

Convergence and Divergence in the Regulation of Capital Punishment in Indonesia and Thailand: Implications for Criminal Law Reform in Southeast Asia

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Abstrak

Hukuman mati tetap menjadi salah satu sanksi paling diperdebatkan dalam hukum pidana, memunculkan pertanyaan mengenai efektivitas penegakan dan perlindungan hak asasi manusia. Indonesia dan Thailand, keduanya negara retensionis di Asia Tenggara, mempertahankan hukuman mati meskipun memiliki karakteristik regulasi dan lintasan reformasi berbeda. Studi ini menganalisis konvergensi dan divergensi regulasi hukuman mati di kedua yurisdiksi serta mengkaji implikasinya bagi reformasi hukum pidana di Asia Tenggara. Menggunakan metode hukum komparatif normatif yang menggabungkan pendekatan statuta, konseptual, dan fungsional, studi ini mengacu pada bahan hukum primer, termasuk perundang-undangan dan instrumen internasional seperti ICCPR dan Protokol Opsional Kedua, serta literatur terindeks Scopus. Temuan menunjukkan kedua negara berkonvergensi dalam mempertahankan hukuman mati untuk kejahatan serius, khususnya pembunuhan berencana dan kejahatan narkoba, namun berdivergensi dalam model reformasi. KUHP Indonesia tahun 2023 memperkenalkan hukuman mati bersyarat dengan masa percobaan sepuluh tahun yang memungkinkan komutasi, sementara Thailand menempuh model restriktif yang mempersempit cakupan delik pidana mati serta mengatur prosedur eksekusi. Kedua negara belum meratifikasi Protokol Opsional Kedua; reformasi mencerminkan akomodasi domestik terhadap Pasal 6 ICCPR, bukan penghapusan yang diwajibkan perjanjian internasional. Dengan teori divergensi hukum Nelken, studi ini menyimpulkan bahwa tekanan internasional yang sama menghasilkan jalur reformasi berbeda yang termediasi domestik, bukan konvergensi regional seragam menuju satu model.

Keywords: Pidana Mati; Hukum Pidana Komparatif; Reformasi Hukum Pidana; Indonesia; Thailand

Abstract

Capital punishment remains one of the most debated sanctions in criminal law, raising questions about enforcement effectiveness and human rights protection. Indonesia and Thailand, both retentionist states in Southeast Asia, retain the death penalty despite differing regulatory characteristics and reform trajectories. This study analyzes convergence and divergence in capital punishment regulation between the two jurisdictions and examines implications for criminal law reform in Southeast Asia. Using a normative comparative legal method combining statutory, conceptual, and

functional approaches, the study draws on primary legal materials, including legislation and international instruments such as the ICCPR and its Second Optional Protocol, alongside Scopus-indexed literature. Findings show both countries converge in retaining capital punishment for serious offenses, particularly premeditated murder and drug crimes, yet diverge in reform models. Indonesia's 2023 Criminal Code introduces a conditional death penalty with a ten-year probationary mechanism permitting commutation, while Thailand pursues a restrictive model narrowing death-eligible offenses and regulating execution procedures. Neither state has ratified the Second Optional Protocol; reform reflects domestic accommodation of ICCPR Article 6 rather than treaty-mandated abolition. Applying Nelken's theory of legal divergence, the study concludes that shared international pressures produce distinct, domestically mediated reform pathways rather than uniform regional convergence toward one model.

Keywords: Capital Punishment; Comparative Criminal Law; Criminal Law Reform; Indonesia; Thailand.

