



A Legal Analysis of Conditional Death Penalty in the New Indonesian Criminal Code

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Abstract

This study examines the regulation of the conditional death penalty under Indonesia's new Criminal Code, focusing on its legal basis, implementation mechanisms, and legal and social implications. The conditional death penalty refers to a death sentence subject to a ten-year probationary period pursuant to Articles 98–102 of Law Number 1 of 2023, as amended by Law Number 1 of 2026. This normative juridical study employs doctrinal legal analysis of relevant legislation and legal literature. The findings indicate that the death penalty is regulated as an alternative punishment of a special nature and as a measure of last resort. During the probationary period, the death sentence may not be carried out. If the convicted person demonstrates commendable conduct and behavior during this period, the death sentence may be commuted to life imprisonment by Presidential Decree after consideration by the Supreme Court. Article 101 further provides for the commutation of the death sentence to life imprisonment by Presidential Decree if the convicted person's application for clemency has been rejected and the death sentence has not been carried out for ten years for reasons other than the convicted person's escape. Article 102 stipulates that procedures for carrying out the death penalty must be regulated by law. The effective implementation of the conditional death penalty therefore requires a clear and coherent legal framework, objective assessment criteria, institutional readiness, and consistent enforcement to ensure legal certainty and procedural safeguards.

INTRODUCTION

The death penalty is one of the most severe forms of punishment in Indonesia's criminal justice system and remains a subject of debate among academics, legal practitioners, and the broader public. On the one hand, the death penalty is viewed as a severe sanction for perpetrators of extraordinary crimes that cause substantial harm to society and the state. On the other hand, the death penalty is frequently questioned because it directly concerns the right to life, a fundamental human right protected under human rights principles. This debate demonstrates that the death penalty is not merely a matter of punishment but is also closely associated with the values of justice and humanity and the direction of national criminal law policy.

In its development, the new Criminal Code introduced provisions governing the conditional death penalty, under which a person sentenced to death may be granted a probationary period subject to specified conditions. The introduction of these provisions represents an important development in Indonesia's criminal law system because the death penalty is no longer regarded

as a punishment that necessarily culminates in execution. Through this framework, lawmakers have sought to position the death penalty as a measure of last resort (*ultimum remedium*) while providing an opportunity to evaluate the conduct and rehabilitation of the convicted person during the probationary period.

The death penalty is a form of punishment with exceptionally serious consequences because its execution is irreversible if a miscarriage of justice occurs during the criminal justice process. Unlike imprisonment or fines, for which legal remedies may provide opportunities for correction when judicial errors are subsequently identified, the execution of a death sentence eliminates the possibility of restoring the convicted person's right to life. Therefore, policies governing the death penalty must be formulated and implemented cautiously, with due regard for the principles of legal certainty, justice, and the protection of human rights (Ananda et al., 2026).

The regulation of the conditional death penalty also reflects a shift in the objectives of punishment under modern criminal law. Punishment is no longer understood solely as a means of retribution against offenders but also as a means of preventing crime, protecting society, and providing offenders with opportunities for rehabilitation and behavioral improvement. Accordingly, the conditional death penalty may be understood as an attempt to reconcile the state's interest in imposing severe sanctions for serious crimes with a more humane and rehabilitative approach to punishment.

Although the conditional death penalty has been regulated under the new Criminal Code, its implementation in Indonesia may encounter various practical challenges, including those related to legal procedures, the institutional readiness of law enforcement and correctional authorities, and public perceptions of the legitimacy and effectiveness of the policy. Moreover, academic studies specifically examining the regulation of the conditional death penalty and its implications remain relatively limited, as much of the previous research has focused on the broader debate concerning the retention or abolition of capital punishment. This situation demonstrates the need for research specifically examining the conditional death penalty as a distinct development in Indonesia's criminal law policy (Amrullah, 2024; Butt, 2023; Tongat, 2024).

