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Reform of the Death Penalty Regulations in the New Criminal Code: A Comparative Study of Three Abolitionist Countries

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Abstrak

Reformasi pidana mati dalam KUHP Baru menghadirkan mekanisme pidana mati bersyarat yang menandai perubahan pendekatan pemidanaan Indonesia, sekaligus menimbulkan pertanyaan mengenai kesesuaiannya dengan prinsip hak hidup dan perkembangan standar hak asasi manusia internasional. Penelitian ini bertujuan menilai koherensi normatif pidana mati bersyarat dan membandingkannya dengan model penghapusan pidana mati di tiga negara. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan, konseptual, dan perbandingan. Hasil penelitian menunjukkan bahwa penerapan pidana mati bersyarat mencerminkan langkah transisional menuju pemidanaan yang lebih humanistik, tetapi belum sepenuhnya sejalan dengan kecenderungan global menuju abolisi. Negara Indonesia masih dalam kategori retentionist dengan modifikasi sehingga diperlukan evaluasi kebijakan yang lebih komprehensif untuk memastikan keselarasan dengan prinsip hak hidup.

Kata Kunci: KUHP Baru; Abolisi; Pidana Mati Bersyarat

Abstract

The reform of capital punishment in the New Criminal Code introduces a conditional death penalty mechanism that marks a change in Indonesia's approach to punishment, while raising questions about its compatibility with the principle of the right to life and the development of international human rights standards. This study aims to assess the normative coherence of the conditional death penalty and compare it with models of abolishing capital punishment in three countries. The study uses a normative legal method with a legislative, conceptual, and comparative approach. The results show that the application of conditional capital punishment reflects a transitional step towards more humanistic punishment, but is not yet fully in line with the

global trend towards abolition. Indonesia is still in the retentionist category with modifications, so a more comprehensive policy evaluation is needed to ensure alignment with the principle of the right to life.

Keywords: New Criminal Code; Abolition; Conditional Death Penalty

INTRODUCTION

The regulation of the death penalty in Indonesia is one of the most complex moral and legal dilemmas in the modern criminal justice system.¹ Law No. 1 of 2023 on the Criminal Code (New Criminal Code) still retains the death penalty, although not as a primary punishment, but places it within a conditional mechanism as stipulated in Articles 98 and 100. Philosophically, this policy reflects the tension between justice oriented towards protecting society (as a last resort to protect society) and humanitarian values that uphold the right to life. Juridically, the existence of the death penalty raises debate regarding its compatibility with Articles 28A and 28I paragraph (1) of the 1945 Constitution², which guarantee the right to life as a fundamental right that cannot be reduced under any circumstances. Sociologically, Indonesian society is still

divided between the demand for retributive deterrence and the desire for a more humanistic penal system.³

Previous research conducted *first* by Dita Melati Putri entitled “Capital Punishment in the New Criminal Code and Abolitionist and Retentionist Perspectives” states that the regulation of capital punishment in Law Number 1 of 2023 shows Indonesia's efforts to balance retributive and rehabilitative approaches by placing capital punishment as an alternative punishment accompanied by a ten-year probation period;⁴ Second, by Roby Satya Nugraha et al. entitled “Transformation of the Criminal Justice System in Indonesia: A Comprehensive Comparison between the Old and New Criminal Codes” which concluded that the New Criminal Code represents a paradigm shift towards a more humanistic and human rights-oriented

¹ Djuhandhani Rahadjo Puro dkk., “Optimalisasi Pelaksanaan Pidana Mati Dalam Mewujudkan Efek Jera Pada Tindak Pidana Pembunuhan Berencana,” *Jurnal USM Law Review* 6, no. 3 (2023): 1183, <https://doi.org/10.26623/julr.v6i3.7945>.

² Abdul As’ad Al Burhan, “Reformulasi Kebijakan Pidana Mati Terhadap Koruptor Dalam Perspektif Hukum Positif Dan Hak Asasi Manusia,” *Jurnal Hukum In Concreto* 3, no. 1 (2024): 130, <https://doi.org/10.35960/inconcreto.v3i1.1856>.

³ Aqmarina Khusnul Baiti, “Pidana Mati Dalam Perspektif Undang-Undang Nomor 1 Tahun 2023: Tinjauan Yuridis Terhadap Model Pemidanaan Alternatif,” *Jurnal Hukum In Concreto* 3, no. 1 (2024): 115, <https://doi.org/10.35960/inconcreto.v3i1.1849>.

