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# Ethical and Philosophical Analysis of Conditional Death Sentence Implementation under Article 100 of Law Number 1 of 2023

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## Abstract

Law Number 1 of 2023 introduces a conditional death penalty system that allows the suspension of executions for a ten-year probationary period, with the possibility of conversion into life imprisonment based on rehabilitation. This research analyzes the ethical legitimacy and philosophical foundations of this "middle-way" approach, specifically evaluating its alignment with human rights principles and the ultimate objectives of punishment. Using a normative-juridical method with statutory and conceptual approaches, the study examined Law Number 1 of 2023 and relevant human rights instruments. The findings indicated that while the conditional death penalty is presented as a humanization of criminal law, it creates profound ethical tensions. The ten-year waiting period induces extreme psychological suffering, often termed the "death row phenomenon", which may constitute inhuman treatment. Philosophically, Article 100 reveals a conflict between retributive justice and rehabilitative goals. Furthermore, the state's role as an arbiter of life remains contested under international human rights standards. The study concludes that this provision serves as a pragmatic political compromise but requires rigorous safeguards to prevent administrative arbitrariness and ensure substantive justice.

## Keywords

Conditional Death Penalty, Criminal Code, Human Rights, Legal Philosophy.

## 1. Introduction

Indonesia, as a constitutional state (*rechtsstaat*) grounded in the philosophical foundation of Pancasila and the 1945 Constitution, is under a mandate to uphold human dignity as the primary pillar of its penal policy. This obligation becomes particularly critical when the state exercises its most extreme power: the authority to take a human life. The legitimacy of capital punishment in a modern democracy cannot rely solely on formal authority, it must be subjected to rigorous moral scrutiny and philosophical rationality (Pasalima et al., 2024). Criminal law is not merely a tool for order but a manifestation of national values intended to uphold social security while maintaining distributive justice (Harahap & Fikri, 2025). In this context, the death penalty has long been the most controversial element of the Indonesian legal system, caught between the demands of public retribution and the universal evolution toward abolition.

The enactment of Law Number 1 of 2023 concerning the Criminal Code (*Kitab Undang-Undang Hukum Pidana*/KUHP) marks a historical milestone in Indonesia's legal decolonization. For over a century, Indonesia relied on the Wetboek van Strafrecht, a Dutch colonial legacy that prioritized retributive deterrence. The new code attempts to modernize this framework by introducing "Special Criminal Sanctions," where the death penalty is no longer a primary punishment but a unique alternative that carries a conditional nature. Article 100 of the New KUHP introduces a 10-year probationary period for death row inmates, allowing for the possibility of sentence commutation to life imprisonment if the convict demonstrates consistent "good behavior." This "Indonesian Middle Way" attempts to reconcile the polarized views of abolitionists, who demand the total removal of the death penalty, and retentionists, who argue for its necessity in combating extraordinary crimes like terrorism and drug trafficking (Falevi et al., 2023; Agrarini, 2025).

However, this innovative legal construction introduces significant ethical and philosophical dilemmas. From an ethical standpoint, the 10-year waiting period creates a state of prolonged legal uncertainty. Critics argue that forcing a human being to live for a decade under the constant shadow of an executioner constitutes a form of psychological torture, often described in international jurisprudence as the "death row phenomenon". This raises a fundamental question: does Article 100 truly humanize the law, or does it merely replace a quick death with a slow, agonizing period of mental distress? Furthermore, the criteria for "good behavior" are often administrative and subjective, potentially placing the convict's life at the mercy of bureaucratic discretion rather than clear judicial parameters (Simanjutak, 2025).

Philosophically, the conditional death penalty creates tension between retributive and rehabilitative theories of punishment. While retribution demands proportional justice through final punishment, rehabilitation assumes that offenders are capable of reform, making the continued threat of execution contradictory (Nasution et al., 2024). From a human rights perspective, the right to life is recognized as a non-derogable right, although Indonesia still retains capital punishment within limited legal boundaries. As a state party to the ICCPR through Law Number 12 of 2005, Indonesia is obligated to apply the death penalty only to the "most serious crimes" and under strict fair trial standards (Karmila et al., 2025). Although Article 100 is viewed as a step toward a more humane penal system, it remains embedded within a retentionist framework that continues to legitimize state-sanctioned killing (Bato, 2023).

