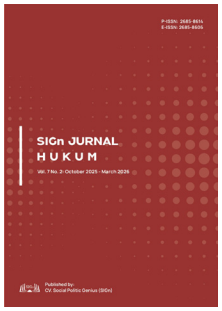

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Article Title

Reorientation of Indonesian Criminal Law Politics: Shifting Paradigm from Retributive to Restorative in Death Penalty Regulation

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ABSTRACT

The shift in global sentencing paradigms, which increasingly abandons the retributive approach in favor of human rights protection, creates an internal normative antinomy within the Indonesian legal system. This antinomy occurs between the constitutional guarantee of the right to life and the continued existence of the death penalty. This study aims to develop a model for reorienting national penal policy from a retributive to a restorative paradigm. Furthermore, this study analyzes the juridical mechanism for implementing the conditional death penalty following the enactment of Law Number 1 of 2023. This research constitutes normative legal research employing statute, case, and conceptual approaches. The legal materials analyzed include primary sources, such as statutory regulations and Constitutional Court decisions, as well as secondary sources from the literature and international reports. The results indicate that the alteration of the death penalty status from a principal punishment to a special punishment with a 10 (ten) year probationary period constitutes a transitional or quasi-abolitionist compromise. This compromise aims to bridge global demands and domestic social defense needs. However, the vacuum of norms regarding the assessment indicators for "commendable attitude" during the probationary period has the potential to cause legal uncertainty. Therefore, integrating restorative justice principles through the recovery of state losses (for corruption) and contributions to severing criminal chains (for narcotics) becomes an imperative objective parameter for sentence alteration. This study concludes that the probationary mechanism must be interpreted as a measurable momentum of rehabilitation, not merely as a postponement of execution. It requires technical implementing regulations in the form of Government Regulations and Supreme Court Regulations.

Keywords: *Death Penalty; Law Politics; Penal Code; Probationary Period; Restorative Justice.*

INTRODUCTION

The discourse on the death penalty within the global criminal law landscape continues to undergo a significant paradigm shift. This shift moves from a rigid retributive approach to a more humanist one, oriented toward protecting human rights. A recent report by Amnesty International (2024) notes that the majority of nations have abolished the death penalty in law or practice. The primary argument posits that this punishment constitutes an absolute violation of the right to life, which is irreversible in the event of a miscarriage of justice. Nevertheless, the tension between abolitionist groups demanding total elimination and retentionist groups viewing capital punishment as a legitimate instrument of social defense remains a subject of fierce debate. This debate persists in both international and national legal discourses (Cahyono, 2024). In this context, Indonesia occupies a unique and complex position. The state must balance international obligations following the ratification of the ICCPR with national legal sovereignty, which still recognizes the legality of the death penalty for extraordinary crimes.

Constitutionally, Indonesia upholds human rights. This is enshrined in Article 28A of the 1945 Constitution, which guarantees the right of every person to live and to defend their life (Soewondo et al., 2023). However, this constitutional guarantee often conflicts with the reality of positive law enforcement, which maintains the

death penalty as the supreme punishment (*ultimum supplicium*). Constitutional Court Decision Number 2-3/PUU-V/2007 has asserted that the right to life is not absolute and may be restricted in the interest of law enforcement and public order. This view is frequently criticized for reducing the essence of non-derogable rights (Buulolo, 2025). The dualism between protecting the right to life on one hand and the spirit of retribution on the other creates prolonged legal and moral uncertainty within the Indonesian criminal justice system (Muhammad et al., 2023).

For decades, sentencing practices in Indonesia have been heavily dominated by the retributive paradigm inherited from the colonial Dutch Penal Code (*Wetboek van Strafrecht*). Under these regulations, the death penalty was positioned as a principal punishment occupying the highest rank. This paradigm assumes that the offender's suffering is a commensurate punishment for the crime committed (*lex talionis*). However, various studies demonstrate that the retributive approach fails to achieve the goals of legal utilitarianism, namely providing utility and a significant deterrent effect. This failure is particularly evident in corruption and narcotics cases (Fariduddin & Tetono, 2022; Ishwara et al., 2025). The absence of a positive correlation between executions and a decrease in crime rates indicates that the criminal law system requires a fundamental reorientation. The legal system must not merely maintain a pseudo-symbol of state firmness (Sinaga, 2025).

