

Legal Analysis of the Death Penalty in Indonesia from the Perspective of National and International Law in Terms of Human Rights

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Abstract: This article discusses the regulation of capital punishment under international law as reviewed by the UN General Assembly Resolution on the Declaration of Human Rights of 1949 and its practice in several countries. The debate on the death penalty has led to the emergence of at least two major groups: those who oppose the death penalty and those who support it. Those who support the death penalty believe it is a necessary form of punishment to prevent and reduce crimes that are considered serious or extraordinary in society. The type of research used in this thesis is normative legal research. Normative legal research examines the law from an internal perspective, with the object of research being legal norms. The approaches used are the statutory approach, the conceptual approach, the case approach, and the comparative approach with several countries. The results of this study show that the regulation of the death penalty in international law shows a tendency towards abolition or very strict restrictions. UN General Assembly resolutions and instruments such as the UDHR and ICCPR provide a moral and normative basis for the rejection of the death penalty. However, its implementation is highly dependent on the socio-political conditions of each country. The future of the death penalty in international law will continue to be a tug-of-war between universal human rights principles and the reality of state sovereignty.

Keywords: Capital Punishment; Human Rights; International; National Law.

1. Introduction

The imposition of criminal penalties on perpetrators of criminal acts is the prerogative of judges, who must consider both legal and sociological factors to ensure that the penalties imposed are beneficial to both the convicted person and society (Gunawan & Bagiastra, 2023). Imprisonment is modified in the implementation of prison sentences with the concept of rehabilitation. For this reason, the application of punishment must take into account the purpose of punishment (straf soort), the severity of the punishment (straf), and the manner of imposing punishment (straf modus). This differs from the concept of the death penalty in the old Criminal Code, which placed the death penalty as the primary punishment, as Article 67 of the 2023 Criminal Code places the death penalty as a special punishment that is threatened alternatively with a probation period. This is as explained in Article 100 of the 2023 Criminal Code (Rusito & Suwardi, 2019).

The death penalty remains one of the most controversial and debated forms of criminal punishment worldwide (Suyatno & Yusuf, 2023). Indonesia, as the largest archipelagic country and a member of the international community, has maintained the death penalty in its criminal justice system, particularly for crimes such as drug trafficking, terrorism, and premeditated murder. This research focuses on a legal analysis of the death penalty in Indonesia, scrutinizing it from the perspective of both national and international law, with particular emphasis on human rights implications (Purba et al., 2020). This study aims to contribute to ongoing discussions about the legitimacy, legality, and ethical considerations of capital punishment within the framework of Indonesian law and its obligations under international human rights treaties.

The context of this research is rooted in Indonesia's complex legal and socio-political landscape (Neves, 2022). On one hand, the death penalty is enshrined in Indonesian criminal law as a legitimate punitive measure, supported by public opinion in some sectors

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and governmental authorities as a deterrent to serious crimes. On the other hand, Indonesia is a signatory to several international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), which advocates for the right to life and calls for the abolition or strict limitation of capital punishment. This juxtaposition presents an inherent tension between Indonesia's national sovereignty and its international legal commitments, raising significant questions about the compatibility of the death penalty with human rights standards (Turangan et al., 2021). The focus of this research is threefold. First, it explores the legal framework of the death penalty within Indonesian national law, including statutory provisions, judicial interpretations, and policy implications. Second, it examines international legal norms and human rights treaties that Indonesia has ratified, analyzing how these international instruments influence or constrain the application of the death penalty domestically (Arifullah, 2024).

Third, it evaluates the intersection of national law and international human rights law, particularly how the death penalty impacts fundamental rights such as the right to life, the prohibition of torture and cruel treatment, and the right to a fair trial. In the Constitution of the Republic of Indonesia, the 1945 Constitution guarantees human rights as stipulated in Articles 28A-28J. The constitution explains that human rights are highly respected for every person. Further regulations related to human rights will be regulated in existing legislation. The death penalty is a fundamental punishment, a type of punishment that is controversial. At the international level, this type of punishment is prohibited from being imposed on convicts (Mohas et al., 2025). The United Nations (UN) encourages the abolition of this type of punishment based on the Universal Declaration of Human Rights, which was adopted on December 10, 1948, guaranteeing the right to life and protection against persecution. Similarly, human rights are guaranteed in Article 6 of the ICCPR, which was adopted in 1966 and ratified by Law No. 12 of 2005 concerning the Ratification of the ICCPR (Zulfikri et al., n.d.).

