

Standarts for Determining “Commendable Attitudes and Actions” in Article 100 Paragraph (4) of Law Number 1 of 2023 concerning the Indonesia Criminal Code

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Standarts for Determining “Commendable Attitudes and Actions” in Article 100 Paragraph (4) of Law Number 1 of 2023 concerning the Indonesia Criminal Code

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Abstract

One of the important updates in the National Criminal Code is the implementation of the conditional death penalty, which provides an opportunity for death row inmates to change their sentence to life imprisonment if they show commendable attitudes and actions during the probation period. The study found that the phrase “commendable attitudes and deeds” refers to sincere remorse, adherence to rules, and positive contributions during the probationary period. However, this article does not yet have clear guidelines or indicators, thus posing challenges in its implementation, including potential subjectivity and inconsistencies in assessments. This study aims to find out how standart determines commendable attitudes and actions in Article 100 Paragraph (4) of Law Number 1 of 2023 concerning the Criminal Code. The method used in this study is normative juridical using a statutory approach and a conceptual approach. The results of this study are that the phrase “commendable attitudes and deeds” refers to sincere remorse, adherence to the rules, and positive contributions during the trial period. However, this article does not have clear guidelines or indicators, thus posing challenges in implementation, including the potential for subjectivity and inconsistency in assessment. The process of converting the death penalty to life imprisonment involves reports from correctional institutions, third-party testimony, and Presidential Decrees based on the Supreme Court's considerations. This research suggests the development of objective and systematic evaluation standards to ensure legal fairness and consistency.

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1 Introduction

² The death penalty, a traditional form of punishment, has been in practice since the Middle Ages. In Indonesia, its application is not unfamiliar, not merely due to influences from Western legal concepts but because it has long been a part of customary law in various regions, reflecting local traditions and practices. This implies that the death penalty is not a new thing in Indonesia because it has existed and been known since the time of the establishment of kingdoms in Indonesia which is seen by observing the types of punishment or punishment based on customary law and the law of previous kings (Nurjanah, Darmawan, and Iskandar 2023).

The Indonesian government has made efforts to address the problem of crime by improving security and law enforcement, as well as by implementing social and economic programs to reduce inequality. However, challenges in tackling crime remain, and further efforts are needed to achieve a better level of security across the country (Muntafa and Mahmud 2023). So far, Indonesia has used the Criminal Code (*wetboek van strafrecht* for indies) made by the Dutch during the colonial period, namely Law Number 1 of 1946 concerning Criminal Law Regulations (hereinafter referred to as the Criminal Code). In its implementation, the Criminal Code is considered not comprehensive because related to the content material in it, both regarding the content material and sanctions, often only benefiting one party and is considered to be uncertain, giving rise to multiple interpretations (Jesica, Rosuul, and Singadimedja 2023).

¹ The death penalty in Indonesia comes from the Netherlands which is regulated in the Criminal Code, the juridical-formal regulation of the death penalty is in article 10 of the Criminal Code with the main penalty read, including: death penalty, prison sentence, imprisonment penalty, fine, cover-up penalty. The implementation of the death penalty is outlined in Article 11 of the Indonesia Criminal Code, stating that it is carried out by an executioner using a rope tied to a gallows. The rope is placed around the convict's neck, and the platform on which the convict stands is then released. (Manoppo, Pongoh, and Bawole 2023).

Death penalty is one of the oldest forms of crime and is also the most interesting form of crime to study because it has a contradictory value. Article 10 of the Criminal Code outlines the types of crimes, which are divided into principal crimes and additional crimes. Principal crimes include the death penalty, imprisonment, detention, and fines. Additional crimes include the confiscation of specific items, the revocation of certain rights, and the public announcement of the court's decisions. In Indonesia, the death penalty is a sentence that is still valid and can be handed down by the court in certain cases. In the current Criminal Code, crimes that can be sentenced to death can target perpetrators of narcotics crimes, premeditated murder, terrorism, and crimes against state security.

Article 100 of the National Criminal Code regulates the conditional death penalty, explaining that defendants who receive the death penalty will be given a probation period of 10 (ten) years. In these 10 years, the development will be seen while in the correctional institution. In this regard, it will be seen whether the convict acknowledges and regrets their actions, and shows a willingness to change for the better. But unfortunately this is still happening. A very serious debate for the public regarding the conditional death penalty. The 10-year probationary period begins 1 day after the court decision acquires permanent legal force. If the convict demonstrates commendable behavior and actions during the probation period, the death penalty may be commuted to life imprisonment through a Presidential Decree, following the consideration of the Supreme Court. (Harefa 2022).

