

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

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Abstract

The death penalty remains one of the most debated sanctions in Indonesia's criminal justice system, particularly regarding the procedural safeguards required to ensure fairness and legal certainty in its implementation. Although the Indonesian Criminal Procedure Code (KUHAP) establishes fundamental guarantees of due process, concerns persist over whether existing procedural mechanisms provide adequate protection for defendants facing the irreversible punishment of death. This study examines the extent to which Indonesia's criminal procedure framework upholds procedural justice in capital cases and evaluates its contribution to legal certainty within the administration of criminal law. Employing a normative legal research method through statutory, conceptual, and case approaches, the study analyzes the Indonesian Criminal Procedure Code, the Criminal Code (Law No. 1 of 2023), relevant Constitutional Court decisions, and international human rights principles concerning fair trial guarantees. The findings indicate that procedural justice in death penalty cases depends not only on strict compliance with procedural requirements but also on the consistent protection of defendants' constitutional rights throughout investigation, prosecution, trial, appeal, and execution. The study concludes that strengthening procedural safeguards, ensuring judicial consistency, and harmonizing criminal procedure with constitutional and human rights standards are essential to achieving greater legal certainty and legitimacy in the application of the death penalty in Indonesia.

Introduction

The death penalty remains one of the most debated sanctions in criminal justice because it involves the irreversible deprivation of the right to life and therefore demands the highest standard of procedural fairness.¹ While many

¹ Joe Tomlinson et al., "Whose Procedural Fairness?," *Journal of Social Welfare and Family Law* 45, no. 3 (2023), <https://doi.org/10.1080/09649069.2023.2243150>; Jianhong

countries have abolished capital punishment, Indonesia continues to retain it for certain serious offences under Law No. 1 of 2023 on the Criminal Code. Consequently, the legitimacy of the death penalty depends not only on substantive criminal law but also on the fairness and certainty of the procedures governing its application.

The implementation of capital punishment in Indonesia is regulated by the Criminal Procedure Code (KUHP), which guarantees fundamental procedural rights such as the presumption of innocence, legal assistance, judicial review, and the right to appeal. However, the irreversible nature of the death penalty raises continuing concerns over whether these procedural safeguards are sufficient to ensure justice and prevent wrongful convictions. These concerns are reinforced by constitutional guarantees of due process and Indonesia's obligations under international human rights law, particularly the International Covenant on Civil and Political Rights (ICCPR).²

Previous studies have largely focused on the constitutionality of the death penalty and its compatibility with human rights standards. Comparatively little attention has been given to the adequacy of procedural safeguards under the Criminal Procedure Code as a means of ensuring procedural justice and legal certainty in capital cases.³ This study addresses that gap by examining Indonesia's criminal procedure framework and evaluating whether it provides sufficient legal protection throughout the adjudication of death penalty cases. It argues that stronger procedural safeguards are essential to enhancing legal certainty, protecting constitutional rights, and reinforcing the legitimacy of capital punishment within Indonesia's criminal justice system.

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>.

² Ade Sathya Sanathana Ishwara, Rodliyah Rodliyah, and Rina Khairani Pancaningrum, "Implementation of Capital Punishment in Indonesia Based on Humanity, Ethics, and Morality Aspects: A Utilitarian Justice Perspective," *SIGn Jurnal Hukum* 7, no. 1 (2025), <https://doi.org/10.37276/sjh.v7i1.435>; Ahdiyatul Hidayah, "A Study on the Implementation of Capital Punishment within Indonesia's Criminal Justice System through the Lens of Human Rights," *Jurnal Al Azhar Indonesia Seri Ilmu Sosial* 6, no. 2 (2025), <https://doi.org/10.36722/jaiss.v6i2.4177>; Emi Nugraheni Solihah and Ali Masyhar, "The Implementation of Capital Punishment in Indonesia: The Human Rights Discourse," *Journal of Law and Legal Reform* 2, no. 2 (2021), <https://doi.org/10.15294/jllr.v2i2.46625>.

