



Discourse on Conditional Death Penalty through Probationary Period of Imprisonment Under the New Criminal Code in Perspective of Restorative Justice

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Submitted: July 12, 2024; Reviewed: Oktober 24, 2024; Accepted: Desember 15, 2024

Article's Information

keywords:

Criminal Code, Death Penalty, Imprisonment

DOI :

<https://doi.org/10.25041/ip.v5i2.3587>

Abstract

One of materials in New Criminal Cod states that the mandatory 10-year probation period for death row inmates in the latest Criminal Code (KUHP) is a solution taken to mediate between the ideas of the pros and cons of the death penalty. The rules on the death penalty are regulated in Article 100 of the new Criminal Code. The article states that judges can impose death penalty with probation for 10 years by taking into account two things. After serving a 10-year probation period, death row inmates will be given an assessment. This becomes the basis for a recommendation whether the convicted person's sentence will remain or be changed to life imprisonment. If the death row convict is considered to be behaving well and changing, then the President will issue a Presidential Decree (Keppres) to change the convict's sentence to life imprisonment. The doctrinal approach is carried out by conducting a study of the principles, regulations and applicable laws and regulations relating to the legal issues to be discussed. Data collection used in this research includes this writing is done in 2 (two) ways, namely primary data and secondary data. The study's findings suggest that this provision could result in corruption from the convicted party to the head of the correctional facility, the Supreme Court, which makes recommendations to the President and the Attorney General's Office regarding the application of the death penalty. In addition, it presents a chance for diplomatic relations between other nations and Indonesia, as its citizens face the possibility of having their sentences reduced to life in prison, and other



nations undoubtedly want their citizens to be free from the fear of such punishment.

A. Introduction

According to Hans Kelsen, law is a coercive command on human levels and has the function of creating justice in governing. One of the laws that regulates public interests and regulates public interests, namely criminal law.¹ According to Van Hamel, criminal law is the entire basis and rules adopted by the state in its obligation to enforce the law, namely by prohibiting what is contrary to the law and imposing punishment/suffering on those who violate it. This is regulated and given suffering or sanctions, in order to protect public interests, both state and society. In protecting all of this, in accordance with the nature of criminal law, those who violate it will receive criminal sanctions and experience suffering, then other impacts in order to educate and prevent criminal acts from being committed by other members of society. Regarding these consequences, this is in accordance with the principle of using criminal law as *ultimum remedium* (as a last resort when other sanctions outside of criminal law no longer regulate it) and *primum remedium* (as a remedy for a criminal act).²

Legal reform is essential since scientific advancement will undoubtedly coincide with it. Similarly, as human beings evolve as lawmakers, so do criminal laws. Criminal law reform can be understood as an ongoing legislative endeavor to reconcile criminal laws with emerging legal theories and moral standards on a national and worldwide scale. *Wetboek van Starfrecht* (WvS), often known as the Criminal Code (KUHP), is a general law that has not escaped change in Indonesia's criminal justice system. With a few minor modifications, Indonesia still uses the Indonesian Criminal Code, which was left over from the Dutch colonial era.

The new Criminal Code, which was drafted as the law that the Indonesian people aspired to (*ius constituendum*) and not as a holdover from colonialism, serves as an example of legal reform in Indonesia. This is due to the liberal, nonreligious, racial discriminatory, unrestricted respect for human rights, individualism, and strict state absolutism ideals that the Dutch upheld during their colonial era. The ideals of the Indonesian national identity—divine, reciprocal cooperation, regard for the interests of the people, and consensus-building—clearly conflict with these values.

It is true that criminals can avoid the death penalty, because they simply improve themselves by repenting and not committing violent acts for 10 years in prison, of course every human being can avoid the existing death penalty. This is what many parties have criticized regarding the new death penalty regulations, because it will disappoint the families of the victims who initially hoped that perpetrators of violent crimes would receive the death penalty so they could be executed. However, with this new law they can avoid execution and this will be painful for the victims' families due to the new government regulations. Not a few people hope that those who commit violence will be sentenced to death and executed as soon as possible.