The discussion on capital punishment has been examined by several previous researchers, first in a study on the existence of capital punishment in the criminal law code conducted by Ni Komang Kumala Sari. Next, research on the application of capital punishment according to positive law in Indonesia was reviewed from a human rights perspective by Baren Sipayung, Sardjana Orba Manullang, and Henry Kristian Siburian. The next study was conducted by Amelia Arief on the problems of imposing the death penalty from the perspective of human rights and criminal law (Fauzan, 2024). From the previous studies mentioned above, there has been no study that specifically discusses the relevance of the application of the death penalty in the context of Indonesian positive law and human rights law, making this thesis research more interesting to discuss (Kurniawan et al., 2024).

Respecting the death penalty in Indonesia as a country that upholds the values of Pancasila to this day is a topic that sparks much debate among legal experts, as many of them still question the death penalty due to differences in opinion and perspective. For some groups who do not accept the death penalty, it is considered to not reflect the values contained in human rights.

This research is important for several reasons. Capital punishment in Indonesia has been a subject of intense domestic and international scrutiny. Numerous high-profile cases, especially involving drug trafficking offenders, have drawn global attention and criticism, with human rights organizations urging Indonesia to abolish the death penalty in line with evolving international norms (Huong & Khoo, 2019). The debate is not merely legal but also deeply moral and social, touching upon issues of justice, deterrence, rehabilitation, and human dignity. Therefore, an in-depth legal analysis provides valuable insights into how Indonesian law aligns or diverges from international human rights principles, and what legal reforms might be necessary to reconcile these differences (Malau, 2023).

Ultimately, the emergence of the debate on capital punishment has led to the emergence of at least two major groups: those who oppose capital punishment and those who support it. For those who oppose it, capital punishment is a form of murder legalized by

the state, violating human rights because the right to life is a fundamental right that cannot be reduced for any reason. On the other hand, those who support the death penalty believe it is a necessary punishment to prevent and reduce crimes that are considered serious or extraordinary in society. The regulation of the death penalty under positive criminal law can be used to protect the structure of life, so that the death penalty is not a violation of the law even though everyone has the right to life, as the state protects its people from unlawful acts.

This research contributes significantly to academic discourse, policy formulation, and human rights advocacy. Academically, it enriches the field of comparative legal studies and international human rights law by providing a focused case study on Indonesia. From a policy perspective, the research offers evidence-based insights that could guide lawmakers, judicial authorities, and government officials in reforming death penalty laws to better align with human rights norms (Hammar & Renjaan, 2022). For human rights activists and civil society, this study strengthens arguments for abolition or stricter regulation of the death penalty by highlighting legal inconsistencies and human rights concerns. Supporting this research is a robust methodology based on doctrinal legal analysis, which involves detailed examination of legal texts, case law, and treaty provisions (Muhtar & Risnain, 2024). Additionally, the study considers relevant reports from human rights organizations and international bodies to contextualize legal findings within broader social and political realities. By integrating national and international legal sources, the research provides a nuanced understanding of the death penalty's legal status and human rights implications in Indonesia.

2. Materials and Methods

The type of research that will be used in this thesis is normative legal research. Normative legal research examines the law from an internal perspective, with the object of research being legal norms (Taekema, 2018). The specification of this research is descriptive analytical research, which involves describing the research results with data that is as complete and detailed as possible. In addition, the research will use prescriptive analysis, which projects how the death penalty will be carried out for perpetrators involved in criminal cases in Indonesia (Taekema, 2018). The approaches used are the legislative approach, the conceptual approach, the case approach, and the comparative approach with several countries.

