

REFORM ON DEATH CRIME IN LAW NUMBER 1 OF 2023

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Abstrak:

This article aims to analyze, investigate, and understand the reform of the death penalty in Indonesia based on Law Number 1 of 2023, as well as a comparison of the death penalty between China and Indonesia. In this article, the authors use normative legal research methods with a statutory approach. The research results show that the death penalty in Indonesia was initially a primary crime but after the enactment of Law Number 1 of 2023, better known as the New Criminal Code, the death penalty was changed to an alternative crime. This is stated in Article 100 of the New Criminal Code, and convicts have a probation period of 10 years. The sentence can be reduced to life imprisonment if they show commendable morals and behavior. The commendable qualities and behavior are obeying prison regulations and contributing services that benefit the nation and state. Apart from Indonesia, China is a country that still applies the death penalty. Both China and Indonesia have probationary periods before the death penalty is carried out. The probation period is an opportunity for the convict to correct his mistakes. Executions in China are carried out in two ways, namely by being shot in the heart and by lethal injection. In contrast, in Indonesia, they are only shot dead by the executioner.

INTRODUCTION

Community life continues to develop daily; this is in line with the emergence of various types of criminal acts ranging from conventional to white-collar. As an authorized institution in law enforcement, the Government is tasked with providing sanctions for perpetrators who commit criminal acts. Each criminal sanction imposed has its purpose for the perpetrators. Of course, the judge who decides has considered various factors so that it can provide benefits to the broader community. Indonesia recognizes the application of death penalty sanctions as mandated by Article 10 of the Criminal Code, but outside the Criminal Code, there are thirteen other laws regarding death penalty sanctions (Ludiana, 2020).

The death penalty is the primary punishment in Indonesia. There are five reasons why Indonesia still carries out the death penalty to this day, namely the request to eliminate the death penalty where its citizens will be executed, developed countries that have significant influence, there are several countries that legalize the death penalty, such as China and the United States, the implementation of the death penalty is considered as law enforcement and a form of sovereignty of a country, and the Constitutional Court, which is the highest judicial institution in Indonesia, stated that the death penalty is in line with the constitution in Indonesia (Olivia, 2021).

Hands Off Cain Info released a note stating that there are around 155 countries that have eliminated the death penalty in their legal systems and implementation, with details of 99 countries that have eliminated the death penalty for all types of crimes, 44 countries have eliminated the death penalty in their implementation, and seven countries have eliminated the death penalty for all types





of crimes. Death for ordinary crimes, and five countries have implemented a moratorium on on-site executions (Fitriani, 2023). Even though many countries have eliminated the policy of imposing the death penalty, there are still several countries that carry out the death penalty, one of which is China. Based on data from Amnesty International, until 2022, China will continue to execute and sentence more than 1,000 people to death. Thus crowning China as the country that carries out the highest number of death penalty executions (Amnesty Internasional Indonesia, 2023).

The implementation of the death penalty in Indonesia is not without its pros and cons in society. Those who agree with the death penalty state that the death penalty is appropriate for the type of crime committed by the perpetrator, and it is hoped that in the future, it will have a deterrent impact, while those who disagree consider the death penalty to be contrary to the second principle of Pancasila and the implementation of the death penalty is very inhumane. Regulations regarding the death penalty in Indonesia have been previously included in the Criminal Code, a legal product inherited from the Netherlands, which is liberal; however, due to the conflict that occurs in society, this legal product is deemed to need to be updated and changed. Meaningful reform means taking action to improve the structure of positive criminal law (*ius constitutum*) and the expected criminal law in the future (*ius constituendum*) in line with the cultural development of Indonesian society. The reform of the Criminal Code is not only focused on the individual perspective but still takes into account the culture, natural elements, social aspects and customs of Indonesian society. Not only that, reform of the Criminal Code still needs to consider the elements or essence of material, formal and criminal procedural law (Cahyani et al., 2022).

Barda Nawawi Arief is an Indonesian criminal law expert famous for his ideas regarding criminal law reform. He is a representative of expert academics in criminal law who has been entrusted with studying and reviewing updates in the Criminal Code Bill. According to him, the concept of the Draft Criminal Code was formed and is based on three contents and problems of criminal law: punishment, guilt, criminal responsibility and criminal acts. The meaning of renewal here cannot be narrowed down to merely discussing the formation of article by article. However, it is essentially renewing the concept or main thought and basic ideas, not just replacing a patchwork of articles textually (Faisal & Rustamaji, 2021).