⁴ Dita Melati Putri, “Hukuman Pidana Mati Dalam KUHP Baru dan Perspektif Abolisionalis Serta Retensionis,” *Eksekusi: Jurnal Ilmu Hukum Dan Administrasi Negara* 2, no. 4 (2024): 01–13, <https://doi.org/10.55606/eksekusi.v2i4.1451>.

criminal justice system, including in sentencing policy, but the study still focuses on internal normative transformation;⁵ *Third*, by Ms. Zhinta Azzahra Tarmizi, entitled “Comparison of the Application of the Death Penalty in the Criminal Justice Systems of Indonesia and European Countries,” which found that European countries have abolished the death penalty based on moral and human rights considerations, while Indonesia continues to uphold it on the grounds of deterrence and security.⁶ These studies share similarities with this study in that they all discuss the death penalty in the context of criminal law reform and the protection of human rights. However, these three studies have not specifically examined the normative coherence of the conditional death penalty in the New Criminal Code through comparison with non-European civil law countries that have completely abolished the death penalty. Therefore, the novelty of this study lies in its comparative normative analysis, which places Indonesia's conditional death penalty within the spectrum between retentionism and abolitionism in order to assess its compatibility with the principle of the right to

life and the direction of modern criminal law development.

The urgency of this research lies in Indonesia's position as one of the civil law countries that still maintains the death penalty amid the global trend towards its abolition. The application of conditional capital punishment in the New Criminal Code has sparked constitutional and moral debates regarding its compatibility with Indonesia's international obligations under the International Covenant on Civil and Political Rights (ICCPR). A systematic analysis is needed to assess whether this mechanism is a form of reform towards a more humanistic criminal law or merely a form of soft retentionism that maintains the death penalty in a new package. A deep understanding of this transition is important to ensure that the direction of national criminal law policy is in line with humanitarian values and universal human rights principles.⁷

The main legal issue examined in this study is the normative consistency between the conditional death penalty mechanism and constitutional guarantees of the right to life, as well as its compatibility with international practice. This study assesses whether this

⁵ Roby Satya Nugraha dkk., “The Transformation of Indonesia’s Criminal Law System: Comprehensive Comparison between the Old and New Penal Codes,” *Reformasi Hukum* 29, no. 1 (2025): 1–21, <https://doi.org/10.46257/jrh.v29i1.1169>.

⁶ Puan Zhinta Azzahra Tarmizi, “Perbandingan Penerapan Hukuman Mati Dalam Sistem Hukum Pidana Di Indonesia Dan Negara-Negara Eropa: Tinjauan Terhadap Aspek Moral Dan Efektivitasnya,” *Jurnal Kajian Hukum Dan Kebijakan Publik* | *E-ISSN: 3031-8882* 2, no. 2 (2025): 833–40, <https://doi.org/10.62379/tc4s7t13>.

⁷ Aista Wisnu Putra dan Rahmi Dwi Sutanti, “Kebijakan Formulasi Pidana Mati Bersyarat dalam Perspektif Pembaharuan Hukum Pidana Indonesia,” *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (2020): 321, <https://doi.org/10.14710/jphi.v2i3.319-330>.

concept truly reflects the application of the principles of *ultimum remedium* and proportionality, or whether it actually creates legal uncertainty. In addition, this study compares the extent to which the conditional death penalty model in the New Criminal Code can be considered a step towards progressive abolition when contrasted with legal reforms in Kazakhstan, the Central African Republic, and Equatorial Guinea, which have completely abolished the death penalty.

This study uses a normative legal research method that examines law as a system of norms through written legal materials. The approaches used include the statute approach by analyzing constitutional provisions and legislation, the conceptual approach by examining legal doctrines and humanitarian principles, and the comparative approach by comparing Indonesia's capital punishment regulations with those of abolitionist countries that adhere to the civil law system. Primary legal materials include the 1945 Constitution, Law Number 1 of 2023, and Law Number 12 of 2005 concerning the Ratification of the ICCPR, which are reinforced by secondary legal materials such as literature, human rights institution reports, and international agreements.

This study aims to analyze the normative coherence and human rights implications of Indonesia's conditional death

penalty policy, as well as assess its compatibility with constitutional principles and global trends toward the abolition of capital punishment. Furthermore, this study seeks to formulate a comprehensive understanding of the direction of Indonesia's criminal law transition from a retributive system to a humanistic and human rights-based system. The results of the analysis are expected to provide academic recommendations for policymakers in their efforts to harmonize national criminal law with humanitarian and constitutional values.

RESULT AND DISCUSSION

Provisions on the Death Penalty in Law No. 1 of 2023 on the New Criminal Code and Comparison with the Abolition of the Death Penalty in Various Countries.

Changes to the provisions on capital punishment in the New Criminal Code indicate a shift in the orientation of lawmakers towards sentencing policy. Through the 2015 Academic Draft of the Criminal Code Bill and the 2019 revision, the government has confirmed that the death penalty is no longer considered a primary punishment, but rather a type of punishment that can only be imposed in very limited circumstances and must take into account humanitarian values. This formulation illustrates efforts to align Indonesia's criminal justice policy with developments in modern criminal law

thinking that emphasize the protection of human rights.⁸

The government's explanation in the series of discussions on the Criminal Code Bill with Commission III of the Indonesian House of Representatives shows that the purpose of Articles 98 and 100 is to avoid the final and automatic imposition of the death penalty.⁹ The ten-year probation period is intended to provide an evaluative mechanism for the behavior of the convicted person before determining whether the death penalty will be carried out or commuted to a lighter punishment.¹⁰

Historically, the regulation of capital punishment in the New Criminal Code cannot be separated from the long process of national criminal law reform that began at the start of independence. In various forums discussing the Criminal Code Bill since the 1960s, capital punishment has always been a controversial issue between retentionists and abolitionists. The Academic Draft of the Criminal Code Bill consistently notes that the continuation of the death penalty in the Indonesian legal system is a political-legal compromise between the

demand for the protection of the right to life as a non-derogable human right and the sociological reality of a society that still demands the maximum punishment for extraordinary crimes. Therefore, lawmakers have opted for a gradualist approach, which does not abolish the death penalty outright, but strictly and conditionally limits its application.