INTRODUCTION

Capital punishment is one of the oldest forms of punishment retained in several systems, including Southeast Asia. Its existence remains debated between retentionist and abolitionist states. Retentionists argue that the death penalty serves deterrence, protects society from crimes, and maintains social order.¹ Abolitionists, however, challenge capital punishment from a human-rights perspective, regarding the right to life.² Under international human-rights law, this relationship requires qualification. Article 6(1) of the ICCPR recognizes the right to life and prohibits arbitrary deprivation of life, while Article 6(2) permits capital punishment in retentionist states only under strict conditions, for the most serious crimes. Although Article 4(2) identifies the right to life as non-derogable, this does not itself constitute an absolute prohibition of capital punishment. Nevertheless, the Second Optional Protocol reflects the movement toward abolition internationally.³

Globally, the movement toward the abolition of capital punishment has progressed significantly over the past several decades.⁴ Nevertheless, Asia remains one of the regions that continues to retain capital punishment more extensively than Europe and Latin America. Within Southeast Asia, several countries, including Indonesia, Thailand, Singapore, and Vietnam, continue to recognize the death penalty as a lawful criminal sanction within their legal systems. Research conducted by Yingyos Leechaianan and Dennis R. Longmire demonstrates that Southeast Asian states generally retain capital punishment for drug-related offenses, premeditated

¹ Sally S Simpson, Miranda A Galvin, and Thomas A Loughran, "Perceptions of White-Collar Crime Seriousness: Unpacking and Translating Attitudes into Policy Preferences," *Journal of Research in Crime and Delinquency* 60, no. 5 (2023): 582–622, <https://doi.org/10.1177/00224278221092094>.

² Philip Czech, Lisa Heschl, and Manfred Nowak, *European Yearbook on Human Rights 2024* (BRILL, 2025).

³F. Pakes, *Comparative Criminal Justice* (Routledge, 2024), <https://doi.org/10.4324/9781003390688>.

⁴ Ryan Nichols, *The Routledge International Handbook of Morality, Cognition, and Emotion in China* (Routledge, Taylor & Francis Group, 2022).

murder, and crimes considered to threaten national security. This policy orientation indicates that criminal law in Southeast Asia continues to regard the death penalty as an important instrument of national criminal policy.⁵

Indonesia is one of the countries that continues to retain capital punishment within its national legal system. The death penalty is regulated not only in the Indonesian Criminal Code but also in various special statutes, including the Narcotics Law, the Anti-Terrorism Law, and the Human Rights Court Law. However, the enactment of Law Number 1 of 2023 concerning the Criminal Code demonstrates a significant shift in Indonesia's criminal law policy. Under the new Criminal Code, capital punishment is no longer classified as a principal punishment but rather as a special punishment of an alternative nature that may be subject to a ten-year probationary period before execution. This reform reflects the state's attempt to accommodate humanitarian principles and the protection of human rights without fully abolishing capital punishment.

The reform of capital punishment policy in Indonesia represents a notable process of legal transformation. On the one hand, the state continues to maintain the death penalty as a penal instrument for extraordinary crimes; on the other hand, it has begun to adopt a more moderate approach through the concept of conditional capital punishment⁶. Several studies suggest that this model constitutes a compromise between international demands for the abolition of the death penalty and domestic needs to preserve the effectiveness of criminal law enforcement.⁷ Accordingly, the reform of capital punishment under the new Criminal Code may be viewed as a form of convergence between the traditional punitive paradigm and the modern human rights paradigm.

The similarity between Indonesia and Thailand lies in the continued existence of capital punishment within their national legal systems and its application to certain offenses regarded as particularly serious.⁸ However, the two countries exhibit significant differences in the direction of their legal reforms. Indonesia has developed a model of conditional capital punishment through its new Criminal Code, whereas Thailand has tended to narrow the scope of capital punishment by restricting the categories of offenses subject to the death penalty. These differing reform orientations illustrate the phenomenon of convergence and divergence in the regulation of capital punishment within Southeast Asia.⁹ Convergence is reflected in the shared recognition of capital punishment as a legitimate legal

⁵ A. Widyawati et al., "Dynamics of the Penitentiary System, Transparent and Accountable Handling of Criminal Cases in Criminal Execution Law in Southeast Asia: Convergence and Divergence of International Perspectives," *Indonesia Law Review* 15, no. 1 (2025): 2, <https://doi.org/10.15742/ilrev.v15n1.1>.

⁶ Carsten Anckar and Thomas Denk, "Diffusion and the Abolition of the Death Penalty : A Global Comparison," *Nordic Journal of Human Rights* 42, no. 2 (2024): 195–214, <https://doi.org/10.1080/18918131.2024.2325254>.