3. Results and Discussion

3.1 *Capital Punishment According to International Law Reviewed from the UN General Assembly Resolution on the Declaration of Human Rights of 1949 and Its Practice in Several Countries*

The death penalty is the most extreme form of punishment imposed by the state on an individual as retribution for a serious crime. This punishment often causes controversy because it involves moral values, law, and human rights. In the context of international law, the issue of capital punishment has become increasingly complex due to the development of global standards, especially since the declaration of the Universal Declaration of Human Rights (UDHR) in 1948 by the United Nations General Assembly (Al Banna, 2022). Although not legally binding, this declaration has become the main moral and political foundation for the formation of global human rights norms. Article 3 of the UDHR states that "Everyone has the right to life, liberty, and security of person." This article is the main reference in the debate on the existence of the death penalty, given that the death penalty directly deprives a person of their right to life (Kutt, 2024).

The UDHR does not explicitly prohibit the death penalty. However, its emphasis on the right to life provides broad room for interpretation. Some countries interpret this as support for the abolition of the death penalty, while others continue to maintain this punishment as part of their national criminal justice systems (AGHOGHO, 2024). Following the UDHR, several international legal instruments began to regulate this issue in greater detail. For example, the 1966 International Covenant on Civil and Political Rights (ICCPR)

allows the death penalty but with strict limitations, such as for the most serious crimes and with guarantees of a fair trial. In fact, the 1989 Second Optional Protocol to the ICCPR explicitly aims to abolish the death penalty completely.

The UN General Assembly has also adopted several resolutions calling for a moratorium or suspension of capital punishment as a first step toward its total abolition. The first resolution, adopted in 2007 and renewed several times, shows that there is a trend within the international community toward the abolition of capital punishment, even though the resolution is not legally binding. Countries that support the abolition of the death penalty argue that capital punishment violates human rights principles, is ineffective as a deterrent to crime, and carries a high risk of executing innocent people. They also argue that the judicial system is never completely free from error or bias (Ramcharan, 2021).

On the other hand, some countries continue to uphold the death penalty for various reasons, such as the importance of maintaining national security, enforcing the law against extraordinary crimes such as terrorism or premeditated murder, and as an expression of the will of the people. Countries such as China, Iran, Saudi Arabia, and the United States belong to this group (Joko et al., 2020). China has the highest number of executions in the world. Although official data is kept secret, various reports indicate that the country applies the death penalty for various types of crimes, including corruption. The Chinese government argues that this is necessary to maintain social order and provide a deterrent effect. The United States is a unique example of an advanced democracy that still retains the death penalty. However, its implementation varies between states. Some states, such as Texas, still actively carry out executions, while states such as New York have abolished it. The debate continues, especially after cases of wrongful convictions have been discovered, resulting in the execution of innocent people (Van Dijk & Van Hoof, 2023). European countries, on the other hand, have mostly abolished the death penalty altogether. The European Union even makes the abolition of the death penalty a prerequisite for membership. This reflects a regional commitment to the protection of human rights, which is also affirmed in the European Convention on Human Rights. Saudi Arabia, Some countries that base their national law on Islamic law continue to uphold the death penalty on the basis of Sharia law, such as Saudi Arabia and Iran. However, its implementation is often criticized due to a lack of transparency and frequent violations of the right to a fair trial (Hamad et al., 2022).

From an international law perspective, there is no explicit prohibition on the death penalty, but there is a strong trend toward limiting or abolishing it. States parties to the ICCPR are still allowed to impose the death penalty, but must meet strict conditions, including not imposing it on children or pregnant women, and not imposing it arbitrarily. Organizations such as Amnesty International, Human Rights Watch, and the UN Human Rights Commission continue to push for the abolition of the death penalty. They also actively document violations and pressure countries to implement moratoriums or remove the death penalty from their legal systems. In addition, Article 9 of Law Number 39 of 1999 concerning Human Rights.