³ Jiří Říha, "Appeal and Its Concept in the Draft Criminal Procedure Code," *Acta Universitatis Carolinae Iuridica* 69, no. 3 (2023), <https://doi.org/10.14712/23366478.2023.30>; Panca Sarjana Putra et al., "Legal Politics of Investigation Authority in Criminal Offences Under the Draft Criminal Procedure Code (RKUHP)," *JUSTISI* 11, no. 3 (2025), <https://doi.org/10.33506/js.v11i3.4273>; Rakhmi Izharti, Erika Magdalena, and Rully Herdita Ramadhani, "The Urgency of Codifying and Unifying Restorative Justice Regulations in Criminal Procedure Code Reform," *Trunojoyo Law Review* 7, no. 2 (2025), <https://doi.org/10.21107/tlr.v7i2.30601>.

Methods

This study employs a normative legal research method⁴ to examine procedural justice and legal certainty in the application of the death penalty under Indonesia's Criminal Procedure Code. The research adopts statutory, conceptual, and case approaches. The statutory approach analyzes relevant legal instruments, including the 1945 Constitution of the Republic of Indonesia, the Criminal Procedure Code (KUHP), Law No. 1 of 2023 on the Criminal Code, and other legislation governing capital punishment. The conceptual approach examines legal doctrines concerning procedural justice, due process of law, legal certainty, and the protection of constitutional rights, while the case approach reviews selected Constitutional Court decisions and judicial precedents concerning the death penalty and criminal procedure. The study relies on primary legal materials consisting of legislation and judicial decisions, supported by secondary legal materials such as scholarly books, peer-reviewed journal articles, and legal commentaries. These materials were collected through library research and analyzed qualitatively using grammatical, systematic, and teleological interpretation to evaluate whether Indonesia's criminal procedure framework provides adequate procedural safeguards and legal certainty in capital punishment cases.

Results and Discussion

1. Procedural Justice in Death Penalty Cases under Indonesia's Criminal Procedure Code

Procedural justice is a fundamental principle in criminal proceedings, particularly in cases involving the death penalty, where judicial error may result in irreversible consequences. The Indonesian Criminal Procedure Code (KUHP) establishes several procedural safeguards, including the presumption of innocence, the right to legal counsel, the right to present evidence, and access to appellate and cassation remedies.⁵ These guarantees are intended to ensure that criminal liability is determined through a fair and impartial process rather than solely through the outcome of the prosecution. In capital cases, procedural fairness is essential because the legitimacy of the sentence depends not only on the gravity of the offence but also on the integrity of the judicial process leading to the conviction.⁶

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

⁵ Syamsul Hidayat, Amiruddin, and Lalu Parman, "Reformulation of Certain Circumstances Indicators as a Prerequisite for the Imposition of Death Penalty in Corruption Crime," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (2024), <https://doi.org/10.29303/ius.v12i1.1350>.

⁶ Daniel McCarthy and Ian Brunton-Smith, "Attitudes towards the Death Penalty: An Assessment of Individual and Country-Level Differences," *European Journal of Criminology*

Despite these safeguards, procedural justice in practice continues to face significant challenges. Differences in the quality of legal representation, inconsistencies in judicial reasoning, and variations in evidentiary assessment may affect the fairness of criminal proceedings. The introduction of the new Criminal Code through Law No. 1 of 2023, which recognizes the death penalty as a special and conditional punishment, reflects a gradual shift toward a more cautious approach. Nevertheless, this development must be supported by consistent procedural standards to ensure that every stage of the criminal process adequately protects the constitutional rights of the accused.⁷

2. Legal Certainty and Constitutional Protection in Capital Punishment

Legal certainty requires that criminal procedures be applied consistently, transparently, and predictably, particularly when the sanction imposed is irreversible. Indonesia's constitutional framework guarantees equality before the law and the right to due process, requiring criminal courts to apply procedural rules without discrimination or arbitrariness. These guarantees are further reinforced by Indonesia's obligations under international human rights law, especially the International Covenant on Civil and Political Rights, which emphasizes that capital punishment may only be imposed following a fair trial conducted by a competent and independent tribunal.

The Constitutional Court has repeatedly emphasized that criminal sanctions must respect constitutional principles while preserving legal certainty. In the context of capital punishment, this means that procedural safeguards cannot be treated merely as formal requirements but must function as effective mechanisms for preventing wrongful convictions and protecting individual rights. Accordingly, legal certainty is achieved not only through clear statutory provisions but also through consistent judicial

21, no. 1 (2024), <https://doi.org/10.1177/14773708221097670>; Tongat, "Death Penalty in Indonesia: Between Criminal Law and Islamic Law Perspectives," *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (2024), <https://doi.org/10.22219/ljih.v32i1.32335>; Prija Djatmika, Milda Istiqomah, and Heru Kurniawan, "Discourse on the Death Penalty: A Study of Public Perceptions in Indonesia," *Yustisia* 13, no. 1 (2024), <https://doi.org/10.20961/yustisia.v13i1.81938>.