Studies on the death penalty in Indonesia have been conducted by various researchers using diverse approaches and areas of focus. (Muntafa & Mahmud, 2023b) examined the application of the conditional death penalty under the new Criminal Code in relation to the principle of legal certainty but did not analyze in depth the mechanism for assessing the conduct of convicted persons during the probationary period. (Hutajulu et al., 2023b) highlighted issues concerning the imposition of the death penalty on perpetrators of corruption offenses under certain circumstances but did not specifically address the conditional death penalty provisions under the new Criminal Code. Yudistira et al. (2025) examined changes to the death penalty framework under the 2023 Criminal Code but focused primarily on normative aspects without comprehensively addressing its social implications or the readiness of the correctional system. Diba and Hapsari (2025) evaluated the effectiveness of the conditional death penalty for narcotics offenses but did not comprehensively analyze all provisions contained in Articles 98–102 of the new Criminal Code. Meanwhile, (Widiartana & Chandavasti, 2025a) discussed the retention of the death penalty as a

middle ground between opposing perspectives but did not specifically examine its policy implications for human rights protection and public trust in the criminal justice system.

Based on the preceding discussion, several research gaps can be identified. First, most previous studies have addressed the conditional death penalty only partially and have not comprehensively examined the provisions contained in Articles 98–102 of the new Criminal Code as an integrated legal framework. Second, previous research has predominantly focused on normative aspects without providing an in-depth analysis of the legal and social implications of implementing the conditional death penalty. Third, research examining the institutional readiness of law enforcement and correctional systems to support the implementation of the conditional death penalty remains limited. Therefore, this study offers novelty through a comprehensive analysis of the conditional death penalty provisions under the new Criminal Code, encompassing the applicable requirements, procedures, and implementation period, as well as their legal and social implications for human rights protection, the legitimacy of the criminal justice system, and public trust in law enforcement.

Against this background, examining the conditional death penalty under Indonesia's new Criminal Code is important for understanding its requirements, procedures, and implementation period, as well as its legal and social implications for human rights, the legitimacy of the criminal justice system, and public trust in law enforcement. The findings of this study are therefore expected to contribute both academically and practically to the development of Indonesian criminal law and criminal justice policy

Based on this background, the study addresses the following research questions: How is the conditional death penalty regulated under Indonesia's new Criminal Code with respect to its requirements, procedures, and implementation period? What are the legal and social implications of implementing the conditional death penalty for human rights protection, the legitimacy of the criminal justice system, and public trust in law enforcement?

This study aims to analyze the provisions governing the conditional death penalty under Indonesia's new Criminal Code, including its requirements, procedures, and implementation period, and to examine the legal and social implications of its application for human rights protection, the legitimacy of the criminal justice system, and public trust in law enforcement (Utama, 2019). This study is expected to contribute to the development of criminal law and criminal justice policy by enriching the literature on the regulation of the conditional death penalty and examining the coherence between applicable legal norms and their potential implementation in judicial and correctional practice. From a practical perspective, this study is expected to provide policy recommendations for the government and the House of Representatives concerning the effective implementation of the conditional death penalty provisions; provide guidance for law enforcement and correctional authorities regarding their consistent, fair, and legally certain application; enhance public understanding of the conditional death penalty and its relationship with human rights protection; and provide a reference for academics conducting further research on criminal law and capital punishment in Indonesia.

METHOD

This study employed a normative juridical approach and doctrinal legal research method to examine applicable legal provisions, legal doctrines, scholarly literature, and relevant implementing regulations. The study relied on secondary legal materials obtained from Indonesia's new Criminal Code, legislation and regulations concerning the death penalty and human rights, scholarly legal journals, reference books, and official government documents relevant to Indonesia's criminal justice and penal systems (Putranto & Harvelian, 2023).

The data were analyzed qualitatively using descriptive, interpretive, and comparative legal analysis. The analysis focused on interpreting the provisions governing the conditional death penalty, examining developments in Indonesian criminal law policy, and assessing the legal and social implications of implementing the conditional death penalty under the new Criminal Code. Relevant legal provisions and scholarly sources were systematically examined to identify their consistency with the principles of justice, legal certainty, human rights protection, and contemporary criminal law policy (Sudiro et al., 2025).