⁷ D. M. Amann, *Harmonic Convergence ? Constitutional Criminal Procedure in an International Context* (Routledge, 2017).

⁸ O. Dyer, "Global Number of Executions Hit Five Year High in 2022, Says Amnesty International," *BMJ*, 2023, <https://doi.org/10.1136/bmj.p1145>.

⁹ Sriprapha Petcharamesree, Raine Boonlong, and Danthong Breen, *ASEAN and the Death Penalty : Theoretical and Legal Views and a Pathway to Abolition* (Springer Nature Singapore, 2023), <https://doi.org/10.1007/978-981-19-8840-0>.

instrument, while divergence is evident in the regulatory models, implementation practices, and trajectories of criminal law reform adopted by each country.¹⁰

Thailand remains a retentionist state, with capital punishment expressly recognized under Section 18 of the Thai Criminal Code. Several provisions, including Sections 107, 108, 109, 224, 288, and 289, continue to permit the death penalty for serious offenses, including crimes against the King, certain offenses resulting in death, and aggravated murder. Nevertheless, Thai criminal law demonstrates a restrictive approach to capital punishment rather than its abolition. The Criminal Code Amendment Act No. 16 B.E. 2546 (2003) amended Section 18 by prohibiting the death penalty and life imprisonment for offenders under eighteen at the time of the offense and replacing them with fifty years' imprisonment. The amendment also revised Section 19, replacing execution by firing squad with lethal injection, with reference to Thailand's obligations under Article 6(5) ICCPR and Article 37(a) CRC. Thus, Thai reform is better understood as strengthening legal safeguards and proportionality in capital sentencing rather than comprehensively reducing death-eligible offenses.¹¹

This study is important because existing scholarship on capital punishment in Indonesia and Thailand has largely examined national legal developments separately or addressed the death penalty broadly from a human rights perspective, while systematic comparative studies mapping convergence and divergence in capital punishment regulation, its limitations, and implications for criminal law reform in Southeast Asia remain limited. The state of the art lies in comparing the legal foundations, death-eligible offenses, limitations on application, and reform trajectories of Indonesia and Thailand through the perspectives of comparative criminal law and human rights protection. The novelty of this study therefore lies not only in comparing the two legal systems but also in identifying patterns of convergence and divergence as a basis for assessing criminal law reform in Southeast Asia. Accordingly, this study addresses three questions: (1) how is capital punishment regulated in Indonesia and Thailand; (2) what aspects demonstrate convergence and divergence; and (3) what implications do these findings have for criminal law reform in Southeast Asia.

1. The Theory and Contemporary Development of Capital Punishment in Modern Criminal Law

Capital punishment remains one of the oldest forms of punishment retained in various legal systems worldwide. Its justification has traditionally been grounded in both retributive theory, which regards punishment as proportionate retribution for violations of legal norms and social order,¹² and deterrence theory, which views severe punishment as a means of preventing serious criminal offenses.¹³ However,

¹⁰ Dan Gabriel Rusu, *Life beyond Murder : Exploring the Identity Reconstruction of Mandatory Lifers after Release* By (Routledge, 2022).

¹¹ Wipaporn Natigirachord, "Kasetsart Journal of Social Sciences The Abolition of the Death Penalty : A Case Study of Appropriate Offenses," *Kasetsart Journal of Social Sciences* 41, no. 3 (2020): 576–80; M. P. Capaldi, *The Death Penalty in ASEAN: Steadfastly Retentionist? In Unpacking the Death Penalty in ASEAN* (Singapore: Springer Nature Singapore, 2023), https://doi.org/10.1007/978-981-19-8840-0_1.

¹² Thom Brooks, "Is Hegel a Retributivist?," *Hegel Bulletin* 25, no. 1–2 (2004): 113–26, <https://doi.org/10.1017/S0263523200002044>.