Therefore, Law No. 39 of 1999 affirms the guarantee that everyone has the right to be free from enforced disappearance and deprivation of life. The polemic over the application of the death penalty in a country is always a routine issue. How could it not be, since the application of the death penalty is part of the criminal justice system and is also a state policy. The death penalty policy is a development of the absolute theory that focuses on deterrence. Those who reject the death penalty consider it to be a continuation of the chain of violence and a form of retribution. Although support for the abolition of the death penalty is increasing, challenges remain. Factors such as legal culture, domestic political pressure, crime rates, and interpretations of legal sovereignty are significant obstacles to unifying global views on the death penalty. Developing countries, including Indonesia, face a dilemma between protecting human rights based on international norms and conforming to public will and national law enforcement. Indonesia, for example, still applies the death penalty for serious crimes such as narcotics, arguing that it is in the national interest.

The right to self-determination is formulated not only to mean freedom to determine political status within the state, but also the freedom to pursue economic, social, and cultural development, including the right of all nations to freely manage and utilize natural resources and wealth for the purpose of fulfilling human rights, which was further elaborated in the Declaration on Permanent Sovereignty over Natural Resources in 1962 through UN General Assembly Resolution 1803(Akter, 2022). In its development, the term self-determination is interpreted not only as the right to independence in relation to the decolonization of a country, but has evolved into the collective freedom (of the population) to participate in determining policies and their implementation in the life of the state. Another instrument related to the right to self-determination is the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries (Entry Into Force) on October 20, 2001.

Although capital punishment has its flaws, it still falls short of fulfilling the purpose of punishment. It does not address the social factors that contribute to crime, but rather the evil deeds committed. A criminal who commits crimes frequently, for example, is ultimately sentenced to life imprisonment. He often escapes and commits other crimes, such as murder, rape, and so on, during his sentence(Mazzeschi, 2021). Basically, the most important thing is that both systems recognize the death penalty, which has been regulated by both legal systems. However, due to humanism and universal humanitarian principles that spread after World War II, the death penalty is considered illogical in the modern era. In other words, human rights defenders claim that the dynamics of global criminal law have now shifted from the theory of retribution to the theory of rehabilitation, which refers to clinical treatment.

The regulation of capital punishment in international law shows a trend towards abolition or very strict restrictions. UN General Assembly resolutions and instruments such as the UDHR and ICCPR provide a moral and normative basis for rejecting the death penalty. However, its implementation is highly dependent on the socio-political conditions of each country. The future of the death penalty in international law will continue to be a tug-of-war between universal human rights principles and the reality of state sovereignty(Akhtar, 2023).

3.2. *Comparative Analysis Of National And International Laws On The Death Penalty*

The death penalty continues to be one of the most polarizing issues in the legal and human rights discourse globally. Indonesia's retention and active enforcement of capital punishment places it at the crossroads of national sovereignty and international legal obligations. A comparative analysis between Indonesia's national laws and international legal frameworks reveals both consistencies and significant inconsistencies, raising complex legal and ethical questions, particularly with regard to human rights protections. At the national level, Indonesia's legal system explicitly provides for the death penalty as a form of punishment for grave offenses such as drug trafficking, terrorism, and premeditated murder. The Criminal Code (Kitab Undang-Undang Hukum Pidana - KUHP) and several special laws underpin this practice. The rationale often cited is that the death penalty serves as a deterrent, reflects societal condemnation of serious crimes, and maintains public order. From a sovereignty perspective, Indonesia asserts its right to legislate and enforce its criminal justice policies in accordance with domestic social, cultural, and political contexts(Reichel, 2022).

Conversely, international law presents a more cautious, often restrictive approach to the death penalty. Indonesia is a party to the International Covenant on Civil and Political Rights (ICCPR), which, while not outright banning the death penalty, sets stringent conditions for its application under Article 6. The UN Human Rights Committee and various UN resolutions advocate for the abolition of the death penalty or at least a moratorium, emphasizing the right to life and prohibiting cruel, inhuman, or degrading treatment or punishment. The Second Optional Protocol to the ICCPR, which specifically

aims to abolish the death penalty, remains unratified by Indonesia, reflecting a divergence from the global abolitionist trend (Ahmad et al., 2024).

