

The Death Penalty under Indonesia's Criminal Procedure Code: Procedural Justice and Legal Certainty

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Article Information

Article History

Submitted: 08-01-2026

Received: 19-01-2026

Accepted: 25-02-2026

Keywords:

Death Penalty; Criminal Procedure; Procedural Justice; Legal Certainty; Due Process; Indonesian Criminal Law

Abstract

The death penalty remains one of the most controversial sanctions in criminal justice because its irreversible nature demands the highest standards of procedural fairness and legal certainty. In Indonesia, capital punishment continues to be recognized under Law No. 1 of 2023 on the Criminal Code, while its implementation is governed by the Criminal Procedure Code, which establishes procedural safeguards intended to protect the constitutional rights of defendants throughout criminal proceedings. This study examines whether Indonesia's procedural framework provides adequate legal protection to ensure fairness and legal certainty in death penalty cases. Employing a normative legal research method through statutory, conceptual, and case approaches, the study analyzes constitutional provisions, criminal procedure legislation, judicial decisions, and legal doctrines concerning due process, procedural justice, and legal certainty. The findings indicate that although the Criminal Procedure Code guarantees fundamental procedural rights including legal representation, judicial review, and appellate remedies the effectiveness of these safeguards depends largely on their consistent implementation and judicial interpretation. Procedural justice cannot be achieved solely through formal compliance with statutory requirements but requires transparent evidentiary standards, independent judicial oversight, and effective protection of defendants' constitutional rights throughout the criminal process. The study concludes that strengthening procedural safeguards and ensuring consistent application of due process principles are essential to enhancing legal certainty, preventing irreversible judicial error, and reinforcing the legitimacy of capital punishment within Indonesia's criminal justice system.

Introduction

The death penalty remains one of the most debated forms of criminal punishment in contemporary legal systems because it directly involves the

irreversible deprivation of the right to life. Although several countries have abolished capital punishment, others continue to retain it for the most serious offences, arguing that it serves the objectives of justice, deterrence, and public security. Regardless of a state's policy on capital punishment, international human rights standards emphasize that any death sentence must be imposed only after a fair trial conducted in accordance with due process and the rule of law.¹ Consequently, procedural justice and legal certainty have become essential safeguards in ensuring the legitimacy of capital punishment.²

Indonesia continues to recognize the death penalty under Law No. 1 of 2023 on the Criminal Code, while criminal proceedings are principally governed by the Criminal Procedure Code. The procedural framework guarantees several fundamental rights, including the presumption of innocence, access to legal counsel, the right to present evidence, and judicial review through appeal and cassation. However, the effectiveness of these safeguards depends not only on statutory provisions but also on their consistent implementation throughout the criminal justice process. In capital cases, procedural deficiencies may lead to irreversible judicial errors, making procedural fairness a constitutional necessity rather than merely a procedural requirement.

Previous studies have primarily examined the death penalty from the perspectives of constitutional law, criminal policy, and human rights. Other scholars have focused on the compatibility of capital punishment with international human rights instruments or the substantive criminal law governing capital offences. However, relatively limited attention has been devoted to analysing how procedural justice and legal certainty operate together within Indonesia's Criminal Procedure Code to ensure the fairness and legitimacy of death penalty proceedings.³ This issue has become increasingly relevant following the enactment of the new Criminal Code, which

¹ Sabrina Gilani, "The Ethics of Capital Punishment and a Law of Affective Enchantment," *Social and Legal Studies* 32, no. 1 (2023), <https://doi.org/10.1177/09646639221094938>; Annisa Hafizhah, Mohammad Ekaputra, and Muhammad Asla Fathi, "Capital Punishment: Islamic Criminal Law Perspective," *Mahadi: Indonesia Journal of Law* 2, no. 2 (2023), <https://doi.org/10.32734/mah.v2i2.13412>.

² Joseph S. Reiff et al., "Perspective-Taking in Capital Punishment Decisions," *Behavioural Public Policy*, 2025, <https://doi.org/10.1017/bpp.2025.10014>.

