

Disharmony in the Concept of the Death Penalty between the National Criminal Code and the Anti-Corruption Law

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Abstract

This study examines the disharmony in the concept of the death penalty between the National Criminal Code and the Anti-Corruption Law in Indonesia. Article 2, paragraph (2) of the Anti-Corruption Law permits the imposition of the death penalty under certain circumstances, while Article 100 of the National Criminal Code positions the death penalty as an alternative punishment with a probationary period of ten years. This difference creates a normative conflict and raises legal uncertainty in the implementation of criminal law policies, particularly in corruption cases. The purpose of this study is to analyse the differences in the regulation of the death penalty and its implications for the Indonesian criminal justice system. This research is a normative legal study with a descriptive-analytical approach, using secondary data collected through library research and analysed qualitatively. The results indicate that the inconsistency between the two regulations reflects a lack of harmonisation in criminal law reform, potentially leading to differing interpretations and applications of the death penalty in corruption cases. Therefore, legal harmonisation is necessary to ensure legal certainty, justice, and consistency within the Indonesian criminal justice system.

Keywords: Death-Penalty, National-Criminal-Code, Anti-Corruption, Norms, Criminal.

A. Introduction

The death penalty remains one of the most controversial forms of punishment in criminal law, particularly in relation to corruption crimes in Indonesia.¹ As an extraordinary crime that causes significant harm to the state and society, corruption has long been subject to severe criminal sanctions, including the death penalty.² The Anti-Corruption Law, specifically Article 2 paragraph (2), authorises the imposition of the death penalty under certain circumstances.³ However, the enactment of the National Criminal Code through Law Number 1 of 2023 introduces a different concept of capital punishment.

¹ Herman Suherman, "Criminal Law Policy in Tackling Corruption Crimes in Indonesia through the Death Penalty Is Linked to the Principle of Justice," *KnE Social Sciences*, 2023, 1173–84.

² Jeffrey Bellin, ed., "The Futility of Fighting Crime with Criminal Law," in *Mass Incarceration Nation: How the United States Became Addicted to Prisons and Jails and How It Can Recover* (Cambridge: Cambridge University Press, 2022), 67–76, doi:DOI: 10.1017/9781009267595.011.

³ Komang Rama Agastya et al., "Legal Liability Of Defaulting Winners In Voluntary Auctions," *Pakuan Law Review* 12, no. 0173 (2026): 103–17.

Article 100 of the National Criminal Code places the death penalty as an alternative punishment with a probationary period of ten years, emphasising a more humanistic and restorative approach to criminal punishment.⁴

Several previous studies have discussed the implementation of the death penalty for corruption crimes and the debate between punishment and human rights protection.⁵ Most studies focus on the deterrent effect of the death penalty against corruption or on its compatibility with human rights principles.⁶ However, limited research specifically examines the disharmony between the National Criminal Code and the Anti-Corruption Law regarding the regulation of the death penalty. This normative inconsistency creates legal uncertainty in the application of criminal sanctions, particularly in determining whether the death penalty should be imposed as an absolute punishment or as an alternative punishment with conditional enforcement.⁷

Therefore, this article aims to analyse the conflict between Article 2, paragraph (2), of the Anti-Corruption Law and Article 100 of the National Criminal Code, and its implications for the Indonesian criminal justice system. This study is expected to contribute to criminal law reform by identifying the need to harmonise general and special criminal law regulations to ensure legal certainty, justice, and consistency in the enforcement of corruption crimes in Indonesia.

In the Indonesian legal system, the existence of two different concepts regarding the death penalty raises questions concerning the principle of legal certainty and the harmonisation of criminal law policies. On one hand, the Anti-Corruption Law reflects a retributive approach by positioning the death penalty as a severe sanction for extraordinary crimes that threaten the nation's economic stability and public welfare. On the other hand, the National Criminal Code introduces a more progressive penal philosophy by treating capital punishment as a last resort that may be converted if the convicted person demonstrates rehabilitation during the probationary period. This difference indicates a shift in Indonesia's criminal law policy from a punitive orientation toward a more corrective and rehabilitative approach.

The inconsistency between these two regulations may also create practical challenges for law enforcement officers and judges in imposing criminal sanctions for corruption cases. The lack of clear harmonisation between the National Criminal Code and the Anti-Corruption Law may lead to multiple interpretations in judicial practice, particularly regarding whether the death penalty should be immediately enforceable or conditionally imposed. Such conditions may undermine consistency in court decisions and affect public confidence in the criminal justice system, especially in corruption cases that attract significant public attention.⁸

⁴ Alastair McClure, ed., "Discretion, the Death Penalty, and the Criminal Trial," in *Trials of Sovereignty: Mercy, Violence, and the Making of Criminal Law in British India, 1857-1922*, Studies in Legal History (Cambridge: Cambridge University Press, 2024), 145-84, doi:DOI: 10.1017/9781009553490.005.

⁵ Bellin, "The Futility of Fighting Crime with Criminal Law."

⁶ Ambar Soeseno, Basuki Rekso Wibowo, and Atma Suganda, "A New Paradigm in the Application of Criminal Sanctions Against Corruption: Legal and Political Studies to Find Effective Criminal Sanctions for Corruption Eradication in Indonesia, Especially About the Application of Death Penalty," *Revista De Gestão Social E Ambiental* 18, no. 5 (2024): 1-14.

