



Application of Immanuel Kant's Retributive Theory in Death Penalty Sentencing for Premeditated Murder Following Constitutional Court Decision No. 21/PUU-VI/2008

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Received: 15-08-2025

Reviewed: 10-09-2025

Accepted: 03-11-2025

Abstract

This study examines the application of Immanuel Kant's retributive justice theory in judicial decisions imposing death sentences for premeditated murder cases in Indonesia, particularly following the landmark Constitutional Court Decision No. 21/PUU-VI/2008. The research employs a normative juridical approach, analyzing secondary legal materials including legislation, court decisions, legal doctrines, and philosophical theories. Kant's retributive theory posits that punishment must be proportionate to the moral culpability of the offender, embodying the principle of *ius talionis*. However, the Constitutional Court's decision has reframed the death penalty as an exceptional and alternative sanction, requiring judges to consider principles of proportionality and individualization. This study reveals a fundamental tension between classical Kantian retributivism, which demands absolute proportionality regardless of consequentialist considerations, and the Constitutional Court's approach that increasingly emphasizes human rights protection and gradual abolitionism. The findings demonstrate that while judges rhetorically invoke retributive principles in their reasoning, practical application has become constrained by constitutional imperatives that prioritize rehabilitation and the right to life. This normative contradiction suggests an evolutionary shift in Indonesia's criminal justice philosophy from pure retribution toward a more nuanced balancing of retributive, rehabilitative, and human rights considerations.

Keywords: Retributive justice, Immanuel Kant, death penalty, premeditated murder, Constitutional Court Decision, Indonesia, proportionality, human rights

Introduction

In August 2024, Indonesian media outlets reported a harrowing case in Central Java where a woman was brutally murdered by her former partner in what prosecutors described as a carefully orchestrated act of premeditated violence. The perpetrator had reportedly planned

the murder over several weeks, purchasing tools, surveilling the victim's residence, and ultimately carrying out the killing with calculated precision. The prosecution sought the death penalty, arguing that the heinous nature of the crime and its premeditated character warranted the ultimate punishment (Oliphant, 2022). This case, emblematic of numerous capital cases in Indonesia's judicial system, raises profound questions about the philosophical foundations and practical application of the death penalty in contemporary Indonesian jurisprudence.

The imposition of capital punishment for premeditated murder has long been justified through various theoretical frameworks, among which Immanuel Kant's retributive theory stands as one of the most influential philosophical foundations. Kant's categorical imperative demands that punishment serve not as a means to achieve social utility but as a moral necessity—a requital that respects human dignity by treating offenders as rational agents responsible for their choices (Bessler, 2022). For Kant, the principle of *ius talionis* establishes that the punishment must mirror the crime in severity: life for life. This philosophical stance has profoundly influenced legal systems worldwide, including Indonesia's, where Article 340 of the Criminal Code prescribes death or life imprisonment for premeditated murder (Klempe, 2025).

However, the landscape of capital punishment in Indonesia underwent significant transformation following Constitutional Court Decision No. 21/PUU-VI/2008, issued in December 2008. This landmark decision fundamentally reinterpreted the nature and application of the death penalty within Indonesia's constitutional framework. The Court ruled that the death penalty should no longer be viewed as an ordinary sentencing option but rather as an exceptional measure of last resort, to be imposed only when all other sentencing alternatives have been exhausted. The decision mandates that judges must explicitly consider principles of proportionality and individualization, taking into account the specific circumstances of both the crime and the offender (Jouet, 2023). Furthermore, the ruling introduced a ten-year probationary period during which convicted individuals may demonstrate rehabilitation, potentially converting their death sentences to life imprisonment (Libraty et al., 2025; Tawaqal & Ramada, 2025).

This constitutional intervention has created a complex jurisprudential environment where traditional retributive philosophy confronts evolving human rights norms. The tension between Kant's absolutist retributive principles and the Constitutional Court's more flexible, human rights-oriented approach presents a fascinating case study in legal philosophy's practical application. Kant's theory, rooted in deontological ethics, rejects consequentialist considerations and demands punishment as a moral imperative divorced from utilitarian calculations. Conversely, the Constitutional Court's decision implicitly incorporates consequentialist and rehabilitative elements, acknowledging that the death penalty's finality requires exceptional justification beyond mere proportionality to the offense (Christiansen & Bakhtiar, 2025; Shaffer, 2025; Sibuea & Prasetyo, 2025).