Furthermore, the minutes of the discussion of the Criminal Code Bill in the Indonesian House of Representatives show that the intent of the legislators is no longer to position the death penalty as an instrument of retributive justice, but rather as a temporary and corrective *ultimum remedium*.¹¹ The concept of conditional death penalty in Article 100 of the New Criminal Code is designed as a transitional bridge towards a more humane sentencing policy, by opening up space for rehabilitation and evaluation of the convicted person's behavior during the probation period. This policy choice reflects the legislators' desire to maintain the constitutional legitimacy of the death penalty in the short

⁸ Rani Hendriana dkk., "Proyeksi Ke Depan Pelaksanaan Pidana Mati Di Indonesia Dalam Rancangan Kitab Undang-Undang Hukum Pidana," *Jurnal Ius Constituendum* 7, no. 1 (2022): 70, <https://doi.org/10.26623/jic.v7i1.4906>.

⁹ Putu Ayu Veguita Putri Ningsih dan Irsyaf Marsal, "Politik Hukum Pembentukan Rancangan Kitab Undang-Undang Hukum Acara Pidana: Peluang Dan Hambatannya Dalam Penegakan Hukum Di Indonesia," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 5 (2025): 7376, <https://doi.org/10.61104/alz.v3i5.2375>.

¹⁰ Bertrand Jerison Gunawan dan Go Lisanawati, "Masa Percobaan Pidana Mati Pada KUHP Nasional Ditinjau dari Aliran Utilitarianisme Hukum," *Jurnal Hukum Lex Generalis* 5, no. 12 (2024): 2, <https://doi.org/10.56370/jhlg.v5i12.857>.

¹¹ Aqmarina Khusnul Baiti, "Pidana Mati Dalam Perspektif Undang-Undang Nomor 1 Tahun 2023: Tinjauan Yuridis Terhadap Model Pemidanaan Alternatif," *Jurnal Hukum In Concreto* 3, no. 1 (2024): 119, <https://doi.org/10.35960/inconcreto.v3i1.1849>.

term,¹² while preparing the direction of *ius constituendum* towards the restriction and even abolition of the death penalty in the future in line with developments in international human rights standards.

Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) still maintains the death penalty as one of the main types of punishment, but places it in a special position. This is explicitly regulated in Article 98, which explains that the death penalty is an alternative punishment given as a last resort.

This formulation represents a significant paradigm shift compared to the old Criminal Code (*Wetboek van Strafrecht*), in which the death penalty was previously placed on a par with other principal penalties without any moral or humanitarian restrictions. By using the phrases “alternatively” and “last resort,” lawmakers emphasize that the death penalty is no longer automatic, but can only be imposed if there are no other effective options to achieve the objectives of punishment.¹³ In criminal law theory, this falls under the principle of *ultimum remedium*, which states that the death penalty is a last resort (final remedy) when other forms of punishment are insufficient to provide social

protection. Furthermore, the New Criminal Code introduces a conditional death penalty mechanism, which means that the death penalty is no longer a final punishment. Through Article 100, judges are given the authority to impose the death penalty with a ten-year probation period and are required to include this probation period in their verdicts. During this period, the behavior of the convicted person is evaluated to determine whether the death penalty should be carried out or commuted to a lighter punishment. The essence of this provision is reflected in Article 100 paragraph (4), which states that: “If during the probation period the convicted person shows commendable attitude and behavior, the death penalty may be commuted to life imprisonment or imprisonment for a maximum of 20 (twenty) years”.¹⁴

The official explanation of Article 100 of the New Criminal Code emphasizes that the probation mechanism is intended to give convicts the opportunity to demonstrate changes in their behavior and attitude during a ten-year period. The results of this evaluation form the basis for the government, through the Minister of Law and Human Rights, after consulting with the Supreme

¹² Indah Lestari dkk., “Analisis Pasal 100 Undang – Undang Nomor 1 Tahun 2023 Tentang Hukuman Mati Bersyarat Berdasarkan Asas Keadilan Dan Asas Kepastian Hukum,” *Jurnal Ilmu Hukum Sui Generis* 4, no. 3 (2024): 3.

¹³ Mahyudin Igo dkk., “Kebijakan Formulasi Dalam RUU KUHP Terhadap Pidana Kerja Sosial Sebagai Alternatif Pidana Penjara,” *Jurnal Education and Development* 10, no. 2 (2022): 709.

