

Death Penalty Reform: A Comparative Study of Indonesia's New Criminal Code and Malaysian Law

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Abstract

This study examines the reform of capital punishment regulation in Indonesia and Malaysia from a human rights perspective. The research aims to analyze the transformation of capital punishment under Law No. 1 of 2023 on the Criminal Code (Indonesia's New Criminal Code) and Malaysia's *Abolition of Mandatory Death Penalty Act 2023* (Act 846), as well as to assess their compatibility with international human rights standards. This study employs a normative juridical method using statutory, comparative, and conceptual approaches. The legal materials consist of primary, secondary, and tertiary sources, which are analyzed qualitatively through descriptive legal analysis. The findings indicate that both Indonesia and Malaysia have shifted from a rigid retributive model toward a more individualized sentencing framework. Indonesia reclassifies the death penalty as a special and alternative punishment accompanied by a ten-year probationary period, while Malaysia abolishes the mandatory nature of the death penalty by granting judges discretion to impose either capital punishment or long-term imprisonment. Although neither country has abolished the death penalty, both have significantly restricted its application to the most serious crimes, reflecting a middle-ground approach between retentionism and abolitionism. These reforms are generally consistent with Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR), which permits capital punishment only under strict limitations. Accordingly, the study concludes that the reforms represent a gradual transition toward a more proportionate, human rights-oriented criminal justice system while maintaining capital punishment as an exceptional sanction.

1. Introduction

The death penalty, or capital punishment, has long been a subject of global debate, reflecting deep tensions between justice, deterrence, and human rights. Internationally, the trend has shifted toward abolition or restriction of the death

penalty, with over 85 countries abolishing it since 1976.¹ Globally, there is a growing perception that the death penalty is no longer relevant, even when justified as a deterrent for specific offenses categorized as extraordinary crimes. Consequently, the majority of nations have removed capital punishment from their legal systems.² In fact, in 2016, the Secretary-General of the United Nations stated that in the context of terrorism, the death penalty has no place in the 21st century, given its ineffectiveness and its violation of human rights.³ Based on the premise that a convict remains, fundamentally, a human being.⁴

Indonesia and Malaysia are two Southeast Asian countries that continue to retain capital punishment within their legal systems. However, in recent years, both countries have undertaken significant reforms to the regulation of this punishment. In Indonesia, capital punishment under Law No. 1 of 1946 concerning Criminal Law Regulations (Indonesia's Old Criminal Code) was classified as a principal punishment and regarded as the most severe form of criminal sanction, serving both as punishment and as a means of holding offenders accountable for their criminal acts.⁵ Subsequently, Indonesia's New Criminal Code introduced a fundamental policy shift. Article 98 provides that "*The death penalty shall be imposed alternatively as a last resort to prevent crime and protect the public.*"⁶ Furthermore, Eddy O.S. Hiariej explains that the Indonesia's New Criminal Code reclassifies capital punishment as a special punishment, removing it from its previous status as either a principal or an additional punishment. Consequently, the imposition of the death penalty is intended to be applied selectively by providing alternative sentencing options, such as life imprisonment or imprisonment for a maximum term of twenty years.⁷

¹ Indah Lestari et al., "Analisis Pasal 100 Undang-Undang Nomor 1 Tahun 2023 Tentang Hukuman Mati Bersyarat Berdasarkan Asas Keadilan Dan Asas Kepastian Hukum," *Jurnal Ilmu Hukum Sui Generis* 4, no. 3 (2024): 1-12, <https://doi.org/10.23887/jih.v4i3.5030>; Daffa Zulhilmi and Muhamad Chaidar, "Analisis Yuridis Kebijakan Hukuman Mati Di Indonesia," *Legal Standing: Jurnal Ilmu Hukum* 9, no. 1 (2025): 55-63, <https://doi.org/10.24269/ls.v9i1.10922>; Karmila Karmila et al., "Kontroversi Hukuman Mati Dalam Sistem Peradilan Pidana Dilihat Dari Perspektif HAM (Hak Asasi Manusia) Dan Kriminologi," *Journal of Contemporary Law Studies* 2, no. 3 (2025): 125-40, <https://doi.org/10.47134/lawstudies.v2i3.3851>.

² Gunnar Kasim, *New Death Penalty Law in Indonesia*, Issue No. 1/2023, Indonesia Criminal Law Update (Institute for Criminal Justice Reform, 2023), 2, https://icjr.or.id/wp-content/uploads/2023/11/ICJR_New-Death-Penalty-Law-in-Indonesia.pdf.

³ United Nations, *On World Day against Death Penalty, Ban Says Practice "Has No Place in the 21st Century"*, Oktober 2016, <https://news.un.org/en/story/2016/10/542302-world-day-against-death-penalty-ban-says-practice-has-no-place-21st-century>.

⁴ David Hardiogo and Syafrinaldi Syafrinaldi, "Terorisme dan Pemasyarakatan: Problem Hukum Pendidikan Deradikalisasi bagi Terpidana Terorisme di Indonesia," *JKIH: Jurnal Kajian Ilmu Hukum* 1, no. 2 (2022): 146-75, <https://doi.org/10.55583/jkih.v1i2.294>.