The practical implications of this theoretical tension manifest in judicial decision-making across Indonesian courts. Judges now face the challenging task of reconciling retributive principles with constitutional mandates that emphasize restraint, proportionality, and the protection of fundamental human rights. In cases of premeditated murder, where

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Kantian retributivism most clearly demands capital punishment, judges must navigate between philosophical consistency and constitutional compliance. This balancing act raises critical questions: Can authentic Kantian retributivism coexist with a death penalty regime characterized as exceptional and alternative? Does the Constitutional Court's decision represent an incremental move toward abolitionism that fundamentally contradicts retributive foundations? How do judges rationalize their sentencing decisions when confronted with these potentially incompatible normative frameworks?

These questions acquire heightened significance in light of Indonesia's position within the global death penalty debate. While international human rights instruments increasingly advocate for abolition, Indonesia maintains capital punishment for various offenses, including premeditated murder, terrorism, and drug trafficking (McCarthy & Brunton-Smith, 2024). The country's stance reflects competing influences: traditional legal culture emphasizing retributive justice, religious and cultural values that may support capital punishment, and mounting international pressure for abolition grounded in human rights discourse (Pascoe & Miao, 2017). The Constitutional Court's decision represents a middle ground—maintaining the death penalty's legality while substantially constraining its application.

This study addresses three interrelated research questions. First, how do judges interpret and apply Kantian retributive principles when deciding death penalty cases following Constitutional Court Decision No. 21/PUU-VI/2008? Second, does the characterization of the death penalty as an alternative of last resort remain consonant with authentic retributive theory, or does it represent a fundamental deviation from Kantian principles? Third, what normative contradictions, if any, exist between classical retributive doctrine and the Constitutional Court's approach that implicitly moves toward gradual abolition (Jouet, 2023)?

Through normative juridical analysis of statutory provisions, court decisions, and philosophical literature, this research illuminates the complex interplay between theoretical purity and practical jurisprudence (Bessler, 2022). The findings contribute to broader debates about punishment theory's role in contemporary criminal justice systems, particularly in jurisdictions attempting to harmonize traditional punitive philosophies with evolving human rights standards. Understanding how Indonesian courts navigate these tensions provides valuable insights for comparative legal scholarship and informs ongoing policy discussions about the death penalty's future in Indonesia and similar jurisdictions (Putra & Sadjijono, 2025; Salsabila & H, 2025).

The urgency of this inquiry extends beyond academic interest. Real cases continue to test these theoretical boundaries, with defendants' lives hanging in the balance as judges struggle to apply philosophical principles within constitutional constraints. The coherence and legitimacy of Indonesia's capital punishment regime depend partly on resolving these theoretical tensions or, at minimum, acknowledging them transparently. This study thus serves both scholarly and practical purposes, offering analytical clarity on fundamental questions that shape how Indonesia administers its most severe punishment.

Literature Review

The philosophical foundations of retributive justice trace their most influential modern articulation to Immanuel Kant's deontological ethics. Kant's theory of punishment, elaborated primarily in *The Metaphysics of Morals*, establishes punishment as a categorical imperative—a moral necessity independent of consequentialist considerations. Recent scholarship has extensively examined Kant's retributive principles and their contemporary relevance. Brooks examines Kant's *ius talionis* principle and argues that proportional punishment serves not merely to balance moral scales but to affirm the rational agency and dignity of offenders by treating them as responsible moral actors capable of understanding and deserving the consequences of their actions. This interpretation emphasizes that retributive justice, properly understood, respects rather than degrades human dignity (Klempe, 2025).

Tadros provides a critical assessment of retributive theory's contemporary viability, questioning whether absolute proportionality can be coherently maintained in complex legal systems that must accommodate multiple, sometimes conflicting, normative considerations. His analysis suggests that pure Kantian retributivism faces significant challenges when confronting modern constitutional frameworks that prioritize human rights protection and rehabilitative objectives. This critique resonates with the Indonesian context, where constitutional imperatives increasingly constrain traditional retributive practices (Ariawan, 2025; Mahajan, 2025).

The death penalty's philosophical justification has been extensively debated in contemporary literature. Boonin presents a comprehensive abolitionist argument, systematically challenging retributive justifications for capital punishment. He contends that even accepting retributive principles, the death penalty fails to satisfy the requirements of just punishment due to its irreversibility, discriminatory application, and the moral distinction between individual acts of killing and state-sanctioned execution (De Ungria & Jose, 2020). This abolitionist perspective has gained traction in international human rights discourse and influences judicial reasoning in jurisdictions reconsidering capital punishment.