This juxtaposition illustrates both consistency and inconsistency. On one hand, Indonesia's laws comply with international legal allowances for the death penalty, as the ICCPR does not mandate total abolition. On the other hand, Indonesia's broad and frequent use of capital punishment, particularly in drug-related cases, is at odds with the spirit and growing global momentum towards limiting or abolishing the death penalty as reflected in international human rights advocacy (Wallerstein, 2023). The application of the death penalty in Indonesia poses profound legal implications for human rights protections. The right to life, enshrined in both the Indonesian Constitution and international human rights law, is fundamentally challenged by capital punishment. The use of the death penalty raises questions about the fairness of legal proceedings, the possibility of wrongful convictions, and the humane treatment of individuals sentenced to death (Anwary, 2023).

Critically, the principle of non-derogability of the right to life under international human rights law means that any application of the death penalty must be conducted with utmost care, ensuring fair trial guarantees, non-discrimination, and the possibility of appeal and clemency. In Indonesia, concerns have been raised regarding the quality of legal representation, prolonged pre-execution detention, and the lack of transparency in some cases. Such factors can amount to violations of due process rights and exacerbate the cruel nature of the punishment. Moreover, the death penalty's application disproportionately affects marginalized groups, raising issues of equality and non-discrimination. From a human rights perspective, the death penalty conflicts with evolving standards of human dignity, leading international bodies to characterize it increasingly as incompatible with contemporary human rights norms (ElShawi et al., 2021).

Several high-profile cases have highlighted the contentious nature of the death penalty in Indonesia and elicited international reactions. One notable example is the execution of foreign nationals convicted of drug trafficking, including Australians Andrew Chan and Myuran Sukumaran in 2015. Their executions sparked widespread international condemnation from governments, human rights organizations, and the UN, arguing that Indonesia's application of capital punishment violated fair trial standards and humanitarian considerations (Chen et al., 2020).

Another case involved the execution of Indonesian nationals convicted of terrorism, which, while domestically supported as necessary for national security, attracted scrutiny regarding the proportionality and human rights implications of the death penalty. These cases illustrate the delicate balance Indonesia attempts to maintain between upholding its national laws and responding to international criticism. International responses have often included diplomatic protests, calls for moratoriums, and appeals to Indonesia to reconsider or commute death sentences. Human rights organizations use such cases to pressure the Indonesian government to align its practices with international standards, emphasizing rehabilitation over retribution (Rosert & Sauer, 2021).

Indonesia faces numerous challenges in harmonizing its national death penalty laws with international human rights standards. First, there is strong domestic political and public support for the death penalty, particularly as a tool against drug-related crimes, which are viewed as a national crisis. This popular sentiment limits political will for abolition or significant reform. Second, Indonesia's legal pluralism and the interplay of civil, customary (*adat*), and Islamic law traditions complicate consensus on penal reforms. The death penalty's role is embedded in legal, cultural, and religious narratives that reinforce its retention. Third, the international human rights framework itself presents challenges. While Indonesia has ratified several key treaties, it maintains reservations and has not adopted binding protocols aimed at abolition, highlighting a preference for selective adherence that balances international obligations with national interests. Finally, the lack of comprehensive legal reforms, limited public education on human rights implications, and institutional inertia within the judiciary and law enforcement agencies hamper progress towards harmonization.

4. Conclusions

The regulation of capital punishment in the context of international law shows a global shift towards its abolition or strict restrictions on its implementation. Although the 1948 Universal Declaration of Human Rights (UDHR), adopted by a resolution of the UN General Assembly, does not explicitly prohibit the death penalty, its fundamental principle of respect for the right to life has become a strong normative basis for various international legal instruments and global campaigns against capital punishment. International law, through subsequent instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the Second Optional Protocol to the ICCPR, affirms strict restrictions on the death penalty and encourages states to abolish it gradually. UN General Assembly resolutions on a moratorium on the death penalty also reflect a growing global moral consensus to abolish this practice. Although there is no absolute prohibition against the death penalty in positive international law, global trends and pressure from the international community through UN resolutions and international legal instruments are leading to the restriction and abolition of the death penalty as part of the realization of human rights protection, particularly the right to life. The implementation of the death penalty in various countries reflects the dynamics between international norms and national interests, as well as differences in interpretation of legal sovereignty and universal human rights standards.

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