⁵ Ahmad Fadlan Andriyansyah and Jamel Dalimunthe, "Vonis Pidana Mati Terhadap Tindak Pidana Serta Hubungannya Dengan Ham Dan Hukum Pidana," *Jurnal Ilmiah Multidisiplin Nusantara (JIMNU)* 1, no. 3 (2023): 168-72, <https://doi.org/10.59435/jimnu.v1i3.182>.

⁶ Article 98 of Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code.

⁷ Susana Rita Kumalasanti, "Pidana Mati ala Indonesia, Jalan Tengah Kaum Abolisisionis dan Retensionis," *Kompas.id*, July 20, 2022, https://www.kompas.id/baca/polhuk/2022/05/26/pidana-mati-ala-indonesia-jalan-tengah-kaum-abolisisionis-dan-retensionis?open_from=Search_Result_Page.

Furthermore, Article 99(4) regulates that executions for pregnant women, breastfeeding mothers, or the mentally ill must be postponed until they have given birth, ceased breastfeeding, or recovered.⁸ Execution can only proceed after a plea for clemency is rejected by the President and must not be carried out in public, typically performed by a firing squad.⁹ Furthermore, Article 100 of Indonesia's New Criminal Code provides that the imposition of the death penalty shall be accompanied by a ten-year probationary period. If, during this period, the convicted person demonstrates commendable conduct and behavior, the death sentence may be commuted to life imprisonment by a Presidential Decree, upon consideration and recommendation of the Supreme Court.¹⁰

Similarly, Malaysia has also undergone a significant reform in the regulation of capital punishment, driven by the growing emphasis on human rights and increasing criticism of a purely retributive sentencing paradigm. This shift culminated in the enactment of the *Abolition of Mandatory Death Penalty Act 2023* (Act 846), which abolished the mandatory imposition of the death penalty for a number of offences and granted judges broader sentencing discretion to impose alternative sanctions, including long-term imprisonment of up to forty years.¹¹

Capital punishment in Indonesia and Malaysia has attracted considerable scholarly attention, particularly in relation to the reform of Indonesia's Criminal Code and the application of the death penalty within Southeast Asia. However, comparative studies that comprehensively examine the reform of capital punishment under Indonesia's New Criminal Code and Malaysia's legal framework remain limited.

cent studies on capital punishment in Indonesia have primarily focused on the reconstruction of the death penalty under the 2023 Criminal Code, particularly its transformation from a principal punishment into a special and alternative sanction, the introduction of a ten-year probationary period, and the possibility of commuting a death sentence to life imprisonment, as well as the implications of these reforms for human rights and legal certainty. Nevertheless, these studies have not undertaken a direct comparison with the Malaysian legal system.¹² Conversely,

⁸ Article 99 (4) of Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code.

⁹ Article 99 (1), (2) and (3) of Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code.

¹⁰ Article 100 of Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code.

¹¹ Siti Zubaidah Ismail, "Proposing Diyat as an Alternative to Death Penalty for the Crime of Murder in Malaysia," *Jurnal Syariah* 32, no. 3 (2024): 487–518, <https://doi.org/10.22452/syariah.vol31no3.6>; Darshan Singh et al., "Reforms and Media Depictions of the Death Penalty in Malaysia," *International Criminal Justice Review* 34, no. 4 (2024): 351–69, <https://doi.org/10.1177/10575677231200447>; Reyhaneh Bagheri and Mai Sato, "Rethinking the Death Penalty Through a Public Health Lens: Examples from Malaysia," *Medicine, Science and the Law*, 2025, 00258024251408740, <https://doi.org/10.1177/00258024251408740>; Nasrul Ismail, "Malaysia's Death Penalty: A Post-Abolition Research Agenda," *Global Social Challenges Journal*, 2026, 1–11, <https://doi.org/10.1332/27523349Y2025D000000067>.

¹² Daffa Rizky Dewanto and Rahtami Susanti, "Hukuman Mati Menurut Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana Dalam Perspektif Hak Asasi Manusia," *Wijayakusuma Law Review* 5, no. 1 (2023), <https://doi.org/10.51921/wlr.v5i1.239>; I. Gusti Agung Istri Ranya Astri Pratiwi and I. Nyoman Bagiastra, "Reform on Death Crime in Law Number 1 of 2023," *Protection: Journal Of Land And Environmental Law* 2, no. 1 (2024): 21–31, <https://doi.org/10.38142/pjlel.v2i1.1058>; Tongat Tongat, "Death Penalty in Indonesia: Between



research on Malaysia has mainly examined the abolition of the mandatory death penalty in 2023, the political framing of capital punishment, and post-abolition research agendas, while comparative analyses have generally been conducted with the legal systems of the United Kingdom, Singapore, or international legal frameworks rather than with Indonesia.¹³

As discussed above, the reform of capital punishment in Indonesia and Malaysia warrants further examination. In Indonesia, the reform is reflected in the reclassification of the death penalty from a principal punishment under Indonesia's Old Criminal Code to a special and alternative punishment under Indonesia's New Criminal Code. Meanwhile, Malaysia introduced a significant reform in 2023 through the *Abolition of Mandatory Death Penalty Act 2023* (Act 846), which abolished the mandatory nature of the death penalty for a number of offences. Under this legislation, judges are granted sentencing discretion to impose alternatives to capital punishment, including imprisonment or whipping.¹⁴ Accordingly, although the death penalty remains part of Malaysia's criminal justice system, its imposition is no longer mandatory. These legal developments in both countries provide a relevant comparative case study for examining the continued existence and justification of capital punishment within national legal systems, particularly in the context of criminal law reform that seeks to reconcile the protection of human rights with the objectives of modern sentencing.