Conversely, Steiker and Steiker analyze the persistence of capital punishment in American jurisprudence, arguing that retributive intuitions remain deeply embedded in public consciousness and legal culture despite mounting evidence of systemic problems in death penalty administration. Their work illuminates how retributive rhetoric can persist even as practical application becomes increasingly constrained, a phenomenon observable in Indonesia following the Constitutional Court decision (Sodikin & Suhaedi, 2025; Widyatama & Sujono, 2025).

Within the Indonesian context, scholarly attention has focused on the constitutional dimensions of capital punishment following Decision No. 21/PUU-VI/2008. Situmorang analyzes the Constitutional Court's evolving jurisprudence on death penalty cases, tracing a gradual shift from acceptance toward skepticism. The decision marks a significant departure from earlier rulings that unequivocally upheld capital punishment's constitutionality. By recharacterizing the death penalty as exceptional and alternative, the Court implicitly acknowledges legitimacy concerns while avoiding outright abolition. This jurisprudential

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evolution reflects broader regional trends in Southeast Asia, where several countries have moved toward de facto or de jure abolition.

Prasad examines proportionality principles in sentencing decisions, arguing that Indonesian courts have historically struggled to articulate clear proportionality standards beyond rhetorical appeals to crime severity. The Constitutional Court's decision attempts to provide more rigorous guidance by mandating explicit consideration of individualization factors, yet substantial discretion remains with trial judges. This discretionary space creates opportunities for varied interpretations of proportionality, potentially leading to inconsistent application of death penalty standards across jurisdictions (Setiodjati & Hamidi, 2025).

The intersection of retributive theory and human rights norms has generated significant scholarly debate. Duff articulates a communicative theory of punishment that attempts to reconcile retributive intuitions with respect for offenders' rights and dignity. His approach suggests that punishment should aim not merely at proportional suffering but at moral communication and potential reconciliation. This perspective offers a middle ground between pure retributivism and purely consequentialist approaches, though its practical implementation remains contested.

Simons analyzes the relationship between retributive desert and preventive considerations in punishment theory, arguing that contemporary sentencing practices inevitably incorporate multiple rationales despite theoretical commitments to single justifications. His analysis suggests that the tension observed in Indonesian death penalty jurisprudence is not unique but reflects broader challenges facing any legal system attempting to operationalize punishment theory within complex institutional frameworks.

Comparative perspectives from other jurisdictions provide valuable insights (Asa'ari et al., 2023). Lim examines Singapore's death penalty regime, which maintains mandatory capital punishment for certain offenses while incorporating limited discretion for others. Singapore's approach contrasts with Indonesia's increasingly flexible framework, yet both jurisdictions confront similar tensions between retributive foundations and evolving human rights consciousness. The comparative analysis reveals that jurisdictions retaining capital punishment adopt varied strategies to manage these tensions, from mandatory sentencing schemes that eliminate judicial discretion to highly individualized assessments that maximize flexibility (Montaña, 2025; Purba et al., 2025).

Hood and Hoyle provide comprehensive empirical analysis of global death penalty trends, documenting widespread movement toward abolition over recent decades. Their research indicates that retention jurisdictions increasingly adopt restrictive policies that limit capital punishment's scope and application, even when formal abolition remains politically unfeasible. Indonesia's Constitutional Court decision fits this pattern, implementing procedural and substantive constraints that effectively reduce death sentences while maintaining formal legality.

The role of judicial discretion in death penalty sentencing has been extensively analyzed. Johnson and Zimring examine how guided discretion systems attempt to structure

judicial decision-making while preserving individualized assessment capacity. Their findings suggest that discretion inevitably introduces variability and potential arbitrariness, challenging retributive theory's demand for consistent proportionality. The Indonesian context presents similar concerns, as trial judges must navigate broad constitutional principles without detailed statutory guidance on their application.

Recent scholarship has also examined the psychological and social dimensions of retributive sentencing. Vidmar and Miller analyze how retributive intuitions influence judicial decision-making, suggesting that judges' sentencing choices reflect not merely abstract philosophical principles but also emotional responses to crime severity and perceived moral culpability (Sujono et al., 2024). This research complicates purely rationalist accounts of judicial reasoning and suggests that actual sentencing practices may diverge from theoretical frameworks in systematic ways.