The journey to formulate the Criminal Code Bill was not easy because there were several controversial articles, such as the imposition of the death penalty. The formulation regarding the imposition of the death penalty in the Draft Criminal Code Bill is still a criminal sanction. However, it and other essential criminal sanctions are no longer included. Article 67 of the New Criminal Code explains that the death penalty is an essential, special punishment and must be punishable by alternatives. Even though it is not included in the main punishment, the death penalty is still considered a particular type of bare punishment. The explanation of article explains that the death penalty is stated in a particular article to show that this type of punishment is exceptional. Since the draft of the new Criminal Code was first formulated, there have been changes to the regulations regarding death penalty sanctions, namely that first, it is still regulated as a primary crime, then an exception crime, then a particular main crime and finally a special punishment for several types of criminal acts. Changes in regulations regarding the imposition of the death penalty are due to the presence of parties who support it or not. Not only that, changes in the imposition of the death penalty are also caused by developments in social life and national and state conditions (Suryani Widayati, 2016).

Placing the death penalty as the highest throne of the forms of punishment that can be imposed as well as the primary punishment is no longer significant in the development of the times. The death penalty is considered a form of punishment that is less effective for criminals and does not



look at it from a restorative justice perspective. The execution of the death penalty often requires an extended period, which can give rise to uncertainty as to when the execution will take place. Therefore, the regulation regarding policy formulation of the death penalty is essential in Indonesia so that in the future, the application of the death penalty is in line with the Indonesian people's philosophical, juridical and social values (Anugrah & Desril, 2021).

After going through the formulation process to form a new Criminal Code, the Criminal Code Bill was finally formalized as the Criminal Code on Tuesday, December 6, 2022, through the DPR-RI Plenary Meeting. As the Minister of Law and Human Rights, Yasonna H. Laoly said that the essential thing that is different about the Draft Criminal Code is that it no longer places criminal punishment as the primary punishment but instead becomes a special punishment that always carries an alternative threat and is subject to a probationary period of ten years (Kanwil Kalbar, 2022).

Article 100 paragraph (4) of Law No. 01/2023 states that if the convict shows commendable attitudes and actions during the probation period, the death penalty can be transferred to life imprisonment based on a Presidential Decree after receiving consideration from the Supreme Court. This makes it less clear because, according to Nella Sumika Putri, Chair of the Center for Criminal Policy, Faculty of Law, Padjadjaran University, the way to determine the criteria for handing over a death row convict to be executed is unclear. "How do you calculate if a convict has done something commendable while in prison? Who has the authority to carry out these calculations? What are the criteria?" (Prasetyo, Aji, 2023)

Based on this background, the transfer of the death penalty, which was initially included as a principal crime, to an alternative crime in Law No. 01/2023, which has been passed, is less clear. The existence of the phrase "commendable attitudes and actions" means that the transfer of the death penalty causes multiple interpretations and is not formulated because the criteria are not stated. Previous research that is relevant to be used as a comparison by the author is entitled "The Urgency of Implementing the Death Penalty in Indonesia (A Study of Motorbike Theft Perpetrators Using Violence)," written by Ade Indriyuni; this research discusses the urgency of implementing the death penalty against perpetrators of violent theft who contained in Article 365 paragraph 4 of the old Criminal Code (Indriyuni, 2020), while the author's research focuses on reforming the death penalty in Indonesia based on Law No.01/2023 (New Criminal Code).

The second research used as a comparison by the author is entitled "Comparison of the Implementation of the Death Penalty Based on the Criminal Code and Indonesian and Chinese Legislation," written by Gina Olivia (Olivia, 2023); this research focuses more on the effectiveness of the death penalty in eradicating corruption cases in Indonesia and China. Meanwhile, the author's research is on reforming the death penalty in Indonesia based on Law No. 01/2023 (New Criminal Code) and will use China as a comparison country. After the various problems that the author has described in the background, this article aims to review the urgency of regulating the imposition of the death penalty in Indonesia and provide solutions on how to overcome the blurred norms in the phrase "commendable attitudes and actions" in Article 100 of Law No.01/2023 which have the potential to creates legal uncertainty and provides a comparison of how the death penalty is imposed between Indonesia and China as a form of comparative study.

1. How will Indonesia's death penalty be reformed based on Law No.01/2023?
2. How does the death penalty in China compare with Indonesia?



