

# Questioning the Future of Death Penalty in Indonesia: A Hermeneutic Analysis

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## Abstract

*Through the enactment of the new Criminal Code, Indonesia is facing a turning point in the implementation of its national criminal law. After more than 100 years of applying the old KUHP, Indonesia now has its own criminal law code that is progressive, reformative and in accordance with the development of Indonesian criminal law. However, in its ratification, the community is still divided into supporters and opponents of the ratification of the new criminal code. Opponents argue that there are problematic articles that should be reviewed. One example is that there is still a death penalty that has changed from the principal punishment to a special crimes punishment. The death penalty has often been debated by legal experts but no resolution has ever been found. In the discussion in this article, the author aims to further explore the future of the death penalty in Indonesia and examine the death penalty from a hermeneutical perspective. This research uses a conceptual method and hermeneutic method which results in the finding that by using the deconstructive hermeneutic method introduced by Jacques Derrida, the death penalty threatened in the CC should not only be viewed from a juridical perspective, but also from various aspects including social, cultural, and religious aspects. However, the presence of the death penalty remains highly necessary in Indonesia, albeit no longer as the primary form of punishment. Instead, it serves as a distinctive kind of punishment that must be considered as an alternative.*

**Keywords:** Death Penalty, Hermeneutics, Indonesian Criminal Code.

## INTRODUCTION

Tuesday, December 6, 2022 is a historic moment and a turning point in the implementation of national criminal law in Indonesia. Indonesia has recently developed its own criminal code (CC), which marks the end of reliance on the Dutch Criminal Code in Indonesia, known as *Wetboek Van Strafrech Voor Nederlandsch Indie (WvSNI)*, which had been in place for almost a century, which can only be implemented in 2026, Yasonna Hamonangan Laoly as the Ministry of Law and Human Rights argues that the CC which was enacted on January 1, 1918 is outdated and is no longer considered relevant to the needs of national criminal law in Indonesia (Novitasari, 2017). Instead, Indonesia passed a new Criminal Code stipulated under the name of Law No. 1 Year 2023 which has been deliberated by Indonesian criminal law experts since 1963.

This new Criminal Code is considered to be very reformative, revolutionary, and responsive to the circumstances and conditions of the Indonesian nation (Post, n.d.-b). Although it has been passed in December 2022, it is inevitable that the Indonesian people remain divided into 2 groups, namely the group that opposes the ratification of the new Criminal Code and the group that approves the ratification of the new Criminal Code (Imran et al., 2024). Pressure and strong opposition not only flared up in Indonesian society, additionally, there were numerous diplomats who raised concerns regarding the execution of the death penalty in Indonesia. According to Eddy O.S Hiariej, death penalty can not only be seen from a legal perspective, but also political issues, religious issues, and others (Darma, 2021). Also, the group that strongly opposes the ratification of the new Criminal Code considers that there are still problematic articles that, if implemented, can create instability in law enforcement in Indonesia (“Indonesia’s New Morally Strict Criminal Code Sparks Debate,” 2022). However, the government is of the view that the new Criminal Code will create perfection in the legal regulation system in Indonesia through sectoral laws and prevent criminal disparity between one provision and another so that the ratification is a real step towards national criminal law reform in Indonesia which is synergistic, comprehensive, dynamic and harmonious (*Kisah Wamenkum Didatangi 12 Dubes Asing Pertanyakan Hukuman Mati Di RKUHP*, n.d., p. 12).

The fundamental difference between the CC inherited from the Dutch colonial government and the new

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Criminal Code can be found in its systematics, where in this case the existing differences can be divided into 2 (two) broad lines, among others:

**Table 1. Differences between Law No. 1/1946 and Law No. 1/2023**

Difference	Law Number 1 of 1946	Law Number 1 of 2023
Section	Book I: General Provisions Book II: Crime Book III: Offenses	Book I: General Provisions Book II: Criminal Offenses
Sanctions	<ul style="list-style-type: none"> <li>a. Principal Punishment                             <ul style="list-style-type: none"> <li>- Death Penalty</li> <li>- Imprisonment</li> <li>- Confinement Penalty</li> <li>- Penalty</li> <li>- Imprisonment</li> </ul> </li> <li>b. Additional Penalty                             <ul style="list-style-type: none"> <li>- Revocation of certain rights,</li> <li>- Deprivation of certain goods,</li> <li>- Announcement of judge's decision</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>a. Principal Punishment                             <ul style="list-style-type: none"> <li>- Imprisonment;</li> <li>- Criminal Cover;</li> <li>- Criminal Supervision;</li> <li>- Fines; and</li> <li>- Criminal Social Work</li> </ul> </li> <li>b. Additional Penalty                             <ul style="list-style-type: none"> <li>- Revocation of Certain Rights;</li> <li>- Forfeiture of Certain Goods and/or Bills;</li> <li>- Announcement of Judge's Decision</li> <li>- Payment of Compensation</li> <li>- Revocation of certain licenses; and</li> <li>- Fulfillment of Local Customary Obligations.</li> </ul> </li> <li>c. Special Crimes                             <ul style="list-style-type: none"> <li>- Death Penalty</li> </ul> </li> </ul>