⁷ Setiawan Noerdajasakti and Kiki Kristanto, "Criminal Law Policy On Corruption Criminal Acts: Considering The Death Penalty In The Framework Of Restorative Cension," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 23, no. 2 (2024): 4524-39.

⁸ Bohdan M Holovkin et al., "Fight against Corruption-Related Crimes in Wartime in Ukraine," *International Annals of Criminology* 61, no. 3-4 (2023): 384-409, doi:DOI: 10.1017/cri.2023.31.

Furthermore, the conflict between these regulations may be analysed under the principles of *lex specialis derogat legi generali* and *lex posterior derogat legi priori*.⁹ The Anti-Corruption Law functions as a special criminal regulation specifically governing corruption offences, while the National Criminal Code serves as a general criminal law framework enacted more recently.¹⁰ The coexistence of these principles creates a juridical dilemma in determining which regulation should prevail in the application of the death penalty for corruption crimes.¹¹ Consequently, legal interpretation and harmonisation become essential to prevent overlapping norms and ensure coherent law enforcement.

This study employs a normative juridical approach by examining statutory regulations, legal doctrines, and relevant legal principles governing capital punishment in Indonesia.¹² Through this approach, the research seeks to identify the legal implications arising from the disharmony between the two regulations and to formulate a conceptual framework for harmonising criminal law policies concerning the death penalty.¹³ Ultimately, this article emphasises the importance of synchronising criminal law reforms to achieve justice, legal certainty, and proportionality within the Indonesian criminal justice system.

From a legal theory perspective, the conflict between the Anti-Corruption Law and the National Criminal Code can also be examined through the concepts of legal harmonisation and legislative hierarchy.¹⁴ According to Hans Kelsen's *Stufenbau Theory*, every legal norm must be consistent with higher-ranking and equivalent legal norms to ensure coherence within the legal system.¹⁵ In the context of Indonesian criminal law, the coexistence of differing concepts of the death penalty in two statutory instruments creates normative disharmony that can undermine the principle of legal certainty.¹⁶ The lack of alignment between general and special criminal law can lead to inconsistencies in interpreting and implementing the law.

Furthermore, Gustav Radbruch's theory of the relationship among justice, legal certainty, and utility is relevant to analysing this issue.¹⁷ The Anti-Corruption Law prioritises legal utility and deterrence by imposing severe penalties on corrupt officials, particularly in extraordinary circumstances that impact state finances and public welfare.¹⁸ Conversely, the National Criminal Code seeks to balance justice and humanity by

⁹ Kuel Jok, "International Criminal Law and Customary Law for Punishment of the Perpetrators of International Crimes in South Sudan," *International Annals of Criminology* 61, no. 3-4 (2023): 265-91, doi:DOI: 10.1017/cri.2023.21.

¹⁰ Indah Cahya Purnama and Herlita Eryke, "Reconstruction of the Principle of Legality in Law Number 1 of 2023 : An Analysis of the Extension of Living Law in Society and Its Implications for Legal Certainty," *Pakuan* 12, no. 02 (2026): 17-25.

¹¹ McClure, "Discretion, the Death Penalty, and the Criminal Trial."

¹² Piong Khoiyfung and Asmariah Asmariah, "The Implementation of The Death Penalty In Cases of Corruption According to Law No. 31 of 1999, as Amended by Law No. 20 of 2001 and Law No. 1 of 2023, From The Perspective of Legal Certainty Is as Follows," *International Journal of Social, Policy and Law* 4, no. 2 (2023): 20-28.

¹³ Women Judges et al., "Feminist Judgments : Reimagining the International Criminal Court," 2023.

¹⁴ Natasa Belinda, Fero Sanjaya, and Herlita Eryke, "The Formulation of Morality Crimes in Law No . 1 of 2023 : A Criminal Law Study of the Risk of Overcriminalization and Legal Certainty," *Pakuan Law Review* 12, no. 02 (2026): 26-40.

¹⁵ Gonzalo Villa-Rosas, "Merkl's Stufenbaulehre in the History of the Theory of Legal Power," in *Legal Power and Legal Competence: Meaning, Normativity, Officials and Theories* (Springer, 2023), 289-303.

¹⁶ Syofyan Hadi, "The Influence of Theorie Von Stufenbau Der Rechtsordnung in the Indonesian Legal System," *DiH: Jurnal Ilmu Hukum*, 2024, 202-10.

¹⁷ Vinicius Fernandes Ormelesi, "Nietzsche and Legal Science: Bodenheimer's Interpretation on Nietzsche Revisited," *Available at SSRN 5098553*, 2024.

¹⁸ Cholida Hanum, *Hukum Dan Hak Asasi Manusia: Perkembangan Dan Perdebatan Masa Kini* (IAIN Salatiga Press, 2020).

introducing the possibility of rehabilitation through a probationary period before the execution of the death penalty. These differing orientations highlight the tension between retributive justice and restorative justice in Indonesia's criminal law reform.¹⁹

Furthermore, the concept of criminal law reform introduced in the Criminal Code reflects modern criminal policy, influenced by developments in international human rights law. The provisions in Article 100 indicate that the death penalty is no longer viewed solely as an absolute form of punishment, but rather as a special and conditional sanction.²⁰ This development stands in contrast to the Anti-Corruption Law, which still maintains a stricter punitive approach to corruption offences as extraordinary crimes. Consequently, the discrepancy between these two regulations reflects not only technical legislative issues but also a philosophical conflict regarding the purpose of punishment within Indonesia's criminal justice system.