¹⁴ Herman dkk., “Analisis Hukum Pidana Masa Tunggu Pidana Mati Dalam Kitab Undang-Undang Hukum Pidana Nasional Dalam Perspektif Keadilan Korektif,” *Halu Oleo Legal Research* 6, no. 2 (2024): 518, <https://doi.org/10.33772/holresch.v6i2.798>.

Court, to recommend changing the death penalty to a lighter punishment. Thus, the death penalty in the New Criminal Code is no longer absolute, but has a moral and humanitarian dimension that allows for rehabilitation and social redemption. From a criminal law policy perspective, the existence of the death penalty in the New Criminal Code is a compromise between two major schools of thought in criminal law, namely abolitionists and retentionists. Abolitionists reject the death penalty because it is considered contrary to the right to life as guaranteed in Article 28A and Article 28I paragraph (1) of the 1945 Constitution, while retentionists argue that the death penalty is still necessary to maintain public security and order from extraordinary crimes, such as terrorism, premeditated murder, or crimes against state security.¹⁵

Comparison of the Abolition of the Death Penalty in Kazakhstan, the Central African Republic, and Equatorial Guinea.

The selection of Kazakhstan, the Central African Republic, and Equatorial Guinea as comparative objects was based on methodological considerations relevant to the objectives of this study. The comparative objects were chosen based on their similar

experiences of transition from a retentionist system to an abolitionist system, despite being in different regional contexts.

These three countries represent three models of abolishing capital punishment in the civil law tradition. Kazakhstan represents a civil law country that constitutionally abolished capital punishment in 2021,¹⁶ while the Central African Republic and Equatorial Guinea are examples of African countries that have successfully achieved total abolition through legislative reform and a commitment to human rights principles. This diversity allows for a more balanced comparative perspective to evaluate Indonesia's conditional death penalty mechanism within the global trend towards the abolition of the death penalty.

In addition, mapping the abolition of the death penalty is necessary to understand how each country interprets the margin of appreciation in determining its death penalty policy. International law, particularly the ICCPR and General Comment No. 36, does not absolutely prohibit the death penalty, but provides certain leeway for countries as long as the punishment does not conflict with the principle of the right to life as an inalienable

¹⁵ Feren Nur Jayanti, "Kebijakan Pemerintah Dalam Pelaksanaan Hukuman Mati Terhadap Kasus Pembunuhan Berencana Berdasarkan Perspektif Hak Asasi Manusia," *WEDANA: Jurnal Kajian Pemerintahan, Politik Dan Birokrasi* 10, no. 2 (2024): 55, <https://doi.org/10.25299/wedana.2024.18132>.

¹⁶ Kiagus Zaenal Mubarak dkk., "Dilema Hukuman Mati: Komparasi Antara Konvenan International Terkait Hak Asasi Manusia Dan Pandangan Nahdlatul Ulama," *Jurnal Keislaman* 6, no. 1 (2023): 193, <https://doi.org/10.54298/jk.v6i1.3709>.

right.¹⁷ Kazakhstan, the Central African Republic, and Equatorial Guinea demonstrate how this policy space can be used progressively to reduce and eventually abolish the death penalty through different legal mechanisms.

Table 1: Comparison of Capital Punishment Regulations in Various Countries

Comparative Aspects	Kazakshtan	Central African Republic	Guinea Khatulistiwa
Death penalty status	Deleted through the Constitution of the Republic of Kazakhstan Amendment (Constitutional Amendment) 2021	Repealed by Law No. 22.011 on the Abolition of the Death Penalty (2022)	Deleted through Ley Orgánica del Código Penal de Guinea Ecuatorial (Ley N° 4/2022)
Death penalty abolition instrument	Constitutional Amendments and Ratification Second Optional Protocol ICCPR	Special laws	Codification of the New Criminal Code
Human Rights Considerations	The right to life as a non-derogable right	African Charter on Human and Peoples’ Right	Criminal justice reform and international commitments
Substitute for capital punishment	Life imprisonment	Forced labor/life imprisonment	Life imprisonment
International ties	Ratification of OP II ICCPR (2022)	Has not ratified OP II	Has not ratified OP II
Relevance for Indonesia	Constitutional abolition model	Abolition model through legislation without amendment	Abolition model through codification, similar to the New Criminal Code

Source: Elaborated by author

The Transformation of Capital Punishment Policy in Indonesia and Kazakhstan

Kazakhstan provides an example of how a civil law country in Central Asia transitioned from a retentionist regime to an abolitionist regime through constitutional mechanisms and international agreements. As a civil law jurisdiction, Kazakhstan initially retained the death penalty in the Criminal

Code of the Republic of Kazakhstan until the early 2000s. However, since 2003, the President of Kazakhstan has imposed a national moratorium on executions, halting all death penalty enforcement without repealing its legal basis.¹⁸ This moratorium policy demonstrates the government's caution in responding to the ongoing development of global humanitarian values while also serving

¹⁷ Irfan Harmain dkk., “Diskrepani Praktik Hukuman Mati di Indonesia Terhadap Standar Ham Internasional: Analisis Reformasi Kuhp 2023 Dan Implikasinya Bagi Kebijakan Pidana Nasional,” *Jurnal Hukum Samudra Keadilan* 20, no. 1 (2025): 2, <https://doi.org/10.33059/jhsk.v20i1.11360>.
¹⁸ Gui Huang, “The Death Penalty and Its Reforms in China and Other Countries,” dalam *On the Alternative Punishment to the Death Penalty in China*, ed. oleh Gui Huang (Springer Nature, 2024), 66, https://doi.org/10.1007/978-981-97-1627-2_3.

as a transitional step toward more humanistic criminal law reform.