The Quran defines a Muslim as someone who has completely surrendered to Allah and his commands, believing in pure Tawhid (the oneness of God) without any shirk, which is why the Almighty introduced the prophet Abraham as a true worshipper (Muhtar et al., 2024). In Islamic law, the death penalty can be imposed in certain cases, such as intentional murder and adultery committed by a married person, as well as acts of apostasy (exit from the Islamic religion) in some interpretations. The application of the death penalty is based on the Qur'an and Hadith, with a constant emphasis on the enforcement process adhering to high standards of justice. For example, in the case of murder, the Qur'an Surah Al-Baqarah verse 178 mentions the principle of qisas, which is just retribution. (Suryani et al., 2023).

However, the Qur'an also provides an opportunity for forgiveness by the victim's family, which is considered a more noble act. Therefore, Islamic law is flexible and values mercy, allowing for the replacement of the death penalty with compensation or forgiveness. In addition, the application of the death penalty must go through a fair and transparent judicial process, with clear evidence and credible testimony (Dungga et al., 2023). Many scholars in the tradition of fiqh (Islamic jurisprudence) emphasize the importance of error prevention in the enforcement of the death penalty, emphasizing the high burden of proof to ensure that only truly guilty offenders receive punishment.

In the table above, various major differences can be found, one of which is the death penalty which has now moved from the main punishment to a special crimes punishment which is often threatened as an alternative (Pasal 67 Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana., n.d.). Capital punishment is a type of punishment whose existence has existed and developed since 1800 BC, which was first applied by the Babylonian king Hammurabi (Malik & Holdsworth, 2014). Where there were 25 cases of crimes that could be sentenced to death (Usmonovna & Kholmurodovich, 2020). History records that some of the rules in the law made by King Hammurabi do not just threaten the death penalty for criminal suspects, but also individuals who are considered negligent in carrying out their obligations to cause the death of other individuals (Little, 1998). This created the idea of lex talionis, or an eye for an eye (VanDrunen, 2007).

In addition, ancient Egyptian culture in 1200 BC also imposed the death penalty. For example, those who were given the death penalty for attempting to kill Pharaoh Ramses III would be given the death penalty (Acker, 2003). Among the death penalty techniques written in history is stabbing with a stake, it is done so

that death feels slow and painful. Until now, the movement to eliminate the death penalty is gaining momentum (Tanjaya et al., 2017). There are 55 nations that still retain the death penalty and 144 countries that have abolished the death penalty. Some countries that still maintain the concept of death penalty include China, Iran, and Saudi Arabia including Indonesia (Post, n.d.-a). Notably, Papua New Guinea, the Central African Republic, and Zambia are among the countries that have eliminated the death sentence. This signifies the advancement of the nation in maintaining and promoting human rights.

The emergence of various arguments and heated debates regarding the retention/abolition of death penalty have indeed been created and implemented by legal experts since long ago (Saputri, 2020). In fact, the implementation of death penalty should not only be seen from a juridical perspective. This perspective is commonly referred to as conservative hermeneutics which has the view that the text becomes a free meaning, the concept is derived from the strict adherence to a rule that is based on the factual assessment (Henebury, 2015). In this sense, conservative hermeneutics is conventional, devoid of content, formulaic, dogmatic, theocentric and ahistorical (Gillo, 2021). However, as a pluralistic nation, Indonesia must pay attention to several important aspects. This can be studied by using deconstructive/radical hermeneutics which originated from the thought of Jacques Derrida, a French philosopher (Taherkhani & Fatemi, 2023).