The concept of premeditated murder as distinctively deserving capital punishment has particular salience in retributive theory. Dressler examines the moral and legal significance of premeditation, arguing that planning and deliberation amplify culpability by demonstrating reflective endorsement of wrongdoing rather than impulsive action. This distinction underlies Article 340 of Indonesia's Criminal Code, which treats premeditated murder more severely than spontaneous killing. However, modern psychological research questions whether premeditation reliably indicates greater moral culpability, as various cognitive and emotional factors may influence planning capacity (Rana et al., 2025).

The rehabilitative critique of retributivism has gained prominence in recent decades. Ryberg and Roberts present arguments for rehabilitative approaches that challenge retribution's exclusive focus on past conduct, emphasizing instead the possibility of moral transformation and reintegration. This perspective informs the Constitutional Court's introduction of a ten-year probationary period, which implicitly acknowledges rehabilitation's relevance even in capital cases. The tension between backward-looking retribution and forward-looking rehabilitation represents a fundamental axis of disagreement in punishment theory.

Existing literature thus reveals multiple strands of inquiry relevant to this study: the philosophical foundations and contemporary critiques of Kantian retributivism, the evolving constitutional status of capital punishment in Indonesia, comparative perspectives on death penalty regimes, and broader debates about punishment's proper aims and justifications. However, systematic analysis of how Indonesian courts apply Kantian principles post-Constitutional Court decision remains limited. This study addresses that gap by examining the specific intersection of retributive theory and constitutional constraint in Indonesian death penalty jurisprudence.

Research Method

This research employs a normative juridical methodology, analyzing legal phenomena through examination of statutory provisions, judicial decisions, doctrinal scholarship, and philosophical theory. The normative juridical approach is particularly appropriate for

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investigating questions concerning legal interpretation, theoretical consistency, and normative contradictions within positive law. Unlike empirical socio-legal research that examines law's actual social effects, normative analysis focuses on internal coherence, interpretive validity, and philosophical foundations of legal doctrines.

The research utilizes secondary legal materials exclusively, encompassing primary legal sources including statutory law, particularly Article 340 of Indonesia's Criminal Code, Constitutional Court Decision No. 21/PUU-VI/2008, and subsequent appellate court decisions imposing or reviewing death sentences for premeditated murder. Secondary sources include scholarly commentaries, legal treatises, philosophical texts, particularly Kant's works on moral philosophy and punishment theory, and journal articles addressing retributive justice and capital punishment. The analysis also incorporates comparative legal materials from other jurisdictions to contextualize Indonesia's approach within broader global trends.

The research design follows a conceptual and statutory approach. The conceptual approach examines Kant's retributive theory as articulated in his philosophical works, particularly *The Metaphysics of Morals*, identifying core principles including proportionality, categorical imperative foundations, rejection of consequentialist justifications, and the moral significance of respecting offenders' rational agency. The statutory approach analyzes positive law provisions governing capital punishment in Indonesia, focusing on interpretive shifts following Constitutional Court Decision No. 21/PUU-VI/2008 and examining how statutory provisions are applied and rationalized in judicial decisions.

Data analysis employs systematic interpretation and hermeneutic methodology. Legal hermeneutics seeks to understand legal texts' meaning within their broader normative and historical contexts, recognizing that legal interpretation involves not merely semantic analysis but also reconstruction of underlying principles and purposes. The interpretive process involves several analytical steps: identification of key normative principles in both Kantian retributive theory and Constitutional Court jurisprudence, comparative analysis examining points of convergence and divergence between theoretical principles and judicial practice, consistency evaluation assessing whether court decisions maintain internal coherence with professed retributive foundations, and critical examination identifying normative tensions or contradictions between classical retributive theory and contemporary constitutional constraints.

The analytical framework recognizes that legal interpretation is neither purely objective nor entirely subjective but involves dialectical engagement between interpreter, text, and context. This hermeneutic approach acknowledges that understanding Indonesian death penalty jurisprudence requires attention not only to explicit legal provisions and judicial statements but also to implicit assumptions, unstated premises, and broader normative commitments that shape judicial reasoning. Through careful reconstruction of these interpretive layers, the analysis aims to illuminate the complex relationship between retributive theory and judicial practice in contemporary Indonesia.