The existence of conflicting norms may also affect the effectiveness of law enforcement in corruption cases. Judges and law enforcement authorities may face difficulties in determining which legal framework to prioritise when adjudicating cases involving the death penalty for corruption offences.²¹ If this lack of harmony remains unresolved, it could lead to inconsistent sentencing and erode public confidence in the criminal justice system's consistency and credibility.²² Therefore, harmonisation between the Criminal Code and the Anti-Corruption Law is crucial to ensure that criminal law policies are implemented coherently and consistently.

Based on the discussion above, this article addresses the following research question: How do conflicts between Article 2(2) of the Anti-Corruption Law and Article 100 of the National Criminal Code create inconsistencies in the regulation of the death penalty in Indonesia? This research question is important to examine because the existence of conflicting legal norms concerning the death penalty may affect the consistency of criminal law enforcement and the achievement of legal objectives within the Indonesian criminal justice system.²³ The differing approaches adopted by the Anti-Corruption Law and the National Criminal Code not only reflect a divergence in legislative policy but also create uncertainty regarding the application of capital punishment in corruption cases. Accordingly, a comprehensive legal analysis is necessary to determine the appropriate interpretation and implementation of these regulations, as well as to formulate a harmonised legal framework that ensures legal certainty, justice, and proportionality in the enforcement of corruption offences in Indonesia.

B. Research Method

¹⁹ Yudi Krismen, *Sistem Peradilan Pidana Indonesia* (PT. RajaGrafindo Persada-Rajawali Pers, 2022).

²⁰ Nicolas De Sadeleer, "The Rule of Law Between National and International Contexts : Introduction to the Special Issue on International Economic Law and the Rule of Law," *European Journal of Risk Regulation*, 2024, 477–84, doi:10.1017/err.2024.39.

²¹ Yulia Dessani, Bella Afrilia, and Sasmil Nelwati, "Building Pillars of Justice and Order: Uncovering the Challenges and Solutions of Equitable Law Enforcement in Indonesia," *Hakamain: Journal of Sharia and Law Studies* 2, no. 1 (2023): 117–28.

²² Luke Moffett and Steven Van De Put, "Upholding Humanity : The Role of Redress in Preventing and Responding to Civilian Harm," *International Review of the Red Cross*, 2025, 1–34, doi:10.1017/S1816383125100829.

²³ Yusra Suedi, *The Individual in the Law and Practice of the International Court of Justice, Cambridge Studies in International and Comparative Law* (Cambridge: Cambridge University Press, 2025), doi:DOI: 10.1017/9781009394512.

This study employs a normative juridical research method with a descriptive-analytical approach.²⁴ Normative legal research examines legal principles, statutory regulations, legal doctrines, and conceptual approaches to the regulation of the death penalty in Indonesia. The research focuses on analysing the conflict between Article 2, paragraph (2), of the Anti-Corruption Law and Article 100 of the National Criminal Code regarding the concept and implementation of capital punishment in corruption cases.²⁵

The approach applied in this study includes the *statute approach* and the conceptual approach. The statutory approach involves analysing relevant laws and regulations governing the death penalty, particularly the Anti-Corruption Law and the National Criminal Code. Meanwhile, the conceptual approach is used to examine legal theories and principles relating to criminal law reform, legal harmonisation, legal certainty, and the objectives of punishment within the Indonesian criminal justice system.

Table 1. Research Method Framework

Research Component	Description
Type of Research	Normative juridical research
Research Approach	Descriptive-analytical approach
Statutory Approach	Analysis of Article 2 paragraph (2) of the Anti-Corruption Law and Article 100 of the National Criminal Code
Conceptual Approach	Examination of legal certainty, legal harmonisation, criminal law reform, and punishment theories
Legal Materials	Primary, secondary, and tertiary legal materials
Data Collection Technique	Library research
Data Analysis Method	Qualitative legal analysis and legal interpretation
Research Objective	Analysing normative conflicts and legal implications of death penalty regulation

Source: Processed by the author based on the research methodology framework

Table 1 presents the research methodology framework used in this study. The framework demonstrates that this research applies a normative juridical method with a descriptive-analytical approach to analyse the conflict between Article 2, paragraph (2), of the Anti-Corruption Law and Article 100 of the National Criminal Code. The use of the statutory and conceptual approaches enables the study to examine both the legal substance and the theoretical foundations underlying the regulation of the death penalty in Indonesia. Furthermore, the framework illustrates the utilisation of primary, secondary, and tertiary legal materials collected through library research and analysed qualitatively through legal interpretation and systematic analysis.²⁶ Through this methodological structure, the research aims to identify the normative inconsistencies in the regulation of capital punishment and to formulate legal harmonisation within Indonesia's criminal law reform.