The momentum for fundamental change in Indonesian criminal law politics occurred with the enactment of Law Number 1 of 2023. This legislation marks a new era by altering the status of the death penalty from a principal punishment to a special punishment threatened alternatively (Ludiana, 2020; Nasution et al., 2024). This change is not merely semantic; rather, it reflects a philosophical shift of the Indonesian nation, which has begun to adopt a "middle way" or compromise between retentionist and abolitionist ideologies (Putri, 2024). Through this regulation, the legislature seeks to accommodate humanitarian concerns without fully relinquishing the state's repressive instruments against the most serious crimes.

One of the most prominent legal innovations is the introduction of a "probationary period" mechanism of 10 (ten) years for death row inmates, as stipulated in Article 100 of Law Number 1 of 2023. This provision allows convicts to obtain a commutation of their sentence to life imprisonment if they demonstrate commendable attitudes and actions during the assessment period (Setyawan, 2024). This mechanism implicitly acknowledges that every human being, including perpetrators of serious crimes, possesses the potential to change and improve themselves (Putra, 2025). Consequently, the death penalty is no longer absolute and immediate but conditional and dependent on the development of the convict's post-verdict behavior (Ismara & Margaretha, 2024).

Although the changes in Law Number 1 of 2023 are considered progressive, there is a conceptual gap regarding the parameters used to assess the "behavioral change" of death-row inmates. The conventional approach, which relies solely on administrative assessments by correctional institutions, is feared to be insufficiently objective and prone to abuse. This highlights the urgency of integrating a restorative justice approach into the execution phase of the conditional death penalty (Senjaya, 2021). Restorative justice, which has largely been applied to minor offenses, needs to be reconstructed to apply to serious crimes. This approach can function as an instrument for moral evaluation and the offender's accountability toward the victim or society (Rezah & Muzakkir, 2021).

Previous research on the death penalty in Indonesia has tended to be polarized between the classic pro-contra debate (retentionist vs. abolitionist) or mere normative reviews (Pratama, 2019; Munawar, 2025). Few studies have specifically examined how restorative justice principles can be operationalized as a framework during the probationary period for the death penalty under Law Number 1 of 2023. This study aims to fill that gap by offering a new perspective that the 10 (ten) year probation period should be interpreted as a phase of restoration. In this phase, commutation of the death sentence to life imprisonment is a logical consequence of the success of the recovery process, not merely state clemency (Cahyono & Santiago, 2023).

Based on this background, this study aims to analyze and construct the reorientation of Indonesian penal policy from a retributive to a restorative paradigm, particularly in the implementation mechanism of the conditional death penalty under Law Number 1 of 2023. Theoretically, this research is expected to enrich the criminal law literature on the integration of restorative values in the handling of extraordinary crimes. Practically, this study aims to contribute thoughts for the government and law enforcement officials in formulating and implementing regulations that are measurable and humane regarding the assessment of death row inmates. This is expected to realize the ideal of *de facto* abolition of the death penalty, aligned with the nation's civilized values.

METHOD

This study constitutes normative legal research (doctrinal legal research) focused on the examination of norms within prevailing positive law (Qamar & Rezah, 2020). This research type was selected based on the primary object of study: the conflict of norms (antinomy) between the right to life guaranteed in Article 28A of the 1945 Constitution and the existence of the death penalty within Indonesian statutory regulations. To dissect this complexity, this study employs three simultaneous approaches: the statutory, case, and conceptual approaches. The statute approach

is utilized to examine the transformation of death penalty regulations from the Old Penal Code to Law Number 1 of 2023, specifically concerning the 10 (ten) year probationary period mechanism. The case approach focuses on analyzing the ratio decidendi in Constitutional Court Decision Number 2-3/PUU-V/2007 to comprehend the legal construction upholding the death penalty. Meanwhile, a conceptual approach is employed to explore the doctrines of restorative justice and utilitarianism as analytical tools for critiquing the effectiveness of the death penalty.