¹³ Schabas, *The Abolition of the Death Penalty in International Law*.

contemporary debates have expanded beyond penal effectiveness to encompass moral, humanitarian, and human rights considerations. Schabas emphasizes that the development of international human rights law, particularly following the adoption of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), has generated increasing pressure to restrict and ultimately abolish capital punishment in recognition of human dignity and the right to life.^{14,15} Nevertheless, several states continue to retain the death penalty, particularly on grounds of national security, the prevention of serious or extraordinary crimes, and criminal justice policy. This continuing divergence between abolitionist and retentionist approaches demonstrates that capital punishment remains a contested issue at the intersection of criminal policy, state sovereignty, and international human rights law, providing an important basis for comparative analysis of its regulation and reform in Indonesia and Thailand.

2. Convergence and Divergence in Comparative Law Studies of Capital Punishment

Convergence and divergence are fundamental concepts in comparative law that are used to analyze the development of legal systems across different jurisdictions. Legal convergence refers to the tendency of states to adopt similar legal principles as a result of globalization, the evolution of international law, and cross-border regulatory harmonization. In contrast, legal divergence refers to the persistence of distinctive national legal characteristics shaped by historical, cultural, political, and social factors. In the context of capital punishment, developments in international law have encouraged a trend toward convergence through the strengthening of human rights standards that restrict the use of the death penalty. However, the implementation of these norms continues to vary across jurisdictions according to each state's national criminal policy orientation.¹⁶

In practice, the phenomenon of convergence and divergence is clearly observable among Southeast Asian countries that continue to retain capital punishment. Research conducted by Yingyos Leechaianan and Dennis R. Longmire demonstrates that Indonesia, Thailand, Singapore, and Malaysia all maintain capital punishment primarily for drug-related offenses and other serious crimes. This similarity reflects a convergence in regional criminal policy orientation, whereby capital punishment is regarded as an instrument for the protection of public security. At the same time, each country has developed different regulatory models, judicial procedures, and implementation mechanisms in accordance with its domestic legal needs, thereby producing divergence in criminal law policy. Accordingly, the comparative law approach is essential for identifying the similarities and differences in the regulation of capital punishment and for understanding the direction of criminal law reform within Southeast Asia.

¹⁴ W. Schabas, *The Abolition of the Death Penalty in International Law* (Cambridge University Press, 2002); W. A. Schabas, *International Law and the Abolition of the Death Penalty. In Comparative Capital Punishment* (Edward Elgar Publishing, 2019), <https://doi.org/10.4337/9781786433251.00022>.

¹⁵ Schabas, *The Abolition of the Death Penalty in International Law*.

¹⁶ Yingyos Leechaianan and Dennis R Longmire, "The Use of the Death Penalty for Drug Trafficking in The," *Laws* 2, no. 2 (2013): 115–49, <https://doi.org/10.3390/laws2020115>.

3. The Regulation of Capital Punishment in the Legal Systems of Indonesia and Thailand as a Comparative Legal Inquiry

Indonesia is one of the countries that continues to retain capital punishment within its national legal system. The regulation of capital punishment is found not only in the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP) but also in various special statutes, including legislation concerning narcotics offenses and terrorism. A significant development occurred with the enactment of Law Number 1 of 2023 concerning the Criminal Code, which classifies capital punishment as a special and alternative punishment that may be subject to a ten-year probationary period. This reform reflects a shift in sentencing philosophy that seeks to balance the interests of criminal law enforcement with the protection of human rights. The model of conditional capital punishment represents one of the more progressive criminal law reforms in Southeast Asia because it emphasizes the principles of individualized sentencing and the possibility of rehabilitation for convicted offenders.¹⁷

Thailand likewise continues to recognize capital punishment as part of its criminal justice system, particularly for serious offenses such as premeditated murder and drug trafficking. However, developments in Thai law demonstrate a tendency to narrow the scope of capital punishment through criminal policy reform and the reduction of categories of offenses punishable by death. At the same time, the Thai government has maintained a repressive approach toward drug-related offenses as part of its national security policy.¹⁸ This situation reveals both similarities and differences between Indonesia and Thailand: both states continue to retain capital punishment as a penal instrument, yet they differ in the direction of legal reform and the implementation of capital punishment. Consequently, Indonesia and Thailand constitute highly relevant comparative legal subjects for analyzing the convergence and divergence of capital punishment regulation and its implications for criminal law reform in Southeast Asia.