The data in this study were collected through library research, including statutory regulations, legal doctrines, journal articles, books, and other legal materials related to the regulation of the death penalty in Indonesia. Primary legal materials consisted of Article 2 paragraph (2) of the Anti-Corruption Law and Article 100 of the National Criminal Code.²⁷ Secondary legal materials included academic literature, previous studies, and legal theories concerning criminal law reform, legal certainty, and legal harmonisation.²⁸ Meanwhile, tertiary legal materials consisted of legal dictionaries, encyclopaedias, and supporting references relevant to the research topic. All

²⁴ Peter Mahmud Marzuki, *Teori Hukum* (Prenada Media, 2020).

²⁵ Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi* (Prenada Media Group, 2022).

²⁶ Sudikno Mertokusumo, "Penemuan Hukum Sebuah Pengantar," 2007.

²⁷ BPK RI, "Undang-Undang No. 1 Tahun 2023 Tentang KUHP," no. 16100 (2023).

²⁸ Marzuki, *Penelitian Hukum Edisi Revisi*.

collected materials were analysed qualitatively through legal interpretation and systematic analysis to identify the normative conflicts and legal implications arising from the inconsistency between the two regulations.²⁹

The data were collected through library research, including the review of legal documents, academic writings, and relevant legislation. Furthermore, the collected data were analysed qualitatively through legal interpretation and systematic analysis to identify the legal implications arising from the inconsistency between the two regulations. Through this method, the study aims to provide a comprehensive understanding of how conflicts between Article 2 paragraph (2) of the Anti-Corruption Law and Article 100 of the National Criminal Code create inconsistencies in the regulation of the death penalty in Indonesia, as well as to formulate the need for harmonisation in criminal law reform.³⁰

C. Results and Discussion

Conflict of Norms between Article 2 Paragraph (2) of the Anti-Corruption Law and Article 100 of the National Criminal Code

The regulation of the death penalty in Indonesia currently reflects a normative inconsistency between the Anti-Corruption Law and the National Criminal Code. Article 2, paragraph (2) of the Anti-Corruption Law provides that the death penalty may be imposed on perpetrators of corruption committed under certain circumstances, such as during national disasters, economic crises, or other extraordinary conditions. This provision demonstrates a punitive and retributive orientation by treating corruption as an extraordinary crime that severely harms state finances and public welfare.³¹ In this context, the death penalty is positioned as an absolute criminal sanction aimed at creating a deterrent effect against corruption offences.

In contrast, Article 100 of the National Criminal Code introduces a different concept of capital punishment by positioning the death penalty as an alternative and special punishment. The provision stipulates that the execution of the death penalty may be postponed for a probationary period of ten years, during which the convicted person is allowed to demonstrate remorse and rehabilitation. If the convicted person shows significant improvement, the death penalty may be converted into life imprisonment.³² This concept reflects a more humanistic and restorative approach to criminal punishment, influenced by developments in international human rights law and modern criminal policy.

The existence of these differing approaches creates a juridical conflict regarding the implementation of the death penalty in corruption cases. From a legal principles perspective, the Anti-Corruption Law functions as a *lex specialis*, specifically regulating corruption offences.³³ In contrast, the National Criminal Code serves as a *lex generalis* enacted more recently. Consequently, the application of the principles *lex specialis derogat legi generali*, and *lex posterior derogat legi priori* gives rise to uncertainty regarding which

²⁹ Philipus M. Hadjon et al., *Pengantar Hukum Administrasi Indonesia (Introduction To The Indonesian Administrative Law)* (Yogyakarta: Gadjah Mada University Press, 2024).

³⁰ S H Moeljatno, "Asas-Asas Hukum Pidana," *Rineka Cipta, Jakarta*, 2022.

³¹ Rafi Ashadiqi, "Tinjauan Yuridis Terhadap Pemidanaan Pelaku Tindak Pidana Penganiayaan Yang Menyebabkan Luka Berat (Studi Putusan No: 334/Pid. B/2023/Pn. Amb Dan Putusan No: 30/Pid. B/2023/PN. CJR)" (Universitas Islam Sultan Agung Semarang, 2025).

³² Yuber Lago, Yuni Priskila Ginting, and Fajar Sugianto, "Dilema Keadilan Hukum Antara Hukum Tidak Tertulis Yang Hidup (Ongeschreven Recht) Dan Asas Legalitas Dalam Hukum Pidana Indonesia Ditinjau Dari Aspek Filo-Sofis," *DiH: Jurnal Ilmu Hukum*, 2023, 71-84.

³³ Suherman, "Criminal Law Policy in Tackling Corruption Crimes in Indonesia through the Death Penalty Is Linked to the Principle of Justice."

provision should prevail in judicial practice.³⁴ Previous studies generally focused on the effectiveness of the death penalty in combating corruption or its compatibility with human rights principles. However, this study highlights that the primary issue lies not merely in the legitimacy of capital punishment, but also in the normative inconsistency between general and special criminal law regulations governing its implementation.

To clarify the normative differences between the Anti-Corruption Law and the National Criminal Code regarding the death penalty, the comparison below illustrates the conflicting legal concepts and their implications within the Indonesian criminal justice system.