³ Jianhong Liu and Guangzhen Wu, "Procedural Fairness and Fear of Crime: Extending the Procedural Justice Theoretical Model Under the Chinese Context," *Crime and Delinquency* 71, no. 4 (2025), <https://doi.org/10.1177/00111287221150422>; Aiza Musaddiq and Aina Nadeem, "Wrongful Convictions in Death Penalty: Effects of Systematic Failures on Rule of Law Hampering Fair and Just Punishment," *Journal of Law & Social Studies* 7, no. 1 (2025), <https://doi.org/10.52279/jlss.07.01.6572>; Sishi Wu, "The Effect of Wrongful Conviction Rate on Death Penalty Support: A Research Note," *Journal of Experimental Criminology* 18, no. 4 (2022), <https://doi.org/10.1007/s11292-021-09467-w>.

redefines the position of capital punishment within Indonesia's criminal justice system.

Accordingly, this study examines the extent to which Indonesia's Criminal Procedure Code provides procedural safeguards capable of ensuring legal certainty and procedural justice in death penalty cases. It argues that the legitimacy of capital punishment depends not only on its statutory recognition but also on the consistent implementation of due process, effective judicial oversight, and the protection of defendants' constitutional rights throughout every stage of criminal proceedings.

Methods

This study employs a normative legal research method⁴ to examine the implementation of procedural justice and legal certainty in death penalty cases under Indonesia's Criminal Procedure Code. The research adopts statutory, conceptual, and case approaches. The statutory approach analyzes the legal framework governing capital punishment, including the 1945 Constitution of the Republic of Indonesia, Law No. 1 of 2023 on the Criminal Code, the Criminal Procedure Code, and other relevant legislation regulating criminal proceedings and the execution of death sentences. The conceptual approach examines legal doctrines relating to due process of law, procedural justice, legal certainty, constitutional rights, and criminal responsibility, while the case approach evaluates selected Constitutional Court and Supreme Court decisions concerning capital punishment and procedural safeguards. Primary legal materials consist of legislation, judicial decisions, and constitutional provisions, whereas secondary legal materials include scholarly books, peer-reviewed journal articles, and legal commentaries on criminal law and human rights. These materials were collected through library research and analyzed qualitatively using grammatical, systematic, and teleological interpretation to assess whether Indonesia's procedural framework provides adequate legal protection and ensures the fair implementation of the death penalty in accordance with constitutional principles and the rule of law.

Results and Discussion

1. Procedural Justice as a Constitutional Requirement in Death Penalty Cases

Procedural justice constitutes the cornerstone of criminal proceedings involving the death penalty because the irreversible nature of capital

⁴ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2024).

punishment requires the highest standard of legal protection.⁵ Under Indonesia's Criminal Procedure Code (KUHP), defendants are guaranteed fundamental procedural rights, including the presumption of innocence, access to legal counsel, the right to present evidence, and the opportunity to challenge judicial decisions through appellate and cassation procedures. These safeguards reflect the constitutional commitment to due process and aim to ensure that criminal responsibility is established through fair and impartial proceedings rather than merely through the outcome of criminal prosecution.⁶ In capital cases, procedural justice is therefore indispensable for protecting the constitutional rights of defendants and maintaining public confidence in the administration of criminal justice.⁷

However, procedural justice cannot be measured solely by the existence of statutory safeguards. Its effectiveness depends on the consistent application of procedural rules throughout investigation, prosecution, adjudication, and judicial review.⁸ Inconsistent evidentiary standards, unequal access to competent legal representation, or procedural irregularities may undermine the fairness of criminal proceedings and increase the risk of irreversible judicial error. Consequently, procedural guarantees must operate as substantive protections that ensure equality before the law and prevent arbitrary deprivation of life, thereby reinforcing the constitutional legitimacy of capital punishment.

2. Legal Certainty and the Implementation of the Death

⁵ Reza Setiawan Lubis, "Analisis Penerapan Hukuman Mati Dalam Hukum Pidana Indonesia: Perspektif Keadilan Dan Hak Asasi Manusia," *COMSERVA : Jurnal Penelitian Dan Pengabdian Masyarakat* 4, no. 11 (2025), <https://doi.org/10.59141/comserva.v4i11.2980>; Deri Ardiansyah et al., "Eksistensi Hukuman Pidana Mati Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP," *Rampai Jurnal Hukum (RJH)* 3, no. 1 (2024), <https://doi.org/10.35473/rjh.v3i1.3005>.