The death penalty in the Criminal Code has always been controversial to discuss. This controversy is caused by very complex problems in the basis for the implementation of the death penalty. The debate about the death penalty, to this day, still attracts the attention of many groups with pros and cons among academics and practitioners. There are at least two mainstreams in this matter, namely groups who agree with the death penalty and groups who reject the death penalty. The party that supports the death penalty contends that in order for the

¹ Masruchin Ruba'i, *Textbook of Criminal Law* (Bandung: Media Nusa Creative (MNC Publishing), 2021).

² Yon Artiono Arba'i, *I Refuse the Death Penalty: An Examination of the Application of the Death Penalty* (Jakarta: Gramedia (KPG), 2012).

death penalty to be effective as a deterrent, it must be used as a threat for grave violations of the right to life. On the other hand, those opposed to the death sentence contend that it violates a person's right to life, among other basic rights. Due to the fact that the death penalty is genuinely applied to safeguard human rights (HAM), its core does not constitute a legal infringement.³

Regarding the pros and cons of the death penalty, Bagir Manan is of the opinion that the basis for justifying the threat and application of the death penalty is: First, religious reasons, namely religious rules that allow the imposition of the death penalty, such as the principle "whoever kills is killed unless the victim's family forgives him" or in criminology it is called the theory of alliance. . Second, the political basis of law. Colonial legal politics can be different from legal politics in independent countries. The Dutch WvS does not contain the death penalty, so there is no threat, let alone the application of the death penalty. However, the Criminal Code contains the death penalty. This is solely based on colonial legal politics towards the Indonesian people. Third, the sociological basis, namely the act of taking the life of another person or other people with extraordinary cruelty, such as deliberately killing for trivial reasons, deliberately killing a family or dozens of school children at school or a crowd of people sitting together. or in other words, it is an extraordinary anti-human act. It is certain that these murderers never received the power from God to cruelly take other people's lives. It is an extraordinary contradiction to think as expressed by human rights fighters that the death penalty violates human rights because the victims who were killed also have human rights such as *the right to life*.⁴

Regarding the current criminal sanctions in Indonesia, which are outlined in Article 10 of the Criminal Code (KUHP), the death sentence, incarceration, fines, and incarceration are the primary penalties. The death penalty is one of the primary offenses; according to Satochid Kartanegara, it is a punishment that involves removing a person's soul from them who has broken the law and needs to be punished. In this sense, the death penalty can be viewed as a social defense mechanism that helps society avert serious threats or hazards associated with crimes that seriously jeopardize social, religious, or state order.⁵

This indicates that certain crimes, such as the offense of premeditated murder, which is covered under Article 340 of the Criminal Code, are still punishable by death in Indonesia. In the Jakarta District Court case 796/Pid.B/2022/PN Jkt.Sel, which involved defendant Ferdy Sambo, the judges condemned the defendant Inspector General to death. This is an example of the implementation of the death penalty. Police Officer Ferdy Sambo in the murder case of Indonesian Police Brigadier Yosua Hutabarat. By being sentenced to death, it is still debatable whether to give the heaviest punishment. Due to the debate that occurred, it then had an impact on the implementation of death executions where waiting did not provide legal certainty, starting from the sentencing of the death penalty by the panel of judges at the first level to other legal measures that did not provide certainty for the defendant, so this phenomenon is called the death row . *row phenomenon*). Owing to these circumstances, a new Criminal Code (KUHP) has been drafted by the government and the House of Representatives (DPR) since 1963. The process has taken a while, and on Tuesday, December 6, 2022, it was finally ratified to become Law of the Republic of Indonesia Number 1 2023 concerning the Criminal Code (henceforth referred to as the Criminal Code).⁶

³ I Made Widnyana, *Criminal Law* (Jakarta: Fikahati Aneska Publisher, 2010).

⁴ Bungasan Hutapea, "Alternatives to the Death Penalty in Indonesia Seen from a Human Rights Perspective," *Human Rights Journal* 7, no. 2 (2016): 69–83, <http://ejournal.balitbangham.go.id/index.php/ham/article/view/170><http://ejournal.balitbangham.go.id/index.php/ham/article/view/170>

⁵ Agung Ngurah Galang Widura Pandji, Gde Made Swardhana, and I Gusti Ngurah Parwata, "The Relevance of the Death Penalty in Extraordinary Crimes in the Perspective of Legal Reform," *Kertha Wicara* 9, no. 6–7 (2020).

