

Life Imprisonment: Legal and Human Rights Perspectives in The Indonesian Criminal Justice System

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Abstract

The death penalty in Indonesia, as governed by the new Penal Code (KUHP) under Law No. 1 of 2023, represents a significant shift from its previous application. Historically, the death penalty was considered the most severe punishment for serious crimes such as premeditated murder, terrorism, and drug trafficking. However, the revised KUHP reclassifies the death penalty as a special form of punishment with a probationary period of 10 years, during which the convict's behavior and potential for rehabilitation are assessed. If the offender demonstrates remorse and positive behavioral change, their sentence may be commuted to life imprisonment. This reform introduces a more restorative approach to justice while still retaining the death penalty as an option for the most serious crimes. The KUHP also includes provisions to protect vulnerable individuals, such as postponing executions for pregnant women and those with mental health conditions. From a human rights perspective, the death penalty raises significant concerns regarding the right to life and freedom from cruel and inhuman treatment. While proponents argue that it serves as a deterrent, human rights organizations emphasize the protection of fundamental freedoms. The new KUHP aims to strike a balance between justice, deterrence, and human rights, with the potential for a future moratorium on the death penalty in Indonesia.

I. Introduction

Imprisonment remains a central component of criminal sanctions in Indonesia, and it is the most frequently imposed punishment by judges in criminal cases. The implementation of imprisonment in Indonesia adheres to the correctional system, as outlined in Law No. 15 of 1995 on Corrections, which reflects a shift in philosophical and juridical approaches from the punitive prison system to a more rehabilitative correctional system. Historically, the prison system emphasized retribution and deterrence, focusing on punishment and vengeance. Over time, this approach was deemed incompatible with contemporary principles of rehabilitation and social reintegration. The correctional system emerged as a response to this shift, aiming to rehabilitate offenders and reintegrate them into society as responsible and law-abiding citizens. This transformation underscores the Indonesian legal framework's alignment with human rights principles, as outlined in Law No. 39 of 1999 on Human Rights and the 1945 Constitution of the Republic of Indonesia.

The correctional system is designed to instill a sense of accountability in inmates, enabling them to reflect on their actions and develop the skills needed to lead law-abiding lives. This rehabilitative approach aligns with broader goals of law enforcement, ensuring that corrections contribute to societal safety and development. As stated in Harefa (2022), the emphasis on rehabilitation demonstrates a commitment to balancing justice with human rights, even for those who have committed serious offenses.

According to Article 12(1) of the Indonesian Penal Code (KUHP), imprisonment is divided into life imprisonment and imprisonment for a specified duration. Life imprisonment, akin to the death penalty, is considered an absolute punishment. From a legal perspective, it is a definite sentence, imposing a fixed duration that spans the convict's entire lifetime. This form of punishment is reserved for the gravest offenses, reflecting society's demand for justice while maintaining the convict's opportunity for rehabilitation within the correctional framework.

The implementation of life imprisonment reflects Indonesia's commitment to ensuring that punishment serves as both a deterrent and a means for rehabilitation. As discussed by Widyaningrum (2020), the Indonesian criminal justice system endeavors to balance punitive measures with restorative justice principles. This balance is crucial, particularly when considering the implications of life sentences on convicts' human rights and potential for reform.

The correctional system's rehabilitative approach is evident in its structured programs, which address the root causes of criminal behavior through education, vocational training, and psychological support. These initiatives aim to reduce recidivism and foster long-term societal stability, as highlighted by Sipayung (2022). Moreover, the correctional system seeks to mitigate stigmatization, ensuring that former inmates are accepted back into society and can contribute positively to its development.

Indonesia's shift from a retributive to a rehabilitative approach is further supported by legal frameworks such as Law No. 1 of 2023 on the Criminal Code, which reinforces the principles of correctional facilities as centers for rehabilitation and social reintegration. The correctional system is not only a means of punishment but also a mechanism to prepare inmates for eventual reintegration into society as responsible citizens, as articulated in Ramadhanti & Fitriah (2022).

Despite its rehabilitative focus, life imprisonment in Indonesia remains a definitive and absolute punishment. As noted by Ardi Isnanto (2023), the imposition of life sentences underscores the gravity of certain offenses while preserving the principles of justice and deterrence. This duality reflects Indonesia's ongoing efforts to balance its legal traditions with modern human rights considerations.