Through this methodological framework, the study systematically examined the conditional death penalty under Indonesia's new Criminal Code from the perspectives of legal doctrine, criminal law policy, human rights protection, and its potential implications for judicial and correctional practice (Bailey, 2024). The analysis also provided a basis for formulating recommendations for policymakers, law enforcement authorities, and academics regarding the implementation of the conditional death penalty in accordance with the principles of justice, utility, and legal certainty (Robbani & Syam, 2024).

RESULTS AND DISCUSSION

Analysis of the Conditional Death Penalty in Indonesia's New Criminal Code

According to (Abyan, 2026) Indonesia's new Criminal Code provides provisions on the death penalty as an alternative to the death penalty which has been known to be absolute. The presence of this provision indicates a change in the penal system in Indonesia, because the death penalty is no longer seen as a punishment that always ends in execution. In the new Criminal Code, the death penalty is placed as a last resort (*Ultimum Remedium*) and its implementation may be suspended if certain conditions are met. This shows that lawmakers are trying to adapt the national criminal law to the development of more modern and humane justice values.

The arrangement also shows that the state is trying to strike a balance between the interests of law enforcement and respect for human rights. In the development of modern criminal law, the purpose of punishment is no longer only limited to inflicting suffering on the perpetrator, but also includes crime prevention, community protection, and coaching the perpetrator so that they can change for the better. Therefore, the death penalty can be understood as a middle ground between the need to give strict sanctions to the perpetrators of serious crimes and the opportunity for the convict to improve themselves.

In practice, judges can impose the death penalty on parole by considering various circumstances related to the perpetrator and the criminal act committed. These considerations

include the perpetrator's age, psychological condition, level of involvement in the crime, attitude during the trial process, remorse for the act, and the possibility of rehabilitation. This means that the death penalty is not imposed automatically, but through a thorough assessment of the condition of each defendant. Thus, the judge's decision is expected to still reflect a sense of justice (Nopriyansah & Yuningsih, 2026)

In addition, the existence of a room for consideration for judges shows that judicial institutions have an important role in determining whether a perpetrator is still worthy of being given the opportunity to improve themselves. Judges not only apply the sound of the law rigidly, but also must consider legal aspects, social conditions, and the value of justice that lives in society. Therefore, the application of the death penalty is highly dependent on the quality of judges who are professional, objective, and have integrity.

The legal basis for the conditional death penalty is regulated in Article 100 Criminal Code. In this provision, the judge can impose the death penalty with a probation period of 10 (ten) years if there are certain reasons, such as remorse from the defendant and hope to change for the better (Muntafa & Mahmud, 2023a). This arrangement is an important update in Indonesian criminal law, as previously the death penalty was better known as the final punishment that ended in execution.

In line with this, (Hutajulu et al., 2023a), explained that the imposition of the death penalty, especially against perpetrators of corruption crimes in certain circumstances, still poses problems because it must consider the juridical basis, the extraordinary nature of the criminal act, and the limitations of its application so as not to conflict with the principles of justice. This view is relevant to the provision of the conditional death penalty in the new Criminal Code, because the state still maintains the death penalty as a sanction for serious crimes, but its implementation is no longer absolute. Thus, the death penalty can be understood as a form of prudence in the penal system, as well as an effort to balance the interests of law enforcement with human values.

The probation period of 10 (ten) years serves as an assessment time for the behavior of the convict. During this period, the state can see whether the convict shows a change in attitude, behaves well, regrets his actions, and has the possibility of rehabilitation. If during the probation period the convict shows positive developments, then the death penalty can be changed to a life sentence. On the other hand, if there is no significant change, the death penalty can still be carried out according to the applicable provisions.

This provision shows that Indonesian criminal law has begun to prioritize the principle of prudence. The death penalty is a type of crime that is final and cannot be corrected if there is a mistake in law enforcement. Therefore, the existence of a probation period is a form of supervision as well as the last opportunity for convicts to show self-change.

