

The Terrorism Death Penalty Controversy in Indonesia from the Perspective of Law and Human Rights

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Abstract

This study aims to critically analyze the application of the death penalty for terrorism-related crimes in Indonesia from the perspectives of criminal law and human rights. The primary focus is to assess whether capital punishment can be justified as a proportionate law enforcement instrument while remaining consistent with the protection of the right to life as a non-derogable right. This research employs a normative juridical method, utilizing statutory, case-based, and conceptual approaches to examine national legal provisions, judicial decisions, and contemporary theories of punishment in conjunction with international human rights standards. The findings indicate that the death penalty retains juridical legitimacy within Indonesia's positive legal system, particularly following the enactment of Law No. 1 of 2023 on the Criminal Code, which introduces a conditional death penalty framework. Nevertheless, the justification of capital punishment based on deterrence theory lacks strong empirical support and raises serious concerns regarding proportionality and the protection of the right to life. This study recommends that the death penalty be strictly positioned as an *ultimum remedium*, applied in a highly selective manner with rigorous due process guarantees, and complemented by non-penal counterterrorism strategies emphasizing prevention, deradicalization, and a more humane justice-oriented approach.

Keywords

Death Penalty; Terrorism; Criminal Law Enforcement; Human Rights

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1. INTRODUCTION

The application of the death penalty for perpetrators of terrorism-related crimes in Indonesia constitutes one of the most controversial issues in contemporary criminal law discourse. This issue has generated intense debate not only within academic circles and judicial practice but also in the realm of public policy, as it directly concerns the relationship between state power in law enforcement and the state's obligation to protect human rights. Through various instruments of criminal law, the state continues to recognize the death penalty as the most extreme form of punishment, which directly interferes with the right to life as the most fundamental human right. In a national context confronted with persistent terrorist threats, the death penalty is often perceived as a manifestation of the state's



resolute response to extraordinary crimes. Nevertheless, such a response simultaneously raises critical questions regarding human rights protection, legal certainty, proportionality of punishment, and the effectiveness of criminal sanctions as preventive instruments. (Garland, 2020; McEvoy, 2021)

The existence of the death penalty within Indonesia's national legal framework reflects an inherent ambivalence between the need to safeguard public security and the obligation to respect human rights. Normatively and historically, Indonesian positive law has long positioned the death penalty as the most severe principal punishment, including as a sanction for terrorism-related crimes. Research indicates that the regulation of capital punishment in Indonesian positive law continues to maintain this sanction as the highest sentencing option for terrorism offenses. (Nurfatlah & Taufik, 2025)

However, recent legal developments through Law Number 1 of 2023 concerning the Criminal Code (Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana, 2023) demonstrate a paradigmatic shift with the introduction of a conditional death penalty, which provides a ten-year probationary period before execution may be carried out (Law Number 1 of 2023 concerning the Criminal Code, 2023). This reform reflects an effort to shift penal orientation from absolute retribution toward a mixed model that also incorporates corrective and rehabilitative considerations, as emphasized in contemporary theories of punishment. (Duff et al., 2020; Nurfatlah & Taufik, 2025; Tonry, 2022)

From a human rights perspective, the imposition of the death penalty has attracted significant criticism due to its potential violation of non-derogable rights, particularly the right to life and the right to be free from torture or cruel, inhuman, or degrading treatment (Rante & Rahman, 2022). Constitutional guarantees of the right to life are explicitly affirmed under Article 28I paragraph (1) of the 1945 Constitution and reinforced by Indonesia's ratification of the *International Covenant on Civil and Political Rights* (ICCPR), which restricts the application of the death penalty to "the most serious crimes" and requires the highest standards of fair trial (International Covenant on Civil and Political Rights, 1966; Joseph & Castan, 2023; Nowak, 2020). In this context, the principle of proportionality becomes a crucial normative tool for assessing the legitimacy of capital punishment, as articulated in modern constitutional rights theory and penal jurisprudence. (Alexy, 2020; Barak, 2021)

Although considerations of security and effectiveness are frequently invoked to justify the death penalty, numerous studies demonstrate that its deterrent effect remains highly contested. Normative research in Indonesia concludes that the imposition of the death penalty on perpetrators of terrorism has not been conclusively proven to function as an effective preventive instrument, as extremely severe sanctions do not necessarily address the ideological and structural roots of terrorism (Badaru, 2023). This conclusion is consistent with international empirical research indicating that executions do not show a significant correlation with reductions in terrorism-related violence (Radelet & Lacoock, 2021)—

accordingly, the effectiveness of the death penalty as a core criminal policy instrument warrants critical reassessment.