In Derrida's radical hermeneutic thought, meaning is always neglected by the emergence of several other possible meanings, therefore the act of understanding is never certain. He emphasizes that language is always open to multiple interpretations and there is no right or wrong interpretation. In the study of the future of the current death penalty which is correlated with the understanding of deconstructive/radical hermeneutics from Jacques Derrida's thought, Indonesia should pay attention to social, cultural and religious aspects. Where one example that can be taken, Indonesia has several religions that are recognized and embraced by its people, the concept is derived from the strict adherence to a rule that is based on the factual assessment. Apart from the religious aspect, there is a social aspect where there is still a mindset of "revenge" by the family against the perpetrator that is still prevalent in society (Judiasih & Fakhriah, 2018). In the cultural aspect, the many ethnic groups that have lived and settled since long ago in Indonesia have also created various laws that live in their communities until now. This has always been defined as living law (Sulistiawan, 2023).

The creation of a new Criminal Code is a solution that is considered appropriate for the Indonesian nation which must be harmonized with legal politics, conditions and developments in public life, a state that has the aim of respecting and upholding human rights, according to God Almighty, fair and civilized humanity, Indonesian unity, Democracy Led by Wisdom and Justice, and Social Justice for All Indonesian People (Somawijaya & Ramdan, 2018) The objective of this research was to conduct a thorough examination of the future of the death penalty in Indonesia and to assess how the death sentence is interpreted within the context of Indonesian law using a hermeneutic approach. The review of the future of death penalty in hermeneutic aspect is expected to be a trigger for other studies that can enrich the repertoire of legal science, especially criminal law.

## **Research Issues**

How does the Indonesian Criminal Code view the future of the death penalty, and what is the history of its emergence globally and in Indonesia? Additionally, how do the hermeneutical implications of the death penalty in the Indonesian criminal code impact its interpretation and application? Understanding the evolution and historical context of the death penalty, both globally and within Indonesia, provides a foundational perspective on how it is currently perceived and administered. Furthermore, examining the hermeneutical implications helps in comprehending how legal texts and principles are interpreted, shedding light on the underlying philosophies and societal values that influence the implementation of the death penalty in Indonesia.

## **RESEARCH METHODOLOGY**

This study uses qualitative methods to achieve significant results and findings. The qualitative method operates by concentrating on overarching principles that stem from the occurrence of symptom units in human life or models that serve as socio-cultural symptoms, thereby gaining insight into recurring patterns. In this study, we

combine the juridical approach and conceptual methods to highlight the concepts formulated in the Indonesian Criminal Code (KUHP), which continues to include the death penalty as one of its sanctions.

This method not only touches on the juridical aspects, but also uses hermeneutics as an intermediary to provide an understanding of the urgency of the existence of the death penalty in Indonesia. Using hermeneutics, this study seeks to explore the meaning and interpretation of the death penalty from the perspective of social, cultural, and religious development in Indonesian society. This study also includes the review of primary documents, such as Law Number 1 of 1946 on Criminal Law Regulations and Law Number 1 of 2023 on Criminal Law, as well as secondary documents such as textbooks, academic documents, and related research such as court decisions. With this comprehensive approach, the study aims to provide an in-depth overview of the history of the death penalty's emergence in the world and in Indonesia, as well as how the Indonesian criminal code views the death penalty's future. Furthermore, this study delves into the hermeneutic review of the death penalty in the Indonesian Criminal Code, establishing a link between the legal dimension and the prevailing socio-cultural context. We hope that this study will significantly contribute to the discourse on the death penalty and its effects on the legal system and Indonesian society.

## **LITERATURE REVIEW**

Death Penalty is a punishment and reaction to an offense or punishment in the form of death which is decided and implemented by the state because the actions or violations that have been committed by the person have met the requirements set out in certain criminal law regulations. Death penalty is a legitimate state activity because it is compiled in positive law. As something that is always debated by various groups, the death penalty should not only be reviewed from the juridical aspect. In this case, it should be able to implement the views of radical or deconstructive hermeneutics introduced by a French philosopher named Jacques Derrida. Radical or deconstructive hermeneutics views that the death penalty can not only be viewed from a juridical perspective, but also from a social, cultural and religious perspective that develops, especially in Indonesia. Al Fayyadl by quoting Derrida's thought points out, as far as it is understood as a text, then to that extent every system of thought, institution of interpretation, history, or anything that seeks to standardize meaning, is open to be read, dismantled, and reinterpreted infinitely (Rustamaji, 2019).