The data utilized in this research consists of primary, secondary, and tertiary legal materials. Primary legal materials encompass binding statutory regulations, namely the 1945 Constitution, Law Number 1 of 1946, Law Number 1 of 2023, and Law Number 12 of 2005 on Ratification of the ICCPR. Additionally, Constitutional Court Decisions are categorized as primary legal materials with the force of statutes. Secondary legal materials include literature, prior research findings, and official documents from international institutions, such as the recent report by Amnesty International (2024), which provides comparative data on global trends in the abolition of the death penalty. Legal materials were collected through library research utilizing legal inventory and harmonization techniques (Sampara & Husen, 2016). These techniques aim to map the vertical and horizontal consistency between norms regulating the death penalty and human rights.

The collected legal materials were subsequently analyzed qualitatively using systematic and teleological interpretation methods (Irwansyah, 2020). Systematic interpretation is employed to link Article 100 of Law Number 1 of 2023 concerning the death penalty probationary period with Article 51 of Law Number 1 of 2023 concerning the objectives of sentencing. Meanwhile, teleological interpretation is utilized to discover the legal objective (*rechtsidee*) behind the alteration of the death penalty's status from a principal punishment to a special punishment. This alteration is interpreted as a middle ground—or compromise—to accommodate humanitarian values without disregarding national legal sovereignty. The results of this analysis are presented in a descriptive-analytical manner to provide a legal prescription regarding the urgency of applying the restorative justice model during the probationary period for death row inmates. This is proposed as a concrete solution to the deadlock in the debate between abolitionist and retentionist groups in Indonesia.

RESULTS AND DISCUSSION

A. Shifting Death Penalty Law Politics: From Retributive Hegemony to Transitional Compromise in Law Number 1 of 2023

The death penalty law politics in Indonesia has undergone a fundamental transformation following the enactment of Law Number 1 of 2023. This

enactment marks a paradigm shift from an absolute retributive orientation to a more moderate, humanist approach. Historically, death penalty regulations in Indonesia were heavily influenced by the Old Penal Code inherited from the Dutch colonial era. Under the Old Penal Code regime, capital punishment was explicitly positioned as a principal punishment in Article 10 point a of Law Number 1 of 1946 (Rivanie et al., 2022b). This placement positioned it as the state's primary instrument in cracking down on serious crimes (Ludiana, 2020). This reflected the strong retributive hegemony, which viewed that the offender must pay for their actions with commensurate suffering, including the loss of life (*lex talionis*). In this context, the death penalty was frequently utilized as a tool of repression to maintain stability and public order, without providing adequate space for considerations of offender rehabilitation (Pratama, 2019; Alex, 2024).

However, this retributive hegemony began to face serious challenges alongside the development of the UDHR discourse and increasing awareness regarding the ineffectiveness of the death penalty in suppressing crime rates. Through Article 65 section (1) of Law Number 1 of 2023, the legislature made a bold breakthrough by removing the death penalty from the list of principal punishments. Capital punishment was subsequently classified as a "special punishment" in Article 67 of Law Number 1 of 2023, subject to alternative threats (Putra, 2025). This status change from "principal" to "special" is not merely a semantic alteration but a strategic transitional compromise. This compromise aims to bridge two conflicting schools of thought: the retentionist group that seeks to preserve the death penalty and the abolitionist group that demands its total elimination (Cahyono & Santiago, 2023; Putri, 2024). This step indicates that Indonesia is seeking to distance itself from the shadow of rigid legal colonialism toward a legal system better aligned with universal humanitarian values.

This shift in law politics cannot be separated from the constitutional dialectic occurring post-Constitutional Court Decision Number 2-3/PUU-V/2007. Although the Constitutional Court stated that the right to life in Article 28A of the 1945 Constitution is not absolute and may be limited by statute, the decision provided a significant clue. The clue is that the execution of the death penalty must be carried out with extreme caution, selectivity, and only as a last resort (*ultimum supplicium*) (Buulolo, 2025). In response, Article 98 of Law Number 1 of 2023 asserts a new philosophy: that the death penalty is to be used as a last resort to prevent the commission of criminal acts and to protect society. This formulation confirms that the state no longer places retribution as the primary objective of sentencing. The state prioritizes societal protection and social balance, even though the instrument of capital punishment itself has not been entirely abolished (Nasution et al., 2023; Sinaga, 2025).

