

Policy Brief:

Reform of the Death Penalty Regulations in the Draft Criminal Procedure Code

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Foreword

The right to life is the most fundamental human right and falls under the category of non-derogable rights, which cannot be reduced under any circumstances. The death penalty is essentially a form of punishment that directly deprives an individual of the right to life. Internationally, the right to life is firmly guaranteed under the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). At the national level, Article 281 paragraph (1) of the 1945 Constitution of the Republic of Indonesia also explicitly guarantees the right to life as a non-derogable right. Nevertheless, to this day Indonesia continues to retain the death penalty within its criminal justice system, despite the fact that many countries have abandoned capital punishment in pursuit of advancing human rights.

The enactment of Law No. 1 of 2023 on the new Criminal Code (KUHP) should have served as a critical momentum for transforming Indonesia's criminal legal framework into one that is more humane and respectful of the right to life. The new KUHP introduces the death penalty as an alternative punishment with a 10-year probation period—an important step forward that deserves appreciation. However, this reform remains insufficient if it is not accompanied by amendments to the Criminal Procedure Code that ensure the application of fair trial principles, due process of law, and comprehensive protection of the rights of death-row inmates.

The ongoing deliberation of the Draft Criminal Procedure Code (RKUHAP) should be a strategic opportunity to reaffirm Indonesia's commitment to the protection of human rights. The RKUHAP will play a central role in ensuring that every legal process—particularly those that may result in the imposition of the death penalty—is carried out with full respect for fair trial principles that prioritize justice, transparency, and accountability.

However, at present, the RKUHAP still leaves a number of fundamental issues unaddressed. Several key provisions that should ensure greater protection for individuals facing the death penalty have yet to be explicitly regulated, including the probation period for the death sentence, certainty regarding the timeline of executions, mechanisms for judicial review (*peninjauan kembali*/PK), and the requirement for a unanimous judicial decision in imposing the death penalty. Without improving these aspects, capital punishment will remain vulnerable to injustice and may lead to irreversible miscarriages of justice.

This policy brief has been prepared by several civil society organizations—namely ICJR, Imparsial, KontraS, LBH Masyarakat, PBHI, and YLBHI—as a collective commitment to encourage criminal procedure reform that does not undermine human rights. While the reclassification of the death penalty as an alternative punishment under the new KUHP may be seen as progress, the lack of serious regulation on its implementation only demonstrates the State's half-hearted approach in governing the death penalty.

Ultimately, this policy brief is expected to serve as a reference for policymakers and the public in recognizing the urgency of reforming the regulation of capital punishment in Indonesia. The revision of the RKUHAP should not be treated merely as a technical legislative agenda, but as a moral and constitutional test for the State in upholding human rights—particularly the right to life.

Jakarta, October 2025

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I. Background

Indonesia continues to retain the death penalty within its criminal justice system, even as the international community progressively moves toward its abolition. However, the enactment of Law No. 1 of 2023 on the Criminal Code (*KUHP Baru*), which will be effective on January 2, 2026, brings a new hope to Indonesia's approach to the death penalty, as it has now been reclassified as an alternative punishment.

The amendment of death penalty provisions in the *KUHP Baru* must be accompanied by stronger guarantees of fair trial rights for individuals facing the death penalty within Indonesia's criminal justice system. Currently, such protections have not sufficiently ensured under the existing Criminal Procedural Code. Therefore, the ongoing deliberation of the Draft Criminal

Procedure Code (*RKUHP*) presents an important opportunity to reinforce procedural safeguards for those who are facing the death penalty, as well as to demonstrate Indonesia's commitment to fulfill international human rights standards.

The notes presented in this Policy Brief refer to the **List of Issues Document (*Daftar Inventarisasi Masalah/DIM*)** issued on July 11, 2025.

II. Strategic Issues

A. The Death Penalty Probation Period and Human Rights Protection

Research by Amnesty International (2020) shows that although the death penalty is considered as a last resort in the criminal justice system, its application often carried out without considering the potential for errors in the judicial process, as well as violations of the right to life protected in Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Civil and Political Rights (ICCPR). The United Nations Human Rights Committee (2018) states that the death penalty must be applied with extreme caution and as a last resort after all legal mechanisms have been exhausted, including the right to appeal or Case Review.

KUHP Baru contains a provision stating that every death sentence must be accompanied by a **10-year** probationary period. This provision is contained in Article 100 of *KUHP Baru*, which provides an opportunity for death row inmates to undergo a probationary period during which their conduct

may be evaluated before the execution of the death penalty. Furthermore, Article 101 of KUHP Baru provides that *"If a clemency petition submitted by a death row inmate is rejected, and the death penalty has not been carried out within ten (10) years after the rejection of such petition, provided that the convict has not escaped, the death sentence may be commuted to life imprisonment by a Presidential Decree."* The provisions of Articles 100 and 101 of *KUHP Baru* can serve as safeguards for death row inmates. Therefore, the material provisions in *KUHP Baru* need to be regulated in a formal formulation for the sake of legal certainty itself.

The provision of Article 235 in the *RKUHP* (List of Issues Document No. 1278) requires stricter regulation to ensure equal opportunity for all death row inmates to obtain commutation from a death penalty to life imprisonment. Furthermore, the wording of Article 235 in the *RKUHP* (List of Issues Document No. 1278) needs to be revised to ensure harmonization with Article 100 paragraph (2) of *KUHP Baru* (substantive law).