The view of the death penalty as a state response to violations committed by individuals has been the subject of intense debate in various circles (Kandelina, 2016). Positive law provides for the death penalty, making it a legitimate act of the state. However, one cannot view this perspective solely from a juridical perspective. Jacques Derrida, a French philosopher, through his radical or deconstructive hermeneutics, proposed a broader perspective on understanding the death penalty. According to Derrida, any system of thought, institution of interpretation, history, or anything else that attempts to standardise meaning is open to reading, dismantling, and reinterpreting indefinitely (Novak, 2019). In this context, we must not only assess the death penalty from a legal perspective, but also consider it from a growing social, cultural, and religious point of view, particularly in Indonesia. Al Fayyadl, citing Derrida's thoughts, emphasises that understanding the death penalty as a text allows us to disassemble and reinterpret its meaning in various contexts. This is crucial because the prevailing social and cultural norms in a given society often influence the application of the death penalty (Sanjaya & Wei, 2023).

The relevant literature also shows that the death penalty has a long history in various cultures and religions. As previously mentioned, the Islamic legal tradition permits the death penalty, albeit under extremely strict conditions. The history of law in Europe also records the use of the death penalty as the main form of punishment for centuries, although modern trends show an increasingly strong rejection of this punishment. Although some states in the United States still apply the death penalty, there is intense debate about its effectiveness as a deterrent to crimes and the ethical issues associated with wrongful execution.

Research from Amnesty International and Human Rights Watch highlights a range of cases in which the death penalty is unfairly applied, including racial, economic, and political discrimination. Meanwhile, organisations such as the European Union and the United Nations firmly oppose the death penalty and advocate for its global abolition on the grounds that it violates a fundamental human right, namely the right to life (Zeki et al.,

2004). People's views on the death penalty are also very diverse from a cultural and social perspective. In some cultures, the death penalty is considered a legitimate form of justice and is necessary to maintain social order. However, in other cultures, this punishment is considered inhumane and contrary to human and moral values. For example, in many Western countries, the abolitionist movement grew stronger with the argument that a fair justice system should not deprive individuals of the right to life.

Furthermore, from a religious standpoint, the death penalty has a variety of interpretations. Some religious traditions support the death penalty in certain cases, while others emphasise forgiveness and rehabilitation. For instance, Christian teaching largely reinterprets the Old Testament's "eye for an eye" principle in light of the New Testament's teachings on love and forgiveness.

Derrida's radical hermeneutical approach encourages us to continuously review and reinterpret the meaning and application of the death penalty in a broader context, transcending traditional juridical boundaries. This allows us to better understand the complexity of this issue and seek more just and humane solutions in law enforcement and human rights protection.

### **The Future of Death Penalty in National Criminal Law in Indonesia**

The Criminal Code, which is often referred to as WvSNI, is one of the laws inherited by the Dutch colonial government which was formalized in the Netherlands during the 1886 period and legalized in Indonesia since January 1, 1918 or it can be said that it has been used by the Indonesian people for more than 100 years. In its implementation, WvSNI is used as a criminal law in Indonesia with Law No. 1 of 1946 related to Criminal Law Regulations. Up to a period of more than 100 years, there are certainly many changes and developments experienced by the Indonesian people related to criminal law. Even so, experts and legal experts in Indonesia have long considered the Dutch CC irrelevant because it is considered outdated and not oriented towards modern criminal law and does not guarantee legal certainty. The old CC was made with an orientation to classical criminal law, where classical criminal law since ancient times the purpose of punishment has been a concern. Immanuel Kant argued that someone who violates the law must get retaliation. Hegel also argues that the law is retaliation which is also justified by Stahl where he argues that the basis of retaliation is based on divinity and is a law that has eternal nature (Sulistiyani, 2019). Criminality must be eradicated by the nation and must also immediately provide suffering to the suspect. Continuing from Kant, where he often argues that punishment is to reward the actions of the suspect. This mindset was eventually followed by legal experts in various concepts of retaliation (Walklate, 2016). In the past, savage punishment was a manifestation of being scorned by the public or by officials. Therefore, punishment is an authority that is considered vital and important in criminal law. From here it can be seen that the Indonesian nation and other nations cannot follow the orientation of classical criminal law anymore because classical criminal law focuses more on revenge which is considered not humanistic and humane and does not see the interests of the perpetrator. The Dutch CC is clearly individualistic and secular.

The new Criminal Code must be oriented towards modern criminal law which in principle sees the purpose of criminal law as the protection of the public through various crimes or the eradication of criminality. The actions of individuals who carry out cannot be seen in the abstract only based on the juridical side through the individuals who carry it out but must also be observed concretely that in reality the actions of individuals can be influenced by their character, aspects of a biological nature or come from environmental factors of the audience.