⁶ Rendy Laputigar, Suhadi Suhadi, and Rodiyah Rodiyah, "Integrating Due Process into The Enforcement Framework of Criminal Law Politics," *Indonesian Journal of Criminal Law Studies* 9, no. 1 (2024), <https://doi.org/10.15294/ijcls.v9i1.50293>.

⁷ Angus Chan, Ben Bradford, and Clifford Stott, "A Systematic Review and Meta-Analysis of Procedural Justice and Legitimacy in Policing: The Effect of Social Identity and Social Contexts," *Journal of Experimental Criminology* 21, no. 2 (2025), <https://doi.org/10.1007/s11292-023-09595-5>; Sharon C. Enujiokwe et al., "Perception of Procedural Justice Amongst Previously Incarcerated Youth: Procedural Justice in Incarcerated Youth," *International Journal of Offender Therapy and Comparative Criminology* 69, no. 6-7 (2025), <https://doi.org/10.1177/0306624X231159878>.

⁸ Jamil Ddamulira Mujuzi, "Addressing Wrongful Convictions Or Miscarriages Of Justice In The Brics Nations," *BRICS Law Journal* 9, no. 1 (2022), <https://doi.org/10.21684/2412-2343-2022-9-1-62-86>; Brandon L. Garrett, "Wrongful Convictions," *Annual Review of Criminology*, 2020, <https://doi.org/10.1146/annurev-criminol-011518-024739>.

Legal certainty is an essential element of the rule of law because it enables criminal sanctions to be imposed through clear, predictable, and consistently applied legal procedures. In Indonesia, the implementation of the death penalty is governed not only by substantive criminal law but also by procedural rules that regulate the investigation, prosecution, trial, judicial review, and execution of criminal judgments.⁹ These procedural requirements are intended to ensure that the most severe criminal sanction is imposed only after all legal remedies have been exhausted and the defendant has been afforded every opportunity to exercise procedural rights guaranteed by law.

Nevertheless, achieving legal certainty in capital punishment remains challenging when differences in judicial interpretation or procedural practice occur across criminal justice institutions.¹⁰ Variations in evidentiary assessment, procedural compliance, or judicial reasoning may create uncertainty regarding the consistent application of procedural safeguards. Such inconsistencies may affect both the legitimacy of judicial decisions and public confidence in the criminal justice system. Accordingly, legal certainty requires not only comprehensive legislation but also uniform judicial interpretation, institutional accountability, and effective supervision throughout the entire criminal process.

3. Strengthening Due Process to Enhance the Legitimacy of Capital Punishment

The findings indicate that the legitimacy of capital punishment depends fundamentally on the effectiveness of procedural safeguards rather than solely on the legal recognition of the death penalty itself. A criminal justice system that guarantees independent judicial review, effective legal assistance, transparent evidentiary procedures, and meaningful appellate mechanisms provides stronger protection against wrongful convictions and reinforces public trust in judicial institutions.¹¹ Procedural fairness therefore serves

⁹ Putu Yanuar Kurniawan, "Studi Perbandingan Tindak Pidana Seksual Antara UU No. 12 Tahun 2022 (UU TPKS) Dengan UU No. 1 Tahun 2023 (KUHP)," *Jurnal Hukum, Politik Dan Kekuasaan* 5, no. 1 (2024), <https://doi.org/10.24167/jhpk.v5i1.11191>; Bayu Angga Syah Putra et al., "Pengaturan Tindak Pidana Narkotika Ditinjau Dari Undang – Undang Nomor 35 Tahun 2009 Tentang Narkotika Dan UU Nomor 1 Tahun 2023 Tentang Kitab Undang – Undang Hukum Pidana," *Lentera Ilmu* 1, no. 1 (2025), <https://doi.org/10.59971/li.v1i2.40>.

¹⁰ Prija Djatmika et al., "Legal Policy of Disparity in Sentencing as a Ground for Judicial Review in Indonesia Corruption Cases," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, no. 2 (2025), <https://doi.org/10.24090/volkgeist.v8i2.13287>; M. Deshpande and S. Gurpur, "Connecting the Dots in 'Rarest of Rare': Is Judicial Discretion the Perfection of Reason? Tracking Judicial Discretion in Death Penalty Cases in India," *Cardiometry*, no. 25 (2023), <https://doi.org/10.18137/cardiometry.2022.25.360367>.