Beyond substantive concerns, procedural aspects and judicial safeguards constitute a crucial dimension of the death penalty debate. Given its irreversible nature, the imposition of capital punishment requires exceptionally high standards of *due process of law* to ensure fairness and legality. In terrorism cases, reliance on intelligence-based evidence, the use of special investigative frameworks, intense political and public pressure, and potential restrictions on the right to a free and fair defense require heightened scrutiny. Indah Lestari et al. (Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana, 2023) emphasize that without transparent procedures and robust legal guarantees, the risk of human rights violations becomes increasingly pronounced. In this regard, the conditional death penalty mechanism and probationary period under the 2023 Criminal Code may be viewed as attempts to mitigate such risks. However, their effectiveness remains subject to ongoing evaluation. (Hood & Hoyle, 2022)

Within the broader context of criminal policy and legal reform, the enactment of the 2023 Criminal Code marks a significant shift in Indonesia's penal orientation. Adjustments to the scope and application of the death penalty indicate legislative responsiveness to human rights-based criticism and demands for the modernization of punishment, even in cases involving extraordinary crimes such as terrorism (Putri, 2024). Nevertheless, regulatory reform alone does not automatically ensure penal practices that are fully consistent with human rights principles and the objectives of just punishment, thereby necessitating continuous normative evaluation and institutional oversight.

At a macro level, the controversy surrounding the death penalty for terrorism-related crimes in Indonesia reflects three interrelated dimensions: the normative-legal dimension, the procedural dimension, and the moral-societal dimension. The normative-legal dimension concerns the regulation of capital punishment within criminal law and public policy; the procedural dimension relates to how the penalty is applied through judicial processes and execution mechanisms; while the moral-societal dimension addresses public perceptions, its impact on victims and society, and its implications for values of justice and humanity. These dimensions require comprehensive examination to ensure that criminal policy operates not merely in a formal sense but also substantively respects human rights while fulfilling the state's duty to protect society.

Based on the foregoing analysis, this study positions the death penalty for terrorism-related crimes as a dialectical arena between the state's imperative to maintain public security and its constitutional responsibility to protect individual rights. An examination of legal provisions, judicial practices, and human rights perspectives is therefore essential to assess the extent to which the death penalty can be maintained within the Indonesian penal system, particularly in the context of terrorism offenses that

possess distinctive characteristics and pose significant risks to society. The ongoing transformation of penal regulations and practices indicates that Indonesia is entering a reflective phase in reassessing capital punishment, questioning whether it should remain a primary punitive instrument or be relegated to a highly limited and strictly controlled option.

2. METHOD

This study employs a normative juridical research method to examine the regulation and application of the death penalty for terrorism-related crimes in Indonesia and its implications for human rights protection. Normative legal research is appropriate for analyzing legal norms, doctrines, and principles, as well as for assessing their coherence with constitutional values and international human rights obligations. (Ibrahim, 2021; Soekanto & Mamudji, 2020)

Three complementary approaches are applied. The statutory approach is used to analyze the legal framework governing terrorism and capital punishment, including Law Number 5 of 2018 on the Eradication of Terrorism Crimes, Law Number 1 of 2023 concerning the Criminal Code, relevant constitutional provisions, and international instruments ratified by Indonesia, particularly the *International Covenant on Civil and Political Rights* (ICCPR). This approach aims to identify normative orientations, policy shifts, and tensions between criminal law enforcement and human rights standards through systematic and teleological interpretation. (Barak, 2021)

