



## APPLYING THE CONCEPT OF THE DEATH PENALTY IN INDONESIA AND MALAYSIA

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M. Farhas Sahdewa<sup>1</sup>, Henny Nuraeny<sup>1</sup>, Rizal Syamsul Ma'arif<sup>1</sup>

<sup>1</sup>Faculty of Law, Universitas Djuanda

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#### **Corresponding Author:**

M. Farhas Sahdewa

[sahdewaabps@gmail.com](mailto:sahdewaabps@gmail.com)

### ABSTRACT

*In the 1946 Criminal Code, the legalization of the death penalty is maintained in Article 10 and is positioned as a principal crime, this is different from the 2023 Criminal Code which includes the death penalty in Article 67, then changes the death penalty to a special crime, whereas in Malaysia the legalization of the death penalty is threatened. The death penalty in Law 574 is formulated in 2 forms of punishment patterns, namely a single one that places the death penalty as mandatory and alternative. However, in 2023 Malaysia will change the mandatory nature of the death penalty in its state regulations, which are outlined in the Death Penalty Deed 2023 Act 846. In this research the author uses a normative juridical approach, namely a statutory approach; by analyzing the rules and regulations relating to these legal issues. The results of this research are: There are several motives that are most popular in the reasons for using the death penalty in Indonesia, namely that the death penalty has a higher level of effectiveness, has a frightening effect (shock therapy), and is also considered more economical and is used so that no action occurs. The main judge himself (eigenrichting) in society as well and the implementation of the Mandatory Death Law in Malaysia from the perspective of the Common Law System is the same as the hudud law in terms of the same type of jinayah punishment for the convicted perpetrator but is contrary to the hudud punishment in terms of making forgiveness and apology to the Yang diPertuan Agong for violations of hudud, seduction can be carried out if there is ambiguity in the case only.*

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## 1. Introduction

Indonesia is one of the countries that still maintains and recognizes the legality of the death penalty as a way to punish the perpetrators of crimes, even though the pros and cons of the death penalty have long occurred in this country. Even the existence of the death penalty in Indonesia will continue in the future because in the (new) Criminal Code, the death penalty is still one of the criminal sanctions that is maintained to punish the perpetrators of crimes. There are many serious cases in Indonesia that impose the death penalty, one of which is the case of Zulfikar Ali and Abidin, they were entangled in a drug case that led to the death penalty.<sup>1</sup> Thus, the death penalty is still considered relevant to be applied, of course, in a more humane way and the availability of supportive regulations so that it is not categorized as a human rights violation.<sup>2</sup>

The focus of the debate on the recognition of the death penalty tends to be related to the right to life for the perpetrator of crimes and is correlated that the development of criminal law has left the classical school with a criminal orientation that is just to provide retribution,<sup>3</sup> especially since the Indonesian constitution recognizes the right to life that cannot be reduced under any circumstances (*non-derogable right*).

The death penalty in *the Indonesian Penal Code* is found in Law Number 1 of 1946 (Criminal Code 1946) and Law Number 1 of 2023 (Criminal Code 2023). In the 1946 Criminal Code, the legalization of the death penalty is maintained in Article 10 and positioned as a basic crime, this is different from the 2023 Criminal Code which includes the death penalty in Article 67, then changes the death penalty as a special crime. In the 1946 Criminal Code, there are 9 articles that regulate crimes that can be sanctioned with the death penalty, in contrast to the 2023 Criminal Code, there are 10 articles that regulate crimes that can be sanctioned with the death penalty. The pattern of death penalty threats in the 1946 Criminal Code and the 2023 Criminal Code is formulated in the form of alternative sanctions.<sup>4</sup>