Consequently, the legal construction in Law Number 1 of 2023 can be categorized as quasi-abolitionist or *de facto abolitionist*. Under this ideology, the death penalty remains legally existent (*de jure*), but its implementation is restricted through special mechanisms allowing for sentence alteration (commutation). This transition marks the end of the era of the death penalty as the state's "automatic killing tool" and the commencement of a new era. In this new era, capital punishment becomes an exceptional means, the application of which relies heavily on the dynamics of the convict's behavioral change (Setyawan, 2024). This shift simultaneously serves as a diplomatic bridge between international pressure for death penalty abolition, as called for by Amnesty International, and the sociological reality of law in Indonesia. This reality indicates that society still tolerates maximum punishment for extraordinary crimes such as narcotics and terrorism (Bimasakti et al., 2024; Cahyono, 2024).

B. Juridical Construction of the 10-Year Probationary Period: Implementation Opportunities and Challenges of Article 100 of Law Number 1 of 2023

One of the most progressive yet controversial innovations in Article 100 of Law Number 1 of 2023 is the introduction of the "probationary period" mechanism for death row inmates. This provision provides a juridical basis for judges to impose the death penalty with a probationary period of 10 (ten) years. The condition is that the convict demonstrates remorse and hope for self-improvement, or the judge considers the defendant's role in the criminal act. This legal construction creates a new paradigm known as conditional capital punishment. Philosophically, this concept aims to balance the interests of protecting society (social defence) with improving the perpetrator (offender rehabilitation) (Setyawan, 2024). This mechanism opens a juridical opportunity unprecedented in the history of Indonesian criminal law, namely the possibility of altering the legal status from a death row inmate to a life imprisonment convict. Such alteration is effected through a Presidential Decree following consideration by the Supreme Court, provided the convict successfully demonstrates commendable attitudes and actions during the assessment period.

The application of this probationary period is not without a strong constitutional basis. When examined from the perspective of modern sentencing objectives as mandated in Article 51 of Law Number 1 of 2023, sentencing no longer aims solely to exact revenge. Sentencing also aims to "resocialize the convict" and "resolve guilt" (Rivanie et al., 2022a). In this context, Article 100 of Law Number 1 of 2023 serves as an implementational bridge to achieve these objectives, even for perpetrators of the most serious crimes. Ismara and Margaretha (2024) assert that the constitutionality of the conditional death penalty lies in its ability

to provide a "second chance" aligned with human rights for self-improvement, without disregarding the gravity of the committed offense. Consequently, this probationary period can be viewed as the state's corrective instrument to avoid an irreversible execution. Furthermore, this mechanism responds to international criticism regarding the cruelty of capital punishment, which is deemed to violate the absolute right to life (Cahyono & Santiago, 2023).

However, behind these significant opportunities lie serious implementation challenges stemming from the lack of norms for indicators to assess "commendable attitudes and actions." This phrase is highly abstract and prone to subjective interpretation by assessors, whether they are correctional officers, supervisory judges, or prosecutors. The absence of measurable and objective parameters within the statute or its derivative regulations has the potential to cause disparity in assessing the good conduct of death row inmates. It is feared that this will spawn transactional or corrupt practices within correctional institutions, where the status of "good behavior" could be commodified (Putri, 2024). Without strict and transparent standard operating procedures (SOP), this probationary mechanism may instead injure the sense of justice of the community and victims, as well as undermine the authority of the law itself.

Furthermore, legal challenges arise regarding the technicalities of altering the verdict. Article 100 section (4) of Law Number 1 of 2023 requires a Presidential Decree to commute the death penalty to life imprisonment. This raises questions about judicial independence and the potential for the politicization of law, given that the President is a political office (Putra, 2025). Is the recommendation for alteration from the Supreme Court binding, or merely a recommendation for the President? The lack of clarity in the checks-and-balances mechanism within this commutation process may create legal uncertainty (*rechtsonzekerheid*) for convicts undergoing the probationary period. Therefore, further regulation is required in the form of a Government Regulation or Supreme Court Regulation that specifically governs the procedures, authority, and limitations in the evaluation and decision-making process of this sentence alteration.