From a legal point of view, the conditional death penalty arrangement is in line with the principle of legality because all mechanisms are clearly regulated in the law. In addition, this provision also reflects the principle of legal certainty because there are strict conditions, procedures, and time periods (Baiti, 2024). Not only that, the death penalty also shows the

principle of proportionality, namely the balance between the severity of the crime and the type of crime imposed.

Conceptually, the conditional sentence cannot be equated with the death penalty with a probationary period. In the National Criminal Code system, a concept similar to conditional imprisonment in the old Criminal Code is realized through criminal supervision. The explanation of Article 75 of Law Number 1 of 2023 states that supervision is one of the main types of crimes which is basically a way of carrying out prison sentences through coaching outside correctional institutions. Supervision is placed as an alternative to imprisonment and is not intended for serious crimes.

Based on Article 75 of the National Criminal Code, the crime of supervision can be imposed on defendants who commit criminal acts with a maximum threat of imprisonment of 5 (five) years. After the amendment through Law Number 1 of 2026, Article 76 stipulates that the sentence of supervision imposed is the same as the sentence of imprisonment that is threatened, but not more than 3 (three) years, and is only given to the person who commits the crime for the first time. In the supervision criminal verdict, a general condition must be established that the convict does not commit another criminal act during the supervision period.

In addition to these general conditions, the judge can set special conditions in the form of an obligation for the convict to compensate all or part of the losses incurred due to the criminal act within a certain period of time and/or to do or not do a certain act. These special conditions must not reduce freedom of religion, freedom of belief, or political freedom. If the convict violates the general requirements, the convict is obliged to serve a prison sentence. Meanwhile, violations of special conditions can be a basis for prosecutors, based on the consideration of community supervisors, to propose the implementation of prison sentences or an extension of the supervision period to the judge. The supervision period can also be reduced if the convict shows good behavior.

In contrast to the death penalty with a probationary period, the death penalty is still the death penalty. The probation period of 10 (ten) years in Article 100 of the Criminal Code is not a form of coaching outside the penitentiary and is not a suspension of the implementation of prison sentences as contained in the supervision penalty. During the probation period, the death penalty cannot be carried out. If the convict shows commendable attitudes and deeds, the death penalty is changed to life imprisonment through a Presidential Decree after obtaining the consideration of the Supreme Court. Thus, the use of the term "conditional death penalty" in this study is an academic term to describe the death penalty with a probation period and is not part of the criminal provisions of supervision in Articles 75 to 77 of the Criminal Code (Widiartana & Chandavasti, 2025b).

Legal and Social Implications of the Implementation of the Conditional Death Penalty

The application of the death penalty with a probation period has important implications for the development of the penal system in Indonesia. This provision shows a change from the death penalty model which was originally understood as a crime that was directly directed at the execution to a special penalty that still opens up space for evaluation of the convict. Although the death penalty is still maintained in the national legal system, its implementation is no longer placed as an automatic

consequence after the verdict acquires permanent legal force. The change shows that there is an effort to place the death penalty in a more limited, careful and balanced manner between the protection of the community and human values (Yudistira et al., 2025b).

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Juridically, the model strengthens the position of the death penalty as a special and alternatively threatened crime. Article 98 of the Criminal Code places the death penalty as a last resort to prevent criminal acts and protect the community. Furthermore, Article 100 provides a probationary period of 10 (ten) years calculated from 1 (one) day after the court decision obtains permanent legal force. During the probation period, the death penalty cannot be carried out. If the convict shows commendable attitudes and deeds, the death penalty is changed to life imprisonment through a Presidential Decree after obtaining the consideration of the Supreme Court. The provision shows that criminal changes must be carried out through the mechanism determined by law and not solely based on the administrative decision of the penitentiary. Law Number 1 of 2026 amends a number of provisions in the Criminal Code and has been in effect since January 2, 2026.