According to Eddy Hiariej, the view is that modern teaching is useful to provide public protection from criminality where the intention is to hold that the highest law is the protection of the public and emphasizes or is oriented towards the suspect. Also, in modern criminal law teaching, several types of justice are known, including: corrective justice intended for the suspect, which is to correct that his actions are wrong (Supriyadi, 2016). Restorative justice is given to the victim, the victim's condition is raised. As for rehabilitative justice, it is given to the suspect and the victim (Askari, 2023). Therefore, legal experts in Indonesia consider that regulations on criminal law with a modern criminal law paradigm must be created so that they can support the restoration of victims' rights and foster offenders to be better.

In addition, there are also other problems with the CC where this regulation is still considered not enough to guarantee legal certainty. This can be observed from the existence of many translations of the CC issued by various legal experts in Indonesia. Indeed, with the existence of different CC translations from legal experts, the consequences will have different interpretations between one expert and another. So, how can this create legal certainty and harmony, especially in the application of material criminal law. An example of the difference in translation is the use of the term 'conspiracy' for the translation of *samenspaning*, where it turns out that the legislator in Indonesia refers more to using the term 'criminal conspiracy' (Lindsey & Pausacker, 2020). In addition, the interpretation of the word "makar" where in the CC version of R. Sugandhi defines makar as "attack" while in the CC version of Andi Hamzah concludes that makar through the purpose of assassination, deprivation of independence, or eliminating the authority of the President or his deputy, is given the threat of death penalty or life imprisonment or a max of 20 years imprisonment. The absence of an official translation issued by the government has implications for the complexity of interpretation of the various elements of offenses in the CC, even the most likely multi-interpretation of certain offenses. This results in endless debates between judges, prosecutors and lawyers. In addition, there are consequences of a No. of court decisions that are inconsistent in applying various articles of the CC due to differences in the views of judges between one another.

Updating criminal law is a vital matter that is important and urgent because on the one hand criminal law can be used as a protector of the people against criminal intent, but on the other hand it can be an intention for human rights that should be given legal protection of the punishment. The CC used today is still based on colonial law. For this reason, the reform of criminal law is something that must be done immediately in order to adjust the country's conditions that are much different. In this case, Muladi argues that the CC must be able to align itself with new developments, especially in the world arena that is approved by civilized audiences. The endeavor to modernize the criminal law encompasses the domain of criminal law policy, which is intricately linked to the policy of legal fortification, criminal policy, and social policy. This reform aimed to update the interpretation of the law in order to enhance its impactiveness in law enforcement. It also serves as a strategy to combat crime and ensure public safety, while addressing social and humanitarian issues to achieve national objectives of safeguarding social well-being and enhancing societal conditions.

The spirit of ideas in the formation of the CC that has occurred since 1958 was marked by the birth of LPHN and the holding of the National Law Seminar I in 1963 with the initiation of urgency to immediately formulate a new Criminal Code. It was mentioned that in 1994 the formulation of this CC had been successfully completed but was stalled when the Ministry of Justice changed under the leadership of Oetoyo Oesman. Only after Muladi served as Minister of Justice in 1998, the Draft CC was resubmitted. The next agenda was submitted in 2001-2004 when Yusril Ihza Mahendra served as Minister of Law and Human Rights. The House of Representatives of the 2014-2019 period then agreed on the Draft CC in the first level of decision making. Until December 6, 2022, finally the CC was successfully passed during the administration of President Joko Widodo under the name Law No. 1 of 2023 related to the CC (Afifa, 2022). There are still protests by the people in Indonesia about the ratification of the new Criminal Code. An example of this is the transformation of the death penalty, which was once designated as the primary form of punishment in the previous CC. However, in the revised Criminal Code, it has been redefined as a distinct kind of punishment that can be imposed as an alternative measure.

When engaging in discussions about the death sentence, it is inevitable that it will generate endless disputes and arguments. Advocates of the death penalty typically claim that it is necessary to eliminate those who pose a threat to the public or the nation and are deemed irreparable. On the contrary, it is contended that death punishment violates human rights and is an irreversible penalty that cannot be rectified if a wrongful conviction is discovered after the execution, as determined by the judge. The author argues that the transformation of the death sentence, which was previously the primary punishment in the old Criminal Code, into a particular punishment that is now threatened as a special crimes punishment, is not unfounded. The transfer of death penalty certainly cannot be seen from the juridical or legal aspect alone. The emergence of death penalty in Indonesia must also pay attention to social, cultural, and religious aspects. In the social view, punishment has a certain social meaning which therefore depends on the individual's perception of the