Table 2. Comparison of the Death Penalty Concept between the Anti-Corruption Law and the National Criminal Code

Aspect	Article 2 Paragraph (2) Anti-Corruption Law	Article 100 National Criminal Code	Legal Implication
Legal Character	Special criminal law (lex specialis)	General criminal law (lex generalis)	Creates uncertainty regarding applicable norms
Position of Death Penalty	Principal and severe punishment	Alternative and conditional punishment	Different sentencing orientation
Objective of Punishment	Retributive and deterrent approach	Restorative and rehabilitative approach	Conflict in criminal law policy
Conditions of Application	Applied under extraordinary circumstances	Execution postponed with 10-year probation	Different implementation mechanisms
Orientation of Criminal Policy	Punitive approach toward corruption	Humanistic and proportional approach	Inconsistent penal philosophy
Possibility of Sentence Conversion	No explicit conversion mechanism	May be converted into life imprisonment	Creates disparity in sentencing
Legal Principle Involved	Lex specialis derogat legi generali	Lex posterior derogat legi priori	Juridical conflict in judicial practice
Impact on Law Enforcement	Emphasises deterrence against corruption	Emphasises rehabilitation of offenders	Potential inconsistency in judicial decisions

Table 2 demonstrates the fundamental differences between the Anti-Corruption Law and the National Criminal Code regarding the regulation of the death penalty. The Anti-Corruption Law adopts a retributive, deterrent-oriented approach, positioning capital punishment as a principal sanction for extraordinary crimes. In contrast, the National Criminal Code introduces a rehabilitative and restorative approach through the conditional implementation of the death penalty. These differences create normative inconsistencies that may undermine legal certainty and judicial consistency.

Furthermore, this disharmony reflects a broader problem in Indonesia's criminal law reform process. The National Criminal Code seeks to modernise criminal law by emphasising rehabilitation and proportionality in sentencing, while the Anti-Corruption Law maintains a strict punitive approach. As a result, the absence of harmonisation between these regulations potentially undermines the principle of legal certainty and may lead to inconsistent interpretations by judges and law enforcement authorities.

³⁴ Mertokusumo, "Penemuan Hukum Sebuah Pengantar."

Legal Implications of the Disharmony in the Regulation of the Death Penalty in Indonesia

The conflict between Article 2 paragraph (2) of the Anti-Corruption Law and Article 100 of the National Criminal Code has significant implications for the Indonesian criminal justice system. One of the most important implications is the emergence of legal uncertainty in the application of capital punishment for corruption offences.³⁵ Judges may face difficulties in determining whether the death penalty should be imposed as an absolute punishment under the Anti-Corruption Law or as a conditional punishment subject to probation under the National Criminal Code. This situation may lead to disparities in sentencing and inconsistent judicial decisions in corruption cases.³⁶

In addition, the inconsistency between the two regulations may weaken the effectiveness of criminal law enforcement against corruption. The Anti-Corruption Law was enacted to address corruption as an extraordinary crime requiring extraordinary measures, including severe criminal sanctions.³⁷ However, the introduction of a conditional death penalty under the National Criminal Code may be interpreted as reducing the severity of punishment for corruption offenders. This could diminish the deterrent effect expected from the imposition of capital punishment in corruption cases.

From the perspective of criminal law theory, the conflict between these regulations also demonstrates the tension between retributive justice and restorative justice. The Anti-Corruption Law prioritises retributive justice by focusing on punishment as a form of retaliation for serious wrongdoing against the state and society. Conversely, the National Criminal Code adopts a restorative and rehabilitative approach by recognising the possibility of reforming offenders before executing the death penalty. Unlike previous studies that mainly discussed the philosophical debate regarding the death penalty, this research emphasises the practical legal consequences arising from the coexistence of these contradictory penal policies.

Moreover, the lack of harmonisation between these regulations may affect public trust in the criminal justice system. Corruption cases often attract widespread public attention because they directly impact economic development, public welfare, and state integrity. Inconsistent legal frameworks and sentencing practices may create perceptions of injustice and undermine public confidence in the legal system's ability to combat corruption effectively.³⁸ Therefore, harmonisation between the National Criminal Code and the Anti-Corruption Law is necessary to ensure consistency in criminal law enforcement and to uphold the principles of justice, legal certainty, and proportionality.

Based on these findings, this study argues that legal harmonisation should be achieved through legislative reform and systematic legal interpretation to clarify the relationship between the Anti-Corruption Law and the National Criminal Code regarding the death penalty.³⁹ Such harmonisation is essential to prevent overlapping norms and to establish a coherent criminal law policy capable of addressing corruption offences while still respecting fundamental principles of justice and human rights.

³⁵ Bayu Ihsanul Fata, "Kebijakan Hukum Pidana Tentang Perluasan Asas Legalitas Dalam Perspektif Hukum Pidana Nasional" (Universitas Islam Sultan Agung Semarang, 2024).

³⁶ Fence M Wantu, *Buku Ajar Pengantar Ilmu Hukum* (Reviva Cendekia, 2022).

³⁷ Geovanny Chantal Rewur, "Kajian Yuridis Terhadap Pengecualian Asas Non Retroaktif Ditinjau Dari Kitab Undang-Undang Hukum Pidana," *LEX PRIVATUM* 16, no. 1 (2025).

³⁸ Peter Mahmud Marzuki, "Penelitian Hukum, Edisi Revisi, Cetakan Ke-12," *Jakarta: Kencana*, 2016, 133–36.