The legal reform continued in December 2021, when Kazakhstan officially abolished the death penalty for all crimes through amendments to its Criminal Code.¹⁹ This development was further reinforced by the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights (OP II ICCPR) on March 24, 2022, which marked Kazakhstan's international commitment to the abolition of the death penalty.²⁰ This protocol requires signatory countries not only to suspend the use of capital punishment, but also to abolish it completely and ensure the protection of the right to life without exception.

The most fundamental changes came about through amendments to the Constitution of the Republic of Kazakhstan in 2021–2022, specifically Article 15 paragraph (2), which explicitly states:

Article 15

1. *Everyone has the right to life.*
2. *No one shall be arbitrarily deprived of life.*

“The death penalty is prohibited.”

In its Kazakh version it states:

15-бап.

1. *Әркімнің өмір сүруге құқығы бар.*

2. *Өмірді өз бетінше қиюға ешкімнің хақысы жоқ.*

“Өлім жазасы жойылады.” (Ölim jazasy joıylady), which means “Capital punishment abolished”.

This constitutional ban is a historic turning point that marks a shift from a mere moratorium on practice to the constitutional abolition of the suspension of implementation, resulting in its normative elimination at the highest level of state law. Theoretically, this position indicates that Kazakhstan places the right to life as a constitutional right that cannot be derogated from for any reason (non-derogable right).

In an official government report, President Kassym Jomart Tokayev emphasized that the abolition of the death penalty was carried out to “enhance human dignity and bring national criminal law in line with universal human values.” In addition, the ratification of OP II ICCPR strengthens Kazakhstan's position under international law to be bound to no longer impose the death penalty in any form.²¹ Amnesty International classifies Kazakhstan as abolitionist for all

¹⁹ *Kazakhstan Became the 90th State to Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights*, 30 Maret 2022, <https://icomdp.org/kazakhstan-became-the-90th-state-to-ratify-the-second-optional-protocol-to-the-international-covenant-on-civil-and-political-rights/>.

²⁰ Muhammad Rafi Darajati dan Muhammad Syaifei, “Politik Hukum Pembentukan Dua Kovenan HAM Internasional Tentang Hak Sipil Politik dan Hak Ekonomi Sosial Budaya,” *Syah Kuala Law Journal* 4, no. 2 (2020): 110, <https://doi.org/10.24815/sklj.v4i2.16999>.

²¹ “Death Sentences and Executions 2022,” *Amnesty International*, 16 Mei 2023, <https://www.amnesty.org/en/documents/act50/6548/2023/en/>.

crimes, meaning that it has abolished the death penalty in law and in practice.

Unlike Kazakhstan, Indonesia still retains the death penalty in its positive legal system. Based on Articles 98 and 100 of Law Number 1 of 2023 concerning the New Criminal Code, the death penalty is still regulated but is placed “specifically” as an alternative and conditional basic punishment.

Article 100 Paragraph (1) states:

“The judge may impose the death penalty with a probation period of 10 (ten) years if there are mitigating circumstances, such as the defendant's remorse and hope for rehabilitation.”

Article 100 Paragraph (2) states that: The probation period as referred to in paragraph (1) must be stated in the judge's decision.

If during the probation period the convicted person demonstrates commendable behavior and conduct, the death penalty may be commuted to life imprisonment or imprisonment for a maximum of 20 years.²² However, if this is not the case, the death penalty may still be carried out.

This policy reflects a soft retentionist model, whereby the country still retains the death penalty, but with softening mechanisms such as probation and moral supervision. Indonesia has also not ratified OP II ICCPR and does not have constitutional provisions

that explicitly prohibit the death penalty. Therefore, Indonesia is categorized as a retentionist with probation, meaning that the country still retains the death penalty but only imposes it in very limited circumstances and with the possibility of commutation to imprisonment. In contrast, Kazakhstan has achieved abolitionist in law status, a term used by Amnesty International to describe countries that have officially abolished the death penalty in their national legislation, both in their constitutions and criminal laws, so that there is no longer any legal basis for imposing or carrying out executions.²³

Indonesia's approach represents a compromise between humanitarian values and the interests of protecting society. Although the New Criminal Code attempts to incorporate humanitarian aspects through conditional death penalties, this policy is not yet fully in line with the international trend towards the complete abolition of the death penalty.

Criminal Law Reform in the Central African Republic Towards the Abolition of the Death Penalty

The Central African Republic (République Centrafricaine) officially abolished the death penalty, through Loi N° 22.011 du 27 juin 2022 portant abolition de la

²² Roby Anugrah dan Raja Desril, “Kebijakan Formulasi Pidana Mati Dalam Pembaharuan Hukum Pidana Indonesia,” *Jurnal Pembangunan Hukum Indonesia* 3, no. 1 (2021): 86, <https://doi.org/10.14710/jphi.v3i1.80-95>.