The death penalty is a type of crime that relatively does not provide legal certainty in terms of its implementation, those who are sentenced to death by judges experience a crucial problem of not knowing when the crime will be carried out, this phenomenon is called *the death row phenomenon*.<sup>5</sup> In the 2019 period, data from the Directorate General of Corrections processed by ICJR recorded that there were 214 convicts who had served a waiting period of 1-10 years, 56 convicts with a waiting period of 10-20 years, and 4 convicts with a waiting period of more than 20 years.<sup>6</sup> ICJR itself in January 2022 released the results of monitoring the data, that in 2020 the number of death row inmates serving a waiting period amounted to 355 death row inmates and on November 29, 2021 it increased to 404 death row inmates or an increase of around 13%.<sup>7</sup>

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<sup>1</sup> Eva, Jaka, *The Abolition of the Death Penalty in Indonesia A Positive Legal Perspective and Islamic Criminal Law*, Al-Hakim Journal: Scientific Journal of Sharia Studies, Law, and Philanthropy Students, 2022. Page 66

<sup>2</sup> Pan Mohamad Faiz, *Hukuman Mati dan Hak Untuk Hidup*, Jurnal Hukum, Vol.1 Nomor 2 Thn 2018. Hlm 6

<sup>3</sup> Chairul Huda, *"From No Crime Without Fault to No Criminal Liability Without Fault, 4th Edition,"* Jakarta: Prenada Media, 2011. p. 128

<sup>4</sup> Khairul Tammi, *Studi Perbandingan Pidana Mati Dalam Penal Code Negara-Negara Asean (Indonesia, Malaysia, Singapura, Vietnam, Myanmar, Thailand, Laos, Dan Brunei Darussalam)*, Fakultas Hukum Universitas Bung Hatta Padang, 2024. Hlm 2

<sup>5</sup> Patrick Hudson, *"Does the Death Row Phenomenon Violate a Prisoner's Human Rights under International Law?"*, European Journal of International Law 11, no. 4, 2000. Hlm 834

<sup>6</sup> Adhigama Andre Budiman, *"The Phenomenon of Waiting Queues for Death Row in Indonesia"* (Jakarta: Institute for Criminal Justice Reform (ICJR), 2020), p. 23

<sup>7</sup> Adhigama Andre Budiman, *"Laporan Situasi Kebijakan Hukuman Mati Di Indonesia 2020: Mencabut Nyawa Di Masa Pandemi,"* Hlm 14.

The concept of human rights enforcement in Indonesia is limitative in nature limited by the obligation of basic human obligations. Basic human obligations are contained in Article 1 number 2 of Law Number 39 of 1999 concerning Human Rights. Human rights protection is the responsibility of each country. The exact content of the human rights tasks of different countries varies, but the primary responsibility will always be the same, respecting and ensuring the rights in the convention. Thus, it is not the international monitoring system that fails if the protection of human rights in the country is not as good as it should be, but it is the state itself that is to blame.<sup>8</sup>

The difference in views on the implementation of the death penalty is also caused by the difference in views adopted by several groups of countries about the implementation of human rights in each country, namely: there are groups of countries that adhere to the understanding that the implementation of human rights has a universal dimension and there are those who adhere to the implementation of human rights with a particular dimension. In some ASEAN countries, the death penalty is still maintained, it can be seen that in Indonesia, Malaysia, Singapore, Vietnam, Myanmar, Thailand, Laos, and Brunei Darussalam still maintain the death penalty as a type of sanction to punish criminals while other countries have actually abolished the death penalty such as the Netherlands and Switzerland and many more countries that have abolished the existence of the death penalty.<sup>9</sup> The legalization of the death penalty is maintained in *each country's* Penal Code.

One of the topics discussed in addition to the concept of the Death Penalty in Indonesia, is the concept of the Death Penalty in Malaysia. The legalization of the death penalty in the Malaysian Penal Code is maintained in the Penal Code Act (Act 574). The threat of the death penalty in Act 574 is formulated in 2 forms of criminal patterns, namely the single one that positions the death penalty as mandatory and alternative. However, in 2023 Malaysia changed the mandatory nature of the death penalty in its country's legislation, which is outlined in the Death Penalty Abolition Act 2023 Act 846. Act 846 changes the mandatory nature of the death penalty which was originally mandatory or in a single form to one form, namely an alternative, and there are 8 articles that state that crimes can be punished by the death penalty.<sup>10</sup>

Malaysia is a country that carries out the death penalty by hanging with ropes for convicts who commit major crimes. The execution of hanging has been applied in Malaysia for a long time, since Pudu Prison, Malaysia was built in 1891. Malaysia itself implements the death penalty by hanging with ropes because it can speed up the elimination of lives by not torturing convicts.