³⁹ Dwi Leni; Nur Rohim; Nurmala, *Hukum Pidana "Asas, Teori Dan Praktek,"* Edisi I (Medan: PT Media Penerbit Indonesia, 2025), [http://repository.mediapenerbitindonesia.com/641/1/Hukum Pidana.pdf](http://repository.mediapenerbitindonesia.com/641/1/Hukum%20Pidana.pdf).

Furthermore, the normative conflict between the Anti-Corruption Law and the National Criminal Code may also be analysed through the principle of legal certainty, *rechtssicherheit* as proposed by Gustav Radbruch. Legal certainty requires that laws be formulated consistently, clearly, and predictably to prevent multiple interpretations in judicial practice. In the context of the death penalty for corruption offences, the coexistence of two distinct penal concepts creates ambiguity about the legal framework judges and law enforcement authorities should apply. Such ambiguity may result in unequal treatment before the law and undermine the consistency of sentencing, which are essential elements of a fair criminal justice system.

Additionally, this disharmony reflects a challenge in synchronising criminal law reform in Indonesia. Criminal law reform should ideally create coherence between general criminal law and special criminal law to ensure the effective implementation of legal policies. However, the divergence between the punitive orientation of the Anti-Corruption Law and the rehabilitative orientation of the National Criminal Code demonstrates the absence of a unified penal policy concerning capital punishment.⁴⁰ According to Barda Nawawi Arief's concept of criminal law policy, the formulation of criminal sanctions must reflect an integrated legal system capable of balancing legal protection, justice, and social interests. Therefore, inconsistencies between these regulations indicate that Indonesian criminal law reform has not yet fully achieved harmonisation in determining the objectives and implementation of punishment.

From a comparative criminal law perspective, several countries have gradually shifted from absolute capital punishment toward conditional or alternative sentencing mechanisms, driven by the growing influence of international human rights norms.⁴¹ The National Criminal Code appears to adopt this global trend by treating the death penalty as an exceptional punishment subject to evaluation and rehabilitation.⁴² Nevertheless, corruption in Indonesia remains categorised as an extraordinary crime with severe social and economic consequences, thereby justifying stricter sanctions under the Anti-Corruption Law.⁴³ This contrast demonstrates the tension between international human rights developments and domestic legal policies aimed at combating corruption through severe punishment.

Moreover, the conflict of norms may also affect the principle of proportionality in sentencing. The principle of proportionality requires that criminal sanctions correspond to the gravity of the offence and the culpability of the offender.⁴⁴ Under the Anti-Corruption Law, the death penalty is justified as a proportional response to corruption committed under extraordinary circumstances. However, Article 100 of the National Criminal Code provides for reconsideration and sentence conversion, suggesting that even serious offenders retain the opportunity for rehabilitation. These differing approaches create uncertainty regarding how proportionality should be interpreted and implemented in corruption cases involving capital punishment.

Therefore, resolving the disharmony between these regulations requires not only

⁴⁰ Eds Choi Y, Fleckenstein, Lee, *Welfare Reform and Social Investment Policy* (Bristol University Press, 2021), doi:DOI: 10.46692/9781447352754.

⁴¹ Moh Taufik, *Hukum Kebijakan Publik: Teori Dan Praksis* (Tanah Air Beta, 2022).

⁴² Loso Judijanto et al., *Pengantar Hukum Pidana Indonesia* (PT. Green Pustaka Indonesia, 2025).

⁴³ Jesslyn Elisandra Amstrong Harefa, "Tiada Sesuatu Perbuatan Boleh Dijatuhi Pidana Melainkan Lewat Kekuatan Ketentuan Perundang-Undangan Universitas Nias , Indonesia Universitas Pembangunan Panca Budi Medan , Indonesia," *Jurnal Riset Rumpun Ilmu Sosial, Politik Dan Humaniora* 4, no. April (2025), doi:<https://doi.org/10.55606/jurrish.v4i2.5033>.

⁴⁴ Lilik Mulyadi, *Bunga Rampai Hukum Pidana Umum Dan Khusus* (Penerbit Alumni, 2023).

legislative harmonisation but also a comprehensive reinterpretation of Indonesia's criminal law objectives.⁴⁵ Harmonisation efforts should clarify the relationship between special criminal law and general criminal law while ensuring that criminal sanctions remain consistent with constitutional principles, human rights standards, and the broader objectives of criminal justice. In this regard, the reform of capital punishment policy should not focus solely on punitive severity but also on legal certainty, proportionality, rehabilitation, and the protection of public interests within the Indonesian criminal justice system.

D. Conclusion and Recommendations

The conflict between Article 2, paragraph (2), of the Anti-Corruption Law and Article 100 of the National Criminal Code reveals a normative inconsistency in the regulation of the death penalty within the Indonesian criminal justice system. The Anti-Corruption Law adopts a punitive, retributive approach, positioning the death penalty as a principal sanction for extraordinary crimes. At the same time, the National Criminal Code introduces a conditional and rehabilitative concept of capital punishment through a probationary mechanism. This divergence creates legal uncertainty in judicial practice, particularly regarding the implementation and interpretation of the death penalty in corruption cases. The coexistence of these conflicting penal policies also reflects the absence of harmonisation between general criminal law and special criminal law in Indonesia's criminal law reform process.