Results and Discussion

Analysis of post-2021 Indonesian death penalty jurisprudence reveals a complex pattern of continuity and transformation in judicial application of retributive principles. Courts continue to employ retributive rhetoric extensively, frequently invoking proportionality between crime severity and punishment. However, the practical application of these principles has been substantially modified by Constitutional Court constraints, creating significant tensions between theoretical purity and constitutional compliance (Sujono, 2022).

Examining representative cases from district courts and appellate tribunals demonstrates how judges navigate these tensions. In typical premeditated murder cases resulting in death sentences, judicial reasoning exhibits several common patterns. Courts invariably emphasize the planned nature of the killing, detailed preparation, and cold-blooded execution as aggravating factors warranting severe punishment. This emphasis aligns with Kantian principles that treat deliberate wrongdoing as more culpable than impulsive action. Judges frequently invoke societal condemnation of the crime and the need for proportional response to heinous conduct, echoing retributive demands that punishment reflect moral desert.

However, post-Constitutional Court decision, judicial reasoning incorporates additional layers of analysis previously absent or minimally developed. Judges now explicitly acknowledge the death penalty's exceptional character and consider whether alternative sanctions might suffice. This consideration represents a significant departure from pure Kantian retributivism, which does not recognize degrees of appropriateness once proportionality is established. For Kant, if death is the proportionate punishment, then death must be imposed—period. The notion that death penalty could be appropriate yet still alternative introduces consequentialist or prudential considerations foreign to deontological foundations.

The Constitutional Court's mandate for individualization further complicates retributive application. Judges must now consider defendant-specific factors including personal circumstances, potential for rehabilitation, age, mental state, and other mitigating factors. While retributive theory certainly permits consideration of culpability-affecting factors such as diminished capacity or duress, the Constitutional Court framework pushes beyond traditional retributive bounds by requiring judges to weigh forward-looking considerations like rehabilitation potential. This requirement imports rehabilitative logic into what Kant would recognize as purely retributive territory.

The ten-year probationary period introduces another dimension incompatible with classical retributivism. This provision effectively converts capital sentences into conditional punishments subject to future revision based on demonstrated rehabilitation. For Kant, punishment's justification derives entirely from past wrongdoing; future behavior cannot alter what justice demands now. The probationary mechanism thus represents a fundamental reconceptualization of capital punishment from absolute judgment to contingent sanction, privileging rehabilitation and reform over categorical moral desert.

Despite these modifications, judges maintain retributive rhetoric when explaining death sentences. Judicial opinions typically begin by establishing the crime's heinousness and the

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resulting proportional need for severe punishment, employing language strongly reminiscent of Kantian principles. Only subsequently do opinions address Constitutional Court requirements, often treating them as additional considerations layered onto foundational retributive justification rather than as fundamentally altering the punishment's nature or rationale.

This rhetorical structure suggests that judges perceive retributive justification as primary, with constitutional constraints functioning as external limitations rather than constitutive elements of justified punishment. In philosophical terms, judges appear to treat constitutional requirements as side constraints on retributive justice rather than as alternative justificatory bases that might supplant retributive foundations entirely. This approach maintains surface consistency with Kantian principles while accommodating constitutional mandates through practical compromise.

However, this compromise creates deep normative tensions. Authentic Kantian retributivism admits no compromise when proportional punishment is determined. Kant famously argued that even if civil society were dissolving, criminals must still receive their deserved punishment lest bloodguilt attach to members who failed to demand proportionate justice. This absolutist position cannot accommodate the notion that death sentences might appropriately be withheld despite being proportionate, nor can it accept that future rehabilitation might justify commuting deserved capital punishment.

The concept of the death penalty as alternative rather than mandatory represents a particularly acute philosophical problem. If capital punishment is truly proportionate to premeditated murder under retributive principles, then judges face a binary choice: impose the proportionate sentence or impose a disproportionate sentence. There exists no coherent middle ground where death is simultaneously proportionate yet alternative. The language of exceptionality attempts to bridge this conceptual gap by suggesting death penalty remains theoretically appropriate but practically disfavored. However, this formulation merely restates rather than resolves the underlying contradiction.

One possible reconciliation involves reinterpreting proportionality more flexibly than Kant would permit. Perhaps multiple punishment levels can be proportionate to a single offense, with judges selecting among proportionate options based on individualization factors. This approach preserves proportionality as a constraint while allowing discretionary choice within proportionate bounds. However, this interpretation substantially dilutes retributive theory's determinacy and threatens to collapse into hybrid theories that blend retributive, utilitarian, and rehabilitative elements without clear principled foundations.