The procedure for execution of the death penalty according to the Law in Malaysia has been regulated in the Civil Law under the Criminal Procedure Code (Amendment and Extension) Act promulgated on 9 January 1976, in CHAPTER XXVII, Article 281 concerning the Execution of the Death Penalty. The death penalty law in Malaysia is based on the British Law which has been used for a long time. The death penalty law in Malaysia is not entirely based on Islamic law. Malaysia bases the "quick death" reason for the death penalty in Malaysia because hanging by rope is believed to take the life of a convict in less than two seconds.

The application of the hanging penalty in Malaysia is based more on the basis of human race and not seen from its position of Islamic law. The hanging penalty in Malaysia does not recognize Muslims or non-Muslims is still punishable by hanging to death if the convict has been proven guilty. If it is called the "death penalty", it means that the perpetrator of the jinayah will be punished by hanging to death, as a practice of execution. Article 277 of the Code of Criminal Procedure states that

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<sup>8</sup> Philip Alston, *Hukum Hak Asasi Manusia*, PUSHAM UII, Yogyakarta, 2018. Hlm 215.

<sup>9</sup> Warih Anjani, *The Imposition of the Death Penalty in Indonesia in the Perspective of Human Rights*, Widya Judisia's Journal, Vol. 1 No.2 Year 2020. Page 71

<sup>10</sup> Khairul Tammi, *Op.cit.* Hlm 4

"if any person has been sentenced to death, the sentence shall be directed that he be hanged by the neck until death, but it shall not be stated where and when the hanging is carried out."

From the background of the problems described above, the author formulates the problem into the form of the following questions:

1. What is the provision of the death penalty under the International Convention *on Civil and Political Rights (ICCPR)*?
2. How Is The Concept Of The Death Penalty Applied In Indonesia And Malaysia?

## 2. Methods

In this study, the author uses a normative juridical approach, namely with a statutory approach by analyzing the rules and regulations related to these legal issues.

## 3. Results and Discussion

### 3.1. Death Penalty Provisions in Review of the *International Convention on Civil and Political Rights (ICCPR)*

Basically, the application of the death penalty is contrary to the provisions of international human rights law. The provisions of international human rights law expressly state that the death penalty is contrary to the principles set out in the *International Covenant on Civil and Political Rights (ICCPR)*. This is as stated in Article 6 (1) of the ICCPR which reads: every human being has the right to life and to legal protection and no one can take away that right. However, the application of the death penalty provisions can be justified as long as it concerns criminal acts that are qualified as gross human rights violations and deserve to be punished with the death penalty, as stipulated in the provisions of Article 6 of the *International Covenant on Civil and Political Rights*.

And according to the ICCPR, the death penalty may be carried out in accordance with the provisions of article 6 paragraph 2 which reads: "In countries that have not abolished the death penalty, the death penalty may only be imposed for some of the most serious crimes in accordance with the law in force at the time of the commission of the crime, and does not contradict the provisions of the Covenant and the Convention on the Prevention and Law of the Crime of Genocide. This punishment can only be carried out on the basis of a final decision handed down by an authorized court."

That way, Indonesia and Malaysia codify the ICCPR into their respective national laws and allow the death penalty with conditions in certain circumstances or perpetrators commit gross human rights violations.