²³ “Republik Afrika Tengah Hapus Hukuman Mati,” diakses 25 Desember 2025, <https://komunio.id/2022/05/30/berita-terkini-internasional-republik-afrika-tengah-hapus-hukuman-mati/>.

peine de mort en République Centrafricaine (Law No. 22.011 of 2022 on the Abolition of the Death Penalty in the Central African Republic)²⁴. This law was passed by the National Assembly on May 27, 2022, and signed by President Faustin Archange Touadéra on June 27, 2022, then published in the Official Journal of the Central African Republic. This step marks the end of the death penalty in the Central African Republic's criminal justice system after more than four decades of a de facto moratorium, as the last execution was carried out in 1981. With the enactment of this law, the Central African Republic is officially categorized as an abolitionist state in law, meaning that it has legally abolished the death penalty from its legal system. The following is an excerpt from the main provisions of Law No. 22.011 of June 27, 2022:

Article 1

"La peine de mort est abolie en République Centrafricaine." (The death penalty has been abolished in the Central African Republic).

This article contains an explicit abrogation of all legal bases that previously allowed the application of the death penalty. Since the enactment of this law, there are no longer any regulations that allow courts to impose or the government to carry out the death penalty.

Article 2

"Les crimes punis de mort sont désormais punis de travaux forcés à perpétuité." (Criminal offenses that were previously punishable by death are now punishable by life imprisonment with hard labor).

This provision emphasizes that the abolition of the death penalty does not mean the abolition of sanctions for serious crimes. The state continues to maintain a balance between deterrence and the protection of the right to life by replacing the death penalty with *travaux forcés à perpétuité* (kerja paksa seumur hidup).

Article 3

"Il est institué une peine complémentaire dite peine de sûreté de 10 à 30 ans." (An additional penalty known as a security period of 10 to 30 years is imposed).

This article introduces a new concept in the Central African Republic's penal system, namely *peine de sûreté* or security period. During this period, prisoners cannot obtain a reduction in their sentence, a pardon, or parole.

Article 4

"Les peines de travaux forcés à temps ou de travaux forcés à perpétuité sont assorties d'une peine de sûreté..." (Temporary or life imprisonment accompanied by a security period commensurate with the severity of the crime).

²⁴ Tim Institute for Criminal Justice Reform (ICJR), *Politik Kebijakan Hukuman Mati dari Masa ke Masa* (Institute for Criminal Justice Reform, 2017), 45.

This provision ensures that alternative penalties remain proportional to the degree of the crime committed.

Article 5

"Pendant la période de sûreté, la peine principale de travaux forcés ne peut être affectée ni par une mesure de grâce, ni par le mécanisme de réduction de peine." (During the security period, forced labor sentences cannot be reduced through clemency or sentence reduction mechanisms)

This article reinforces the certainty that the post-abolition punishment system continues to exert pressure and have a deterrent effect on perpetrators of serious crimes.

Article 6

"La présente loi, qui prend effet à compter de la date de sa signature, sera enregistrée et publiée au Journal Officiel." (This law shall come into force on the date of its signing and shall be recorded and announced in the State Gazette).

With this provision, the law has immediate effect, so that all provisions relating to the death penalty are repealed as of the date of ratification.

Based on reports from Amnesty International and the World Coalition Against

the Death Penalty, the abolition of capital punishment in the Central African Republic was based on four main reasons.²⁵ First, the country's commitment to guaranteeing the right to life and human dignity as stipulated in the African Charter on Human and Peoples' Rights, specifically Article 4, which states that "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person." Second, the abolition of the death penalty is part of the post-conflict national reconciliation process, aimed at strengthening the legitimacy of the state and building sustainable peace after years of political instability.²⁶ Third, this step confirms the Central African Republic's alignment with international and regional legal trends in Africa, which increasingly abolish the death penalty as a form of promoting human rights.²⁷ Fourth, in practice, this country has not carried out executions for more than 40 years, so abolition is a logical consequence of this factual situation. President Faustin Archange Touadéra stated that the abolition of the death penalty was carried out to "enhance human dignity and bring national law into line with universal human values." Thus, this abolition is not only a response to international

²⁵ Jaka Prima dan Moh Kamaluddin, "Analisis Kebijakan Hukuman Mati Dalam Kasus Narkotika: Perspektif Hak Asasi Manusia," *Kabillah* 9, no. 1 (2024): 58.

²⁶ Shekinah Theofany dan Wahyu Wijati, "Pandangan Etika Kristen Tentang Hukuman Mati: Dilematis Antara Keadilan Atau Kekejaman," *Jurnal Ilmu Sosial Dan Humaniora* 1, no. 4 (2025): 1653, <https://doi.org/10.63822/j1r9sy58>.

²⁷ Amnesty International, *Death Sentences and Executions 2022* (London: Amnesty International, 2023).

pressure, but also part of a national criminal law reform that places humanity at its core.