Given these complexities, an ethical-philosophical reflection is essential. Legal norms are not just technical rules, they are expressions of a nation's moral choices. Therefore, the implementation of Article 100 must be understood as a statement of the state's attitude toward human dignity, justice, and the limits of its own power (Simanjutak, 2023). This research seeks to deconstruct the moral foundations of

conditional death sentences, evaluating whether they represent a genuine evolution of justice or a procedural mask for an inherently problematic practice. By examining the interplay between the new KUHP, constitutional mandates, and philosophical theories of justice, this study aims to critically examine the ethical, philosophical, and human rights implications of the conditional death penalty under Article 100 of Law Number 1 of 2023, particularly concerning the "death row phenomenon," the paradox of penal objectives, and the political compromise between abolitionist and retentionist perspectives in Indonesia's criminal law reform.

## 2. Methods

This study employs a normative-juridical research method, which analyzes law as a system of norms (Nur, 2021). This method is considered appropriate because the study focuses on the normative validity, philosophical consistency, and human rights implications of Article 100 rather than empirical measurement of criminal justice practices. The primary focus is on the "law in books," examining the statutory construction of the New KUHP and its internal consistency. A legislative approach is used to deconstruct Article 100 of Law Number 1 of 2023, while a conceptual approach is utilized to evaluate the ethical and philosophical theories underlying the text (Pujiati, 2024).

The data used in this research consist entirely of secondary legal materials, as the study focuses on the normative and philosophical examination of conditional capital punishment within the Indonesian legal system. These materials are classified into three categories. Primary legal materials include Law Number 1 of 2023 concerning the Criminal Code, the 1945 Constitution of the Republic of Indonesia, and Law Number 39 of 1999 on Human Rights, which serve as the main legal foundations for analyzing the legitimacy and constitutional position of the conditional death penalty. Secondary legal materials consist of academic journals, legal textbooks, scholarly commentaries, and research reports discussing capital punishment, ethics, penal philosophy, and human rights. These sources are used to provide theoretical interpretation and critical analysis of the legal issues examined. Meanwhile, tertiary materials, including legal dictionaries and encyclopedias, are utilized to clarify legal terminology and strengthen conceptual understanding throughout the analysis process.

The analysis is conducted through a qualitative-prescriptive approach to identify and examine the normative tensions embedded within the conditional death penalty framework. These tensions are critically evaluated using the principles of justice, humanity, and human rights as the primary philosophical benchmarks. Through deductive reasoning, the study assesses whether the existing legal construction aligns with the ethical standards and constitutional values expected of a modern constitutional democracy, particularly regarding the protection of fundamental rights and the proportional exercise of state punishment

## 3. Results and Discussion

### 3.1. Ethical Dilemmas and Human Rights Implications

The introduction of the conditional death penalty in Article 100 of the New KUHP represents a pragmatic attempt by the Indonesian state to navigate the international pressure for abolition while respecting domestic demands for severe punishment. However, this "middle way" creates an unprecedented ethical dilemma regarding the psychological welfare of the condemned. Under the new code, a death sentence is not immediately final; it is accompanied by a ten-year waiting period. Ethically, this shifts the nature of the punishment from a swift termination of life to a decade of existential suspension. The convict is forced to "perform" reform under

the constant threat of execution, turning the internal process of remorse into a high-stakes administrative requirement (Agustia et al., 2025).

From a human rights perspective, this waiting period brings the "death row phenomenon" to the forefront of Indonesia's legal challenges (Simanjutak, 2023). International jurisprudence has increasingly recognized that prolonged incarceration on death row, characterized by isolation and the uncertainty of the execution date, constitutes cruel and inhuman treatment (Syauket, 2023). While Article 100 is intended to be merciful by offering a path to commutation, the ten-year duration is arguably excessive. It exposes the individual to severe mental trauma, which can be seen as a violation of the prohibition against torture and ill-treatment as stipulated in the Convention Against Torture (CAT), which Indonesia ratified. The ethical question remains: can the state justify ten years of psychological agony as a prerequisite for mercy?

Furthermore, the implementation of Article 100 faces the challenge of "Vitiated Consent." The "good behavior" required for commutation must be genuine to be philosophically valid. However, when behavior is coerced by the threat of death, it loses its moral authenticity. Philosophically, a person who behaves well only to avoid the gallows has not undergone a moral transformation; they have merely succumbed to state-sponsored terror (Ananda, 2023). This reduces the human being to an object of state experimentation, contradicting the Kantian imperative that humans must always be treated as ends in themselves, never merely as a means to an end (Husairi et al., 2024).