### 3.2. Application of the Concept of the Death Penalty in Indonesia and Malaysia

The beginning of the existence of the death penalty in Indonesia is juridical-historically regulated in the Criminal Code, which mostly originated in the Netherlands or known as *the Wetboek van Strafrecht (WvS)*. It turns out that in its development, the implementation in the Netherlands and Indonesia is very different. In the Netherlands, the death penalty has been abolished since 1870, except in wartime.<sup>11</sup>

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<sup>11</sup> Yon Artiono Arba'l, *Aku Menolak Hukuman Mati*, (Jakarta: KPG(Kepustakaan Populer Gramedia), 2012), Hlm 15

The death penalty in Indonesia itself is juridically formally contained in Article 10 of the Criminal Code which states that the death penalty is included in the main penalty. In article 11 of the Criminal Code, it is also explained about *the penalty* mode of the death penalty that the death penalty is carried out by the executioner in the hanging place by ensnaring the rope tied to the hanging pole around the neck of the convict and then dropping the board where the death row inmate stands. The implementation of the death penalty in Indonesia was then replaced by the issuance of Presidential Decree Number 2 of 1964 concerning the Procedures for the Execution of the Death Penalty which was imposed by courts within the General Court and Military Court. *The penalty* mode of death is by being shot to death by a firing squad.<sup>12</sup>

In Indonesia, the Dutch Colonial Government at the time of the formation of the Criminal Code in 1915 deviated from its attitude in its own country and maintained the death penalty in Indonesia for serious crimes. And the provisions of the death penalty are regulated, among others, in Law No. 1 of 2023 concerning the Criminal Code (KUHP). For example, Article 17 paragraph (4) of the Criminal Code regulates attempts to commit criminal acts that are threatened with the death penalty or life imprisonment, punishable by a maximum prison sentence of 15 years.

In contrast to the Dutch colonial legacy Criminal Code which places the death penalty as the main crime, Law No. 1 of 2023 changes the status of the death penalty to a special penalty that is always threatened alternatively. "Special crimes as referred to in Article 64 letter c are capital punishments that are always threatened alternatively."

The application of the death penalty is motivated by the presence of disaster emergencies, child protection emergencies and emergencies to the number of victims, thus giving birth to a response to provide punishment for the sake of national stability. There are several most popular motives for the use of the death penalty in Indonesia, namely the death penalty has a higher level of effectiveness, has a frightening effect (*shock therapy*), and is also considered more economical and used so that there is no act of vigilante (*eigenrichting*) in society.<sup>13</sup>

The existence of Presidential Decree Law Number 2 of 1964 which regulates the Procedures for the Execution of the Death Penalty, juridically article 11 of the Criminal Code which regulates the hanging penalty is no longer valid. In accordance with the legal principle *of lex posteriori derogate legi lex priori* (new statutory provisions replace old statutory provisions). If there is an old legal norm and then a new legal norm is issued with an equal position that contains the same substance or improves (improves) and does not contain contradictory norms, then the new legal norm applies.<sup>14</sup>

In this case, Presidential Decree number 2 of 1964 is a new legal product in the form of a law equivalent to the Criminal Code which has been in effect for a long time since March 8, 1942. According to Presidential Decree No. 2 of 1964, the death penalty is carried out somewhere in the jurisdiction of the court that handed down the verdict in the first instance (District Court), carried out not in public (therefore not covered by the media) and in the simplest possible way, unless otherwise stipulated by the President. The death penalty imposed on several persons in a single verdict shall be carried out simultaneously at the same time and place, unless otherwise specified. With the input of the Prosecutor, the Police Chief where the District Court is located determines the time and place of execution of the death penalty. Before the death penalty is carried out, within three times 24 hours the death row inmate must be informed about the execution of the death penalty against him. The grace period given is useful for the death row inmate to meet his family.<sup>15</sup>

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<sup>12</sup> Robby, *Op.cit.* Hlm 4

<sup>13</sup> Coulson, *The History Of Islamic Law*, diterjemahkan oleh Hamid Ahmad, Hukum Islam dalam Perspektif Sejarah, P3M, Jakarta, 2017. Hlm 59