The case approach examines selected final and binding court decisions that impose the death penalty in terrorism cases. Cases were selected based on their relevance to terrorism offenses, the clarity of judicial reasoning, and their significance for assessing proportionality and *due process of law*. This approach enables an evaluation of how statutory norms are applied in judicial practice and how human rights considerations are reflected in sentencing decisions (Duff et al., 2020; McEvoy, 2021). Third, the conceptual approach is employed to analyze legal doctrines and theories of punishment, particularly retributive theory, utilitarian deterrence theory, and the principle of proportionality. These theoretical frameworks are employed to evaluate the normative justification of the death penalty in terrorism cases and to inform the analysis of human rights implications and policy harmonization. (Alexy, 2020; Tonry, 2022)

The study relies on primary, secondary, and tertiary legal materials. Primary materials include statutes, court decisions, and international treaties. Secondary materials comprise recent books and peer-reviewed journal articles, carefully selected based on relevance and academic credibility. Tertiary materials support conceptual clarification. All materials are analyzed qualitatively using a normative-evaluative framework, integrating statutory analysis, judicial reasoning, and theoretical perspectives to produce systematic and argumentative conclusions.

3. FINDINGS AND DISCUSSION

3.1. Legal Framework For The Death Penalty And Terrorism In Indonesia

From a normative juridical perspective, the regulation of the death penalty for terrorism-related crimes in Indonesia reflects an interaction between criminal law policy, constitutional norms, and international human rights obligations. The death penalty remains the most severe sanction in the Indonesian penal system and continues to provoke debate regarding its legitimacy, proportionality, and effectiveness. Within Indonesia's positive law, capital punishment retains a clear statutory basis in both the Criminal Code (*Kitab Undang-Undang Hukum Pidana*) and special legislation, particularly Law Number 5 of 2018 on the Eradication of Terrorism Crimes. This legal configuration illustrates the state's assertion of punitive authority in responding to terrorism as an *extraordinary crime* that poses a threat to national security and the constitutional order. (Abdullah, 2022)

Historically, the death penalty has been embedded in Indonesia's criminal justice system since the colonial period, influenced by Dutch penal law. Article 10 of the Criminal Code lists capital punishment among the principal penalties; however, its imposition is discretionary rather than mandatory. Judges retain the authority to impose alternative sanctions, reflecting the principle that capital punishment should only be applied under exceptional circumstances (Nugroho & Sulhin, 2023). This structure is consistent with modern criminal law doctrine, which positions the death penalty as *ultimum remedium*, namely a last resort within the hierarchy of punishment. (Tonry, 2022)

At the constitutional level, a fundamental normative tension arises between the retention of the death penalty and the protection of the right to life. Articles 28A and 28I of the 1945 Constitution explicitly recognize the right to life as a non-derogable right. This tension was addressed by the Constitutional Court in Decision No. 2-3/PUU-V/2007, which held that the death penalty is constitutionally permissible provided that it is imposed selectively, proportionally, and through procedures that fully respect due process of law. This reasoning reflects a proportionality-based constitutional approach, whereby state punishment must be balanced against fundamental rights and human dignity. (Alexy, 2020; Barak, 2021)

The classification of terrorism as an extraordinary crime further influences the legal justification of capital punishment. Terrorism is characterized by mass violence, psychological intimidation, threats to public order, and challenges to state sovereignty. These characteristics are often used to justify exceptional legal responses, including the death penalty (Abdullah, 2022). Law Number 5 of 2018 reinforces this approach by providing capital punishment for terrorism offenses that result in death or pose serious threats to national security. Normatively, this reflects a retributive rationale combined with preventive objectives aimed at protecting society. (Alexy, 2020; Barak, 2021)

Nevertheless, Indonesian criminal law has gradually shifted toward a more humanistic orientation. The enactment of Law Number 1 of 2023 concerning the new Criminal Code introduces a conditional death penalty mechanism. Article 100 allows for a ten-year probationary period, during which the sentence may be commuted to life imprisonment if the offender demonstrates genuine remorse and behavioral improvement (Lestari et al., 2025). This reform signals a transformation from rigid retribution toward a mixed penal model that incorporates corrective and rehabilitative considerations, consistent with contemporary sentencing theory. (Tonry, 2022)