The legal uncertainty inherent in this process also impacts the principle of fair trial. Although the sentence is handed down by a judge, the final decision on commutation rests with the President, based on a recommendation from the Ministry of Law and Human Rights and the Supreme Court. This introduces an executive and administrative element into what should be a purely judicial process. If the criteria for "good behavior" are not transparently and objectively defined, the process risks being influenced by political climate or administrative bias, further eroding the rights of the convict (Simanjutak, 2023). Thus, while Article 100 may appear humanistic on the surface, its ethical core is hollowed by the potential for prolonged suffering and administrative arbitrariness.

International human rights law provides a rigid framework for this study. The "death row phenomenon", the psychological toll of long-term confinement under a death sentence, has been recognized by the European Court of Human Rights and various UN bodies as a violation of the prohibition against cruel, inhuman, or degrading treatment (Syauket, 2023). In Indonesia, the constitutional right to life under Article 28A of the 1945 Constitution has been interpreted by the Constitutional Court as a right that can be limited by law, yet the introduction of a 10-year probationary period adds a new layer of complexity to this interpretation (Manoppo et al., 2023).

### *3.2.* Philosophical Legitimacy and the Paradox of Penal Objectives

Theoretical foundations of punishment play a crucial role in this analysis. Retributive theory, championed by Kant and Hegel, posits that punishment is a moral necessity to balance the scales of justice (Duff, 2022). Conversely, Utilitarian theory, associated with Jeremy Bentham, views punishment through the lens of social utility and deterrence (Tofik, 2022). Article 100 of the New KUHP introduces a third dimension: the "Reformative" or "Rehabilitative" theory, which views the criminal as a person capable of change (McNeill, 2022). Pane (2021) notes that Indonesia's transition to a conditional death penalty reflects a shift toward an integrated theory of punishment that combines retribution with the goal of social reintegration.

The conditional death penalty under Law Number 1 of 2023 creates a philosophical paradox by attempting to merge three conflicting theories of

punishment: retribution, deterrence, and rehabilitation. Traditionally, the death penalty is the ultimate expression of retributive justice, the idea that the only fitting punishment for taking a life is to forfeit one's own. Retribution requires finality and proportionality (Hirsch, 2022). By introducing a 10-year delay and a possibility of commutation, the New KUHP weakens the retributive claim. If the crime was heinous enough to deserve death, can ten years of "good behavior" truly balance the moral scales? (Ardiansyah et al., 2024). This creates a crisis of consistency for the retributivist camp within Indonesian legal philosophy.

Simultaneously, the theory of deterrence (general and special prevention) is undermined by the conditional nature of the sentence. Deterrence relies on the certainty and celerity of punishment (Hood & Hoyle, 2023). When the public sees that a "death sentence" might not actually lead to death, the psychological effect of the threat is diluted. From a Benthamite utilitarian perspective, the punishment's value is measured by its ability to prevent future crimes. If a life sentence achieves the same social utility as a conditional death sentence without the ethical baggage of execution, the utilitarian justification for the death penalty vanishes (Widjaja & Nurhidayanti, 2024).

The most significant philosophical conflict lies in the rehabilitative ideal. Article 100 assumes that even a "most serious" offender can be rehabilitated within ten years. This is a progressive admission from the state, recognizing the inherent plasticity and dignity of the human person. However, if the state truly believes in rehabilitation, why maintain the death penalty as the starting point? True rehabilitative philosophy (as seen in restorative justice) focuses on healing and reintegration, not on a "suspended killing" (Arafat, 2025). The state's role here is contradictory: it acts as a mentor, encouraging reform while holding the executioner's rope. This "sword of Damocles" approach suggests that the state does not fully trust the rehabilitative process it has mandated.

Finally, we must consider the legitimacy of state power. Following Hobbesian social contract theory, individuals surrender certain rights to the state in exchange for security (Fiddin & Karli, 2023). However, modern democratic philosophy, particularly in the Indonesian context of "*Adil dan Beradab*" (Just and Civilized Humanity), argues that the state's power must be limited by the fundamental dignity of the person. By positioning itself as the ultimate judge of who "deserves" to continue living based on a 10-year performance review, the state assumes a quasi-divine authority that exceeds the bounds of a secular legal system (Saputra et al., 2024). This philosophical overreach suggests that Article 100 is not just a legal tool, but a problematic expansion of state control over the very essence of human existence.