⁶ Tinuk Dwi Cahyani, *Corruption Death Penalty: Positive Legal and Islamic Perspectives* (Samudra Biru, 2021).

There have been several changes to the Criminal Code as a result of its ratification. One of the most significant changes is that Article 64 of the Criminal Code, which originally classified the death penalty as a basic crime, now refers to it as a special punishment that is imposed with a ten-year probationary period. This is stated in Article 100 paragraph (1), where the judge imposes the death penalty after considering the circumstances.

The reason is irrelevant if it is related to the status of a defendant, then being an inmate in a correctional institution will always behave well. In accordance with the objectives of correctional institutions as explained in the Law of the Republic of Indonesia Number 22 of 2022 concerning Corrections, Article 2 letter b, that the objectives of correctional institutions are none other than to form, train and provide guidance.

With this, when this reason is used to change the defendant's sentence, it is possible that in the future after the Criminal Code comes into force it will cause unrest in society regarding the contents of Article 100 Paragraph (4) which states the phrase "can". Of course, the phrase used gives rise to a broad interpretation and gives rise to legal uncertainty in the application of the death penalty, given the latitude it can be changed to a lighter sentence or to life imprisonment. Apart from that, the decision on whether this sentence can be changed is in the Presidential Decree after receiving consideration from the Supreme Court, however, the time period for the issuance of the Presidential Decree has not yet been regulated.

The current version of the Criminal Code (KUHP) mandates a 10-year probationary period for death row inmates. According to the Ministry of Law and Human Rights (Kemenkumham), this decision was made as a means of resolving conflicting viewpoints regarding the death sentence. Article 100 of the revised Criminal Code contains regulations pertaining to the death penalty. According to this article, a court may apply the death penalty after a ten-year probationary period, provided that two conditions are met. First, there is hope for the defendant to better himself and a sense of regret. The defendant's part in the offense comes in second. Then, according to Article 100 Paragraph 4, the death sentence may be altered to life in prison by a presidential decree after the Supreme Court's (MA) approval if the convicted person exhibits a respectable attitude during the probationary period. An assessment will be conducted to death row convicts following their ten-year probationary period. This serves as the foundation for suggestions regarding whether the convict's sentence will stay the same or be increased to life in prison. In the event that the President issues a Presidential Decree (Keppres) modifying the death row inmate's sentence to life in prison, the inmate will no longer be sentenced to death.

In order to implement the doctrinal approach, a study of the appropriate laws, rules, and guiding principles pertaining to the legal issues under discussion is conducted. Primary and secondary data were the two types of writing that were employed in this study's data collecting. The process of gathering data for a literature study involves looking for, reading, comprehending, and citing a variety of literature that is relevant to the issues raised in the research. This literature can take the form of relevant laws and regulations, legal books, articles, journals, jurisprudence, court rulings with permanent legal force, and other legal materials. The data resulting from the collection and processing mentioned above can be analyzed in this way analytical descriptive, which is intended to describe and analyze data obtained from research results.

B. Discussion

1. Criminal Dynamics of Conditional Death Penalty in the New Criminal Code

The death penalty is a legal and historical legacy of the Netherlands known as the *Wetboek van Strafrecht* (WvS), which governs its application in Indonesia's Criminal Code. Nonetheless, the death penalty was abolished in the Netherlands in 1870—the country that gave rise to

Indonesia—apart from crimes that jeopardize public order and state stability, as those committed during a time of war. The death penalty will thereafter be applied.⁷

Formally speaking, the death penalty is the harshest punishment for basic crimes according to Criminal Code Article 10; among other offenses, the death sentence is one such type of infraction (Moeljatno, 1999). According to Article 11 of the Criminal Code, the executioner would first tie a rope around the defendant's neck and then lower the board the prisoner was standing on in order to put out the death penalty sanction. However, following the publication of Presidential Decree Number 2 of 1964 on Procedures for Implementing the Death sentence Imposed by Courts in the General Courts and Military Courts, the death sentence was no longer applied. That being executed by firing squad is the method used to carry out the death punishment plan. Amnesty International statistics shows that 117 cases in 2020 and 114 cases in 2021 received death sentences. Narcotics charges accounted for the highest number of death sentences, followed by murder cases and cases involving terrorism.