2. Method

This study employs a normative legal research method using statutory and comparative approaches. The statutory approach is adopted because the research focuses on analyzing the legal norms governing capital punishment in Indonesia and Malaysia. Through this approach, the study systematically examines the provisions of Indonesia's New Criminal Code and the Abolition of Mandatory Death Penalty Act 2023 (Act 846), while identifying the legal policy reforms introduced by both jurisdictions. This approach is essential for understanding the normative construction, the direction of legal reform, and the legal implications of capital punishment regulation, particularly in relation to the protection of human rights and the evolution of modern sentencing objectives.

The comparative law approach is employed because Indonesia and Malaysia are two jurisdictions that continue to retain capital punishment while adopting different reform models in response to the development of international human rights standards and modern sentencing principles. Indonesia, through Indonesia's New Criminal Code, reclassifies the death penalty as a special and alternative punishment

Criminal Law and Islamic Law Perspectives," *Legality : Jurnal Ilmiah Hukum* 32, no. 1 (2024): 90–104, <https://doi.org/10.22219/ljih.v32i1.32335>.

¹³ Ismail, "Malaysia's Death Penalty"; Amirah Khadijah Khurun Hizar et al., "The Abolition of Mandatory Death Penalty: Implementation in Malaysia and the United Kingdom," *International Journal of Research and Innovation in Social Science* 9, no. 7 (2025): 389–405, <https://doi.org/10.47772/IJRISS.2025.90700029>; Thaatchayini Kananatu, "Framing Death Penalty Politics in Malaysia," *International Journal for Crime, Justice and Social Democracy* 11, no. 3 (2022): 57–66, <https://doi.org/10.5204/ijcjsd.2476>.

¹⁴ Human Rights Watch, *Malaysia Mencabut Perintah Hukuman Mati Wajib: Langkah yang Bermakna Harus Membuka Jalan Menuju Penghapusan Penuh*, April 20, 2023, <https://www.hrw.org/id/news/2023/04/20/malaysia-repeals-mandatory-death-penalty>.

accompanied by a ten-year probationary period, whereas Malaysia, through the Abolition of Mandatory Death Penalty Act 2023 (Act 846), abolishes the mandatory nature of capital punishment and expands judicial sentencing discretion. This comparative analysis enables the identification of the similarities, differences, and underlying legal policy rationales of these reforms, thereby providing a more comprehensive understanding of the continued existence and justification of capital punishment within national legal systems amid the growing emphasis on human rights protection and the development of modern criminal law.

3. Analysis or Discussion

3.1. The Regulation of Capital Punishment in Indonesia's New Criminal Code

The provisions regarding capital punishment in the New Criminal Code have sparked significant debate, primarily because a vast number of countries globally have abolished the death penalty within their legal frameworks. Under the New Criminal Code, Indonesia maintains the death penalty; however, it no longer functions as a principal penalty. Instead, it is classified as a special or alternative sanction.

The concept of capital punishment in the latest Penal Code is retained as the most severe sanction in the Indonesian legal system. Article 98 of the New Criminal Code stipulates that the death penalty is no longer a principal penalty but is uniquely alternative in nature. This implies that for the relevant offenses, the judiciary should, as far as possible, 'avoid the imposition of the death penalty' subject to the requirements established in Article 100 of the New Criminal Code.

Aulia Andika Rukman notes that there are several reasons why Indonesia continues to employ the capital punishment system, namely: (1) the legacy of death penalty regulations implemented and inherited from the Dutch colonial regime; (2) repressive political efforts stemming from an inability to reform a corrupt legal system; and (3) an increase in crime rates caused by accountable individuals.¹⁵ Under the New Criminal Code, several offenses remain punishable by the death penalty, including:

Table 1. Capital Offenses Stipulated under Indonesia's New Criminal Code

Substance of the Provision	Criminal Sanction and Remarks
Article 191 Committing Treason (Makar) with the intent to kill, deprive the liberty of, or render the President and/or Vice President incapable of governing.	Death penalty , life imprisonment, or a maximum of 20 years' imprisonment
Article 192 Committing Treason (Makar) with the intent to cause part or all of the territory of the Republic of Indonesia to fall under foreign power or to secede from the Republic of Indonesia.	Death penalty , life imprisonment, or a maximum of 20 years' imprisonment. Remarks: 1. Criminal Acts committed with the intent to cause part or all of the national territory to fall under foreign power are classified as extreme treason (<i>landverraad</i>), as they involve the intervention of a foreign state.

¹⁵ Dewi Sekar Candrawati et al., "Eksistensi Pidana Mati Dalam KUHP Baru: Orientasi dan Implikasi," *Madani: Jurnal Ilmiah Multidisiplin* 1, no. 12 (2023): 123–30, <https://doi.org/10.5281/ZENODO.10428719>.

Article 212 (3)

During Wartime, providing aid to the Enemy or detrimental acts to the state for the Enemy's benefit, including: (a) Treacherous acts, surrendering strategic locations/supplies to the enemy, or sabotaging military efforts; (b) Inciting riots, rebellion, or desertion among troops.