### *3.3.* The Political Compromise: Navigating Abolition and Retention

The discourse on the death penalty is historically divided into two major camps: abolitionism and retentionism. Abolitionists argue that the death penalty violates the most fundamental human right, the right to life, and that any judicial error is irreversible (Hood & Hoyle, 2023). Retentionists, on the other hand, maintain that certain crimes are so heinous that they forfeit the perpetrator's right to live, serving as a necessary deterrent and a just retribution for the victims (Hamzah, 1993). In Indonesia, this debate has reached a synthesis in the form of the "New KUHP," which attempts to move away from Dutch colonial retributivism toward a more rehabilitative "restorative" approach, as analyzed by Syaifullah (2024) and Arafat (2025).

Article 100 of the New KUHP can be best described as a "political compromise" designed to address Indonesia's unique socio-political landscape. For decades, Indonesia has been criticized by the international community for its continued use of the death penalty, particularly for drug offenses. At the same time, domestic public opinion, often influenced by conservative religious views and a "tough on crime"

stance, remains largely supportive of capital punishment (Agrarini, 2025). This tension forced the drafters of the New KUHP to find a "middle way" that satisfies both sides without fully committing to either. The result is a system where the death penalty remains on the books (satisfying retentionists) but is so difficult to execute that it serves as a de facto moratorium (satisfying abolitionists).

However, a compromise in politics often results in ambiguity in law. The "special sanction" status of the death penalty effectively removes it from the list of "primary punishments," signaling a move toward abolition. Yet, as Elvariani and Tongat (2025) point out, this creates a hybrid status that complicates judicial sentencing. Judges must now consider not only the crime but the future potential for remorse, which is an inherently speculative task. This legal gray area can lead to inconsistent sentencing across different jurisdictions, where one judge might grant the 10-year probation while another, for a similar crime, might not, depending on their personal philosophical leanings toward Article 100.

Moreover, the role of the president in the commutation process (Article 100, paragraph 4) politicizes the judiciary. The requirement of a "Presidential Decree" for commutation means that the life of a convict can become a matter of political expediency. In an election year, a President might be less inclined to sign a commutation decree for fear of being seen as "weak" on crime (Fiddin & Karli, 2023). This subjects the right to life to the whims of the executive branch, a dangerous precedent for the separation of powers and the rule of law. Ethical-philosophical integrity requires that the finality of life and death be settled in a court of law, not in the halls of political power.

Ultimately, while the conditional death penalty is a pragmatically brilliant move to move Indonesia closer to the global abolitionist trend, it fails to provide a solid moral or legal foundation. It reflects a state that is unsure of its own values, a state that wants to be seen as humanistic but is unwilling to let go of the ultimate tool of colonial repression (Pane, 2021; Muntafa & Mahmud, 2023). For the New KUHP to be a true instrument of justice, Article 100 should be viewed as a transitional mechanism toward the total abolition of capital punishment. Only by removing the threat of death entirely can Indonesia align its penal system with the universal standards of human dignity and the "just and civilized humanity" it claims to uphold in Pancasila.

## 4. Conclusion

The introduction of the conditional death penalty under Article 100 of Law Number 1 of 2023 reflects a significant transformation in Indonesia's penal philosophy, shifting from a purely retributive approach toward a more rehabilitative and humanistic framework. However, this study finds that the provision remains ethically, philosophically, and legally problematic. The ten-year probationary period creates the risk of the "death row phenomenon," which may constitute cruel, inhuman, or degrading treatment under international human rights standards. In addition, the conditional nature of the punishment creates contradictions between retributive, deterrent, and rehabilitative objectives, while also introducing legal uncertainty through administrative and political discretion in the commutation process. These findings indicate that Article 100 represents a pragmatic political compromise between abolitionist and retentionist positions rather than a fully coherent penal reform model.

The findings imply that Indonesia's criminal law reform still faces challenges in aligning punitive policies with constitutional principles of human dignity, justice, and the rule of law. Although the provision attempts to humanize capital punishment, its implementation risks reproducing psychological suffering and administrative arbitrariness in a different procedural form. This study is limited by its normative-juridical approach, which relies exclusively on secondary legal

materials and does not empirically examine the implementation of Article 100, including judicial interpretation, executive discretion, and the lived experiences of death row inmates during the probationary period. Future research should employ socio-legal and empirical approaches to evaluate the practical application of conditional death sentences, particularly regarding the assessment of "good behavior," psychological impacts of prolonged death row confinement, and consistency in judicial and executive decision-making. Comparative studies on abolition-oriented penal reforms in other jurisdictions are also recommended to strengthen Indonesia's future criminal law reform.

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The authors declare that there is no conflict of interest.

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Ethical approval was obtained for this study. The manuscript represents original work and has not been previously published, nor is it under consideration by another journal.

***Data Disclosure Statement***
The data that support the findings of this study are available from the corresponding author upon reasonable request.