From a human rights perspective, the death penalty with probation is directly related to the protection of the right to life. These rights are guaranteed in Article 28A and Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia. However, in the Indonesian legal system, the protection of the right to life does not necessarily cause all death penalty provisions to lose their legal force. In the Constitutional Court Decision No. 2-3/PUU-V/2007, the Court rejected the application for a test of the death penalty provisions in the narcotics law. The ruling shows that the death penalty is still recognized in Indonesia's positive law, even though its implementation must be carried out in a limited, selective manner, and based on strict legal procedures.

Indonesia has also ratified the International Covenant on Civil and Political Rights through Law Number 12 of 2005. Article 6 of the ICCPR recognizes the right of every human being to life and prohibits the arbitrary deprivation of life. However, the ICCPR does not absolutely prohibit the death penalty for countries that have not abolished it. The death penalty can only be applied to the most serious crimes, based on the laws in force at the time the crime was committed, and through a judicial process that meets the guarantee of legal protection. Therefore, the death penalty with a probationary period cannot be immediately declared to be fully in accordance with all developments in international human rights standards. This provision is more appropriately understood as an effort to limit the absolute nature of the death penalty and open up the possibility of criminal changes before execution is carried out.

The death penalty with a probation period is also related to the principle of criminal

individualization. Criminal individualization requires that punishment is not only based on the type of criminal act, but also takes into account the level of offense, the personal circumstances of the perpetrator, the background of the act, the consequences caused, and the possibility of coaching. With this approach, the judge not only carries out the function of applying criminal threats, but also assesses whether the sentence imposed is proportional to the concrete circumstances of the case (Heliany, 2017). However, it is necessary to distinguish between the judge's consideration when imposing a sentence and the assessment after the convict has served a probationary period. In the change from the death penalty to life imprisonment, the normative measure used is the presence of commendable attitudes and deeds during the probation period.

The probation period for 10 (ten) years not only serves as a postponement of the execution of the death penalty, but also as a period of coaching and evaluation. During this period, the development of convict behavior must be assessed on an ongoing basis through an objective and accountable mechanism. It is not enough to be based on statements of remorse, but it is necessary to consider daily behavior, adherence to discipline, participation in coaching programs, relationships with officers and other inmates, and concrete actions that indicate changes in attitudes. Prisoner coaching has an important function in shaping legal awareness and changing the behavior of convicts (Santoso & Heliany, 2021a).

Nevertheless, the phrase "commendable attitudes and deeds" still needs a more operational elaboration. The Criminal Code has not explained in detail the indicators used, the institution that conducts the evaluation, the form of the assessment report, the frequency of evaluations, and the position of the assessment results in the process of consideration by the Supreme Court and the issuance of a Presidential Decree. The absence of uniform indicators can cause differences in assessment between one convict and another. This situation has the potential to raise issues of legal certainty and disparities in the implementation of changes to the death penalty.

Another problem is related to the condition of the correctional system. The implementation of probation requires correctional institutions that are able to provide effective coaching, provide professional personnel, and document the development of convicts in a measurable manner. The problem of excess capacity, limited coaching personnel, and uneven rehabilitation programs can affect the objectivity of assessments of convict behavior (Maharani, 2025). Therefore, the application of the death penalty with a probation period is not only the responsibility of the judge and the President, but also requires the readiness of correctional institutions, prosecutors, community counselors, psychologists, and other institutions involved in the evaluation process.

From an institutional perspective, the mechanism for changing the death penalty involves several institutions that have different authority. Correctional institutions carry out coaching and prepare assessments of the development of convicts, the Supreme Court provides consideration, while the President determines criminal changes through a Presidential Decree. The involvement of several of these institutions can strengthen the principle of prudence because decisions are not only determined by one party. However, without a clear division of authority, coordination procedures, and deadlines, the mechanism also has the potential to cause uncertainty in its implementation.

The application of the death penalty with a probationary period also has implications for the

legitimacy of the criminal justice system. This policy can be seen as a form of state prudence in implementing irreversible crimes. The existence of a probation period provides an opportunity to evaluate the convict while reducing the risk of hasty execution of the death penalty. However, this legitimacy can only be built if the assessment process is transparent, consistent, and not influenced by certain interests. Differences in the treatment of convicts in similar conditions can create perceptions of injustice and reduce public trust in law enforcement.