⁷ Muhammad Rahmadianto, "Study of Law Number 1 of 2023 Concerning the Criminal Code (KUHP)," *Enigma in Law* 1, no. 2 (2024), <https://doi.org/10.61996/law.v1i2.36>; Maulana Halim Putra, Rizanizarli Rizanizarli, and Sulaiman Sulaiman, "The Position of Customary Criminal Law in Law No. 1 of 2023 on the Criminal Code," *International Journal of Law and Society* 2, no. 3 (2025), <https://doi.org/10.62951/ijls.v2i3.686>; Sigid Suseno et al., "Cybercrime in the New Criminal Code in Indonesia," *Cogent Social Sciences* 11, no. 1 (2025), <https://doi.org/10.1080/23311886.2024.2439543>.

interpretation and strict adherence to due process throughout investigation, prosecution, adjudication, and the execution of sentences.⁸

3. Strengthening Procedural Safeguards for Fair Capital Punishment

The findings indicate that the effectiveness of Indonesia's death penalty system depends largely on the quality of procedural safeguards rather than on the existence of capital punishment itself. A criminal justice system that provides effective legal assistance, transparent evidentiary procedures, independent judicial review, and meaningful appellate remedies is more capable of ensuring that death sentences are imposed only after the highest standard of fairness has been achieved. These safeguards strengthen public confidence in the administration of justice while minimizing the risk of irreversible judicial error.⁹

Future reforms should therefore focus on improving procedural consistency across all stages of criminal proceedings. Enhancing access to competent legal representation, strengthening judicial oversight, and harmonizing procedural rules with constitutional and international human rights standards would contribute to greater legal certainty.¹⁰ Such reforms would not necessarily alter Indonesia's policy on capital punishment but would ensure that its implementation remains consistent with the principles of justice, constitutional protection, and the rule of law.

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 also on the effectiveness of procedural safeguards established by the Criminal Procedure Code. Although Indonesian law provides fundamental guarantees of due process, including legal representation, judicial review, and appellate remedies, the implementation of these protections must remain

⁸ Noel Ndikummasabo, "The Right to a Fair Trial Within a Reasonable Time Under Burundian Law," *European Scientific Journal, ESJ* 21, no. 17 (2025), <https://doi.org/10.19044/esj.2025.v21n17p53>; SAMANVITHA M and NIVEDHA S, "STRICT INTERPRETATION OF PENAL AND

TAXING STATUTE," *White Black Legal International Law Journal* 2, no. 16 (2023).

⁹ Abdullah Mohammad Erfan, Mohammad Saiful Islam, and Abdul Malek, "THE DEATH PENALTY AS DETERRENT PUNISHMENT: A REVIEW OF EFFECTIVENESS OF DEATH PENALTY IN BANGLADESH," *Diponegoro Law Review* 10, no. 1 (2025), <https://doi.org/10.14710/dilrev.10.1.2025.120-133>; Abdul Jalil Salam and Zahlul Pasha Karim, "Death Penalty in Indonesia: Revisiting the Debate Between the Retentionist and the Abolitionist," *Lentera Hukum* 8, no. 1 (2021), <https://doi.org/10.19184/ejllh.v8i1.20138>.

¹⁰ Sabá Vicente Mesquita da Silva, "DEATH PENALTY AND CIVIL LIBERTIES IN DEMOCRATIC INDIA: ISSUES AND CONCERNS," *Novos Estudos Juridicos* 28, no. 1 (2023), <https://doi.org/10.14210/nej.v28n1.p116-132>.

consistent to ensure procedural justice and prevent irreversible judicial error. The findings demonstrate that legal certainty in capital punishment can only be achieved when procedural rules are applied fairly, transparently, and in accordance with constitutional principles and international human rights standards. Accordingly, strengthening procedural safeguards, enhancing judicial consistency, and ensuring effective protection of defendants' constitutional rights are essential to reinforcing the legitimacy, fairness, and credibility of the administration of capital punishment in Indonesia.

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