This country successfully abolished the death penalty without amending the constitution, simply through a special law (lex specialist), while ensuring that there was no legal vacuum by establishing an equivalent alternative punishment. For Indonesia, this model is relevant if lawmakers wish to abolish the death penalty without having to amend the 1945 Constitution. However, a grand design for cross-law harmonization needs to be prepared so that no death penalty norms remain in procedural law, correctional law, or other sectoral regulations. The following is the writing of the sub-chapters. Each chapter is a description of each problem formulated.

Criminal Law Reform in Equatorial Guinea Towards the Abolition of the Death Penalty

Equatorial Guinea (República de Guinea Ecuatorial) took a codifying approach to abolishing the death penalty, namely through the creation of a new Penal Code (Código Penal) that explicitly eliminates all provisions regarding the death penalty. The country had previously carried out executions until 2014, before finally entering a long period of de facto moratorium. Pressure from

the international community, particularly the United Nations (UN) and the African Union, played an important role in encouraging the government to reform its criminal law in line with international human rights standards.²⁸

On August 17, 2022, the government of Equatorial Guinea passed Law No. 4/2022, of August 17, the Penal Code of Equatorial Guinea, which was promulgated in the Official State Gazette and came into force 90 days after its official publication. This new penal code replaces the old Penal Code, which was a legacy of Spanish colonialism, and now forms the basis of a completely new national criminal law.

Article 26 of this law reads as follows in Spanish:

“... En la aplicación de las penas, queda totalmente abolida la pena de muerte en la República de Guinea Ecuatorial.” (...The death penalty has been completely abolished in the Republic of Equatorial Guinea).²⁹

The provisions of Article 26 constitute an explicit abrogation, which completely revokes all legal bases that allow for the death penalty. Since the enactment of Ley No 4/2022, there are no longer any articles in the criminal law of Equatorial Guinea that give

²⁸ “Equatorial Guinea Becomes 25th African Country to Abolish Death Penalty,” Death Penalty Information Center, diakses 25 Desember 2025, <https://deathpenaltyinfo.org/equatorial-guinea-becomes-25th-african-country-to-abolish-death-penalty>.

²⁹ S. W. I. swissinfo.ch, “Guinea Ecuatorial abole la pena de muerte en el nuevo Código Penal,” *SWI swissinfo.ch*, 19 September 2022, <https://www.swissinfo.ch/spa/guinea-ecuatorial-abole-la-pena-de-muerte-en-el-nuevo-código-penal/47912656>.

courts the authority to impose the death penalty in any form.

The structure of the Penal Code of Equatorial Guinea consists of four main books is Book I (General Provisions) contains the principles of criminal law, types of crimes, and principles of liability; Book II (Serious Crimes) covers the types of crimes and their penalties, with all previous provisions containing the death penalty being repealed; Book III (Misdemeanors and Minor Offenses); and Final and Repealing Provisions, which state that all previous legal provisions that conflict with this book are no longer valid.

Article 26 is the central norm in this codification because it substantively affirms the total abolition of the death penalty while introducing a new system of sanctions in the form of life imprisonment and long-term imprisonment to replace it. Thus, abolition is carried out through total codified abolition, rather than through additional laws or constitutional amendments.

The decision to abolish the death penalty in Equatorial Guinea was the result of a combination of political, legal, and social factors. President Teodoro Obiang Nguema Mbasogo, in his statement to the national media PDGE Guinea Ecuatorial, emphasized that this step is part of a “reforma penal humanista” (humanitarian criminal law reform) to strengthen respect for the right to

life and the country's image in the international community.

There are at least four main reasons for abolishing the death penalty in this country:

1. This country last carried out an execution in 2014, and since then has not imposed any death sentences. Therefore, normative abolition is a logical legal step to bring factual practice into line with the national regulatory system.
2. The United Nations, the African Union, and various human rights organizations, such as Amnesty International and the International Commission against the Death Penalty (ICDP), urged the country to abolish the death penalty as part of the process of democratization and the promotion of human rights. This abolition makes Equatorial Guinea the 25th country in Africa to officially abolish the death penalty.
3. Previously, Equatorial Guinea's legal system was still heavily influenced by Spanish legal traditions (colonial civil law). With the new Criminal Code, the country gained full autonomy in determining its legal policy, and the abolition of the death penalty became a symbol of reform towards a modern criminal justice system.
4. The abolition of the death penalty was carried out in conjunction with a complete overhaul of the criminal code, so that all new norms were formulated in

an integrated manner, leaving no residual provisions. This provides greater legal certainty than a partial approach or special legislation.

This policy can be categorized as codified abolition, which is the elimination of the death penalty through the codification of new criminal laws, rather than through constitutional amendments or additional legislation. The codified approach ensures the unity of the criminal justice system, strengthens political legitimacy, and avoids fragmentation between regulations. Equatorial Guinea's move also shows that the abolition of the death penalty does not always have to be preceded by a long moratorium or major social change. With strong political will and international support, criminal law reform based on human values can be carried out quickly and comprehensively.