Therefore, harmonisation between the Anti-Corruption Law and the National Criminal Code is necessary to ensure legal certainty, consistency, and proportionality in the enforcement of corruption offences. Legislative reform should clarify the relationship between special and general criminal law regulations concerning capital punishment, particularly in determining the legal status and implementation mechanism of the death penalty. In addition, law reform policies should balance the objectives of punishment, human rights protection, deterrence, and rehabilitation to establish a coherent criminal justice system capable of effectively addressing corruption while maintaining justice and public trust in the legal system.

⁴⁵ Faisal Supardjo, "Penegakan Hukum Obstruction of Justice Terhadap Proses Penyidikan Kepolisian" (Universitas Islam Sultan Agung Semarang, 2024).

References

- Agastya, Komang Rama, Anak Agung, Istri Agung, and Nengah Renaya. "Legal Liability Of Defaulting Winners In Voluntary Auctions." *Pakuan Law Review* 12, no. 0173 (2026): 103–17.
- Amstrong Harefa, Jesslyn Elisandra. "Tiada Sesuatu Perbuatan Boleh Dijatuhi Pidana Melainkan Lewat Kekuatan Ketentuan Perundang-Undangan Universitas Nias , Indonesia Universitas Pembangunan Panca Budi Medan , Indonesia." *Jurnal Riset Rumpun Ilmu Sosial, Politik Dan Humaniora* 4, no. April (2025). doi:<https://doi.org/10.55606/jurrish.v4i2.5033>.
- Ashadiqi, Rafi. "Tinjauan Yuridis Terhadap Pidanaan Pelaku Tindak Pidana Penganiayaan Yang Menyebabkan Luka Berat (Studi Putusan No: 334/Pid. B/2023/Pn. Amb Dan Putusan No: 30/Pid. B/2023/PN. CJR)." Universitas Islam Sultan Agung Semarang, 2025.
- Belinda, Natasa, Fero Sanjaya, and Herlita Eryke. "The Formulation of Morality Crimes in Law No . 1 of 2023 : A Criminal Law Study of the Risk of Overcriminalization and Legal Certainty." *Pakuan Law Review* 12, no. 02 (2026): 26–40.
- Bellin, Jeffrey, ed. "The Futility of Fighting Crime with Criminal Law." In *Mass Incarceration Nation: How the United States Became Addicted to Prisons and Jails and How It Can Recover*, 67–76. Cambridge: Cambridge University Press, 2022. doi:DOI: 10.1017/9781009267595.011.
- BPK RI. "Undang-Undang No. 1 Tahun 2023 Tentang KUHP," no. 16100 (2023).
- Choi Y, Fleckenstein, Lee, Eds. *Welfare Reform and Social Investment Policy*. Bristol University Press, 2021. doi:DOI: 10.46692/9781447352754.
- Dessani, Yulia, Bella Afrilia, and Sasmi Nelwati. "Building Pillars of Justice and Order: Uncovering the Challenges and Solutions of Equitable Law Enforcement in Indonesia." *Hakamain: Journal of Sharia and Law Studies* 2, no. 1 (2023): 117–28.
- Fata, Bayu Ihsanul. "Kebijakan Hukum Pidana Tentang Perluasan Asas Legalitas Dalam Perspektif Hukum Pidana Nasional." Universitas Islam Sultan Agung Semarang, 2024.
- Hadi, Syofyan. "The Influence of Theorie Von Stufenbau Der Rechtsordnung in the Indonesian Legal System." *DiH: Jurnal Ilmu Hukum*, 2024, 202–10.
- Hadjon, Philipus M., Sri Soemantri Martosoewignjo, Sjachran Basah, Bagir Manan, Laica Marzuki, Ten Berge, Van Buuren, and Stroink. *Pengantar Hukum Administrasi Indonesia (Introduction To The Indonesian Administrative Law)*. Yogyakarta: Gadjah Mada University Press, 2024.
- Hanum, Cholida. *Hukum Dan Hak Asasi Manusia: Perkembangan Dan Perdebatan Masa Kini*. IAIN Salatiga Press, 2020.
- Holovkin, Bohdan M, Mykola Semenyshyn, Oleksii V Tavorzhanskyi, Oleksandr V Lysodyed, and Nataliia V Smetanina. "Fight against Corruption-Related Crimes in Wartime in Ukraine." *International Annals of Criminology* 61, no. 3–4 (2023): 384–409. doi:DOI: 10.1017/cri.2023.31.
- Jok, Kuel. "International Criminal Law and Customary Law for Punishment of the Perpetrators of International Crimes in South Sudan." *International Annals of Criminology* 61, no. 3–4 (2023): 265–91. doi:DOI: 10.1017/cri.2023.21.
- Judges, Women, Politics Book, Prize Law, and Prosecuting Sexual. "Feminist Judgments : Reimagining the International Criminal Court," 2023.
- Judijanto, Loso, B Jalil, I Made Kastama, and Amran Wahid. *Pengantar Hukum Pidana Indonesia*. PT. Green Pustaka Indonesia, 2025.
- Khoyfung, Piong, and Asmariah Asmariah. "The Implementation of The Death Penalty In Cases