Another equally complex challenge is the readiness of correctional infrastructure in facilitating special guidance for death row inmates undergoing probation. The current Indonesian correctional system faces overcrowding and a shortage of human resources. This condition raises doubts about its ability to organize intensive guidance programs capable of genuinely altering the behavior of serious criminals, such as terrorists or drug lords (Bimasakti et al., 2024). Without structured and evidence-based correction programs, the 10 (ten) year probation period will merely become a passive, torturous waiting period (death row phenomenon), rather than a productive phase of self-transformation. This

demands fundamental reform in correctional management to support the effective implementation of Article 100 of Law Number 1 of 2023.

In synthesis, Article 100 of Law Number 1 of 2023 represents a promising legal breakthrough, though its implementation remains fragile. Its success relies heavily on the state's ability to formulate detailed, objective, and accountable implementing regulations. The probationary period must not merely be a "time pause" before execution but must be constructed as a serious and measurable rehabilitation phase. Suppose these juridical and technical challenges are not immediately addressed. In that case, the noble intent to humanize the death penalty will remain mere legal rhetoric, without tangible impact on improving the Indonesian criminal justice system (Nasution et al., 2023).

C. Urgency of Integrating Restorative Justice as an Evaluation Parameter for Death Row Inmates

Amidst the vacuum of norm regarding the assessment parameters for "commendable attitudes and actions" during the 10 (ten) year probationary period for death row inmates, the restorative justice approach presents itself as the most rational and constructive solution. Conceptually, restorative justice focuses not solely on individual victim recovery but also on the restoration of broader social harm resulting from criminal acts (Laia, 2024). The integration of these restorative values is crucial to transforming the probationary period from a mere "waiting for fate" to an "active redemption." Within this framework, the commutation of the death penalty to life imprisonment is not granted as a form of state gratification, but as a logical consequence of the convict's success in restoring the damage caused. This restoration is directed toward both the direct victim and the societal order (Senjaya, 2021).

Applying the restorative concept to extraordinary crimes is often deemed paradoxical due to the absence of specific individual victims in certain cases, such as corruption or narcotics. However, this challenge can be addressed by expanding the definitions of "victim" and "recovery." In corruption cases, for instance, although the death penalty is still defended by some factions on the legal grounds (ratio legis) that corruption undermines the state's economic foundations, the restorative approach offers a more pragmatic utilitarian perspective (Munawar, 2025). Fariduddin and Tetono (2022) argue that prosecuting corruptors deprives the state of the opportunity to optimize asset recovery. Through the restorative approach, the 10 (ten) year probation period can be utilized to demand the corruptor cooperate in dismantling networks (justice collaborator) and returning state losses maximally as an absolute condition for sentence commutation.

Similarly, in narcotics criminal cases, where the primary victims are the broader society and the younger generation. Instead of merely killing the perpetrators, who are frequently only couriers or field operators, the restorative approach during probation can be directed toward the convict's tangible contribution to narcotics prevention programs. Bimasakti et al. (2024) highlight that the death penalty often fails to break the supply chain of illicit drug trafficking. Under the restorative model, death row inmates in narcotics cases can be mandated to become agents of change or anti-drug educators during the probationary period, as well as to dismantle larger syndicates. The assessment of "commendable attitude" is no longer subjective; it is measured by the positive impact of such contributions on national narcotics eradication efforts.

Meanwhile, in cases of crimes against life or severe sexual violence threatened with the death penalty, the restorative approach possesses a more emotional and personal dimension. Senjaya (2021) offers a radical notion that even in extreme sexual violence cases, the space for dialogue (if possible and consented to by the victim/family) or other forms of accountability, such as material and immaterial compensation, must be a primary consideration. In the context of premeditated murder, the 10 (ten) year probation period should be used to facilitate the forgiveness process or, at the very least, the payment of restitution to the victim's family. This constitutes concrete moral responsibility, transcending mere verbal regret.