Despite this information, there are still issues with Indonesia's execution policy, one of them being that it violates human rights severely (HAM). Due to the fact that Law Number 39 of 1999 respecting Human Rights explains the exceptional nature of human rights, which Indonesia has acknowledged. Furthermore, there is a lot of international pressure against the death penalty, including opposition to the UN's suggestion. In light of all these factors, criminal law started to be examined and discussed in an effort to develop different approaches. As a result, Indonesia has the concept of the "Indonesian way" in the debate over the New Criminal Code, which regards the death sentence as the primary criminal punishment and a last resort. A person convicted to death under the Indonesian system, which includes the death penalty, will serve a ten-year probationary period. If the offender behaves well and later expresses regret, their sentence may be reduced or converted to life in prison.⁸

Then, on December 6, 2022, the Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code was ratified, replacing the Dutch East Indies Criminal Code, which had been in effect for almost 104 (one hundred and four) years. This law made reference to this concept. On the other hand, the Criminal Code will become operative in 2026, or three (three) years after it was enacted. This will classify the death penalty statute as a special criminal law, sometimes known as a conditional death penalty law. With the modifications and updates to Indonesian criminal code, it is naturally a source of national pride to have our own National Criminal Code, which is written in native Indonesian for pragmatic reasons as well as for sociological reasons based on the country's existing national value system.

Aside from that, the Criminal Code, which is founded on Pancasila, or the so-called five guiding principles, is a tangible representation of the real nature of Indonesian society. The issue that will surface in the future is the implementation of the Criminal Code as a result of these reform initiatives. Article 67 of the Criminal Code confirms that one of them relates to the law regarding the conditional death penalty.

"The special punishment as intended in Article 64 letter c is the death penalty which is always punishable by alternative means."

One way to carry out the death penalty's objective is to give the offender one of two possible punishments: the "death penalty" or the "conditional death penalty." The death penalty is no longer the primary punishment in this case; instead, pursuant to Article 99 paragraph (1) of the Criminal Code, it may be applied conditionally, provided that the convict refuses the President's request for clemency and the death penalty is subsequently imposed upon good behavior following a ten-year probationary period. For this reason, the judges' panel applies the

⁷ A Hasyim Nawawie, "The Existence of the Death Penalty in Indonesia," *Tribakti: Journal of Islamic Thought* 28, no. 1 (2017): 175–205.

⁸ Bobby. Kholis Roisah Aswandi, "Death Penalty from a Judicial Perspective in Indonesia," *Journal of Indonesian Legal Development* 1, no. 1 (2019): 128–45, <http://ejurnal.ung.ac.id/index.php/jalrev/article/view/2399>.

death penalty in Article 100 paragraph (1) of the Criminal Code, with a ten-year probationary period.⁹

This sorrow necessitates that the conditional death punishment be included in the judgment as per paragraph (2) of the court. Additionally, paragraph (3) clarifies that a court decision granting a conditional death punishment has permanent legal effect and entails a 10-day trial period beginning one day following the ruling. Additionally, paragraph (4) allows for a probationary period during which the death penalty may be substituted with life in prison if the convicted individual demonstrates admirable attitudes and deeds. According to the Criminal Code's explanation of the conditional death penalty rule, a prisoner who is given the death penalty will undoubtedly behave well because this is in line with the objectives of the penal system, which provides Pancasila-based coaching to inmates in order to improve their qualities and help them identify their mistakes and become better versions of themselves. This implies that if a criminal receives the death penalty, he will improve himself by turning from his sins, becoming closer to Allah SWT, and seeking guidance or spiritual healing from religious authorities in prisons. In the case of Freddy Budiman, for instance—a well-known drug lord who was given a death sentence—this occurred even after he filed a Judicial Review (PK) lawsuit, in which case Fredy read Nasuha's statement of contrition in front of the Cilacap District Court. Freddy expressed his desire that he might grant it through this letter in his statement. PK that he turned in.¹⁰

This is not the same as the case of Ferdy Sambo, who received death sentences in both his initial and appellate stages. According to Article 100 paragraph 4 of the Criminal Code, which states that "the death penalty can be changed to life imprisonment by Presidential Decree after receiving consideration from the Supreme Court," in this case, the punishment will be conditional and given after 10 (ten) years of probation. What is meant by "obtaining consideration from the Supreme Court" in this answer is still unclear. In light of the Supreme Court's consideration, the death penalty may now be changed to life in prison or 20 (twenty) years.