From an international human rights perspective, the right to life is a core component of human dignity. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) prohibit arbitrary deprivation of life. Indonesia's ratification of the ICCPR through Law Number 12 of 2005 imposes legal obligations to ensure that the death penalty, where retained, is applied only to the "most serious crimes" and in accordance with strict fair trial guarantees (UN Human Rights Committee, 2022). While terrorism is often categorized within this threshold, international human rights law requires an individualized assessment based on intent, culpability, and proportionality rather than categorical offense labelling. (R. Lubis, 2025)

The procedural dimension of capital punishment is therefore inseparable from its normative legitimacy. Given its irreversible nature, the death penalty requires the highest standards of due process, evidentiary reliability, and judicial transparency. Theories of criminal adjudication emphasize that fair trial guarantees are not merely procedural formalities but substantive safeguards against arbitrary punishment (Duff et al., 2020). In this context, the National Commission on Human Rights (*Komnas HAM*) has repeatedly encouraged a moratorium on executions while systemic weaknesses in the criminal justice process are evaluated.

Empirical practice shows that Indonesia has imposed the death penalty in several terrorism cases, including the Bali bombings. These executions were justified as expressions of state resolve and protection of public safety. However, empirical and doctrinal studies increasingly question the deterrent effect of capital punishment in terrorism cases, as perpetrators are often motivated by ideological convictions that reduce the rational impact of severe sanctions (Novianti, 2023). This challenges utilitarian justifications of the death penalty and highlights the limitations of punishment-based deterrence.

Accordingly, contemporary criminal policy emphasizes that counterterrorism strategies must extend beyond punitive severity. Deradicalization programs, social reintegration, and community-based prevention are increasingly recognized as more effective long-term approaches. Within this framework, the death penalty should remain strictly limited and reserved for the most exceptional cases. Ultimately, the legal framework governing capital punishment for terrorism in Indonesia reflects

a persistent tension between legal legitimacy and moral restraint. While the state retains statutory authority to impose the death penalty, it must continuously ensure that its application conforms to constitutional principles, human rights standards, and proportionality. (M. R. Lubis, 2023)

3.2. Law Enforcement Against Terrorism Crimes

Law enforcement against terrorism crimes in Indonesia represents a strategic exercise of state authority aimed at safeguarding national security, constitutional order, and public safety. Terrorism constitutes not merely an offense against individual victims, but a systemic threat to social stability and state sovereignty. Consequently, the state bears a dual obligation: to enforce the law firmly and effectively while simultaneously ensuring that such enforcement remains consistent with the principles of legality, due process of law, and human rights protection. (Rozaq, 2023)

The effectiveness of counterterrorism law enforcement in Indonesia can be analytically examined using Lawrence M. Friedman's legal system theory, which conceptualizes law as an interaction between legal structure, legal substance, and legal culture. This framework is particularly relevant to normative legal research, as it allows for an integrated assessment of how statutory norms are implemented through institutional mechanisms and shaped by societal attitudes (Afandi, 2025)

From a legal structure perspective, counterterrorism enforcement involves multiple institutions, including the Indonesian National Police (POLRI), the National Counterterrorism Agency (BNPT), the public prosecution service, the judiciary, and correctional institutions. The establishment of specialized units such as Densus 88 Anti-Terror reflects a structural response to the complex and transnational nature of terrorism. However, institutional effectiveness depends not only on operational capacity but also on inter-agency coordination and accountability mechanisms to prevent abuse of power.

In terms of legal substance, Indonesia has progressively strengthened its statutory framework through Law No. 15 of 2003, which was later refined by Law No. 5 of 2018. These laws provide the legal basis for preventive, investigative, and repressive measures against terrorism, including expanded powers of arrest, detention, and intelligence gathering (Wibisono, 2020). Normatively, Law No. 5 of 2018 marks a shift from a purely repressive model to a preventive-oriented approach by mandating counter-radicalization and deradicalization programs, coordinated by the BNPT. This legislative development aligns with contemporary criminal policy theory, which recognizes that terrorism cannot be effectively addressed solely through punitive sanctions. (Agustin et al., 2023)