Alternatively, one might argue that the Constitutional Court decision reflects evolving understanding of human dignity and proportionality's requirements in light of contemporary human rights norms. Perhaps what appears to be compromise actually represents refinement of retributive principles through constitutional interpretation. On this view, respect for human dignity—a value central to Kantian ethics—requires recognizing the death penalty's exceptional severity and corresponding exceptional justification threshold. Capital

punishment's irreversibility and finality demand heightened confidence in proportionality judgments, justifying procedural safeguards and individualized assessment.

This interpretive strategy maintains rhetorical continuity with retributive foundations while substantively transforming their application. Whether Kant himself would accept such reinterpretation remains doubtful. His own explicit statements about capital punishment admit little flexibility, asserting unequivocally that murderers must die to satisfy justice's demands. Contemporary appropriations of Kantian theory that accommodate constitutional constraints thus represent creative adaptations rather than strict applications of Kant's actual views.

The practical impact of these theoretical tensions appears in sentencing variability across jurisdictions and judges. Different courts applying the same legal framework reach divergent conclusions about death penalty appropriateness in factually similar cases. This variability partly reflects inevitable interpretive discretion but also suggests underlying conceptual uncertainty about how constitutional requirements interact with retributive foundations. Judges lack clear principled guidance for weighing retributive desert against individualization factors or for determining when cases qualify as sufficiently exceptional to warrant capital punishment.

From a critical perspective, the persistence of retributive rhetoric amid increasing constitutional constraints may serve primarily legitimating rather than explanatory functions. Retributive language provides moral gravitas to sentencing decisions while constitutional requirements offer legal validity. However, this dual justification strategy obscures rather than resolves fundamental questions about punishment's proper aims and justifications. If rehabilitation matters sufficiently to justify probationary provisions, why should retributive desert determine initial sentences? Conversely, if retributive proportionality truly governs, why permit future commutation based on rehabilitation?

These tensions reflect broader challenges facing any legal system attempting to operationalize punishment theory within complex institutional frameworks constrained by multiple, sometimes conflicting, normative commitments. Indonesia's experience demonstrates that theoretical purity often yields to practical compromise when abstract principles meet concrete institutional realities. The Constitutional Court's decision represents an attempt to reconcile competing values—retributive intuitions, human rights protection, judicial flexibility, and legal certainty—through procedural and substantive reforms that modify capital punishment's application without formal abolition.

Whether this compromise succeeds depends partly on evaluative criteria. If the goal is maintaining strict adherence to Kantian retributive principles, the Constitutional Court's approach fails by introducing impermissible considerations and undermining proportionality's categorical demands. If instead the goal is developing a humane, rights-respecting approach to serious crime that acknowledges retributive intuitions while constraining capital punishment through procedural safeguards, the decision succeeds in balancing these competing concerns.

From a comparative perspective, Indonesia's trajectory mirrors broader global trends toward qualified retention or gradual abolition. Many countries maintaining formal death penalty provisions have implemented increasingly restrictive application standards, effectively

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achieving de facto abolition through judicial restraint despite legislative inaction. The Constitutional Court's decision places Indonesia within this category of retention jurisdictions that maintain capital punishment's legal validity while substantially constraining practical application through constitutional interpretation.

Looking forward, the tension between retributive foundations and constitutional constraints will likely intensify as human rights consciousness continues developing. Future Constitutional Court decisions or legislative reforms may further restrict capital punishment's scope, potentially moving Indonesia toward de facto abolition while maintaining formal legality. This evolutionary process, while pragmatically understandable, leaves unresolved the fundamental theoretical question: what, ultimately, justifies criminal punishment in contemporary Indonesia? The answer increasingly appears to involve eclectic synthesis rather than coherent theoretical foundation, combining retributive, utilitarian, and rehabilitative elements without clear prioritization or integration principles.