It will undoubtedly take a long time to wait for these steps and processes. Because the Supreme Court's authority is limited to the three points mentioned above in accordance with Supreme Court Law. As a result, the question of modifying the death sentence may be raised throughout the trial and tailored to the particulars of the case. in order for the Panel of Judges to decide whether to sentence someone to death, life in prison, or a number of years in conformity with current positive law. As a result, the imposition of conditional death penalty sanctions solely takes into account non-legal factors, as opposed to legal ones, which ought to be the primary factor taken into account when determining sentence modifications. Because trafficking in drugs, terrorism, corruption, and premeditated murder are crimes for which there are legal penalties.¹¹

Naturally, this has a major effect on society and the state. A sentence reduction for non-legal grounds will be detrimental to the law as a whole. Therefore, it is ideal that definitive criminal sanctions that offer legal certainty, such as the death penalty or life imprisonment, are offered from the time the main case is evaluated at the first court stage or other stages of the legal action.¹² As a result, the death penalty may be applied based on caution and accuracy. This is consistent with the viewpoint expressed by German author Hermann Mostar, who states

⁹ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Jakarta: Prenada Media, 2016).

¹⁰ Karmila As'ad, Abdul Agis, and Hamza Baharuddin, "The Existence of the Death Penalty in Law Enforcement in Indonesia Seen from the Human Rights Aspect," *Journal of Lex Generalis (JLG)* 2, no. 1 (2021): 107–16.

¹¹ Samuel Agustinus, Eko Soponyono, and Rahayu, "Implementation of the Death Penalty in Post-Reform Indonesia from a Human Rights Perspective," *Diponegoro Law Journal* 5, no. 4 (2016): 1–16.

¹² Mien Rukmini, *Aspek Hukum Pidana Dan Kriminologi (Sebuah Bunga Rampai)* (Bandung: Alumni, 2006).

that the death sentence should not be applied arbitrarily and that it should only be applied in limited situations where it is just, certain, and practical.¹³

2. Implications of the Application of the Conditional Death Penalty and Its Relevance to the Principle of Legal Certainty

The purpose of criminal sanctions is to deter crime and offer offenders just compensation. One of them has to do with the death penalty, which has changed since the Criminal Code's inception. It is still regarded as the primary penalty in the Draft Criminal Code Law (KUHP), which was discussed from its original formulation in 1971/1972 to 1980. Additionally, in 1964, the death penalty was formed as an exclusion in the Criminal Code concept, but in 1964, this formulation was amended to make it a particular principal crime. In the end, the death penalty was no longer the primary crime from its formulation in 1983/19834 until the notion of the KUHP was introduced in 2015 and until the Criminal Code was passed.¹⁴

For prisoners, the death sentence is in fact a conundrum. Royal traitors and murderers are among individuals who frequently face the death penalty for their actions that undermine royal sovereignty. The state offers death row offenders a 10-year probationary period, which is a type of mercy that the prisoner must accept in order to determine whether or not their behavior has changed for the better. Good behavior could be used to overturn the death penalty or substitute a life sentence as evidence of whether the offender will regret their crimes or not. Furthermore, just because different religions introduced the death sentence to Indonesia, it does not imply that it is an obligatory form of punishment.