The involvement of the Indonesian National Armed Forces (TNI), as regulated under Law No. 5 of 2018 and subsequent implementing policies, further illustrates the extraordinary nature of terrorism enforcement. While military involvement may be justified in addressing armed terrorist threats, its

deployment must remain subject to civilian control and clear legal mandates to ensure compliance with constitutional principles and prevent the militarization of law enforcement. (Casmudin et al., 2024)

The preventive dimension of law enforcement constitutes a crucial element of Indonesia's counterterrorism strategy. BNPT-led programs of counter-radicalization and deradicalization aim to address the ideological roots of terrorism through education, counseling, and social reintegration. From a conceptual perspective, this approach reflects a shift toward a *preventive justice* paradigm, emphasizing early intervention and social resilience rather than post-crime punishment alone. Such measures are consistent with criminological theories that view radicalization as a socio-ideological process requiring multidimensional responses.

At the investigative and prosecutorial stages, law enforcement authority is primarily exercised by Densus 88 under POLRI. Although terrorism cases involve heightened security concerns, investigative practices must remain bound by procedural safeguards enshrined in the Criminal Procedure Code and Law No. 5 of 2018. Core principles such as the presumption of innocence, access to legal counsel, and limits on detention are essential components of due process of law, particularly in cases where severe penalties—including the death penalty—may be imposed (Anakotta & Ubrwarin, 2021). Normatively, due process serves as a safeguard against arbitrariness and ensures the legitimacy of state coercive power.

Despite the existence of a comprehensive legal framework, significant challenges persist in practice. Evidentiary difficulties arise due to the clandestine nature of terrorist networks, the use of encrypted communications, and the transnational operational structures employed by these networks. These challenges often necessitate international cooperation, the sharing of intelligence, and mutual legal assistance. However, expanded investigative powers also increase the risk of human rights violations, including excessive use of force, arbitrary detention, and procedural irregularities. Empirical studies and human rights reports indicate that deviations from due process standards may undermine both justice and public trust in counterterrorism efforts. (Telaumbanua et al., 2025)

Another critical challenge lies within the correctional system, where ideological radicalization may persist or even intensify. The continued influence of extremist ideologies among terrorism inmates suggests that incarceration alone is insufficient to achieve rehabilitation. This condition highlights the need for structured deradicalization programs that involve religious scholars, psychologists, and social workers, grounded in a human rights-based correctional philosophy.

International cooperation is a further integral component of Indonesia's counterterrorism law enforcement. Collaboration with institutions such as Interpol, ASEANAPOL, and the United Nations Counterterrorism Committee facilitates intelligence exchange, capacity building, and regulatory

harmonization. From a policy-oriented perspective, such cooperation enhances national capability while embedding domestic enforcement within global legal norms.

Ultimately, law enforcement against terrorism crimes in Indonesia must be evaluated not solely based on punitive outcomes, but on its adherence to constitutional guarantees and international human rights standards, particularly those enshrined in the ICCPR. The success of counterterrorism policy depends on the state's ability to strike a balance between security imperatives and the principles of justice, legality, and respect for human dignity. In this regard, Indonesia's evolving approach—combining firm enforcement with preventive and rehabilitative strategies—reflects an ongoing effort to reconcile national security objectives with the foundational principles of a democratic rule-of-law state.

3.3. Death Penalty And Protection Of Human Rights

The death penalty constitutes the most severe form of punishment within the penal system, as it permanently deprives individuals of their right to life—the most fundamental and non-derogable human right. In a constitutional state such as Indonesia, the retention and application of capital punishment inevitably generate normative tension between the objectives of criminal law enforcement, deterrence against extraordinary crimes, and the obligation to respect human rights. This tension becomes particularly acute in terrorism cases, where the state faces the dual responsibility of protecting public safety while simultaneously safeguarding the right to life of every individual, including those convicted of serious crimes.

From a statutory perspective, Indonesian positive law continues to recognize the death penalty as a lawful sanction. Article 10 of the Criminal Code classifies capital punishment as one of the principal penalties. At the same time, Law Number 15 of 2003 (Undang-Undang Republik Indonesia Nomor 1 Tahun 2003 Tentang Kitab Undang-Undang Hukum Pidana, 2003)(as amended by Law Number 5 of 2018) explicitly authorizes its imposition for terrorism crimes that result in death or pose severe threats to national security. Normatively, this legal framework reflects the state's perception of terrorism as an *extraordinary crime* warranting exceptional punitive responses. However, the mere existence of statutory authorization does not automatically resolve the question of legitimacy when examined through a human rights lens.