punishment. Emile Durkheim relates the variation of punishment to the variation of social cohesiveness of the audience where in the cohesiveness of the system is based on the overall likeness and loyalty through individuals, so that the punishment given has a repressive nature. This punishment has the purpose of punishing crimes or actions that violate the social rules that are followed. To the extent that punishment can be considered a tool for the satisfaction of consciousness. In an audience that has organic cohesiveness based on differences between individuals, so that punishment has a restitutive nature. Thus, it is necessary for sanctions to have an accommodative nature, whose characteristics provide care for various inequalities so that disintegration does not arise. In the socio-economic aspect of the study in the United States, it is argued that the death penalty can have a very significant impact on the poor and minorities, when compared to those who come from white groups. The matter relates to legal aid for suspects. They are also more likely to be given the death penalty if they are assisted by a court-appointed lawyer than if they are accompanied by a personal lawyer.

In terms of culture in Indonesia, there are many tribal groups that have settled in it, these tribes will create customary laws that are still alive and developing in the community. Some examples of customary laws that can be found are in the interior of Toraja, individuals who commit incest are allowed to take two preferences of sanctions including being strangled to death or put in a *rota* which is given a heavy stone and then thrown into a deep river. Also in Gayo, thieves, kidnappers, murderers and traitors are shot to death, even if they are partying. In Minangkabau custom, it is known as the law of retaliation. If the "*bangu*" can be paid by the suspect's family or tribe, the suspect is allowed to be killed.

The punishment is publicly executed in a densely populated area, visible to the general public. The execution method involves securing the suspect's head with a turban and fastening it to a pole. The executioner, who is typically a family member of the murder victim, carries out the execution by using a *kris* to mark a "sign" on the suspect's face and occasionally delivering a stab. If the vindictive individual's life is already fraught with intense emotions, they are permitted to administer a death stab to the left side of the torso. According to Balinese cultural traditions, engaging in an incestuous marriage, namely when the perpetrator has sexual relations with the wife of a priest or religious expert, is considered a capital offense and will result in death as punishment.

Another case in the religious aspect, with a society that mostly embraces Islam, the largest in the world, which is 240.62 million people, there are still many Muslims in Indonesia who partly still adhere to Islamic law. Where in the Qur'an there are regulations as well as various punishments for minor or serious crimes (Gofar, 2017). The Quran teaches about the general provisions of manners related to justice, merit, patience, and others. Based on Q.S. Al-Baqarah Verse 179, it can be clearly understood that the essence of the punishment called *qisash* is the guarantee of the continuity of life for individuals or actions that have a preventive nature (repressive) because if the individual understands that he will be given the death penalty if he kills another individual, then he will consciously not do it (Muhyidin et al., 2022). *Qisash* can also be given the meaning of giving a similar action to the act of punishment as he did to the victim. The sanction of *qisash* connotes more of a warning so that people do not shed the blood of others. There are several different views among Islamic religious leaders regarding the procedure for implementing *qisash*. Some opinions include that *qisash* can be carried out only with a weapon or sword, regardless of whether the murder has been committed using a sword or not (Amdani, 2018).

In addition, *qisash* must be carried out in accordance with the method and equipment used by the killer when carrying out the murder. But it has been agreed among religious leaders that if there are other tools that can more easily take the life of the suspect, then it is allowed to be done, so that the pain felt by him is not so long. As for the crimes for which *qisash* is punishable, it can be quoted from Surah An-Nur ayat 2 and HR. Muslim from Ubaidah bin Shamit, namely in essence, people who commit adultery who are married where the punishment is stoning, namely being given stones until they die. In the second scenario, premeditated murder, which refers to intentional killing, is mentioned in the Quran in Surah Al-Nisa verse 93. According to this verse, persons who commit murder of Islamic individuals are obligated to face *qisash*.

In Christianity, Thomas R. Eddlem reveals that the sanction of being retaliatory is the reason for practicing

the death penalty. The Old Testament gives an eye command for the use of death, gini guna gigi, he continued, the Christian perspective on the issue of the death penalty, as an act of "revenge" on suspects who commit serious crimes. In the Bible, in No.s 35: 16-18 it is stated that those who kill are definitely obliged to be killed. Thus, the death penalty can be justified (Chui et al., 2013). Christian teaching believes in a personal God who "has given the brush" to individuals to execute the death penalty, on variations of the serious crime. Leviticus states that if one person has caused injury to another, they must get the same harm in return. If he fractures a bone, one of his bones becomes fractured; if he impairs vision in an eye, one of his eyes becomes impaired; if he dislodges a tooth, one of his teeth becomes dislodged. The individual will receive the same hurt that he inflicts upon another person. The crimes punishable by death in the covenant include:

**Table 2. Crimes in the Bible that carry the death penalty**

Crime	Bible Verse
Murder	Exodus 21:12
Adultery for Married and Unmarried People	Lamentations 22:22
Worshiping Idols	Exodus 22:20
Kidnapping	Exodus 21:16
Giving untrue evidence in court	Lamentations 19:16-19

Following the teachings of Buddhism, which are adapted from Samyutta Nikaya I: 227 that "what we sow we will also reap, therefore sow kindness too and you will also feel the good fruit thereof". This can be interpreted as the law of karma, which in meaning is the law of causality through action. For individuals who act well, happiness will follow. In contrast, for individuals who act evilly, there will be unhappy conditions.

The existence and occurrence of the death sentence since ancient times, with diverse norms and processes for its administration, can be inferred from the varied viewpoints of social, cultural, and religious views. The adoption of the death penalty, which from the beginning was contained in the main punishment in the old Criminal Code and then moved to special punishment which was threatened alternatively in the new Criminal Code, implies that the existence of the death penalty still exists but in terms of its implementation there are still many problems or it is still difficult in its application. The new Criminal Code is present as a decolonization is an effort to eliminate colonialism in the past Criminal Code, Democratization refers to the process of formulating the punishment articles of the CC in accordance with the constitution and legal calculations. This involves the Constitutional Court's decision to test the relevant Criminal Code article, as well as consolidating the re-establishment of punishment provisions from the old Criminal Code and parts of the Punishment Legislation that are not included in the CC. This is achieved through Recodification. Harmonization is a method of adapting and aligning with modern legal advancements. It involves incorporating live laws and updating traditional retaliatory approaches to encompass a comprehensive philosophy that considers the actions, suspects, and victims of crimes.

### **Death Penalty Viewed from Hermeneutic Aspects in Indonesian Legal Perspective**

Through the ICJR report, it was found that there were 132 cases of recent convictions that were given the death penalty through a total of 145 defendants. Meanwhile, the accumulated No. of death penalty cases given as of March 24, 2023 is 1,105 through 1,242 suspects from 1969 to 2022. At least, there are 520 suspects who finally have the status of death row awaiting execution based on the latest court verdict and processed from the Directorate General of Corrections data in 2019. Generally, cases that were given a death sentence in the 2022 period were dominated by narcotics convictions. The following is a description of the case:

**Table 3. Cases Charged with Death Penalty**

Case	Number of Cases
Narcotics	123
Premeditated Murder	3
Aggravated Murder and Child Abuse Resulting in Death	2
Aggravated Murder, Violence against Children Resulting in Death, and Child Rape	1
Child Rape	1
Child Rape Resulting in Fatal Injuries and Causing More than 1 Victim	1
Corruption Crime	1

The debate on Death Penalty had previously been filed as a petition for judicial review of Law No. 22 Year 1997 related to Narcotics in the Constitutional Court by Todung Mulya Lubis, et al. In their petition, Todung Mulya Lubis served as legal counsel for the names, Edith Yunita Sianturi as Petitioner 1, Rani Andriani as Petitioner 2, Myuran Sukumaran as Petitioner 3, and Andrew Chan as Petitioner 4 where Petitioners 1 and 2 at that time were carrying out sanctions at LPP Tangerang, while Petitioners 3 and 4 were carrying out sentences at Krobokan Prison in Kuta, Badung Regency, Bali in relation to the acts of punishment described in Law No. 22 of 1997 related to Narcotics. In his petition, Todung Mulya Lubis, et al provided various reasons regarding the unconstitutionality of the death penalty. The first reason where he revealed that the death penalty in the Narcotics Legislation is against the "authority of life" guaranteed in Article 28A and 28I which briefly explains that the death penalty is against the "authority of life". Furthermore, it can be correlated with Article 6 of the ICCPR, which elucidates that the death sentence is incongruous with the fundamental right to life. In his second argument, he contends that any error in imposing the death penalty is fatal due to its irreversible nature. This means that once individuals are executed, they cannot be brought back to life, even if it is later discovered that they were innocent. In the third argument, he clarified that there exist multiple international human rights agreements that advocate for the abolition of the death penalty. Specifically, he referred to the Second Optional Protocol, which sets a more stringent standard compared to Article 6 of the ICCPR. The objective of both is to completely eliminate the death penalty without any exemptions. There is currently a global trend advocating for the abolition of the death penalty. Furthermore, the death sentence is deemed inconsistent with the ideology of punishment in Indonesia. Todung Mulya Lubis, et al asserted that Indonesia strongly prioritizes the protection of human rights, which includes recognizing the numerous legal rights held by a suspect. Punishment serves not only as a means of revenge, but also prioritizes efforts towards rehabilitation and social reintegration for the individual being punished.