This article aims to examine, explore and understand the death penalty reform in Indonesia based on Law No. 01/2023 and compare the death penalty in China and Indonesia. (Utama et al., 2022)

METHODS

The author uses a normative legal research type and a statutory approach (I Wayan Kartika Jaya Utama, 2022). Data was collected using library study techniques by collecting primary and secondary materials obtained from reading, studying and extracting extracts from books, journals, statutory regulations and documents relevant to this paper, then analyzed qualitatively with sentences that were systematic and logical (Soekanto & Mamudji, 2023)

RESULT AND DISCUSSION

Reform of the Death Penalty in Indonesia Based on Law Number 1 of 2023. For example, the oldest punishment is the death penalty. The death penalty was born at the same time as the birth of humanity. Indonesia itself implemented the death penalty long before independence, and it has even become customary law in several regions in Indonesia. After declaring its independence, Indonesia began implementing the death penalty in line with what was stated in the national criminal law. Generally, the death penalty is only imposed on types of crimes that are large-scale and have a high probability of destruction. After the Constitutional Court Decision No. 2-3/PUU-V/2007 explains that the death penalty is by the existing constitution in Indonesia, the existence of the death penalty is increasingly strengthened (Amarani, 2023).

MK Decision No.2-3/PUU-V/2007 is a decision that tests the constitutionality of the death penalty for Law No.22/1997 concerning Narcotics. Even though the test is for one law only, it significantly impacts the death penalty's constitutionality under other laws. This decision is one of the most important decisions of the Constitutional Court, as well as a landmark decision, due to the issue of the constitutionality of the death penalty in the Indonesian legal system, which is always based on this decision and for the direction of the regulation of the death penalty in the future (Susanto & Ramdan, 2017).

The Constitutional Court is of the view that in connection with this decision, in the future, the implementation of the death penalty must take into account four conditions, namely:

- a. The death penalty was changed to a unique and alternative punishment, which was initially the main punishment;
- b. The death penalty may be changed to life imprisonment or twenty years if the convict performs good behavior during the ten-year probation period;
- c. The death penalty cannot be imposed on children under the age of majority.
- d. The execution of the death penalty for pregnant women is postponed until the birth of their child and mentally ill people have recovered. (Rahardjo, 2024)

In Law No.01/2023, the death penalty is given for:

- a) Article 215 paragraph (1) concerning criminal acts that threaten state security, including treason; Article 228 concerning incitement that causes war; and Article 237 paragraph (3) concerning treason against the state,
- b) Articles 242, 244, 247, 250, and 262 regulate Terrorism,
- c) Article 269 contains treason against friendly countries,
- d) Article 295 concerning Humanitarian Crimes,
- e) Articles 396 to 399 explain criminal acts during wartime,



- f) Articles 506 and 508 for Narcotics,
- g) Article 515 for Psychotropics,
- h) Article 572 sanctions for premeditated murder,
- i) Article 684 is intended for Corruption for natural disasters. (S.Lon, 2020)

Based on data obtained from Amnesty International in 2020, 117 cases were sentenced to death; in 2021, there were 114 cases in the first category for narcotics crimes, the second was murder, and the third was Terrorism. The implementation of the death penalty caused problems, especially in the field of human rights and was not in line with Law No. 39/1999 concerning Human Rights. Plus, there was input from the United Nations (UN) to abolish the death penalty. When formulating the New Criminal Code Bill, Indonesia issued an idea, namely the "Indonesian Way," which placed the death penalty as the final method. This concept means that death row inmates are given ten years of probation. If you behave well and regret arises, the sentence can be changed to life or lighter based on a Presidential Decree after consideration by the Supreme Court (Muntafa & Mahmud, 2023).

Article 100 of the New Criminal Code states that the postponement of the execution considers two conditions: regret, efforts to improve the person's personality and the convict's involvement in the criminal act. The regulation regarding a probationary period of ten years is a meeting point for the controversy over the abolition of the death penalty (abolitionist) and the implementation of the death penalty (retentions) (Gabrielle et al., 2023).