At the constitutional level, Articles 28A and 28I paragraph (1) of the 1945 Constitution unequivocally affirm the right to life as a non-derogable right. These provisions form the normative basis for arguments opposing the death penalty, asserting that the state lacks moral and constitutional justification to extinguish an individual's life under any circumstances. This constitutional protection imposes substantive limits on the exercise of punitive power. It requires that criminal sanctions,

particularly those that are irreversible, be subjected to strict scrutiny based on humanity, justice, and proportionality.

The conceptual debate surrounding capital punishment in terrorism cases is commonly framed through competing theories of punishment. Utilitarian theory, rooted in the thought of Jeremy Bentham, evaluates punishment based on its capacity to produce greater social benefits, particularly in terms of deterrence and public protection. From this perspective, the death penalty may be justified if it effectively prevents future terrorist acts and safeguards the lives of the broader community. Proponents argue that the state's obligation to protect the collective right to life may outweigh the individual rights of convicted terrorists, especially when their actions threaten mass casualties and national stability.

However, utilitarian justifications face significant criticism. Empirical and normative studies increasingly question whether capital punishment genuinely produces a deterrent effect in terrorism cases, given that many perpetrators are motivated by ideological or religious convictions that diminish rational cost-benefit calculations. Consequently, the assumption that harsher punishment necessarily leads to greater deterrence remains a matter of debate. In contrast, retributive theory emphasizes moral culpability and the proportional application of punishment. Punishment, under this framework, is justified as a response to wrongdoing rather than as a means of social control. While retributivists acknowledge the gravity of terrorism offenses, many argue that capital punishment exceeds the moral limits of just retribution because it irreversibly negates the offender's humanity. From this standpoint, the death penalty risks transforming justice into vengeance, thereby undermining the ethical foundations of criminal law. (Saleh & Calvin, 2023)

The tension between these theories is further evaluated through the principle of proportionality, which has become a central analytical tool in contemporary constitutional and human rights jurisprudence. Proportionality requires that punishment be suitable, necessary, and balanced in relation to the severity of the crime and the rights affected. In terrorism cases, although the harm caused is undeniably grave, a proportionality analysis demands an individualized assessment of culpability rather than a categorical justification based solely on the type of offense. The irreversible nature of capital punishment raises serious concerns regarding whether the deprivation of life can ever be proportionate when less severe yet equally protective alternatives—such as life imprisonment—are available.

From an international human rights perspective, the right to life is protected under Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which Indonesia ratified through Law Number 12 of 2005. While the ICCPR does not categorically prohibit the death penalty, it strictly limits its application to the “most serious crimes” and requires rigorous compliance with fair trial guarantees. International human rights bodies

have consistently emphasized that these standards must be interpreted restrictively, and any deviation risks constituting arbitrary deprivation of life (*A Study of the Death Penalty Justice Process in Indonesia*, n.d.). Globally, there is a clear trend toward the abolition of the death penalty. Many states have replaced the death penalty with life imprisonment, reflecting an evolving understanding of human dignity and penal effectiveness. International institutions, including the United Nations, continue to advocate for moratoria on executions as a transitional step toward abolition. (Saputri, 2020)

Indonesia occupies a complex and ambivalent position within this global context. While it has not abolished the death penalty, the enactment of Law Number 1 of 2023 introduces a conditional death penalty model, positioning capital punishment as a last resort subject to a ten-year probationary period. This reform allows for commutation to life imprisonment upon demonstrated rehabilitation, signaling a shift toward a more humane and corrective penal philosophy.

Philosophically, this development resonates with the critiques advanced by Cesare Beccaria, who argued that the death penalty is neither necessary nor effective in preventing crime, and that humane punishment better reflects the moral authority of the state. Within the Indonesian context, these arguments gain additional significance when viewed through the values of Pancasila, particularly the principle of *Just and Civilized Humanity*, which underscores respect for human dignity as a foundational legal and moral norm.