Conclusion

This study reveals fundamental tensions between Immanuel Kant's retributive justice theory and contemporary Indonesian death penalty jurisprudence following Constitutional Court Decision No. 21/PUU-VI/2008. While judges continue employing retributive rhetoric to justify capital sentences for premeditated murder, actual sentencing practice has been substantially transformed by constitutional constraints emphasizing exceptionality, proportionality, individualization, and rehabilitation potential. These modifications, though pragmatically defensible within Indonesia's evolving legal framework, represent significant departures from authentic Kantian retributivism. The research demonstrates that Indonesian courts face an inherent theoretical contradiction. Classical Kantian retributivism demands absolute proportionality between crime and punishment, treating death as the categorical imperative response to premeditated murder. However, constitutional requirements now mandate treating capital punishment as exceptional and alternative, incorporating forward-looking rehabilitative considerations alongside backward-looking retributive assessment. This hybrid approach attempts to satisfy both retributive intuitions and human rights commitments but achieves coherence in neither domain.

The ten-year probationary period particularly exemplifies this theoretical incoherence. By making capital sentences contingent upon future behavior, this provision fundamentally reconceptualizes punishment from moral desert to conditional sanction. Such reconceptualization contradicts retributive foundations that derive punishment's justification entirely from past wrongdoing rather than future conduct. While the probationary mechanism may serve humanitarian purposes and accommodate rehabilitation values, it cannot be reconciled with strict Kantian principles. Similarly, the requirement that judges consider mitigating factors extending beyond traditional culpability assessment imports consequentialist and rehabilitative logic into ostensibly retributive determinations. Factors such as defendant's age, personal circumstances, or rehabilitation potential may be normatively relevant within utilitarian or rehabilitative frameworks but lack clear justificatory status within pure

retributivism. Their inclusion suggests that Indonesian death penalty jurisprudence has evolved toward eclectic synthesis rather than maintaining theoretical purity.

The Constitutional Court's decision reflects Indonesia's participation in broader global trends toward death penalty restriction and eventual abolition. By recharacterizing capital punishment as exceptional while maintaining formal legality, the Court positions Indonesia within a growing category of qualified retention jurisdictions. This middle ground satisfies neither pure retributivists who demand consistent application of proportional punishment nor absolute abolitionists who reject capital punishment categorically. However, it may represent a pragmatic compromise achievable within Indonesia's current political and cultural context. From a normative perspective, these developments raise questions about theoretical foundations of punishment in contemporary Indonesia. If retributive principles truly govern, constitutional modifications that undermine categorical application appear unprincipled. Conversely, if human rights protection and rehabilitation justify constraining retribution, continued reliance on retributive rhetoric may serve primarily legitimating functions rather than explanatory purposes. The resulting theoretical ambiguity complicates coherent punishment policy development and may contribute to arbitrary sentencing patterns across different jurisdictions and judges.

Suggestion

Future research should examine actual sentencing patterns empirically to determine whether constitutional constraints have substantially reduced death sentences in practice or merely modified their rhetorical justification. Comparative analysis with other Southeast Asian jurisdictions undergoing similar transitions could illuminate common challenges and varied solutions to reconciling retributive traditions with evolving human rights norms. Additionally, philosophical analysis could develop more coherent hybrid theories that explicitly integrate retributive, utilitarian, and rehabilitative elements rather than maintaining uneasy coexistence between competing frameworks.

For policy development, these findings suggest the need for clearer legislative guidance regarding death penalty application standards. The current framework leaves substantial discretion to trial judges without providing detailed criteria for weighing competing considerations. More specific statutory provisions could reduce arbitrariness and enhance consistency while maintaining necessary flexibility for individualized assessment. Alternatively, if constitutional constraints have effectively moved Indonesia toward *de facto* abolition, formal legislative abolition might provide greater clarity and consistency than the current hybrid approach.

The study's findings also have implications for legal education and judicial training. Judges require enhanced understanding of punishment theory's philosophical foundations and practical applications to navigate the complex terrain between retributive principles and constitutional constraints. Professional development programs addressing these theoretical tensions could improve judicial reasoning quality and sentencing consistency. Law faculties should incorporate punishment theory more comprehensively into criminal law curricula,

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examining not merely doctrinal provisions but also underlying normative foundations and their practical implications.

In conclusion, Indonesian death penalty jurisprudence following Constitutional Court Decision No. 21/PUU-VI/2008 exemplifies the challenges of applying classical punishment theory within contemporary constitutional frameworks committed to human rights protection. The resulting hybrid approach maintains retributive rhetoric while substantially modifying practical application through constitutional constraints. Whether this compromise represents pragmatic wisdom or theoretical confusion remains contested, reflecting ongoing debates about punishment's proper aims and justifications in modern democratic societies.

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