In practice, the correctional system ensures that the implementation of life imprisonment complies with international standards of humane treatment. Facilities are tasked with providing inmates opportunities for personal growth and development, aligning with global norms on prisoner rights. This approach, discussed by Mukti Fajar and Achmad Yulianto (2020), highlights the importance of integrating normative and empirical perspectives in the study of legal frameworks.

In conclusion, life imprisonment in Indonesia represents a complex interplay between justice, rehabilitation, and societal expectations. While it serves as a definitive punishment for the gravest offenses, it is implemented within a framework that prioritizes the correction and reintegration of offenders. Through structured programs and a humane approach to incarceration, the correctional system aims to transform lives, reduce recidivism, and contribute to a safer, more inclusive society. This approach reflects Indonesia's commitment to a legal system that balances accountability, rehabilitation, and human rights, ensuring that even those who face the harshest penalties have the opportunity for reform and reintegration into society.

2. Research Method

This study employs a normative juridical method as the primary approach, focusing on an in-depth normative analysis. The method utilizes a legislative approach as a core element in examining legal issues. Normative legal research serves as the methodological foundation, emphasizing a comprehensive understanding of applicable and relevant legal regulations, making it the basis for addressing legal problems.

The data collection process is systematically conducted through a literature review or library research approach. The data used is secondary data obtained from various legal documents such as laws and regulations, books, meeting minutes, scientific journals, and other scholarly works as references. In this study, all information is meticulously organized with systematic, logical, and nationally relevant structures to ensure high-quality and reliable data.

In addition to the normative approach, qualitative analysis methods are deeply integrated into this research. The qualitative approach allows for processing data into structured, detailed, and coherent narratives, providing a clear and comprehensive understanding of the subject matter. The collected data is analyzed to identify patterns, themes, and relevant connections, resulting in explanations that are free from overlap. This analytical process is carefully conducted to ensure that the outcomes are effective, informative, and easy to comprehend, while also contributing significantly to the broader understanding and development of legal studies.

3. Results and Discussion

The implementation of life imprisonment in Indonesia

The implementation of life imprisonment in Indonesia originally stemmed from the colonial legacy of the Dutch East Indies Criminal Code (WvS). Therefore, the formal application of life imprisonment in Indonesia is as old as the Indonesian Criminal Code (KUHP). The regulation of life imprisonment is stipulated in various laws, including: (1) In the Criminal Code (KUHP), there are 24 articles that impose life imprisonment sanctions under six classifications of crimes. These include crimes against the state, such as in Articles 104, 106, 107(2), 111(2), 124(2), 124(3), and 140(3); crimes endangering public interest, found in Articles 187, 198, 200, 202, and 204; crimes against life, such as in Articles 339 and 340; violent theft as per Article 365(4); maritime crimes resulting in death, outlined in Article 444; and aviation crimes and crimes against aviation infrastructure in Articles 479(b), 479(k), 479(i), 479(j), 479(o), 479(m), and 479(n). (2) Outside the KUHP, there are also life imprisonment sentences in other laws, such as in Law No. 21 of 2002 concerning Amendments to Law No. 31 of 1999 on Corruption Eradication (Articles 2(1), 3, and 12B(2)); Law No. 5 of 2018 regarding Amendments to Law No. 15 of 2003 on the Enforcement of Government Regulation in Lieu of Law No. 1 of 2002 on Terrorism Eradication (Articles 6, 9, 10A(1), and 14); and Law No. 35 of 2009 on Narcotics (Articles 111(2), 113(2), 114(2), 115(2), 116(2), 118(2), 119(2), and 121(2)).

During the course of serving their sentences, prisoners are entitled to various rights under the provisions of Article 14 of Law No. 12 of 1995 on Corrections, which include: (1) the right to worship according to their religion or belief; (2) the right to receive spiritual and physical care; (3) the right to education and teaching; (4) the right to receive proper healthcare and nutrition; (5) the right to submit complaints; (6) the right to access reading materials and other forms of media not prohibited; (7) the right to earn wages or premiums for work performed; (8) the right to receive visits from family, legal counsel, or other designated individuals; (9) the right to receive sentence reductions; (10) the right to undergo assimilation, including family visits; (11) the right to parole; and (12) the right to receive leave before release. However, life sentence prisoners are not granted the right to assimilation and are not allowed to visit their family or home. This is further clarified in Articles 65(b) and 68(c) of the Regulation of the Ministry of Law and Human Rights No. 3 of 2018 on the Terms and Procedures for Remission, Assimilation, Family Visits, Parole, Leave Before Release, and Conditional Leave. As of 2014, there were at least 423 individuals serving life sentences in Indonesia, with the majority being convicted for crimes against life (218 individuals), narcotics offenses (139 individuals), and other types of crimes (66 individuals).