Article 459

With premeditation, depriving the life of another person (Premeditated Murder).

Article 479 (4)

Committing theft that is preceded, accompanied, or followed by violence or the threat of violence against persons, with the intent to prepare for or facilitate the theft, or in the event of being caught in the act (in flagrante delicto) to enable oneself or others to maintain possession of the stolen goods, resulting in serious injury or death, committed collectively and in concert, accompanied by one of the following conditions: (1) at night in a dwelling or a closed yard containing a dwelling, on a public road, or in a moving public transportation vehicle; (2) theft committed by means of damaging, breaking into, cutting, smashing, climbing, using false keys, employing false orders, or wearing false official uniforms, to enter the scene of the crime or to reach the goods taken.

Article 588

1. Unlawfully committing violence against persons on board an aircraft in flight (vide Article 586);
2. Unlawfully placing or causing to be placed, by any means whatsoever, any device or substance within an aircraft in service (vide Article 587);
3. The acts mentioned in points 1 and/or 2 are committed by two or more persons collectively and in concert; or as a continuation of a conspiracy resulting in the loss of life or the destruction of the aircraft.

Article 598

Any Person who, with the intent to destroy, in whole or in part, a national, racial, ethnic, religious, or belief group (genocide), by: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part; (d) imposing measures intended to prevent births within the group; or (e) forcibly transferring children of the group to another group.

Article 599 point a

Any Person who commits any act as part of a widespread or systematic attack directed against any civilian

2. Criminal Acts committed with the intent to secede a part of the national territory are classified as internal treason (*laogenuid*), as they do not involve a foreign state, although they may gradually involve foreign powers over time.

Death penalty, life imprisonment, or a maximum of 20 years' imprisonment.

Death penalty, life imprisonment, or a maximum of 20 years' imprisonment.

Death penalty, life imprisonment, or a maximum of 20 years' imprisonment.

Remarks:

1. The criminal act of theft under this provision is qualified as aggravated theft (pencurian dengan pemberatan). The aggravating element is the presence of violence or the threat of violence against persons in the commission of the theft. Such violence or threat of violence may occur before, during, or after the theft is committed.
2. Violence refers to the use of physical force, whether through bodily strength or the use of an instrument/tool. Meanwhile, the threat of violence refers to a situation or condition that instills fear, anxiety, or apprehension in the person being threatened.
3. The use of violence or the threat of violence does not necessarily have to be directed toward the owner of the goods; it may also be directed toward other individuals, such as domestic workers or security guards.

Death penalty, life imprisonment, or a maximum of 20 years' imprisonment.

Death penalty, life imprisonment, or a minimum of 5 (five) years and a maximum of 20 (twenty) years of imprisonment.

Death penalty, life imprisonment, or a minimum of 5 (five) years and a maximum of 20 (twenty) years of imprisonment.

population, with knowledge of the attack (crimes against humanity), in the form of: murder; extermination; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; or the crime of apartheid.

Article 600

Any Person who uses violence or the threat of violence to create a widespread atmosphere of terror or fear among the public, causing mass casualties by depriving others of their liberty or causing the loss of life and property, or resulting in the damage or destruction of strategic vital objects, the environment, public facilities, or international facilities.

Article 610 Paragraph (2) point a

Any Person who, without authorization, produces, imports, exports, or distributes Category I Narcotics in the form of plants exceeding 1 (one) kilogram in weight or exceeding 5 (five) trees, or non-plant Category I Narcotics exceeding 5 (five) grams in weight.

Article 610 Paragraph (2) point b

Any Person who, without authorization, produces, imports, exports, or distributes Category II Narcotics exceeding 5 (five) grams in weight.

Imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years, life imprisonment, or the **death penalty**.

Death penalty, life imprisonment, or imprisonment for a maximum term of 20 (twenty) years, and/or a fine not exceeding Category VI.

Death penalty, life imprisonment, or imprisonment for a term not exceeding 20 (twenty) years, and/or a fine not exceeding Category VI.

Source: Primary Legal Materials, 2025 (Edited).

Based on the Table 1 above, the reform of capital punishment under Indonesia's New Criminal Code does not abolish the existence of the death penalty as a form of punishment; rather, it reclassifies it as a special punishment that is imposed only as an alternative to life imprisonment or a fixed-term term of imprisonment. This reform reflects a paradigm shift from a purely retributive approach toward a more moderate sentencing model, while retaining capital punishment as an ultimum remedium for offences classified as the most serious crimes that pose an extraordinary threat to the legal interests protected by the State.

Research conducted by Prija Djatmika et al. (2024) found that a substantial majority of respondents supported the retention of the death penalty, reflecting a strong retentionist perspective, whereas only a small proportion favored its abolition,¹⁶ nevertheless, the reforms introduced by Indonesia's New Criminal Code deserve recognition because capital punishment is no longer positioned as the sole sentencing option. Instead, it is consistently provided as an alternative to life imprisonment or fixed-term imprisonment. This reformulation expands judicial discretion to impose a sentence that is more proportionate to the offender's degree of culpability, the aggravating and mitigating circumstances, and the sentencing objectives embraced by the Indonesia's New Criminal Code. Moreover, the introduction of a ten-year probationary period further demonstrates that the death penalty is no longer conceived solely as an instrument of retribution but rather as an exceptional punishment that may only be carried out if the convicted person fails to demonstrate rehabilitation or does not satisfy the statutory requirements during the probationary period.