Ultimately, the relationship between the death penalty and human rights in Indonesia cannot be reduced to a binary choice between abolition and retention. Instead, it reflects an ongoing dialectic between legal firmness and moral restraint. The conditional death penalty regime represents an attempt to reconcile these competing imperatives by maintaining legal authority while incorporating humanitarian safeguards. In this sense, human rights should not be viewed as an obstacle to law enforcement, but as a normative foundation that ensures punishment is carried out justly, proportionately, and with respect for human dignity.

3.4. Harmonization Between Law Enforcement and Human Rights Protection in Counterterrorism Policy

In contemporary constitutional democracies, law enforcement and human rights protection are not competing objectives, but mutually reinforcing components of the rule of law. However, this normative ideal is frequently tested in the context of counterterrorism, where the state confronts extraordinary threats that demand swift and decisive responses. Terrorism challenges the foundational functions of the state—security, sovereignty, and public order—while simultaneously exposing the vulnerability of human rights when coercive powers are expanded. The central question, therefore, is not whether the state may act firmly, but how far state power may legitimately extend

without eroding the normative foundations of legality and human dignity.

From a rule of law perspective, law enforcement authority must always be constrained by legal norms, institutional accountability, and respect for fundamental rights. Dicey's classical conception of the rule of law emphasizes that state power is legitimate only to the extent that it is exercised under law and subject to judicial control (Dicey, 1982). In the counterterrorism context, this principle requires that extraordinary powers—such as preventive detention, expanded surveillance, or capital punishment—remain exceptional, clearly regulated, and subject to review. Without such constraints, counterterrorism measures risk transforming into mechanisms of structural injustice.

Normatively, Indonesian statutory law reflects an effort to reconcile these principles. Law Number 39 of 1999 on Human Rights provides a general framework for the protection of rights, while Law Number 5 of 2018 grants enhanced powers to address terrorism. However, policy-oriented jurisprudence, as developed by Lasswell and McDougal, emphasizes that legal norms must be evaluated not only based on formal validity but also on their social consequences and value-orientation (McDougal et al., 2019). Applying this framework, counterterrorism law should be assessed based on whether it genuinely advances human dignity, social order, and long-term security, rather than merely legitimizing the use of coercive authority.

At the implementation level, the challenge of harmonization becomes more acute. Empirical experiences across jurisdictions demonstrate that security-driven enforcement often prioritizes efficiency over legality, increasing the risk of arbitrary detention, excessive use of force, and erosion of fair trial guarantees. Scholars of *preventive justice* warn that counterterrorism policies frequently shift the focus from punishing proven wrongdoing to managing perceived future risks, thereby weakening traditional safeguards of criminal law (Ashworth & Zedner, 2014). This shift is particularly problematic in democratic systems, as it blurs the boundary between lawful prevention and unjustified repression.

The principle of proportionality functions as a critical analytical tool for evaluating the legitimacy of counterterrorism measures. Proportionality requires that state actions pursue a legitimate aim, employ suitable and necessary means, and maintain a fair balance between public interests and individual rights (Alexy, 2020; Barak, 2021). In the Indonesian context, proportionality serves as a normative benchmark for assessing whether severe measures—such as prolonged detention or the death penalty—are justified when less intrusive alternatives are available. Excessive measures not only undermine human rights but may also be counterproductive, as they can fuel grievances and radicalization.

From a security–human rights nexus perspective, contemporary scholarship increasingly rejects the assumption that stronger security necessarily requires weaker human rights. Studies in counterterrorism policy suggest that respect for human rights enhances, rather than undermines, long-term security by strengthening public trust, institutional legitimacy, and social cohesion (Kaldor, 2018; Waldron, 2020). Conversely, systematic rights violations may delegitimize state authority and provide ideological narratives that extremist groups exploit for recruitment and justification.

This tension is particularly visible in debates surrounding the death penalty for terrorism crimes. From a retributive standpoint, capital punishment is sometimes defended as morally deserved due to the gravity of harm inflicted. However, modern retributive theorists emphasize that punishment must remain consistent with respect for moral agency and human dignity (Duff, 2018). The irreversible nature of the death penalty raises serious concerns regarding error, disproportionality, and the denial of the offender’s capacity for moral transformation.