In the verdict, the constitutional judges stated:

Delivering the petition of Applicants I and II in Case No. 2/PUU-V./2007 is completely rejected;

Submitting the petition of Applicants III and IV in Case No. 2/PUU-V./2007 is not acceptable;

To declare Case No. 3/PUU-V./2007 inadmissible."Constitutional Court Decision No. 2-3/PUU-V/2007" (2017).

This also concludes that the provisions of Article 80 Paragraph (1) letter a, Paragraph (2) letter a, Paragraph (3) letter a; Article 81 Paragraph (3) letter a; Article 82 Paragraph (1) letter a; Paragraph (2) letter a, and Paragraph (3) letter an of the Narcotics Legislation, as long as they impose the intention of capital punishment, do not violate Article 28A and Article 28I Paragraph (1) of the 1945 Constitution. Therefore, there is no valid reason for the petition to review these articles, and all applicants' petitions must be rejected. This decision means that the death penalty is not in violation of the sanctity of life and is not contrary to the 1945 Constitution (Lubis, 2009).

The enforcement of death penalty in Indonesia should not only be seen partially or partially in this case based on juridical basis. Indeed, the implementation of death penalty in Indonesia must also be understood in the context of deconstructive/radical hermeneutics. This hermeneutic concept was first introduced by a French philosopher named Jacques Derrida. Derrida is a modern philosopher who criticizes the ideas and theories of modern philosophers, for example western philosophers who often favor logocentrism. According to Muhammad Rustamaji quoted from Anthon F. Susanto defines etymologically that deconstruction is actually a word match of analysis which means removing, releasing, compared to the etymological definition of the word deconstruction where the closeness of the etymology shows that deconstruction is more intended for a strategy in structural decomposition and the field of meaning in the text than activities that provide damage to the text (Rustamaji, 2019). This deconstruction method as an analysis initiated by Derrida through the structural dismantling as well as various language symbols, especially the structural counterpart as best as possible to form an operation without final sign and without final meaning. Deconstruction is a resistance to the opinion or speech of the opponent, whether it exists or not, original or mixed, and resistance to the validity of the logos. In interpreting the concept and implementation of death penalty, it should not only use the author approach

but also use the concept of understanding deconstruction/radical hermeneutic science. As explained above, death penalty should not only be seen from a juridical perspective but also concerned with social, cultural, and religious perspectives. For example, it is often found that there is a potential for revenge against the perpetrator's actions carried out by the victim's family. As one example of the potential for revenge, a case can be taken from the Lumajang area where there was a man who was killed by his neighbor because he had previously killed the father of the neighbor (*Balas Dendam, Anak Di Lumajang Bunuh Tetangga Yang Habisi Bapaknya*, n.d.). In another aspect, it can be seen from the concept of several religions that still apply the death penalty. If lifting the concept of Biomijuridika which was first introduced by Barda Nawawi Arief, he argued that the science of national law must point to the science of divinity contained in various religious values through verses and God's creatures in nature (Rustamaji, 2019). National punishment sanctions are divine in nature because the life of the nation as well as the state of Indonesia has the basis of Pancasila, including based on "God Almighty". In a nation that has divinity, it is carried out "For Justice Based on the Godhead", so that the strengthening of the law is not necessarily just based on the "demands of the Law", but according to "Divine Robbi's guidance". Based on the deconstruction/radical hermeneutic view of Jacques Derrida's thought, Law No. 1 Year 2023 related to the CC does not merely consider juridical aspects but connects with other aspects that develop in Indonesia. Thus, the death penalty extension is recognized but not abolished by the Indonesian people.

## CONCLUSIONS

The death penalty has indeed become a heated debate by experts since long ago. In this writing, the author can draw a conclusion that the future of death penalty in Indonesia can be seen from its existence in Law No. 1 Year 2023 related to the CC is still recognized by the Indonesian people. Despite no longer being a primary form of punishment, the death penalty should still be included in Indonesian national criminal law. This is because Indonesia takes into account not only legal aspects, but also social, cultural, and religious factors. Death penalty that can be studied using the radical hermeneutic aspect of Jacques Derrida's creation implies that Indonesia is fair in using various perspectives in order to create justice and legal certainty with integrity.

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