Accordingly, the reform of capital punishment under Indonesia's New Criminal Code reflects a middle-ground approach between retentionist and abolitionist

¹⁶ Prija Djatmika et al., "Discourse on the Death Penalty: A Study of Public Perceptions in Indonesia," *Yustisia Jurnal Hukum* 13, no. 1 (2024): 38–63, <https://doi.org/10.20961/yustisia.v13i1.81938>.

perspectives. While the State continues to retain the death penalty for offences that threaten the most fundamental legal interests—including national security, the right to life, public safety, gross human rights violations, and narcotics-related offences—it has simultaneously narrowed its application by reclassifying capital punishment as an alternative sanction, expanding judicial sentencing discretion, and introducing a probationary review mechanism. These reforms indicate that Indonesia's criminal law policy is evolving toward a sentencing paradigm that places greater emphasis on human rights protection while retaining capital punishment as an exceptional sanction within the national legal system.

3.2. The Regulation of Capital Punishment under the Laws of Malaysia: Penal Code (Act 574) as of 31 May 2023 and Abolition of Mandatory Death Penalty Act 2023 (Act 846)

In October 2018, the Malaysian Cabinet decided to abolish the death penalty, as Malaysia was historically among the nations that practiced capital punishment. Today, the abolition of the death penalty has become a prominent agenda within the international human rights movement.¹⁷

From the perspective of international human rights, capital punishment is viewed as a violation of the right to life, which is a fundamental right inherent to every human being from birth. Furthermore, Islamic or Sharia perspectives and Western perspectives maintain divergent views on human rights. The concept of human rights in Islam is divine in nature; it is non-negotiable and cannot be easily altered. In contrast, the Western perspective views human rights as dynamic, evolving in accordance with the times and human needs. These differing paradigms fuel the ongoing debate regarding the application of the death penalty.¹⁸

According to reports by Amnesty International, Malaysia previously rejected all recommendations regarding a moratorium on executions and the abolition of the death penalty proposed by UN member states during the Universal Periodic Review (UPR), which aimed to improve human rights conditions in the country. Furthermore, Malaysia held a reputation for imposing death sentences through secretive processes. This lack of transparency in capital sentencing increased the risk of judicial errors or wrongful convictions.

However, several months after the ASEAN civil society conference, the Malaysian government began taking substantive steps toward abolition. This shift followed the official announcement in November 2015 regarding the government's intent to amend the draft legislation concerning the death penalty.¹⁹ The Malaysian government's commitment to upholding human rights appeared minimal, exacerbated by a profound lack of transparency in capital sentencing. Despite not being a state party to the International Covenant on Civil and Political Rights (ICCPR) or its Second Optional Protocol which aims at the abolition of the death penalty Malaysia nonetheless made the landmark decision to move toward

¹⁷ Yanti Kristina Sianturi and Irza Khurun'in, "Amnesty International dan Penghapusan Hukuman Mati di Malaysia," *Transformasi Global* 7, no. 2 (2020): 235–57, <https://doi.org/10.21776/ub.jtg.2020.007.02.4>.

¹⁸ Ibid.

¹⁹ Ibid.

abolishing the death penalty.²⁰ In 2023, through the Laws of Malaysia Penal Code (Act 574) (as of 31 May 2023) and the Abolition of Mandatory Death Penalty Act 2023 (Act 846), Malaysia reformed the sentencing provisions for several offences that had previously carried a mandatory death penalty by introducing alternative punishments and granting judges greater sentencing discretion. Rather than requiring the imposition of capital punishment, the amended provisions now allow courts to impose alternative sanctions alongside the death penalty. The specific criminal offences and their corresponding penalties are presented in the following table.

Table 2. Capital Offenses under the Laws of Malaysia: Penal Code (Act 574) as of 31 May 2023 and Abolition of Mandatory Death Penalty Act 2023 (Act 846)

Substance of the Provision	Penalties and remarks
Waging or attempting to wage war or abetting the waging of war against the Yang di-Pertuan Agong, a Ruler or Yang di-Pertua Negeri Article 121 Whoever wages war against the Yang di-Pertuan Agong or against any of the Rulers or Yang di-Pertua Negeri, or attempts to wage such war, or abets the waging of such war.	Be punished with death or imprisonment for life, and if not sentenced to death shall also be liable to fine. Amended by Act 846: Substituting for the words "imprisonment for life" the words "imprisonment for a term of not less than thirty years but not exceeding forty years".
Offences against the person of the Yang di-Pertuan Agong, Ruler or Yang di-Pertua Negeri Article 121A Whoever compasses, imagines, invents, devises or intends the death of or hurt to or imprisonment or restraint of the Yang di-Pertuan Agong or any of the Rulers or Yang di-Pertua Negeri, their heirs or successors.	Be punished with death and shall also be liable to fine. Amended by Act 846: Substituting for the words "with death and shall also be liable to fine" the words "with death or imprisonment for a term of not less than thirty years but not exceeding forty years and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes".
Committing terrorist acts Article 130C (1) Whoever, by any means, directly or indirectly, commits a terrorist act shall be punished — (a) if the act results in death, with death.	Be punished with death. Amended by Act 846: Inserting after the words "with death" the words "or imprisonment for a term of not less than thirty years but not exceeding forty years and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes".
Directing activities of terrorist groups Article 130I Whoever intentionally directs the activities of a terrorist group shall be punished — (a) if the act results in death, with death.	Be punished with death. Amended by Act 846: Inserting after the words "with death" the words "or imprisonment for a term of not less than thirty years but not exceeding forty years, and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes".
Providing or collecting property for terrorist acts Article 130N Whoever, by any means, directly or indirectly, provides or collects or makes available any property intending, knowing or having reasonable grounds to believe that the property	Be punished with death. Amended by Act 846: Inserting after the words "with death" the words "or imprisonment for a term of not less