List of Issues Document	Article	Proposed Amendment
1278	235	In the event that a judge imposes the death penalty, the judge must impose the death penalty with a probationary period of 10 (ten) years

B. Regulation of Commutation of Sentence After 20 Years

The *RKUHAP* has not incorporated provisions to address the issue of undue delay, which frequently occurs in death penalty cases in Indonesia. According to the Directorate General of Corrections, Ministry of Law and Human Rights of the Republic of Indonesia, as of October 2, 2025, at least 596 inmates sentenced to death, consisting of 586 men and 10 women, currently awaiting execution on the death row. The undue delay in carrying out executions constitutes a violation of the right to life that should be protected and fulfilled by the State. Therefore, ensuring legal certainty regarding the timeframe for the execution of the death penalty is essential within Indonesia’s criminal justice system.

The newly proposed provision to be included in *RKUHAP* involves the addition of a paragraph under Article 311 (List of Issues Document No. 1612). In addition to the new paragraph, it is also necessary to establish clear guidelines for calculating the timeframe for carrying out the death penalty and to ensure the existence of a transparent oversight mechanism.

List of Issues Document	Article	Proposed Amendment
1612	311	Addition of paragraph In cases where the Public Prosecutor fails to carry out the execution of a death sentence within twenty (20) years from the date the court decision becomes final and binding, the authority to enforce the death sentence shall expire .

C. Regulation of Case Review and Death Penalty Execution in the Draft of Criminal Procedure Code (RKUHAP)

Another crucial issue concerns the mechanism for Case Review and the potential execution of death penalty against convicts who are still undergoing extraordinary legal remedies. At present, *RKUHAP* contains vague provisions regarding the enforcement of final and binding judgments that are under Case Review. This provision is found in Article 307, which states *“Except for the execution of the death penalty, destruction or disposal of evidence, the filing of a Case Review of a judgment shall not suspend or halt the enforcement of such judgment.”*

Executing the death penalty before the completion of the Case Review process often carries the risk of judicial error and violation of the right to life. One of the most well-known examples is the case of Timothy Evans in the United Kingdom, who was executed for the alleged murder of his wife and infant daughter, but was later proven innocent several years after the execution. Research by Van den Haag (2013) emphasizes that the hasty implementation of the death penalty can lead to serious injustice and undermine public confidence in the judicial system.

The Case Review in death penalty cases serves as a mechanism to provide the convicted person with an opportunity to present new evidence or grounds that were not previously considered in a final and binding judgment. This aligns with the principle of justice, which requires that every individual has the right to a fair trial. Therefore, while the Case Review process is still ongoing, the execution of the death penalty

should be suspended to ensure that it is not carried out in cases where there may be injustice or fatal judicial errors in the previous judgment. Such suspension aims to protect human rights, including the right to adequate defense, and to prevent irreversible punishment that, if implemented without careful consideration, could result in irreparable injustice.

During the Case Review process, the opportunity to reveal new evidence or errors in the application of law serves as protection against potential judicial mistakes. This demonstrates that suspending the execution of the death penalty until the completion of the Case Review process is a measure to ensure that judicial decisions are not only procedurally fair but also substantively just. Thus, postponing the execution of the death penalty provides assurance that the rights of the convicted person remain respected.

To avoid vague and ambiguous provisions that may lead to multiple interpretations, it is necessary to revise the wording of Article 307 of *RKUHP*.

List of Issues Document	Article	Proposed Amendment
1581	307	A petition for Case Review of a judgment shall not suspend or halt the enforcement of such judgment, except in cases involving the execution of the death penalty.

D. Regulation of *Dissenting Opinions* among Judges

In cases where there is disagreement among judges when adjudicating a defendant charged with a capital offense, the panel of judges should refrain from imposing the death penalty on that individual. However, given that the mechanism currently regulated in the Criminal Procedure Code (KUHP) and adopted in *RKUHP* requires decisions to be made through voting, defendants may still be sentenced to death based on the majority vote of the members of the panel of judges. This reflects judicial doubt, which fails to meet the standard of beyond reasonable doubt required in imposing the death penalty. Therefore, *RKUHP* must explicitly stipulate that a death sentence may only be imposed through a unanimous decision of the panel of judges. If there is a difference of opinion regarding the type of sentence to be imposed, the primary mechanism that should be applied is not voting, but adopting the opinion most favorable to the defendant. In the court’s decision, any dissenting opinions among the judges must also be included and clearly explained.

List of Issues Document	Article	Proposed Amendments
1199 and 1200	220	(1) The decision reached in the deliberation of the panel of judges shall be the result of a unanimous agreement.

		(2) In the event that the unanimous decision as referred to in paragraph (1) cannot be reached, the decision shall be based on the opinion most favorable to the defendant. (3) If there is a difference of opinion among the panel of judges, such difference of opinion shall be included in the court's judgment.
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Conclusion

The reform of Indonesia's criminal justice system, particularly in death penalty cases as proposed in (RKUHAP, provides an opportunity to mitigate the application of capital punishment, which often carries the risk of human rights violations. By strengthening the provisions on the probationary period, the commutation of sentences based on the passage of time, and the Case Review mechanism, Indonesia can demonstrate its commitment to the right to life and the pursuit of justice. These policy measures should be adopted promptly to establish a more humane, impartial, and rights-based legal system that aligns with international human rights standards

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