In practice, life imprisonment in Indonesia can take two forms: formal life imprisonment and informal life imprisonment. The first form involves the explicit legal provision that an individual may be sentenced to life imprisonment as stated in the legislation. The second form occurs when the legislation does not explicitly mention life imprisonment but the sentence effectively means imprisonment until death. Indonesia follows the first model. Life imprisonment separates an individual permanently from their community, meaning the individual has no opportunity to return to society, undermining the rehabilitative goal of corrections. This can lead to both psychological and sociological effects. Psychologically, the prisoner may experience conditions such as idiosyncratic behavior, while sociologically, they may face social deformity or the loss of their identity due to drastic and prolonged environmental changes.

The presence of life imprisonment sentences in many laws indicates that Indonesia's penal system still adheres to the retributive justice system. This approach, derived from classical theories, emphasizes punishment as a form of retribution. According to Karl O. Christiansen, the retributive theory is characterized by several key features: (1) The sole purpose of punishment is retribution; (2) Retribution is the primary goal without serving other purposes, such as public welfare; (3) Guilt is the only condition for punishment; (4) The punishment should match the crime committed; (5) Punishment looks backward, focusing purely on the offense, without an intention to rehabilitate or reintegrate the offender (Chandrawati, 2020).

On the other hand, the modern or positive school of thought, which emphasizes the principle of "salus populi est suprema lex" (the welfare of the people is the highest law), seeks to address the causes of crime and focuses on positively influencing the offenders. This approach prioritizes the offender or *dader-strafrecht* and is based on three key foundations: first, combating crime; second, integrating insights from other disciplines; and third, *ultimum remedium* (Flora, 2019). This paradigm also incorporates the principle of restorative justice, with the following characteristics: (1) Crime is seen as a violation against others and a conflict to be resolved; (2) Focus on addressing responsibility and obligations for the future; (3) Dialogue and negotiation serve as the normative foundation; (4) Restitution aims for the repair of harm, with reconciliation and restoration as primary objectives; (5) Justice is valued based on the outcome of relational rights; (6) The focus is on remedying social harm; (7) Society plays a role as a facilitator in the restorative process; (8) Recognition of the role of both victims and offenders in addressing issues and meeting the victims' needs; (9) The offender's accountability is framed to understand their actions and determine the best path forward; (10) Crime is viewed in its moral, social, and economic context; (11) Stigma can be removed through restorative actions (Chandrawati, 2020).

Philosophically, the term "prison" is increasingly seen as irrelevant to the spirit of rehabilitation. The word prison comes from the Javanese *penjoro*, meaning repentance or reformation. The correctional system in Indonesia has shifted from the retributive, deterrent, and resocialization philosophies, which focused on punishment and suffering, to a more rehabilitative approach. As reflected in Article 2 of the 1995 Law on Corrections, the aim is to help offenders become fully human, aware of their wrongdoings, and reintegrate into society (Anwar, 2016).

In Indonesia, while it does not strictly follow systems like the Pennsylvania System, Auburn System, or Ireland System, the history of corrections refers to the "New Penitentiary Regulations" (*Gestichten Reglemen*) introduced in 1918, which guided the rehabilitation of prisoners to become moral citizens (Lamintang, 1984). Therefore, placing offenders in prison should be based on humane principles, respecting human rights as stipulated in the 1995 Law on Corrections.

In this context, life imprisonment sentences and the goals of modern criminal law are at odds. Imprisoning an offender for life undermines the very objectives of criminal law, which aims not only to protect society but also to rehabilitate and reintegrate offenders into society. This concept of reintegration was formalized in the Standard Minimum Rules for the Treatment of Prisoners (SMR) by the UN in 1955, which states that the period of incarceration should be used to ensure that offenders can return to society as law-abiding,

self-sufficient citizens (Journal on the Status of Life Imprisonment in National Penal Law Formation, 2021).