²⁰ Ibid.

will be used, in whole or in part, to commit a terrorist act shall be punished — (a) if the act results in death, with death.

Providing services for terrorist purposes

Article 1300 (1)

Whoever, directly or indirectly, provides or makes available financial services or facilities

- a) intending that the services or facilities be used, or knowing or having reasonable grounds to believe that the services or facilities will be used, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act, or for the purpose of benefiting any person who is committing or facilitating the commission of a terrorist act; or
- b) knowing or having reasonable grounds to believe that, in whole or in part, the services or facilities will be used by or will benefit any terrorist, terrorist entity or terrorist group,

shall be punished

(aa) if the act results in death, with death.

Accepting gratification to facilitate or enable terrorist acts

Article 130QA

Whoever accepts gratification to facilitate or enable the commission of any terrorist act shall be punished — (a) if the act results in death, with death.

Accepting gratification to facilitate or enable organized criminal activity

Article 130ZB

Whoever accepts gratification to facilitate or enable any organized criminal activity shall be punished - (a) if the act results in death, with death.

Abetment of mutiny, if mutiny is committed in consequence thereof

Article 132

Whoever abets the committing of mutiny by an officer, soldier, sailor or airman in the Malaysian Armed Forces, shall, if mutiny is committed in consequence of that abetment.

Giving or fabricating false evidence with intent to procure conviction of a capital offence

Article 194

Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by the law for the time being in force in Malaysia, shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine; and if an innocent person is convicted and executed in consequence of such false evidence, the person who gives such false evidence.

Punishment for murder

Article 302

Whoever commits murder shall be punished with death.

than thirty years but not exceeding forty years and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes".

Be punished with death.

Amended by Act 846:

Inserting after the words "with death" the words "or imprisonment for a term of not less than thirty years but not exceeding forty years and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes".

Be punished with death.

Amended by Act 846:

Inserting after the words "with death" the words "or imprisonment for a term of not less than thirty years but not exceeding forty years and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes".

Be punished with death.

Amended by Act 846:

inserting after the words "with death" the words "or imprisonment for a term of not less than thirty years but not exceeding forty years and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes".

Be punished with death or with imprisonment for a term which may extend to twenty years, and shall also be liable to fine.

Be punished either with death or the punishment hereinbefore described.

Be punished with death.

Amended by Act 846:



inserting after the words "with death" the words "or imprisonment for a term of not less than thirty years but not exceeding forty years and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes".

Abetment of suicide of child or insane person

Article 305

If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide.

Attempt to murder

Article 307

Whoever does any act with such intention or knowledge and under such circumstances, that if he by that act caused death he would be guilty of murder, shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable to imprisonment for a term which may extend to twenty years.

When any person offending under this section is under sentence of imprisonment for life or for a term of twenty years, he may, if hurt is caused, be punished with death.

Kidnapping or abducting in order to murder

Article 364

Whoever kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered.

Be punished with death or imprisonment for a term which may extend to twenty years, and shall also be liable to fine.

Be punished with death or imprisonment for a term which may extend to thirty years and shall, if he is not sentenced to death, also be liable to whipping.

Amended by Act 846:

Substituting for the words "death or imprisonment for a term which may extend to thirty years and shall, if he is not sentenced to death, also be liable to whipping" the words "imprisonment for a term of not more than thirty years and shall also be punished with whipping".

Be punished with death.

Hostage-taking

Article 374A

Whoever seizes or detains and threatens to kill, to injure or to continue to detain another person ("the hostage") to compel the Government of Malaysia or the Government of any State in Malaysia, any other government, or any international organization or any other person or group of persons to do or refrain from doing any act as an explicit or implicit condition for the release of the hostage shall be punished – (a) if the act results in death, with death.

Punishment for rape

Article 376 (4)

Whoever whilst committing or attempting to commit rape causes the death of the woman on whom the rape is committed or attempted.

Gang-robbery with murder

Article 396

If any one of two or more persons, who are conjointly committing gang-robbery, commits murder in so committing gang-robbery, every one of those persons.

Amended by Act 846:

Inserting after the words "with death" the words "or imprisonment for a term of not less than thirty years but not exceeding forty years and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes".

Be punished with death or imprisonment for a term of not less than fifteen years and not more than thirty years, and shall also be punished with whipping of not less than ten strokes.

Be punished with death or imprisonment for a term which may extend to thirty years, and, where the punishment is not death, shall also be liable to whipping.