According to Article 100, paragraph (4) of the National Criminal Code, "If the convicted individual demonstrates commendable behavior and actions during the probation period mentioned in paragraph (1), the death penalty may be commuted to life imprisonment through a Presidential Decree, following the Supreme Court's recommendation." From this article, if examined there is a sentence "Showing commendable attitudes and deeds" from the quote of the sentence raises an interpretation of how the inmate can be said to show commendable attitudes and deeds, an indicator of whether it can be used as a parameter to assess that the death row inmate shows a commendable attitude and deeds so that it can replace the death penalty with life imprisonment. Because in the article it is not explained in detail how the parameters used to assess the death row inmate have commendable attitudes and deeds and who are the officials who are given the authority to give assessments to the convicts so that they can be said to have commendable attitudes and deeds (Harefa 2022).

22 2 Materials and Methods

This study employs a normative juridical research method, which focuses on analyzing legal norms, principles, and rules as outlined in statutes, regulations, and legal doctrines. It emphasizes a systematic examination of legal materials to address the issues under study, providing a theoretical and conceptual foundation for understanding the law. Using a statutory approach by analyzing related regulations used as research materials and conceptual approaches (Peter Mahmud Marzuki 2016).

3 Results and Discussions

The death penalty is a topic that is often a long debate both at the national and international levels. The death penalty began to be applied in Indonesia to the Dutch East Indies government by the Governor of Daedels to suppress the resistance of the indigenous population.³ In addition, the death penalty is regulated in article 1 of the Transitional Rules of the 1945 Constitution of the Fourth Amendment. This article stipulates that the implementation of existing regulations before

Indonesia Independence is still in place as long as there are no new regulations that revoke the regulation. This means that the death penalty in the Criminal Code is still valid until it is repealed by the Indonesia Criminal Code (Harefa 2022).

The death penalty raises a difference in perspective between the pros and cons of the death penalty. Between the two respects, they have their own reasons, namely the deterrent effect of perpetrators for those who are pro and violate Human Rights (hereinafter referred to as human rights) for those who are against. Indonesia itself is a country that still imposes the death penalty even though several other countries have abolished the death penalty. Indonesia maintains the death penalty to protect security and public interest. This is in line with the change in Indonesian criminal law with the ratification of the National Criminal Code, which has led to a renewal of the death penalty rules in Indonesia (Ardi isnanto 2023).

Unlike the previous Criminal Code, the new Criminal Code introduces the death penalty as an alternative measure of last resort, as outlined in Article 98 of Law Number 1 of 2023 regarding the Criminal Code. According to this provision, the judge may impose the death penalty with a 10-year probationary period. During this probation, if the defendant demonstrates a desire to reform and exhibits positive behavior, the death penalty can be commuted to life imprisonment through a Presidential Decree, following consideration by the Supreme Court. The death penalty, as regulated in Law Number 1 of 2023 concerning the Criminal Code (KUHP), is detailed in Article 98, which specifies that it is applied as a last resort to deter crime and protect society. (Khairunisa and Ravena 2021).

The phrase "commendable attitudes and deeds" in the context of Article 100 Paragraph (4) is normative and moral, which requires clear evaluation standards. Currently, the phrase does not have a specific definition, thus opening up a space for diverse interpretation among law enforcement officials. Article 100 Paragraph (4) of Law Number 1 of 2023 concerning the Criminal Code (KUHP) provides an opportunity for death row inmates to change their sentence to life imprisonment on the condition that they show "commendable attitudes and deeds" (Leasa 2020).

In practice, commendable attitudes and deeds can be interpreted as actions that reflect remorse, desire to change, and positive contributions during the sentence. However, without official guidelines, this interpretation can differ from case to case. As a result, the assessment can be subjective and inconsistent. Normatively, "commendable attitudes and deeds" refers to behaviors that reflect high morality, such as remorse for actions, obedience to rules, and positive contributions to the environment. However, in a legal context, this phrase requires a measurable interpretation so as not to become a tool of subjectivity. To date, there are no implementing regulations or official guidelines describing the indicators of "commendable attitudes and deeds." This leads to non-uniform law implementation, depending on the understanding of each law enforcer (Rahadjo Puro, Sudarmanto, and Arifin 2023).