During this probationary term, two aspects of the offender's development will be monitored, first, whether the offender acknowledges and regrets his conduct; and second, if the offender maintains optimism that he can change for the better. Thus, when the Supreme Court has given its consideration, the convict may take this justification as a guide when deciding whether to grant a conditional death sentence through a Presidential Decree. This is to establish legal stability for the regulation of the death sentence, which is still a contentious topic. Widayat (2016). According to Article 100, paragraph (4) of the Criminal Code, "The death penalty may be changed to life imprisonment by Presidential Decree after consideration by the Supreme Court if the convict during the probation period as intended in paragraph (1) shows commendable attitudes and actions." Examining the word "can" from this article, we find that it has a broad meaning.¹⁵

This will give rise to the possibility of the conditional death penalty, which lacks legal certainty. Because there is no deadline for waiting on the president to decide whether to modify the defendant's sentence. Furthermore, a presidential decree is required before conditional penalties can be applied. This is a concern since the President's ability to convert the death penalty to life in prison is limited. The decision-making process occurs every 5 (five) years, or 10 (ten) years if he returns to office. This is if the president changes. will be a political decision and not a decision based on law. Because of this, in addition to a probationary period and waiting for the president's decision, the possibility of negative consequences may lead to covert detention, and if the offender had only a little role in the criminal act, the death sentence could be applied. The conditional death penalty calls into question the arbitrary decisions made by

¹³ Aan Riana Angkasa Aji Putra and Ningrum Puspita Sari, "Kendala Pemberian Pembebasan Bersyarat Di Lembaga Pemasyarakatan Kelas Ila Sragen," *Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 2, no. 3 (2013).

¹⁴ Barda Nawawi Arief and Gita Santika Ramadhani Purwoto, "Sistem Pidana Dan Tindakan 'Double Track System' Dalam Hukum Pidana Di Indonesia," *Diponegoro Law Review* 1, no. 4 (2012): 19518.

¹⁵ Ateng Sudibyo and Aji Halim Rahman, "Dekonstruksi Asas Legalitas Dalam Hukum Pidana," *Journal Presumption of Law* 3, no. 1 (2021): 55–79.

upcoming office holders about the reduction or There might be an opportunity with this change to the death penalty's punishments.¹⁶

There is a chance for corruption. This will present a chance for diplomatic relations between other nations and Indonesia, whose nationals face the possibility of being executed, to have their sentences commuted to life in prison. Other nations will undoubtedly wish to see their citizens freed from the danger of death.

Because it allows for this trial period, the system is overly convoluted. The judges' decision must first include a ten-year probationary sentence. Next, the prison, acting as the inmate's supervisor, will evaluate the convict's behavior. Finally, the convict's application for a conditional sentence from the Supreme Court will be evaluated and taken into consideration based on the Court's evaluation. The President receives Agung and decides whether to grant the offender a conditional criminal sentence.¹⁷

Therefore, after the requirements of the penalty have been met, conditional criminal consequences may be applied. In this instance, since the Criminal Code no longer lists the death penalty as a basic offense, very important considerations and beliefs are needed to impose the death penalty or a lower sentence. However, the Constitutional Court (MK) decided that it could not carry out a judicial review of Law Number 1/2023 concerning the Criminal Code because it has not yet come into force and will only become effective on December 2 2026.¹⁸

The Ministry of Law and Human Rights (Kemenkumham) stated its decision to make a mandatory 10 year probationary period for death row convicts in the latest Criminal Code (KUHP). In this latest regulation, convicts who receive the death penalty are given the opportunity to change their behavior for the better and will receive a certificate of good behavior while in detention. Seeing the existence of the latest Criminal Code regarding the death penalty certainly raises pros and cons among the public, because basically the public wants the death penalty to be carried out and given to those who have committed serious offenses such as killing intentionally.¹⁹

The latest regulations regarding the death penalty are regulated in Article 100 of the new Criminal Code, where the judge sentences the convict to the death penalty with a probation period of 10 years. This is of course seen from two aspects which are the basis of the probation period itself, firstly the defendant's feeling of regret and his feeling of wanting to improve himself to be better and promising not to make a mistake. Second, the role of the defendant in the crime.²⁰ In article 100 paragraph 4, it is explained that if the convict has committed commendable actions and has become a good person and regrets his actions, then the convict who initially received the death sentence can be changed to a life sentence. However, if the convict cannot improve himself and repent within 10 years, the death penalty will still be given and he will undergo execution.²¹

Death row inmates who already have good behavior will certainly not undergo execution, but the sentence they received when initially receiving the death penalty will be transferred to a life sentence. Of course, this doesn't just happen, but they have to undergo a trial period of 10 years and if they get a certificate of good behavior they will not be executed. Unfinished debates about the pros and cons of the death penalty may continue not only in academia, but also in

¹⁶ Yaris Adhial Fajrin and Ach Faisol Triwijaya, "Arah Pembaharuan Hukum Pidana Indonesia Di Tengah Pluralisme Hukum Indonesia," *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan* 18, no. 1 (2019): 734–40.