International human rights law reinforces this cautious approach. The ICCPR and its interpretative jurisprudence increasingly emphasize the restrictive application of capital punishment and encourage states toward abolition. Comparative legal studies suggest that states adopting abolitionist or moratorium-based approaches have not experienced increased security, thereby undermining claims that capital punishment is indispensable for counterterrorism (Hood & Hoyle, 2022; Schabas, 2019). Indonesia’s adoption of a conditional death penalty under the 2023 Criminal Code can thus be interpreted as a transitional model reflecting this evolving global consensus.

Beyond doctrinal analysis, effective harmonization requires a cultural and institutional transformation within law enforcement agencies. Human rights education, ethical training, and internal accountability mechanisms are essential to ensure that discretionary powers are exercised responsibly. As Fuller (Fuller, 1969) argues, legality is not merely a matter of rules, but of fidelity to the moral principles that give law its legitimacy. Law enforcement officials who internalize human rights norms are more likely to act proportionately and professionally, even under security pressure.

Public participation and civil society oversight further strengthen this balance. Democratic accountability requires that counterterrorism policies remain subject to public scrutiny and open debate. A legal culture that dehumanizes suspects or equates security with unrestricted power risks normalizing exceptionalism. Conversely, a humanistic legal culture promotes sustainable peace by emphasizing that justice and humanity are inextricably linked.

Finally, harmonization must be embedded within a comprehensive criminal policy framework that integrates enforcement, prevention, and rehabilitation. Indonesia’s deradicalization programs represent an important step toward addressing the ideological roots of terrorism. Such policy-oriented approaches align with restorative and preventive justice theories, which emphasize social

reintegration and long-term stability over purely punitive responses (Braithwaite, 2002). In sum, harmonization between law enforcement and human rights protection in counterterrorism is not merely a technical legal issue, but a normative test of democratic governance. Strong security measures that disregard human rights ultimately weaken the moral authority of the state, while human rights protection that ignores legitimate security concerns risks public vulnerability. The sustainable path lies in a proportional, accountable, and human rights-centered approach to counterterrorism—one that affirms that effective law enforcement and respect for human dignity are not opposing values, but mutually constitutive foundations of a just legal order.

4. CONCLUSION

This study concludes that the relationship between law enforcement and human rights protection in counterterrorism policy in Indonesia is characterized by an inherent but manageable tension. The state's obligation to safeguard national security and public order must be exercised within a legal framework that consistently upholds human dignity, the rule of law, and accountability. The findings demonstrate that counterterrorism law enforcement cannot be justified solely on the basis of security imperatives.

However, they must also be evaluated against constitutional principles, international human rights standards, and the normative foundations of the rule of law. The analysis confirms that Indonesia's legal framework has progressively moved toward a more balanced and human-centered approach, particularly through the development of conditional and proportional mechanisms in criminal policy. This shift reflects an understanding that effective counterterrorism does not rely exclusively on punitive severity, but on the legitimacy, fairness, and moral authority of legal institutions. Law enforcement measures that respect due process and proportionality are not obstacles to security, but essential elements for sustaining public trust and long-term social stability.

Furthermore, the study underscores that the effectiveness of counterterrorism policies depends not only on statutory regulation but also on institutional practices, legal culture, and policy orientation. The harmonization of security and human rights requires continuous institutional oversight, professional capacity-building for law enforcement officials, and the integration of preventive and rehabilitative strategies alongside repressive measures. Without these elements, counterterrorism efforts risk undermining the very values they seek to protect.

Ultimately, this research confirms that the sustainability of Indonesia's counterterrorism policy hinges on its ability to institutionalize a proportional, accountable, and rights-based approach to law enforcement. The protection of human rights should be understood not as a limitation on state authority, but as a normative foundation that strengthens the legitimacy and effectiveness of the legal

system in confronting extraordinary crimes. By maintaining this balance, Indonesia can develop a model of counterterrorism that is both legally robust and morally defensible within a framework of democratic rule of law.

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