Based on Table 2, the reform of capital punishment in Malaysia reflects a more progressive paradigm shift than merely retaining or abolishing the death penalty. Through the Abolition of Mandatory Death Penalty Act 2023 (Act 846), Malaysia has not abolished capital punishment from its criminal justice system; rather, it has abolished the mandatory death penalty that previously bound judicial decision-making for a number of offences. This reform grants judges broader sentencing discretion to choose between capital punishment and imprisonment for a term ranging from thirty to forty years, which, for certain offences, is accompanied by whipping. Consequently, Malaysia's sentencing policy has shifted from an absolute sentencing model toward an individualized sentencing framework,²¹ enabling courts to consider the offender's degree of culpability, aggravating and mitigating circumstances, and the proportionality of punishment in each individual case.

An analysis of the amendments to each statutory provision reveals that the majority of the reforms follow a consistent legislative pattern, namely replacing the previously mandatory death penalty with a sentencing option that allows courts to impose either capital punishment or imprisonment for a term ranging from thirty to forty years, accompanied by whipping. Nevertheless, several notable variations can be identified. Section 364, concerning kidnapping or abduction for the purpose of murder, represents a more substantial reform, as it removes the death penalty entirely and replaces it with imprisonment for a term not exceeding thirty years, together with whipping. By contrast, several other provisions including Sections 132, 194, 305, 307, 376(4), and 396 had already provided alternatives to capital punishment prior to the reform. Consequently, the amendments to these provisions were relatively limited or, in some cases, were not affected by the Abolition of Mandatory Death Penalty Act 2023 (Act 846).

Accordingly, the reform of capital punishment in Malaysia demonstrates a clear trend toward a restrictionist approach, whereby the application of the death penalty is substantially limited without abolishing it entirely. This policy reflects Malaysia's effort to strike a balance between the protection of human rights and the State's interest in imposing severe sanctions for offences regarded as the most serious crimes, particularly those involving national security, terrorism, murder, and other offences resulting in the loss of life. Unlike Indonesia, which reclassifies capital punishment as a special punishment accompanied by a ten-year probationary period, Malaysia retains the death penalty as one of the available sentencing options while abolishing its mandatory nature through the expansion of judicial sentencing discretion. These reforms demonstrate that both countries have adopted a middle-ground approach between retentionism and abolitionism, albeit through different legislative mechanisms.

3.3. The Reform of Capital Punishment Regulation in Indonesia's New Criminal Code and Malaysian Law: A Human Rights Perspective

The reform of capital punishment in Indonesia and Malaysia reflects a significant shift in criminal law policy within Southeast Asia. Rather than abolishing the death penalty entirely, both countries have adopted a more moderate approach by limiting its application and expanding judicial discretion in sentencing.

²¹ See: William W. Berry, "Individualized Sentencing," *SSRN Electronic Journal*, ahead of print, 2019, <https://doi.org/10.2139/ssrn.3358738>.

Indonesia, through Indonesia's New Criminal Code, reclassifies capital punishment as a special and alternative sanction accompanied by a ten-year probationary period. Meanwhile, Malaysia, through the *Abolition of Mandatory Death Penalty Act 2023* (Act 846), abolishes the mandatory nature of the death penalty by allowing courts to impose alternative sentences, primarily imprisonment for a term of thirty to forty years, accompanied by whipping for certain offences.

Accordingly, this section examines the extent to which the reforms undertaken by both countries are consistent with international human rights principles, particularly those concerning the protection of the right to life and the evolving paradigm of modern criminal justice.

Table 3. Regulation Regarding the Right to Life

No	Legal Basic	Provision	Remarks
1	Universal Declaration of Human Right	Article 3 Everyone has the right to life, liberty and security of person.	Article 3 of the UDHR serves as the global foundation for human rights protection, implemented in practice through, for example: 1. Prohibition of the death penalty; 2. Protection of conflict victims; and 3. The right to healthcare.
2	International Covenant on Civil and Political Rights (ICCPR)	Article 6 (1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. Article 6 (2) In 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. Article 7 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.	This article establishes that the right to life must be grounded in law. It also applies to the punishment of perpetrators of most serious crimes, whereby the death penalty may be executed in accordance with prescribed laws. This provision stipulates that retentionist countries may only apply the death penalty for crimes deemed serious under laws active at the time of the offense, provided they do not conflict with the ICCPR and are based on a final court verdict. Torture refers to both physical and psychological acts causing suffering. Thus, this prohibition indirectly protects the right to life by preventing actions that could lead to death or serious injury.
3	The 1945 Constitution of the Republic of Indonesia	Article 28A Every person shall have the right to live and to defend his/her life and existence. Article 28I (1) The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person	The 1945 Constitution affirms the right of every individual to live and defend their existence, recognizing it as the most fundamental human right.

4	Law No. 39 of 1999 on Human Rights	before the law, and the right not to be prosecuted under retroactive laws are human rights that cannot be diminished under any circumstances Article 4 The right to life, the right not to be tortured, the right to personal liberty, freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and the right to equality before the law, and the right not to be prosecuted under retroactive laws are human rights that cannot be diminished under any circumstances and by anyone. Article 9 (1) Everyone has the right to life, to maintain life, and to improve his/her standard of living.	This article aims to guarantee that every individual possesses these rights as non-negotiable human rights that cannot be reduced or infringed upon by any party.
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Source: Primary Legal Materials, 2025 (Edited).