¹⁷ Erlina Erlina, "Analisa Kriminologi Terhadap Kekerasan Dalam Kejahatan," *Al Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan* 3, no. 2 (2014): 217–28.

¹⁸ M Ainul Syamsu and M H SH, *Penjatuhan Pidana & Dua Prinsip Dasar Hukum Pidana* (Jakarta: Prenada Media, 2018).

¹⁹ Hanafi Arief and Ningrum Ambarsari, "Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia," *Al-Adl: Jurnal Hukum* 10, no. 2 (2018).

²⁰ Mei Susanto and Ajie Ramdan, "Kebijakan Moderasi Pidana Mati," *Jurnal Yudisial* 10, no. 2 (2017): 193, <https://doi.org/10.29123/jy.v10i2.138>.

²¹ Sulardi Sulardi and Yohana Puspitasari Wardoyo, "Kepastian Hukum, Kemanfaatan, Dan Keadilan Terhadap Perkara Pidana Anak," *Jurnal Yudisial* 8, no. 3 (2015).

parliament, government, the executive branch, and society at large. The pros and cons of the death penalty of course come from religious norms themselves, because religion teaches that only God is able to take a person's life, not other humans themselves.²²

The system is unduly complex because it permits this trial period. First, the judges' ruling must contain a ten-year probationary period. The jail will then assess the convict's conduct in its capacity as the inmate's supervisor. Lastly, based on the Supreme Court's assessment, the convict's request for a conditional sentence will be examined and taken into account. After receiving Agung, the President determines whether to impose a conditional criminal sentence on the perpetrator.

As a result, if this justification is used to modify the defendant's sentence, there's a chance that the word "can" in Article 100 Paragraph 4 of the Criminal Code will provoke social disturbance when it comes into effect. Given the flexibility to substitute a lesser punishment or life in prison for the death penalty, the word used naturally lends itself to a broad interpretation and creates legal ambiguity in its use. Aside from that, the Presidential Decree contains the decision about whether this sentence can be altered, following review by the Supreme Court. The time frame for issuing the Presidential Decree has not yet been established.

The death penalty is indeed a dilemma for convicts. The death penalty is often imposed on those who harm royal sovereignty, such as royal traitors or murderers. The 10 year probation period given by the state to death row inmates is a form of mercy that the convict needs to respond to, because the 10 year probation period is to see whether their behavior repents or not. Good behavior is proof of whether they will regret their actions or not, so the death penalty could be given or changed to a life sentence. And regarding the introduction of the death penalty by various religions in Indonesia, this does not mean that the death penalty is a mandatory punishment. Therefore, the probation period given for 10 years is a form of making the convict aware to regret his actions, so that the death penalty does not need to be carried out.

C. Conclusion

According to Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code, the death penalty may be applied in an emergency. However, if the offender maintains good behavior during a ten-year probationary period and receives approval from the President following consideration by the Supreme Court, the sentence may be changed to life in prison. Because Article 100 paragraph 4 contains the word "can" in its provision of a conditional death punishment, it is unclear when the death penalty will be converted to life in prison. This indicates that there is an excessively protracted criminal trial period, that the court procedure is uncertain about the outcome it will reach, and that there is an unclear time limit for the presidential judgment to be issued. The government and law enforcement agencies should consider the use of conditional death sentences for crimes including drugs, terrorism, and corruption. It is preferable to deny them the chance since the consequences of their acts will be extremely harmful to the state and society.

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²² Muhammad Taufiq, "Penyelesaian Perkara Pidana Yang Berkeadilan Substansial," *Yustisia Jurnal Hukum* 2, no. 1 (2013).

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