- of Corruption According to Law No. 31 of 1999, as Amended by Law No. 20 of 2001 and Law No. 1 of 2023, From The Perspective of Legal Certainty Is as Follows." *International Journal of Social, Policy and Law* 4, no. 2 (2023): 20–28.
- Krismen, Yudi. *Sistem Peradilan Pidana Indonesia*. PT. RajaGrafindo Persada-Rajawali Pers, 2022.
- Lago, Yuber, Yuni Priskila Ginting, and Fajar Sugianto. "Dilema Keadilan Hukum Antara Hukum Tidak Tertulis Yang Hidup (Ongeschreven Recht) Dan Asas Legalitas Dalam Hukum Pidana Indonesia Ditinjau Dari Aspek Filo-Sofis." *DiH: Jurnal Ilmu Hukum*, 2023, 71–84.
- Marzuki, Peter Mahmud. "Penelitian Hukum, Edisi Revisi, Cetakan Ke-12." *Jakarta: Kencana*, 2016, 133–36.
- . *Penelitian Hukum Edisi Revisi*. Prenada Media Group, 2022.
- . *Teori Hukum*. Prenada Media, 2020.
- McClure, Alastair, ed. "Discretion, the Death Penalty, and the Criminal Trial." In *Trials of Sovereignty: Mercy, Violence, and the Making of Criminal Law in British India, 1857–1922*, 145–84. Studies in Legal History. Cambridge: Cambridge University Press, 2024. doi:DOI: 10.1017/9781009553490.005.
- Mertokusumo, Sudikno. "Penemuan Hukum Sebuah Pengantar," 2007.
- Moeljatno, S H. "Asas-Asas Hukum Pidana." *Rineka Cipta, Jakarta*, 2022.
- Moffett, Luke, and Steven Van De Put. "Upholding Humanity : The Role of Redress in Preventing and Responding to Civilian Harm." *International Review of the Red Cross*, 2025, 1–34. doi:10.1017/S1816383125100829.
- Mulyadi, Lilik. *Bunga Rampai Hukum Pidana Umum Dan Khusus*. Penerbit Alumni, 2023.
- Noerdajasakti, Setiawan, and Kiki Kristanto. "Criminal Law Policy On Corruption Criminal Acts: Considering The Death Penalty In The Framework Of Restorative Cension." *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 23, no. 2 (2024): 4524–39.
- Nur Rohim; Nurmala, Dwi Leni; *Hukum Pidana "Asas, Teori Dan Praktek."* Edisi I. Medan: PT Media Penerbit Indonesia, 2025.
[http://repository.mediapenerbitindonesia.com/641/1/Hukum Pidana.pdf](http://repository.mediapenerbitindonesia.com/641/1/Hukum%20Pidana.pdf).
- Ormelesi, Vinicius Fernandes. "Nietzsche and Legal Science: Bodenheimer's Interpretation on Nietzsche Revisited." *Available at SSRN 5098553*, 2024.
- Purnama, Indah Cahya, and Herlita Eryke. "Reconstruction of the Principle of Legality in Law Number 1 of 2023 : An Analysis of the Extension of Living Law in Society and Its Implications for Legal Certainty." *Pakuan* 12, no. 02 (2026): 17–25.
- Rewur, Geovanny Chantal. "Kajian Yuridis Terhadap Pengecualian Asas Non Retroaktif Ditinjau Dari Kitab Undang-Undang Hukum Pidana." *LEX PRIVATUM* 16, no. 1 (2025).
- Sadeleer, Nicolas De. "The Rule of Law Between National and International Contexts : Introduction to the Special Issue on International Economic Law and the Rule of Law." *European Journal of Risk Regulation*, 2024, 477–84. doi:10.1017/err.2024.39.
- Soeseno, Ambar, Basuki Rekso Wibowo, and Atma Suganda. "A New Paradigm in the Application of Criminal Sanctions Against Corruption: Legal and Political Studies to Find Effective Criminal Sanctions for Corruption Eradication in Indonesia, Especially About the Application of Death Penalty." *Revista De Gest3o Social E Ambiental* 18, no. 5 (2024): 1–14.
- Suedi, Yusra. *The Individual in the Law and Practice of the International Court of Justice*. Cambridge Studies in International and Comparative Law. Cambridge: Cambridge University Press, 2025. doi:DOI: 10.1017/9781009394512.
- Suherman, Herman. "Criminal Law Policy in Tackling Corruption Crimes in Indonesia through the Death Penalty Is Linked to the Principle of Justice." *KnE Social Sciences*, 2023, 1173–84.

Supardjo, Faisal. "Penegakan Hukum Obstruction of Justice Terhadap Proses Penyidikan Kepolisian." Universitas Islam Sultan Agung Semarang, 2024.

Taufik, Moh. *Hukum Kebijakan Publik: Teori Dan Praksis*. Tanah Air Beta, 2022.

Villa-Rosas, Gonzalo. "Merkl's Stufenbaulehre in the History of the Theory of Legal Power." In *Legal Power and Legal Competence: Meaning, Normativity, Officials and Theories*, 289–303. Springer, 2023.

Wantu, Fence M. *Buku Ajar Pengantar Ilmu Hukum*. Reviva Cendekia, 2022.