Based on Table 3, the reform of capital punishment in Indonesia and Malaysia reflects an effort to strike a balance between the protection of human rights and the State's interest in imposing sanctions on perpetrators of the most serious crimes. From a normative perspective, both international and domestic human rights instruments recognize the right to life as a fundamental and non-derogable right that cannot be restricted under any circumstances. This principle is enshrined in Article 3 of the Universal Declaration of Human Rights (UDHR), Article 6 of the International Covenant on Civil and Political Rights (ICCPR), Articles 28A and 28I(1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), as well as Articles 4 and 9 of Law No. 39 of 1999 on Human Rights (Human Rights Law). Collectively, these instruments establish that the right to life must be respected, protected, and fulfilled by the State as part of its constitutional and international human rights obligations.

Nevertheless, the ICCPR does not impose an absolute prohibition on the death penalty. Article 6(2) of the Covenant continues to permit retentionist States to maintain capital punishment, provided that its application is strictly limited to the most serious crimes, is based on the law in force at the time the offence was committed, and is imposed pursuant to a final judgment rendered by a competent court. Accordingly, international human rights law does not require the immediate abolition of the death penalty; rather, it encourages States to progressively restrict its application (the restrictionist approach) as a step toward its eventual abolition.

In this context, Indonesia's reform of capital punishment through Indonesia's New Criminal Code reflects a paradigm shift from a predominantly retributive approach toward one that places greater emphasis on the protection of human rights. The reclassification of the death penalty from a principal punishment to a special and alternative punishment, coupled with the introduction of a ten-year probationary period, demonstrates the legislature's intention to position capital punishment as an ultimum remedium. Under this mechanism, convicted persons are afforded an opportunity for rehabilitation and behavioral reform, indicating that the State no longer regards the death penalty as a punishment that should be executed

immediately, but rather as an exceptional sanction to be imposed only in truly extraordinary circumstances.

A comparable development can also be observed in Malaysia's criminal law reform through the Abolition of Mandatory Death Penalty Act 2023 (Act 846). Although the reform does not abolish capital punishment entirely, it removes the mandatory nature of the death penalty for most offences that previously required courts to impose a death sentence. Instead, judges are granted the discretion to impose either capital punishment or imprisonment for a term of thirty to forty years, which, for certain offences, is accompanied by whipping. This policy reinforces the principle of individualized sentencing by enabling courts to consider the offender's degree of culpability, aggravating and mitigating circumstances, and the proportionality of the sentence before determining the appropriate punishment.

From a human rights perspective, the reforms undertaken by both countries exhibit a common tendency to restrict the application of capital punishment without abolishing it altogether. Indonesia has adopted a mechanism that postpones the execution of the death penalty through a ten-year probationary period, whereas Malaysia has abolished the mandatory death penalty by expanding judicial discretion in sentencing. Both models reflect a compromise between the retentionist view, which advocates the continued use of capital punishment for the most serious crimes, and the abolitionist view, which regards the right to life as a non-derogable right. Accordingly, the reforms in both jurisdictions may be understood as embodying a middle-ground approach that seeks to reconcile the protection of human rights with the continued retention of capital punishment within their respective national legal systems.

Nevertheless, when assessed against the evolving standards of international human rights law, these reforms do not fully align with the global trend toward the complete abolition of the death penalty. Although the scope of its application has been substantially narrowed, the continued existence of capital punishment as a criminal sanction remains the subject of ongoing debate regarding its compatibility with the right to life as guaranteed under the UDHR, ICCPR, UUD NRI 1945, and Human Rights Law. Consequently, the reforms adopted by Indonesia and Malaysia are more appropriately understood as "transitional measures" toward the progressive restriction of capital punishment rather than as constituting its complete abolition. They demonstrate an evolving criminal law policy that increasingly emphasizes the principles of proportionality, individualized sentencing, and respect for human rights, while continuing to retain capital punishment as an exceptional sanction reserved for the most serious crimes.

4. Conclusion

The reform of capital punishment in Indonesia and Malaysia reflects a paradigm shift in criminal law from a predominantly retributive approach toward a sentencing system that places greater emphasis on individualized sentencing and the protection of human rights. Through the Indonesia's New Criminal Code, Indonesia reclassifies the death penalty as a special punishment that is imposed only as an alternative sanction and is accompanied by a ten-year probationary period. Meanwhile, Malaysia, through the Abolition of Mandatory Death Penalty Act 2023 (Act 846), abolishes the mandatory death penalty by granting judges the

discretion to choose between capital punishment and imprisonment for a term ranging from thirty to forty years, which, for certain offences, is accompanied by whipping. Although the two jurisdictions have adopted different legislative mechanisms, both retain capital punishment exclusively for the most serious crimes, thereby demonstrating a shared tendency to restrict its application without abolishing it altogether.

From a human rights perspective, the reforms in Indonesia and Malaysia reflect an effort to balance the protection of the right to life with the State's legitimate interest in responding to offences that threaten national security, public safety, and human life. This approach is consistent with Article 6 of ICCPR, which continues to permit retentionist States to maintain capital punishment on a limited basis for the most serious crimes. Accordingly, the reforms undertaken by both countries may be understood as embodying a middle-ground approach between retentionism and abolitionism, while also representing a transitional stage toward a more proportionate sentencing system that emphasizes individualized sentencing and increasingly aligns with the evolving standards of international human rights law.

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