The implementation of the death penalty, in addition to trying to guarantee the protection of society and pay attention to individual rights, such as a probation period of ten years. Indonesian society, which has a highly religious nature, prioritizes the principles of kinship and mono-dualistic and collective views. The mono-dualistic view is to accommodate values that are based on the public interest and still pay attention to the balance between the interests of the wider community and the individual (Dudy & Ashady, 2023)

Article 100 of the new Criminal Code regarding special death penalties reads:

- 1) "The judge imposed the death penalty with a probationary period of 10 (ten) years taking into account: a. the defendant feels remorse and there is hope to improve himself; or b. the role of the defendant in the crime.
- 2) The court decision must include the death penalty with a probationary period, as intended in paragraph (1).
- 3) The 10 (ten) year probationary period begins 1 (one) day after the court decision obtains permanent legal force.
- 4) If the convict shows commendable attitudes and actions during the probation period, as intended in paragraph (1), the death penalty can be changed to life imprisonment by Presidential Decree after the Supreme Court has considered it.
- 5) Life imprisonment, as intended in paragraph (4), is calculated from the time the Presidential Decree is issued.
- 6) Suppose the convict during the probation period, as intended in paragraph (1), does not show commendable attitudes and actions, and there is no hope of improvement. In that case, the death penalty can be carried out on the order of the Attorney General." (Utama & Wiryani, 2023)

In this research, the author will provide several views on interpreting the phrase "praiseworthy attitudes and actions." Based on the United States Constitution, Wisconsin, what is meant by commendable conduct refers to "exemplary compliance with institutional disciplinary regulations," which includes:

1. Avoid undisciplined acts;

2. Comply with the instructions of correctional institution officers;
3. Avoid fighting with other inmates;
4. Avoid using drugs or possessing other unauthorized items;
5. Be diligent in working and completing the work assigned;
6. Pursue education and training to develop yourself;
7. Actively contribute to counseling;
8. Be active in activities that can benefit all people in prison;
9. Use time constructively. (Haerunnisa, 2023)

Government Regulation No. 32/1999 concerning Requirements and Procedures for Implementing the Rights of Correctional Inmates explains that good behavior means complying with established regulations and not being sentenced to punishment or disciplinary sanctions written in the F register book within the period considered for granting remission. Apart from that, PP Number 32/1999 also explains in Article 34 paragraph (2) that while serving a sentence, the person concerned must provide services to the state, carry out activities that benefit the state or humanity, and assist with prison activities. Requirements for good behavior for convicts can be seen by providing evidence that the convict has not been undergoing sanctions or disciplinary punishment in the last six months, starting from the date of granting remission and has carried out a development program by a prison with a good reputation (Firdaus & Harahap).

Comparison of the death penalty in China and Indonesia.

Imposition of the Death Penalty in China. China is known as one of the countries that carries out executions of death penalty sentences numbering in the thousands, according to Amnesty International. In China's Criminal Code, execution can be postponed for two years when the death penalty is decided. If someone sentenced to death shows good behavior, the sentence can be changed to life imprisonment. If he shows genuine service, the sentence can be reduced to fifteen to twenty years in prison (Hamzah, 2008)

The Chinese Criminal Procedure Law states that there are two methods used to execute the death penalty, which is more specifically stated in Article 212 of the 1979 Chinese Criminal Procedure Law, which was amended on March 14, 2012, namely by shooting or lethal injection. The execution of the death penalty takes place at the place of execution or a location determined by the prisoner. Before an execution, the competent judicial authorities must double-check the convict's identity and ask whether there are any final things they wish to convey. If, during the checking process, new facts or possible errors are discovered, then the execution must be temporarily postponed and submitted to the Supreme People's Court for a decision. China itself carries out executions of the death penalty behind closed doors, but the implementation must be announced to the public (Eza Tiara, 2016)

The death penalty in China is justified in two places, namely first, retribution (mainly based on public anger) and second, prevention. The death penalty must be imposed on society for violations or defamation of the consensus that occurs in society so that they can coexist peacefully (Nopriandi & Fany Ardhiansyah, 2020).

The death penalty in China is only applied to the "most serious crimes," as stated in Article 6 paragraph (2) of the ICCPR, divided into 68 types regulated in the 1997 Chinese Criminal Code. Article 386 of the Chinese Criminal Code regulates Corruption by misusing state money. This article states that parties who misuse state money for their function and make no effort to return it will be sentenced to life imprisonment or death. However, Article 386 provides relief; if there is an attempt to return funds that have been corrupted within less than three weeks, no criminal penalties will be imposed (Makaruku, 2016)





Imposing the Death Penalty in Indonesia. The ratification of Law No.01/2023, known as the New Criminal Code, has significantly changed the criminal justice system in Indonesia. One is a postponement period for implementing the death penalty or a waiting period (waiting series phenomenon) for ten years, as stated in Article 100 of the New Criminal Code. Regulations regarding the waiting period for the execution of the death penalty in Indonesia have not yet been stated in writing. However, some matters are considered juridical considerations in postponing the execution, namely:

1. Application to postpone the execution by the convict;
2. The convict is pregnant with his child;
3. The convict is applying for clemency;
4. Filing a cassation;
5. Submission of a judicial review (PK) to the Supreme Court. (Helmi & Ayu Refriani, 2022)

With the enactment of Law No.01/2023, the death penalty has been abolished as the primary punishment for certain offenses. Article 67 of the new Criminal Code has changed the sanctions to particular criminal offenses.