Article 100 Paragraph (4) of Law Number 1 of 2023 concerning the Criminal Code (KUHP) regulates the possibility of converting the death penalty to life imprisonment for convicts who show commendable attitudes and deeds during the probation period. The following is an explanation of the standards used to determine these commendable attitudes and actions. The phrase "commendable attitude and deeds" in Article 100 Paragraph (4) of Law Number 1 of 2023 concerning the Criminal Code (KUHP) describes efforts to integrate moral values in the process of reducing sentences for death row inmates. In its implementation, this concept includes psychological, disciplinary, and social dimensions that are interrelated. A more detailed explanation of these aspects helps to understand how this phrase can be translated in practice (Lubis and Margaini 2022).

The psychological dimension of "commendable attitude" is evident in the element of sincere regret. This regret is not just a verbal expression, but reflects a moral awareness and a desire to improve oneself. In the context of criminal law, genuine remorse can be the first step to showing that a person understands his or her mistake. Evaluation of this regret requires in-depth methods, such as interviews and psychological assessments. However, the challenge that arises is to ensure its authenticity. Sincere remorse must be distinguishable from manipulative efforts made solely to obtain leniency.

Furthermore, the attitude of compliance with the rules is also an important indicator in assessing whether a convict shows a "commendable attitude." This compliance can be seen from the track record of behavior during the probation period in correctional institutions. When an inmate does not violate the rules, it reflects self-control and respect for the system in place. However, obedience alone may not be enough to prove moral change. Other evidence is needed in the form of active participation in activities that promote social rehabilitation and reintegration, such as education or skills training programs.

The social dimension of "commendable deeds" is seen in how an inmate contributes to his or her community. Good behavior in daily interactions, such as helping fellow inmates or being respectful to officers, is one of the indicators that can be measured. In addition, actions such as apologizing to the victim or the victim's family show a sense of responsibility and efforts to improve the impact of the crime committed. This not only helps the personal rehabilitation process, but also restores social relationships that have been disrupted by the crime.

The involvement of inmates in activities that benefit the community is also an important element of "commendable deeds." An example is participation in community service programs, such as cleaning the environment or providing training to other inmates. This kind of action shows that despite being in limited conditions, inmates still have the desire to contribute positively. This kind of participation provides tangible evidence that inmates are not only focused on themselves but also care about the community around them.

However, the implementation of the concept of "commendable attitudes and deeds" is inseparable from various challenges. Subjectivity in assessment is one of the main issues because each evaluator can have different standards. In addition, the condition of correctional institutions, which often face problems of overcapacity and lack of rehabilitation facilities, also limits opportunities for inmates to show behavior that meets the criteria of "commendable." Another challenge is the plurality of social values in Indonesia. In a multicultural society, the definition of "commendable" can differ from region to region, depending on prevailing cultural and religious norms.

Therefore, the application of this concept requires a systematic and measurable approach. Clear standards, along with objective indicators such as disciplinary records, rehabilitation program outcomes, and independent evaluations, are important steps to ensure consistency and fairness. In this way, the main objective of Article 100 Paragraph (4)—which is to provide a second chance for death row inmates who have actually shown change—can be achieved more transparently and effectively.

In assessing whether a convict has shown commendable attitudes and deeds in accordance with Article 100 Paragraph (4) of Law Number 1 of 2023 concerning the Criminal Code, judges or authorities need to consider various aspects that reflect changes in the convict's behavior and morality during the probation period. This assessment is not only administrative, but also involves a multidimensional approach that includes an evaluation of daily behavior, testimonials from third parties, and consistency of attitudes over a specified period (Muntahar, Ablisar, and Bariah 2021).

One of the important elements in this assessment is the report from the correctional institution. Correctional institutions have a central role in supervising and evaluating the behavior of convicts during the probation period. These reports typically include in-depth information about how the convict interacted with other inmates, whether he complied with the applicable rules, and the extent to which he participated in the rehabilitation program provided. Programs such as skills training, education, or social activities within correctional institutions are often an indicator of whether the convict is committed to self-improvement and prepare for reintegration into society. Such reports provide an objective basis for judges to assess whether the convicted person's behavior meets the criteria of "commendable."