<sup>14</sup> Robby, *Op.cit.* Hlm 8

<sup>15</sup> *Ibid*, Hlm 8

Then for the execution of the death penalty, the chief of the local police where the death penalty was imposed would form a firing squad consisting of a non-commissioned officer, twelve enlisted men, under the leadership of an officer who was all from the car brigade. This firing squad is under the leadership of the High Prosecutor. Death row inmates on the way to the place of execution of the death penalty must be accompanied by sufficient police. When the death row inmate is taken to the place of execution, the death row inmate may be accompanied by a clergyman. Upon arrival at the place of execution, the Commander of the guard covers the face of the death row inmate with a piece of cloth, but this face covering can not be done if the death row inmate so desires. Death sentences can serve the death penalty standing, sitting or kneeling.

Then if it is deemed necessary by the Prosecutor, then the hands and feet of the death row inmate can be tied to a special backrest made for it. After the death row inmate is ready to be executed, the firing squad with a weapon that already contains bullets goes to the place that has been determined by the prosecutor responsible for the execution of the death penalty. The Gunnery Squad Commander gave the order to prepare, then moved his sword upwards as a signal to order his squad to aim at the convict's heart and by swinging the sword quickly downwards, then the shooting squad began firing. If after the shooting the convict still shows signs that he is not dead, then the squad commander immediately orders the shooting squad officer to fire the final shot by pressing the tip of the barrel of his weapon on the convict's head just above his ear.<sup>16</sup>

The death penalty in this day and age, to control serious crimes that require serious threats such as the death penalty, and in the application of the death penalty, care must be taken, both against the crimes of treason, corruption, subversion, and smuggling as well as against individual crimes committed in a cruel or heinous manner. The provisions of the law that apply in carrying out the death penalty, namely:

1. The death penalty should not be carried out on a person who has been sentenced, then becomes insane and the situation is recognized by the judge who handed down the sentence, then the execution of the death penalty is suspended until the insane person recovers, and
2. The death penalty should also not be carried out on a woman who is pregnant or pregnant, in such a case the execution of the death penalty is also suspended until the pregnant woman gives birth.<sup>17</sup>

Law number 39 of 1999 concerning Human Rights as stipulated in article 3 paragraph (2) also states that everyone has the right to recognition, guarantee, protection and fair legal treatment and to receive legal certainty and equal treatment before the law. And in the Regulation of the Chief of Police of the Republic of Indonesia Number 12 of 2010 concerning Procedures for the Implementation of the Death Penalty, in article 3 it is said that one of the principles in the regulation is the protection of human rights, namely in the implementation of the death penalty still respect and pay attention to human rights, therefore if viewed from the Indonesian constitution, with the example of the Sumiarsih and Sugeng cases it indicates that there is still a problem related to human rights, Especially in terms of the time of execution of the death penalty, with the absence of regulations governing the issue of time in the execution of the death penalty, then it raises a constitutional problem.<sup>18</sup>

The regulation of the death penalty in the Concept of the Criminal Code (new) is regulated in Article 67, the death penalty is declared as a special principal crime and is always threatened alternatively. The death penalty can be imposed conditionally, by providing a probationary period, so

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<sup>16</sup> *Ibid*, Hlm 9

<sup>17</sup> *Ibid*, Hlm 9

<sup>18</sup> *Ibid*, Hlm 11

that within the grace period of probation, the convict is expected to be able to improve himself so that the death penalty does not need to be carried out. In Article 90 of the Criminal Code Concept, it is regulated regarding the implementation of the death penalty, namely:

1. The death penalty is carried out by shooting convicts to death by firing squads.
2. The death penalty is not carried out in public.
3. The execution of the death penalty against pregnant women or mentally ill people is postponed until the pregnant woman gives birth or the mentally ill person recovers.
4. The death penalty can only be carried out after the request for clemency for the convict is rejected by the President.

The execution of the death penalty can be postponed with a probation period of 10 (ten) years, if the conditions are met:

- a. The public's reaction to the convicts was not too great;
- b. The convict shows remorse and there is hope for improvement;
- c. The position of the convict in the participation of the criminal act is not very important; and
- d. There is a mitigating reason.