¹¹ Janani Umamaheswar, "The Relational Costs of Wrongful Convictions," *Critical Criminology* 31, no. 3 (2023), <https://doi.org/10.1007/s10612-023-09684-x>; John Morgan,

both individual rights and broader constitutional values by ensuring that criminal punishment is administered according to the principles of justice and the rule of law.

Future reforms should prioritize strengthening procedural safeguards throughout every stage of criminal proceedings. Improving access to qualified legal representation, standardizing evidentiary practices, enhancing judicial consistency, and reinforcing constitutional oversight would significantly reduce the possibility of judicial error while increasing legal certainty. Such reforms do not necessarily determine whether the death penalty should be retained or abolished; rather, they ensure that, so long as capital punishment remains part of Indonesia's criminal justice system, its implementation complies with constitutional guarantees, due process, and internationally recognized standards of procedural justice.

Conclusions

This study concludes that the legitimacy of the death penalty under Indonesia's criminal justice system depends not only on its substantive legal basis but, more importantly, on the consistent implementation of procedural justice and legal certainty throughout the criminal process. Although the Criminal Procedure Code provides fundamental procedural safeguards, including the rights to legal representation, judicial review, and appellate remedies, the effectiveness of these protections is determined by their uniform application and the integrity of judicial institutions. The findings demonstrate that procedural justice serves as the primary safeguard against arbitrary deprivation of life, while legal certainty reinforces public confidence by ensuring that capital punishment is imposed through transparent, predictable, and constitutionally compliant procedures. Accordingly, strengthening due process guarantees, enhancing judicial consistency, and improving institutional accountability are essential to minimizing the risk of irreversible judicial error and ensuring that the implementation of the death penalty remains consistent with the principles of the rule of law, constitutional protection, and fundamental human rights.

Acknowledgments

The authors would like to express their sincere gratitude to the Faculty of Law, Universitas Narotama, Surabaya, Indonesia, for its continuous academic support and the research facilities provided throughout this study. The authors also extend their appreciation to colleagues and legal scholars

"Wrongful Convictions and Claims of False or Misleading Forensic Evidence," *Journal of Forensic Sciences* 68, no. 3 (2023), <https://doi.org/10.1111/1556-4029.15233>.

whose valuable discussions and constructive insights contributed to the development of the legal analysis on criminal procedure, constitutional rights, and the administration of capital punishment presented in this article. Special thanks are addressed to the anonymous reviewers for their thoughtful comments and recommendations, which significantly enhanced the quality, clarity, and academic rigor of this manuscript. Any remaining errors or interpretations are solely the responsibility of the authors.

Funding

No funding was received for this study.

Reference

- Chan, Angus, Ben Bradford, and Clifford Stott. "A Systematic Review and Meta-Analysis of Procedural Justice and Legitimacy in Policing: The Effect of Social Identity and Social Contexts." *Journal of Experimental Criminology* 21, no. 2 (2025). <https://doi.org/10.1007/s11292-023-09595-5>.
- Deri Ardiansyah, Muhammad Adiaat, Aditya Indah Cahyani, and Nurlaili Rahmawati. "Eksistensi Hukuman Pidana Mati Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP." *Rampai Jurnal Hukum (RJH)* 3, no. 1 (2024). <https://doi.org/10.35473/rjh.v3i1.3005>.
- Deshpande, M., and S. Gurpur. "Connecting the Dots in 'Rarest of Rare': Is Judicial Discretion the Perfection of Reason? Tracking Judicial Discretion in Death Penalty Cases in India." *CARDIOMETRY*, no. 25 (2023). <https://doi.org/10.18137/cardiometry.2022.25.360367>.
- Djatmika, Prija, Wahbi Rahman, Dwi Edi Wibowo, Robert Lengkong Weku, and Noor Dzuhaidah Osman. "Legal Policy of Disparity in Sentencing as a Ground for Judicial Review in Indonesia Corruption Cases." *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, no. 2 (2025). <https://doi.org/10.24090/volksgeist.v8i2.13287>.
- Enujioké, Sharon C., Matthew C. Aalsma, Carolyn G. Meagher, Abby Hunt, Monique M. Hensley, and Mary A. Ott. "Perception of Procedural Justice Amongst Previously Incarcerated Youth: Procedural Justice in Incarcerated Youth." *International Journal of Offender Therapy and Comparative Criminology* 69, no. 6–7 (2025). <https://doi.org/10.1177/0306624X231159878>.
- Garrett, Brandon L. "Wrongful Convictions." *Annual Review of Criminology*, 2020. <https://doi.org/10.1146/annurev-criminol-011518-024739>.
- Gilani, Sabrina. "The Ethics of Capital Punishment and a Law of Affective Enchantment." *Social and Legal Studies* 32, no. 1 (2023).