There are several differences between the death penalty provisions in the previous Criminal Code and the current Criminal Code:

1. Based on the previous Criminal Code, two categories of criminal sanctions were outlined: basic and additional penalties.
2. Based on previous provisions of the Criminal Code, there are five main categories of offenses. Article 10, Letter A of the Criminal Code, previously outlined several basic violations. Specifically, the penalties include incarceration, fines, the death penalty, imprisonment, and imprisonment.
3. Further sanctions can be seen in Article 10 letter b of the previous Criminal Code, which outlines several basic crimes such as deprivation of special rights, confiscation of certain goods, and disclosure of the judge's decision to the public.

New Criminal Code for the Death Penalty:

1. Law No. 1/2023 regulates three categories of criminal treatment, namely basic, additional and special crimes, for several criminal acts as intended in statutory regulations.
2. Based on the new Criminal Code, fines and the death penalty are no longer the main elements of punishment.
3. In the new Criminal Code, the Government also replaced the crime of concealment with the crime of supervision. Convicts are entitled to a probationary period of 10 years. If the convict shows good behavior during the probation period, then the sentence is reduced, namely life imprisonment, by presidential decree. This is contained in article 100 of Law No.01/2023, namely conditional sentences. Not only that, but the new Criminal Code also adds another type of punishment, namely social work.
4. Article 65 of the new Criminal Code regulates several basic criminal acts: imprisonment, concealment, social work, fines and supervision.
5. Additional penalties specified in Article 65 of the new Criminal Code are divided into five forms: revocation of special rights, confiscation of certain assets/claims, issuance of a judge's decision, payment of compensation, revocation of special permits and obligation to comply with local customary provisions. (Sekar Candrawati et al., 2023)

In ancient times, each country had different ways of carrying out the death penalty (Poernomo, 1982). However, along with changing times, the method of executing the death penalty has changed,



namely shooting, lethal injection or electric shock. Indonesia itself uses the method of being shot to death based on the Decree of the President of the Republic of Indonesia No.02/1964 concerning Procedures for Implementing the Death Penalty (Marwin, 2019).

The following is a comparative table of the death penalty between China and Indonesia:

Table 1. Comparison of the death penalty between China and Indonesia

No.	Comparison	China	Indonesia
1.	Waiting period for execution.	If you have good behavior, two years can be reduced to a life sentence and fifteen to twenty years in prison if you show genuine service. This is regulated in the Chinese Criminal Procedure Law.	Ten years, if the convict shows good behavior, based on a Presidential Decree after receiving consideration from the Supreme Court, the death penalty can be changed to life imprisonment. Regulated in Article 100 of Law No.01/2023.
2.	A crime that carries the death penalty.	Sixty-eight types of crimes are regulated in the Chinese Criminal Code of 1997.	Crimes against state security, Terrorism, treason against friendly countries, genocide, crimes against humanity, crimes during the war, narcotics, psychotropic substances, premeditated murder and Corruption in funds for natural disasters.
3.	How to execute.	Shot directly in the heart, temple or back of the convict's head and euthanized in certain parts of the body.	This is done by shooting the convict directly in the heart by the executioner.

CONCLUSION

The death penalty has been implemented in Indonesia since ancient times, as stated in the old Dutch Criminal Code, but its implementation has caused problems, especially human rights violations. Therefore, in Law No. 01/2023, the initial death penalty has been transferred to an alternative punishment with a ten-year probation period, and if the convict shows commendable attitudes and actions by Article 100 paragraph (4), then the sentence can be reduced to life imprisonment. Based on a Presidential Decree after receiving consideration from the Supreme Court. Commendable attitudes and actions include obeying all the rules in prison, contributing services to the country and carrying out activities that benefit the country and humanity. Apart from Indonesia, China is an example of a country that still applies the death penalty. China and Indonesia both have probationary periods, which can be used as the last chance for convicts to correct their mistakes. Executions in China and Indonesia are both carried out by shooting the convict directly in the heart, but in China, it can also be carried out by lethal injection. The author hopes that the phrase "praiseworthy attitudes and actions" can be regulated and stated more clearly in Law No.01/2023 to avoid multiple interpretations.



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