From a social perspective, the application of the death penalty with a probation period has the potential to cause differences of opinion in society. Some people may view it as a more humane policy because it provides opportunities for convicts to improve themselves. On the other hand, some others may consider the change of the death penalty to life imprisonment as a form of reducing strictness against serious criminals. These differences of view show that public acceptance cannot be assumed just like that. It is necessary to provide appropriate information about the purpose, conditions, and mechanisms of the death penalty with a probation period so that the public understands that criminal changes are not given automatically.

The social implications must also be seen from the interests of the victim and the victim's family. Discussions about changing the behavior of convicts should not ignore the suffering, loss, and need for justice experienced by the victim. Therefore, the application of the death penalty with a probationary period must still consider the balance between the protection of the rights of the convict, the interests of the victim, public safety, and legal certainty. An overly retaliation-centric approach can give the impression that the legal system is overriding the victim's position, while an approach that is only retaliation-oriented can eliminate the purpose of coaching in punishment.

Article 102 of the Criminal Code stipulates that the procedure for carrying out the death penalty is regulated by law. The provision suggests that the mechanism for carrying out the death penalty, including the relationship between probation, evaluation of convicts, clemency, criminal reform, and execution of execution, requires more specific arrangements. Until July 2026, the Draft Law on the Implementation of the Death Penalty is still in the legislative process. Therefore, the formation of implementing laws is important so that the application of Articles 98 to 102 of the Criminal Code does not cause procedural gaps or differences in interpretation between institutions ((Santoso & Heliany, 2021b),

Overall, the death penalty with probation reflects a renewal in the Indonesian penal system because it places the death penalty more restrictively and opens up the possibility of criminal change based on the results of the evaluation of the convict. Nevertheless, its success depends on the clarity of assessment indicators, the readiness of the correctional system, inter-institutional coordination, the protection of victims' interests, and the formation of implementing laws as mandated by Article 102 of the Criminal Code. Without such support, the goal of balancing legal certainty, community protection, and human values will be difficult to realize consistently (Diba & Hapsari, 2025)

CONCLUSION

Based on the findings and discussion, the conditional death penalty under Indonesia's national Criminal Code must be systematically understood through Articles 98–102 of Law Number 1 of

2023 concerning the Criminal Code, as amended by Law Number 1 of 2026 concerning Criminal Law Adjustment. Article 98 establishes the death penalty as an alternative punishment of a special nature and as a measure of last resort, while Article 99 governs the general requirements for its implementation. Article 100 provides for a probationary period of 10 (ten) years, commencing one day after the court judgment acquires permanent legal force (*inkracht van gewijsde*). During the probationary period, the death sentence may not be carried out. If the convicted person demonstrates commendable attitudes and conduct during this period, the death sentence may be commuted to life imprisonment by Presidential Decree after consideration by the Supreme Court. Article 101 further regulates the commutation of a death sentence to life imprisonment under specified legal circumstances, while Article 102 mandates that the procedures for carrying out the death penalty be further regulated by law. Thus, the conditional death penalty constitutes a special sentencing mechanism that is legally distinct from supervisory punishment or other forms of conditional sentencing.

The implementation of the conditional death penalty has complex legal and social implications. From a legal perspective, this policy reflects the state's cautious approach to carrying out an irreversible punishment while providing an opportunity to evaluate the convicted person's conduct and rehabilitation during the probationary period. However, its implementation requires objective criteria for assessing commendable attitudes and conduct, a clearly defined evaluation mechanism, an appropriate allocation of authority among relevant institutions, and clear regulation of the relationship among the probationary period, clemency, consideration by the Supreme Court, and Presidential Decrees. From a social perspective, the policy may generate differing public views because some members of society may regard it as a more humane approach to punishment, whereas others may perceive it as diminishing the severity of sanctions imposed for serious crimes. Therefore, its implementation must maintain an appropriate balance among the protection of the rights of the convicted person, the interests of victims and their families, public safety, legal certainty, and the objectives of punishment.

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