Equatorial Guinea shows that a criminal justice policy oriented towards humanity can be achieved through national codification, without having to amend the constitution. If Indonesia chooses to abolish the death penalty at some point, the strategy adopted by Equatorial Guinea can be used as a conceptual model for drafting a humane and restorative criminal code, in line with the principle of the right to life as mandated in Article 28A and

Article 28I paragraph (1) of the 1945 Constitution.

Capital Punishment in the New Criminal Code from the Perspective of the Ultimatum Principle and Human Rights

Capital Punishment from the Perspective of the Ultimatum Principle

In the criminal justice system, the principle of ultimatum remedium asserts that criminal law should be the last resort in resolving unlawful acts, after all social, administrative, and civil mechanisms have proven ineffective. The New Criminal Code explicitly adopts this principle through Article 98, which states that the death penalty “is always imposed as a last resort to protect society”.³⁰

The application of this principle marks a shift in Indonesian legal policy from a retributive orientation towards a more selective and humane penal system. This means that the state no longer uses the death penalty as its primary instrument for enforcing the law, but only in extreme circumstances, such as terrorism, genocide, or premeditated murder involving a high degree of cruelty. The death penalty must be weighed against two main interests: “Maintaining social order for public

³⁰ Handrawan dkk., “Shifting Death Penalty as Main Punishment towards Alternative Punishment: An Effort to Realize the Middle Way of Human Rights | Journal of Law, Social Science and Management,” *Journal of Law, Social Science and Management* 1, no. 1 (2025): 35.

safety, but without sacrificing human dignity as the essence of humanity.”

In other words, the state must not only side with order (because that can lead to state violence against individuals), but also must not neglect public safety in the name of humanity alone. The application of the *ultimum remedium* principle in the New Criminal Code also demonstrates Indonesia's legal efforts to avoid overcriminalization, which has often occurred in the colonial legal system and has the potential to cause structural injustice against criminals from vulnerable groups.³¹

Capital Punishment from a Human Rights Perspective

From a human rights perspective, capital punishment remains a fundamental issue because it concerns the right to life, which is a fundamental right that cannot be diminished under any circumstances. Article 28A of the 1945 Constitution states that “every person shall have the right to live and to defend his life,” while Article 28I paragraph (1) states that “the right to life is a non-derogable right.”³² Indonesia has ratified the International Covenant on Civil and

Political Rights (ICCPR) through Law No. 12 of 2005, but has not yet ratified the Second Optional Protocol to the ICCPR (OP II), which completely abolishes the death penalty. As a result, Indonesia is still classified as a retentionist with probation, meaning that it retains the death penalty but with a mitigation scheme such as a ten-year probation period and the possibility of conversion of the sentence.

The National Human Rights Commission in its 2022 report emphasized that the death penalty system in Indonesia often causes prolonged psychological suffering (death row phenomenon) and legal uncertainty that potentially violates humanitarian principles. This view is reinforced by Amnesty International's 2024 report, which notes that more than two-thirds of countries worldwide have abolished the death penalty both in law and in practice.³³

In addition, the United Nations Human Rights Council (UNHRC) at the 2022 Universal Periodic Review (UPR) session also recommended that Indonesia review its death penalty policy because it

³¹ “Upaya Mencegah Overkriminalisasi Tindak Pidana Kesusilaan di Indonesia -,” diakses 25 Desember 2025, <https://icjr.or.id/upaya-mencegah-overkriminalisasi-tindak-pidana-kesusilaan-di-indonesia/>.

³² Anita Angelina dan Subekti Subekti, “Hukuman Mati Dalam Perspektif Hak Asasi Manusia Di Indonesia,” *Jurnal Ilmiah Wahana Pendidikan* 10, no. 21 (2024): 85, <https://doi.org/10.5281/zenodo.14287289>.

³³ “Laporan Amnesty International tentang Hukuman Mati 2023/2024 • Amnesty International Indonesia,” *Amnesty International Indonesia*, 28 Mei 2024, <https://www.amnesty.id/kabar-terbaru/siaran-pers/laporan-amnesty-international-tentang-hukuman-mati-2023-2024/05/2024/>.

is considered inconsistent with international commitments to the right to life and universal humanitarian principles.

CONCLUSION

The provisions on capital punishment in the New Criminal Code show that Indonesia still retains capital punishment, but places it within a conditional mechanism as an effort to introduce a more humanistic approach to punishment. This mechanism provides a probationary period and the opportunity for commutation of sentences so that capital punishment is no longer absolute as it was in the previous system. Meanwhile, Kazakhstan, the Central African Republic, and Equatorial Guinea have completely abolished the death penalty through constitutional mechanisms, special legislation, and criminal codification. This comparison shows differences in commitment to the protection of the right to life, with Indonesia still in the retentionist with probation category. This condition indicates that the regulation of the death penalty in Indonesia is not yet in line with the global trend towards abolition. Therefore, a more comprehensive evaluation of criminal punishment policies is needed so that the direction of criminal law reform in Indonesia is consistent with human rights principles and developments in international law.

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