In addition to reports from correctional institutions, assessments can also be supported by testimonies or supporting evidence from third parties. Testimony from correctional officers, psychologists, or other experts directly involved in the supervision or rehabilitation of convicts can provide a more in-depth picture of changes in attitudes and behaviors. For example, a psychologist who works with convicts may be able to evaluate levels of remorse, changes in mindsets, and a commitment to moral improvement. This testimony serves as a complement to the official report, as well as providing a personal dimension that may not be recorded in administrative data (Marianti, Jopi, and Hutagalung 2020).

Another factor that is no less important is the specified probationary period, which is for ten years. This probation period provides a long enough duration to evaluate the consistency of the convict in showing behavior change. This consistency is very important because moral change cannot be based solely on momentary behavior or temporary imagery. For ten years, every aspect of the life of the convict in the penitentiary, both formal and informal, will be observed and recorded. During this time frame, convicts are expected to show stability in attitudes, both through compliance with the rules, active involvement in rehabilitation, and positive contributions to the environment Through a combination of official reports, third-party testimony, and evaluation of the duration of the probationary period, judges can make a more comprehensive and fair assessment. The process also reflects a humanist approach, in which behavioural change and self-improvement efforts are valued as part of the objectives of criminal law that are not only oriented towards punishment, but also rehabilitation and social reintegration (Cahyani et al. 2023).

The process of converting the death penalty into life imprisonment for convicts who show commendable attitudes and deeds during the probation period involves a strict and formal legal mechanism. This process begins with an evaluation of the convict's behavior that lasts during the ten-year probation period. If the convict is considered to meet the criteria, the next step is through the submission of an official decision that requires the involvement of the highest state authority. The decision to change the death penalty to life imprisonment can only be made by the President through a Presidential Decree. This process involves the Supreme Court giving legal considerations before the President makes his decision. This mechanism reflects the principle of prudence, where every step in the process must be based on evidence and careful consideration. The Supreme Court has a role to play in ensuring that convicts do deserve criminal rehabilitation, based on behavioral reports during the probation period and the recommendations of correctional institutions (Cahyani et al. 2023).

In addition, this process must also follow applicable legal procedures. Compliance with legal procedures is an important element to maintain justice for all parties involved, including the state, victims, and convicts. Every stage, from the collection of behavioral evidence to decision-making, must be carried out transparently and in accordance with applicable regulations. This process aims to ensure that criminal reform is given fairly, not based on external pressure or specific interests. Thus, the criminal reform process in Article 100 Paragraph (4) of Law No. 1 of 2023 shows a serious approach in assessing moral changes and behavior of convicts. The "commendable attitudes and deeds" standards applied not only include aspects of behavioral evaluation during the probationary period but also involve thorough assessments by relevant agencies, legal supervision, and compliance with procedures. This approach affirms Indonesia's legal commitment to the principles of justice and rehabilitation opportunities (Khairunisa and Ravena 2021).

4 Conclusion

Article 100 Paragraph (4) of Law No. 1 of 2023 concerning the Criminal Code reflects a humanist approach in the Indonesian criminal law system, by providing death row inmates with the opportunity to convert their sentences into life imprisonment. The phrase "commendable attitude and deeds" becomes a key element in the assessment, which includes psychological, disciplined, and social aspects, such as sincere remorse, adherence to rules, and contribution to the community. However, the implementation of this article faces major challenges, mainly due to the absence of clear technical guidelines or parameters for assessing commendable attitudes and deeds. This opens up a diverse space of interpretation and has the potential to create injustice. In addition, the limited condition of correctional institutions, as well as the plurality of social values in Indonesia, also add to the complexity of assessment. The process of converting the death penalty to life imprisonment involves a strict formal mechanism, including penitentiary reports, third-party testimony, and a final decision by the President based on the Supreme Court's consideration. To ensure fairness and effectiveness in the implementation of this article, it is necessary to develop evaluation standards that are objective, transparent, and can be applied consistently throughout Indonesian jurisdictions. Thus, the main goal of criminal law—which is to provide rehabilitation opportunities while protecting the interests of the community—can be achieved optimally.

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PAGE 1

PAGE 2

PAGE 3

PAGE 4

PAGE 5

PAGE 6

PAGE 7

PAGE 8

PAGE 9