Basically, the application of the death penalty is contrary to the provisions of international human rights law. The provisions of international human rights law expressly state that the death penalty is contrary to the principles set out in the *International Covenant on Civil and Political Rights (ICCPR)*. This is as stated in Article 6 (1) of the ICCPR which reads: every human being has the right to life and to legal protection and no one can take away that right.<sup>19</sup>

However, the application of the death penalty provisions can be justified as long as it concerns criminal acts that are qualified as gross human rights violations and deserve the death penalty, as stipulated in the provisions of Article 6 of the *International Covenant on Civil and Political Rights*.<sup>20</sup>

As for a number of countries that have abolished the imposition of the death penalty, based on the records issued by *Hands Off Cain Info* states that around 155 countries have abolished the death penalty policy in their legal system and practice, of which 99 countries have abolished the death penalty policy for all categories of crimes (overall), 44 countries have abolished the death penalty policy in practice (*de facto abolitionist*) and 7 countries have abolished the death penalty for *ordinary crimes*, and 5 countries have implemented a *moratorium* on executions on the spot.<sup>21</sup>

In terms of the concept of the death penalty in Malaysia that In Malaysia, the method of execution of the death penalty is through the hanging technique. Dealing with murder, drug trafficking in excess of the specified amount and possession of firearms are among the criminal acts

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<sup>19</sup> Slamet, *Problematika Penerapan Pidana Mati Dalam Konteks Penegakan Hukum Di Indonesia*, Jurnal Hukum dan Peradilan, Volume 1, Nomor 2 Juli 2012. Hlm 209

<sup>20</sup> Hal ini sebagaimana yang diatur dalam ketentuan Pasal 6 "*International Covenant on Civil and Political Rights* "countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court

<sup>21</sup> Asian Human Rights Commission, *Defisit Abolisi Hukuman Mati di Indonesia dengan Tren Global Menuju Penghapusan Hukuman Mati*, 2012. <https://www.humanrights.asia/news/ahrc-news/AHRC-STM-195-2012-ID/>, diakses pada Kamis, 6 Juni 2024 Pukul 21:16 WIB

that can lead to the death penalty.<sup>22</sup> In the Malaysian legal system, a person will go through a number of trials before the death penalty is carried out. The first stage of punishment is in the High Court followed by the Court of Appeal and finally by the Federal Court. If the Court decides on three levels of guilt against the accused, an application for a pardon for the offence must be made to the Yang di-Pertuan Agong or Yang Mulia Sultan or the Head of State, depending on where the offence was committed. This decision is considered final and if the sentence is upheld, the court will order the Department of Prisons to impose the death penalty on the perpetrator.

A person who has been sentenced to death by the courts, from the legal aspects passed by the law takes a long time. The Taiping Prison experience, found that the average person serving a sentence from the date of commencement of the law by the high court varies and takes years. There is a time between 1 year and 9 months and it takes up to 7 years and 10 months.<sup>23</sup>

Once all legislative proceedings have ended and appeals for clemency have been rejected by the Pardon Council, the prisoners involved will await instructions to execute sentences. When a sentence is issued by the court, the Department of Prisons will handle the execution of the hanging. A pardon is a jurisdiction that is under the State or Governor (State) where the crime was committed, or the Yang di-Pertuan Agong (YDPA) can act to pardon criminals if the crime was committed in the Federal Territory or when involving members of the armed forces. The death penalty in Malaysia is carried out with the concept of hanging as stipulated in Article 281 of the Criminal Code.

The implementation of the Mandatory Death Penalty in Malaysia in the perspective of the *Common Law System* is the same as hudud law in terms of the same type of punishment for the convicted perpetrator but contrary to hudud punishment from the point of view of making a pardon and apologizing to the Yang di-Pertuan Agung for the violation of hudud, an appeal can be made if there is ambiguity in the case only. Regarding the Execution of the Death Penalty stated in Article 281 (e) of the Jenayan Event Kannum. Other requirements for perpetrators of adultery who have been sentenced to death are mentioned in Article 281 of the Criminal Procedure Code.