The differences in the regulation of the death penalty between the old Penal Code (KUHP Lama) and the new Penal Code, as outlined in Law Number 1 of 2023

In the Indonesian Dictionary (KBBI), the death penalty is defined as a punishment carried out by killing, shooting, or hanging the person found guilty. This penalty involves the deprivation of life from the convicted individual, which is applied based on the nature of the crime, depending on the applicable jurisdiction. Crimes that are commonly punishable by the death penalty include murder (both premeditated and non-premeditated), mass killings, rape (often including sexual violence against children), terrorism, war crimes, crimes against humanity, genocide, as well as some crimes against the state such as attempts to overthrow the government, treason, espionage, incitement, and piracy, as well as other crimes such as recidivism, serious theft, kidnapping, and drug trafficking. The death penalty has existed since the Dutch colonial era. In 1808, during the tenure of Henry Willem Daendels as Governor-General of the Dutch East Indies, the death penalty was applied to indigenous people who refused to become subordinates or did not follow Daendels' orders. The death penalty is considered the most severe form of punishment because it deprives an individual of their life, and once executed, the individual cannot be revived, even if new evidence later shows that they were innocent.

Before the enactment of the new Penal Code in Law No. 1 of 2023, Indonesia applied the Penal Code derived from the *Wetboek van Strafrecht (WvS) voor Nederlandsch-Indie*, which was drafted by the Dutch colonial government. After Indonesia's independence, the Indonesian government passed Law No. 1 of 1946 concerning the Penal Law Regulations, which served as the legal basis for the application of the WvS and became known as the Indonesian Penal Code (KUHP). Initially, the KUHP was only applied in the regions of Java and Madura, but on September 20, 1958, following the issuance of Law No. 73 of 1958, the KUHP became applicable throughout the entire territory of Indonesia. After over 100 years of using the Dutch colonial Penal Code, the government and the Indonesian Parliament finally decided to revise the Penal Code. The new Penal Code was ultimately enacted through Law No. 1 of 2023, replacing the old KUHP. The new KUHP will come into effect three years after its promulgation, which is on January 2, 2023.

The comparison between the Old and New Penal Codes (KUHP Lama and KUHP Baru) highlights significant changes in the implementation of the death penalty. Under the Old Penal Code, the death penalty was considered the primary punishment for certain crimes. In contrast, the New Penal Code no longer treats the death penalty as a primary punishment. Additionally, the Old Penal Code did not recognize a probationary period for those sentenced to death, whereas the New Penal Code introduces a probationary period during which the convicted individual's behavior is monitored. The death penalty under the Old Penal Code was only carried out after the President had rejected the clemency request. However, in the New Penal Code, the death penalty is carried out if the convicted person demonstrates bad behavior during the probationary period and the President denies clemency.

In the Old Penal Code (KUHP Lama), the death penalty was classified as a primary form of punishment as stated in Article 10. The death penalty was considered the most severe penalty under Indonesian positive law. In contrast, under Law No. 1 of 2023 (the New Penal

Code or KUHP Baru), the death penalty is categorized as a special punishment, provided as an alternative option. Referring to Article 67 of the New Penal Code, the death penalty is now a special punishment that is always imposed alternatively.

The death penalty as a special punishment is regulated in Articles 98 to 102 of the New Penal Code. In addition to being a special punishment, the death penalty in the New Penal Code is subject to a probationary period of 10 years. This probationary period is intended to provide an opportunity for the convicted person to show behavioral change and remorse.

Article 100 of the New Penal Code stipulates that a judge imposes the death penalty with a 10-year probation period, considering factors such as:

1. The remorse shown and the potential for self-improvement;
2. The role played in the crime committed.

The death penalty with a probationary period must be included in the court's decision. The 10-year probation period is calculated from the day after the court's ruling becomes legally binding (*inkracht*). If, during the probationary period, the convicted person shows significant change and exemplary behavior, the death penalty may be commuted to a life sentence. This change in punishment is determined through a Presidential Decree (*Keppres*) after consultation with the Supreme Court (MA). However, if the convicted person does not show any change or improvement during the probation period, the death penalty will be carried out upon the order of the Attorney General.

The death penalty is executed only after the convicted person's clemency request is rejected by the president. If the clemency request is denied and the death penalty is not carried out within 10 years due to reasons other than the convict's escape, the death penalty may be commuted to a life sentence.