The integration of restorative justice also aligns with the values of Indonesian local wisdom. The concept of Siri' in the Bugis-Makassar culture, for example, emphasizes the restoration of self-worth and social balance disrupted by shameful acts (Rezah & Muzakkir, 2021). In the national context, this aligns with the second precept of Pancasila, which upholds just and civilized humanity. Applying restorative justice in the evaluation of death row inmates is fundamentally an effort to "re-humanize" the offender by assigning them a heavy moral responsibility to improve the situation. This responsibility is far more difficult and meaningful than merely facing a firing squad (Ishwara et al., 2025).

To operationalize this idea, strict technical regulation is required. A Government Regulation or Supreme Court Regulation must specify specific indicators of restorative success for each type of crime. For instance, indicators of state money return for corruptors, indicators of cooperation in dismantling networks for drug lords, and indicators of reconciliation with the victim's family for murderers. Without these measurable indicators, the restorative concept will remain empty rhetoric, incapable of addressing public concerns about justice. Sinaga (2025) warns that the balance between the offender's human rights and

the effectiveness of law enforcement must be strictly maintained to prevent the probationary period from becoming a loophole for impunity.

Thus, the urgency of integrating restorative justice into Article 100 of Law Number 1 of 2023 is not merely an alternative but an imperative necessity. It is the only way to ensure that the transition from retributive to rehabilitative proceeds on an objective and accountable track. Through this approach, Indonesian criminal law shifts not only from "avenging" to "forgiving" but moves further toward "demanding restoration of responsibility." Only in this manner can the ideal of *de facto* abolition of the death penalty be accepted by public reason and victims, as justice is no longer measured by spilled blood, but by healed wounds.

D. Harmonization of International Human Rights Standards and National Legal Sovereignty in the Death Penalty Issue

The discourse on the death penalty in Indonesia cannot be separated from the dialectical tension between the obligation to comply with international human rights standards and the state's right to maintain its national legal sovereignty. In the global arena, the trend toward death penalty abolition (abolitionism) is strengthening. This is noted in the latest Amnesty International (2024) report, which indicates that most nations have abandoned this practice. Capital punishment is regarded as an absolute violation of the right to life and a form of cruel and unusual punishment. This pressure is supported by international legal instruments such as the Second Optional Protocol to the ICCPR, which explicitly aims to abolish the death penalty. However, Indonesia chose to adopt a stance of reservation or distinct interpretation (margin of appreciation), despite having ratified the ICCPR through Law Number 12 of 2005. Indonesia did not ratify the additional protocol, thereby retaining the death penalty as part of its positive law for crimes categorized as most serious crimes (Muhammad et al., 2023).

Indonesia's retentionist stance is grounded in constitutional foundations and national jurisprudence, which view human rights as not absolute. Human rights are limited by the rights of others, morality, and public order in a democratic society, as stipulated in Article 28J section (2) of the 1945 Constitution. Buulolo (2025), in his analysis of the Constitutional Court Decision, asserts that the right to life, although fundamental, can be derogated (derogable) through a court ruling. This restriction is imposed to protect broader societal interests from the threat of extraordinary crimes. From this perspective, the death penalty is viewed not as a human rights violation but as an instrument of social defense to guard state sovereignty against massive destruction caused by narcotics, terrorism, or corruption. This argument serves as Indonesia's defensive bulwark against

diplomatic pressure and criticism from international organizations demanding its total abolition.

However, maintaining a pure retentionist *status quo* amidst the rapid current of global criminal law humanization is certainly not a wise choice. Therefore, the presence of Law Number 1 of 2023 must be read as an effort at harmonization or convergence between these two extreme poles. Cahyono (2024) analyzes that the alteration of the death penalty into a special punishment with a 10 (ten) year probationary period is a form of Indonesian legal diplomacy. On one hand, Indonesia continues to demonstrate sovereign firmness by including the death penalty to answer domestic retentionist demands. On the other hand, Indonesia practices a *de facto* moratorium on executions through the commutation mechanism to accommodate international human rights standards. This strategy places Indonesia in the category of a *de facto abolitionist* state. This transitional position is more realistic than immediate abolition, which could cause social turbulence domestically.