<https://doi.org/10.1177/09646639221094938>.

- Hafizhah, Annisa, Mohammad Ekaputra, and Muhammad Asla Fathi. "Capital Punishment: Islamic Criminal Law Perspective." *Mahadi: Indonesia Journal of Law* 2, no. 2 (2023). <https://doi.org/10.32734/mah.v2i2.13412>.
- Kurniawan, Putu Yanuar. "Studi Perbandingan Tindak Pidana Seksual Antara UU No. 12 Tahun 2022 (UU TPKS) Dengan UU No. 1 Tahun 2023 (KUHP)." *Jurnal Hukum, Politik Dan Kekuasaan* 5, no. 1 (2024). <https://doi.org/10.24167/jhpk.v5i1.11191>.
- Laputigar, Rendy, Suhadi Suhadi, and Rodiyah Rodiyah. "Integrating Due Process into The Enforcement Framework of Criminal Law Politics." *Indonesian Journal of Criminal Law Studies* 9, no. 1 (2024). <https://doi.org/10.15294/ijcls.v9i1.50293>.
- Liu, Jianhong, and Guangzhen Wu. "Procedural Fairness and Fear of Crime: Extending the Procedural Justice Theoretical Model Under the Chinese Context." *Crime and Delinquency* 71, no. 4 (2025). <https://doi.org/10.1177/00111287221150422>.
- Lubis, Reza Setiawan. "Analisis Penerapan Hukuman Mati Dalam Hukum Pidana Indonesia: Perspektif Keadilan Dan Hak Asasi Manusia." *COMSERVA: Jurnal Penelitian Dan Pengabdian Masyarakat* 4, no. 11 (2025). <https://doi.org/10.59141/comserva.v4i11.2980>.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana, 2024.
- Morgan, John. "Wrongful Convictions and Claims of False or Misleading Forensic Evidence." *Journal of Forensic Sciences* 68, no. 3 (2023). <https://doi.org/10.1111/1556-4029.15233>.
- Mujuzi, Jamil Ddamulira. "Addressing Wrongful Convictions Or Miscarriages Of Justice In The Brics Nations." *BRICS Law Journal* 9, no. 1 (2022). <https://doi.org/10.21684/2412-2343-2022-9-1-62-86>.
- Musaddiq, Aiza, and Aina Nadeem. "Wrongful Convictions in Death Penalty: Effects of Systematic Failures on Rule of Law Hampering Fair and Just Punishment." *Journal of Law & Social Studies* 7, no. 1 (2025). <https://doi.org/10.52279/jlss.07.01.6572>.
- Reiff, Joseph S., Aaron F. Rudkin, Scott E. Sundby, and Hal E. Hershfield. "Perspective-Taking in Capital Punishment Decisions." *Behavioural Public Policy*, 2025. <https://doi.org/10.1017/bpp.2025.10014>.
- Syah Putra, Bayu Angga, Ivo Apriliansyah, Muhammad Indra Yudi Latif, and Muhammad Misbahul Arifin. "Pengaturan Tindak Pidana Narkotika Ditinjau Dari Undang – Undang Nomor 35 Tahun 2009 Tentang Narkotika Dan UU Nomor 1 Tahun 2023 Tentang Kitab Undang – Undang Hukum Pidana." *Lentera Ilmu* 1, no. 1 (2025). <https://doi.org/10.59971/li.v1i2.40>.

- Umamaheswar, Janani. "The Relational Costs of Wrongful Convictions." *Critical Criminology* 31, no. 3 (2023). <https://doi.org/10.1007/s10612-023-09684-x>.
- Wu, Sishi. "The Effect of Wrongful Conviction Rate on Death Penalty Support: A Research Note." *Journal of Experimental Criminology* 18, no. 4 (2022). <https://doi.org/10.1007/s11292-021-09467-w>.