The death penalty under Law No. 1 of 2023 concerning the Penal Code (KUHP) from a human rights perspective

The death penalty, as regulated in Law No. 1 of 2023 concerning the Penal Code (KUHP), involves the state taking the life of a convicted individual. This severe punishment is typically imposed on those convicted of grave crimes such as premeditated murder, terrorism, drug trafficking, or actions that threaten national security. The death penalty is often considered the most extreme form of punishment, as it eliminates any chance for the offender to redeem themselves.

The United Nations Human Rights Committee agrees that the death penalty may only be applied in cases where the crime is deemed one of the "most serious crimes." According to the International Covenant on Civil and Political Rights (ICCPR), the death penalty must be used in a very selective manner, applying only to situations with grave consequences, including actions involving violence. The 1998 Rome Statute of the International Criminal Court considers acts such as mass destruction, crimes against humanity, war crimes, and acts of aggression as the "most serious crimes."

The death penalty is a controversial and impactful issue within society. Supporters argue that it serves as a means of restoring justice for victims and providing a deterrent to those committing serious crimes. However, many human rights groups and international organizations contend that it violates fundamental human rights, particularly the right to life and the right to be free from torture, cruel, inhuman, or degrading treatment or punishment.

From a human rights perspective, the death penalty is seen as a violation of the basic right to life. Everyone has the inherent right to live, and imposing the death penalty is viewed as a serious infringement on that right. Human rights frameworks also emphasize the protection of individuals from torture and degrading treatment. While the death penalty is often framed as a form of retribution, current criminal law paradigms emphasize restorative justice. Traditional views held that the death penalty was essential to prevent future violations of law. However, comprehensive surveys by the UN in 1988 and 1996 found no scientific evidence supporting the notion that the death penalty is a more effective deterrent than life imprisonment.

That said, Indonesia maintains legal sovereignty, and the policy of capital punishment remains within the state's prerogative. In Indonesia, the death penalty is imposed on those convicted of severe crimes such as premeditated murder, terrorism, drug trafficking, and national security violations.

Under the new Penal Code, the death penalty is classified as a special form of punishment, regulated from Articles 98 to 102. One significant change in the new KUHP is the introduction of a 10-year probationary period for death penalty convicts. According to Article 100 of the new law, the judge may impose the death penalty with a 10-year probation period, considering the defendant's remorse and their potential for reform, as well as their role in the crime. During this probation, if the offender shows commendable behavior, the death penalty can be commuted to a life sentence, as determined by a Presidential Decree after consultation with the Supreme Court. If the convict does not show improvement and there is no hope for reform, the death penalty will be carried out upon the Attorney General's order. The reforms in the new Penal Code reflect a compromise between proponents and opponents of the death penalty. While the death penalty remains, the law provides a pathway for potential reform, allowing for a life sentence if the offender demonstrates good behavior during the probation period. Additionally, the new regulations consider individual circumstances, such as postponing execution for pregnant women or those with mental disorders.

4. Conclusion

In conclusion, the death penalty under Indonesia's new Penal Code (KUHP) as outlined in Law No. 1 of 2023 has undergone significant reforms that reflect a balance between maintaining this severe punishment and acknowledging human rights considerations. In the past, the death penalty was considered the ultimate form of punishment, applied to the most serious crimes such as premeditated murder, terrorism, and drug trafficking. However, the new KUHP redefines the death penalty as a special form of punishment, offering a probationary period of 10 years during which the offender's behavior can be assessed. If the convict demonstrates remorse and positive behavioral change, their sentence may be commuted to life imprisonment through a Presidential Decree. This shift introduces a more restorative approach to justice, allowing for the possibility of rehabilitation. The death penalty will only be carried out if the convict fails to reform during the probation period or if they engage in acts that show no hope for change. The reforms also include protections for individuals such as postponing executions for pregnant women and those with mental health issues.

From a human rights perspective, the death penalty has been viewed with controversy due to its irreversible nature and its potential violation of the right to life and freedom from cruel treatment. While supporters argue that it serves as a deterrent and brings justice to victims, human rights organizations emphasize the need to protect fundamental freedoms. The reforms in Indonesia's new KUHP attempt to balance these perspectives by providing a space for redemption while still maintaining the death penalty as an option for the most severe crimes. This law opens the possibility of a moratorium on the death penalty in the future, allowing for a more nuanced and humane approach to justice.

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