This harmonization is also reflected in the adoption of more universal values within judicial considerations. Although it does not abolish the death penalty, Law Number 1 of 2023 mandates that judges consider "remorse" and the "defendant's role" as indicators for granting a probationary period. This aligns with the principles of a fair trial and the individualization of punishment in international law. Putri (2024) highlights that this shift signifies that national law no longer turns a blind eye to the development of global civilization, which demands the protection of human dignity, even for criminals. Consequently, national legal sovereignty is no longer interpreted as self-isolation from global values, but rather the ability to adapt those values according to the characteristics and legal needs of Indonesian society (Indonesianized global values).

Thus, it can be concluded that harmonization between international human rights standards and national law regarding the death penalty in Indonesia is achieved not through absolute submission to one party but through a moderate, gradual policy synthesis. Sinaga (2025) emphasizes that this balance is essential to maintain the stability of domestic law enforcement while simultaneously improving Indonesia's image in the eyes of the world. The probationary mechanism in Law Number 1 of 2023 is a tangible manifestation of such a balance, offering an elegant exit from the deadlock of the classic debate. The death penalty remains a symbol of firmness (symbolic legislation), yet its execution is minimized for the sake of humanity. This is the "Indonesian middle way" model that seeks to reconcile retribution with restoration and sovereignty with human rights.

CONCLUSIONS AND SUGGESTIONS

Based on the in-depth analysis of the transformation of national criminal law politics, it can be concluded that Indonesia is currently in a crucial transition phase from an absolute retributive paradigm toward a conditional restorative paradigm in death penalty regulation. The shift in the death penalty's status from a principal punishment in the Old Penal Code to a special punishment threatened alternatively in Law Number 1 of 2023 constitutes a manifestation of a strategic compromise or middle way. This compromise aims to reconcile global demands for the abolition of capital punishment with the sociological reality of Indonesian society, which still desires firmness against extraordinary crimes. The "10 (ten) year probationary period" mechanism stipulated in Article 100 of Law Number 1 of 2023 is not merely a postponement of execution, but a juridical social engineering to provide a "second chance" for death row inmates to prove their self-improvement, allowing the death sentence to be commuted to life imprisonment. Thus, *de jure*, Indonesia still retains the death penalty. However, *de facto* and philosophically, the national legal system has moved toward a quasi-abolitionist position, placing the death penalty as the ultimate means of social defense (*ultimum supplicium*).

Furthermore, this study asserts that the success of this paradigm shift depends heavily on filling the normative vacuum regarding the assessment parameters for "commendable attitudes and actions" during the probationary period. Without clear indicators, Article 100 of Law Number 1 of 2023 could become an ambiguous provision susceptible to transactional practices. Therefore, the integration of a restorative justice approach becomes an imperative necessity to objectify such an assessment. In the context of serious crimes such as corruption and narcotics, restoration is not narrowly interpreted as a victim-offender meeting, but is expanded to include the recovery of state losses and tangible contributions to severing criminal chains. The application of measurable restorative indicators—such as the recovery of assets from corruption or an active role as a justice collaborator—renders the commutation of the death penalty to life imprisonment a logical consequence of the offender's moral accountability, not merely state clemency. This simultaneously addresses the challenge of harmonizing national legal sovereignty affirmed by the Constitutional Court with international human rights standards articulated by the global community.

As an implication of the above conclusions, this study recommends concrete follow-up steps for policymakers. The Government needs to immediately draft a Government Regulation as an implementing regulation for Article 100 of Law Number 1 of 2023, specifically governing the assessment procedures and indicators of good conduct based on restorative values. This is essential to close loopholes for multiple interpretations and abuse of authority. Concurrently, the Supreme Court is advised to issue a Supreme Court Regulation providing guidelines for judges imposing the

conditional death penalty, mandating consideration of the defendant's "restorative potential" in the verdict. Finally, for law enforcement officials and academics, a reorientation of thought is required, no longer to view the death penalty as a final solution, but to encourage the optimization of the probationary period as a momentum for dignified rehabilitation. This step aligns with the values of just and civilized humanity and the ideals of integrative national sentencing.

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