Hanging is usually carried out on the Friday after Fajr prayers at around 6:30 a.m. for Muslim convicts. For non-Muslim convicts, the hanging sentence is carried out on weekdays, especially Tuesdays around 5:30 am. The Superintendent of Prisons is responsible for carrying out the execution of the sentence unless confirmed by the Minister of the Interior in a written statement, no person shall carry out or attend the execution of the sentence while it is carried out. The officers who have the right to carry out the execution of the death penalty according to the law in Malaysia are certain persons who have been appointed by the Director General of Prisons after obtaining the approval of the Yang di Pertuan Agung.

And on April 3, 2023, the lower house (Dewan Rakyat) of the Malaysian Parliament decided to pass the Abolition of the Compulsory Death Penalty Bill 2023 and the Death Penalty and Imprisonment for Natural Life (Temporary Jurisdiction of Federal Courts) Bill 2023. The Upper House (State Council) then passed the two bills on April 11, 2023. Now the bill has been sent to the king for his signature into law.

The first bill would remove the country's mandatory death penalty for certain serious crimes, such as murder and terrorism, making the punishment discretionary. The agreement would also remove the death penalty for some offenses that did not cause death, including kidnapping and certain firearms offenses. Furthermore, life imprisonment will be replaced with a prison sentence of

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<sup>22</sup> *Death Penalty In Malaysia*, 2018, [https://ms.wikipedia.org/wiki/Hukuman\\_mati\\_diMalaysia](https://ms.wikipedia.org/wiki/Hukuman_mati_diMalaysia), accessed on Friday, June 7, 2024 at 12:03 WIB

<sup>23</sup> Ibrahim Abu Bakar, Utusan Online, "*Hukuman Mati Tak Wajar Diganti Penjara Seumur Hidup*", 2018. [http://ww1.utusan.com.my/utusan/Rencana/20131213/re\\_06/Hukuman-mati-tak-wajar-diganti-penjara-seumur-hidup](http://ww1.utusan.com.my/utusan/Rencana/20131213/re_06/Hukuman-mati-tak-wajar-diganti-penjara-seumur-hidup) diakses pada Jumat, 7 Juni 2024 Pukul 12:05 WIB

between 30 and 40 years. The second bill would authorize the Federal Court to review death and life sentences previously imposed by courts for such crimes.

There are currently 34 death penalty violations in Malaysia. Under the previous law, the punishment was mandatory for the 12 crimes. The bill will remove mandatory sentences contained in the following provisions:

1. Article 121A of the Criminal Code ( Law 574), contains criminal acts that plan or intend to cause death or harm to the Yang di-Pertuan Agong (king) or one of the rulers or Yang di-Pertua Negeri (head of state of Malaysia).
2. Articles 130C, 130I, 130N, 130O, 130QA, and 13ZB of the Criminal Code, contain various criminal acts of terrorism.
3. Article 302 of the Criminal Code, contains the crime of murder.
4. Article 374A of the Criminal Code, contains the crime of hostage-taking.
5. Articles 39B(2A) and (2B) of the Dangerous Drugs Act 1952 (Law 234), related to drug trafficking.
6. Section 3 of the Firearms (Increased Penalties) Act 1971 (Act 37), contains the offence of using a firearm with intent to injure or kill.
7. Section 3A of the Firearms (Increased Penalties) Act of 1971, on being an accomplice of a person who uses a firearm with intent to injure or kill.

Once the bill comes into force, criminal offenses and drug offenses will be threatened with the death penalty or imprisonment of between 30 and 40 years, and with a minimum of 12 lashes if the person is not sentenced to death. Firearms violators are no longer subject to the death penalty, but are threatened with 30 to 40 years in prison and 12 lashes. *Human Rights Watch noted that the bill retains the death penalty for drug traffickers, which is the most common punishment for death row inmates.*

There has been a moratorium on the execution of the death penalty in Malaysia since 2018. The government also later proposed abolishing the death penalty altogether, but this did not result in legislation being introduced in Parliament. The country's Human Rights Commission, Suhakam, continues to advocate for the abolition of the death penalty for all crimes.<sup>24</sup> And in 2023 Malaysia changed the mandatory nature of the death penalty in its country's legislation, which is outlined in the Death Penalty Abolition Act 2023 Act 846. In Act 846, it changes the mandatory nature of the death penalty, which was originally mandatory or in a single form, to one form, namely an alternative, and there are 8 articles that state that crimes can be punished by the death penalty.

#### 4. Conclusion

The International Convention *on Civil and Political Rights-ICCPR* expressly protects the right to life of every human being and *the ICCPR* explains that States that have not abolished the death

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<sup>24</sup> Kelly Buchanan, *Malaysia: Bill on the Abolition of the Mandatory Death Penalty for Certain Offences Passed*, 2023. <https://www.loc.gov/item/global-legal-monitor/2023-04-13/malaysia-bill-removing-mandatory-death-penalty-for-certain-offences-passed/>, accessed on Friday, June 7, 2024 at 12:20 WIB

penalty may impose the death penalty but in certain circumstances or the perpetrator of a crime commits a gross human rights violation.

The death penalty is regulated in Article 11 of the Criminal Code, which reads: The death penalty is carried out by the executioner at the place of hanging, by using a snare around the neck of the condemned person and tying the snare to the hanging post and dropping the board on which the person is standing. As time goes by, the provisions on the procedures for carrying out the death penalty are no longer in accordance with the development of the cultural condition of the Indonesian nation and the spirit of the Indonesian revolution, so with Presidential Decree No. 2/1964 the execution of the death penalty is carried out by being shot to death somewhere within the jurisdiction of the Court that imposes the verdict in the first instance. The provisions of the death penalty are regulated, among others, in Law No. 1 of 2023 concerning the Criminal Code (KUHP). For example, Article 17 paragraph (4) of the Criminal Code regulates attempts to commit criminal acts that are threatened with the death penalty or life imprisonment, punishable by a maximum prison sentence of 15 years. In contrast to the Dutch colonial legacy Criminal Code, which places the death penalty as the main crime, Law 1/2023 changes the status of the death penalty to a special crime that is always threatened alternatively. "Special crimes as referred to in Article 64 letter c are capital punishments that are always threatened alternatively." The application of the death penalty is motivated by the presence of disaster emergencies, child protection emergencies and emergencies to the number of victims, thus giving birth to a response to provide punishment for the sake of national stability. There are some of the most popular motives for the use of the death penalty in Indonesia, namely the death penalty has a higher level of effectiveness, has a frightening effect (*shock therapy*), and is also considered more economical and used so that there is no act of vigilante (*eigenrichting*) in society. In terms of the concept of the death penalty in Malaysia that In Malaysia, the method of execution of the death penalty is through the hanging technique. Dealing with murder, drug trafficking in excess of the specified amount and possession of firearms are among the criminal acts that can lead to the death penalty. The implementation of the Mandatory Death Penalty in Malaysia in the perspective of the Common Law System is the same as hudud law in terms of the same type of punishment for the convicted perpetrator but contrary to hudud punishment from the point of view of making a pardon and apologizing to the Yang diPertuan Agong for the violation of hudud, an appeal can be made if there is ambiguity in the case only. Regarding the Execution of the Death Penalty stated in Article 281 (e) of the Jenayan Event Kannyum. Other requirements for perpetrators of adultery who have been sentenced to death are mentioned in Article 281 of the Criminal Procedure Code. And in 2023, Malaysia will change the mandatory death penalty in its country's legislation, which is outlined in the Death Penalty Abolition Act 2023 Act 846. In Act 846, it changes the mandatory nature of the death penalty, which was originally mandatory or in a single form, to one form, namely an alternative.

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