RESEARCH METHOD

This study employs a normative comparative legal research approach using a functional comparative analysis design to examine the convergence and divergence of capital punishment regulation in Indonesia and Thailand. This approach was selected because both countries continue to retain capital punishment while exhibiting different trajectories of legal reform in response to developments in modern criminal law and international human rights standards. The object of the study consists of legal instruments regulating capital punishment in both jurisdictions, including national legislation, judicial decisions, and international legal instruments.

¹⁷ A M Putri and S Y Ardiyanto, "Conditional Death Penalty Policy Under Law Number 1 Of 2023 On The Criminal Code: A Legal Certainty Perspective," *Jurnal Ilmiah Advokasi* 13, no. 2 (2025): 581-96; Jonaedi Efendi and Imam Suroso, "Conditional Death Penalty Sentencing in The New Indonesian Criminal Code : A Non-Derogable Rights Perspective," *IUS POSITUM: Journal of Law Theory and Law Enforcement* 4, no. 3 (2025): 66-77, <https://doi.org/10.56943/jlte.v4i3.842>.

¹⁸ F. E. Johnson, D. T., & Zimring, *The next Frontier: National Development, Political Change, and the Death Penalty in Asia* (Oxford University Press, 2009).

The data sources comprise primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations, judicial decisions, and international legal instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the Second Optional Protocol to the ICCPR. Secondary legal materials consist of Scopus-indexed international journal articles, academic books, reports issued by international organizations, and other relevant scholarly publications. Tertiary legal materials include legal dictionaries, legal encyclopedias, and regulatory indexes.

The data were analyzed through three analytical stages. First, descriptive legal analysis was employed to identify the characteristics of capital punishment regulation in Indonesia and Thailand. Second, comparative legal analysis was used to identify similarities and differences in the regulatory frameworks and the direction of legal reform in each country. Third, thematic analysis was conducted to classify and interpret the findings according to themes of legal convergence and legal divergence.

The analytical framework combines David Nelken's theory of legal convergence and divergence with William A. Schabas's human rights approach to capital punishment. The comparative analysis applies consistent functional legal comparators to Indonesia and Thailand: (1) the legal status of capital punishment; (2) death-eligible offenses; (3) sentencing discretion and judicial safeguards, including mitigating circumstances and alternative sanctions; (4) commutation, sentence reduction, and conditional release; (5) judicial and administrative review, including appeals and clemency; (6) execution practices and procedural safeguards; and (7) international human-rights obligations, particularly under the ICCPR. Each comparator is examined through relevant legislation, amendments, judicial decisions, and official legal materials, followed by systematic comparison of similarities, differences, and reform trajectories. Rather than "source triangulation," this doctrinal study employs cross-verification of legal sources to distinguish substantive convergence from regulatory divergence and assess implications for capital punishment reform.

RESULTS AND DISCUSSION

Research Findings

Convergence of Capital Punishment Regulation in Indonesia and Thailand

The findings indicate that Indonesia and Thailand continue to retain capital punishment as an integral part of their national criminal justice systems. Both countries classify the death penalty as a sanction for offenses considered particularly serious, including premeditated murder, drug-related crimes, and offenses threatening national security. This similarity demonstrates a convergence in criminal law policy oriented toward the protection of public interests and the control of serious crime.

Table 1. Convergence Analysis of Capital Punishment Regulation in Indonesia and Thailand

Analytical Aspect	Indonesia	Thailand	Form of Convergence
Status of Capital Punishment	Recognized under the Criminal Code and special statutes	Recognized under the Thai criminal justice system	Both countries retain capital punishment as a legally valid sanction
Criminal Policy Orientation	Used to combat serious crime and protect public interests	Used to combat serious crime threatening society and the state	Both treat capital punishment as an instrument of criminal policy
Offenses Punishable by Death	Premeditated murder, terrorism, narcotics offenses, and other serious crimes	Premeditated murder, narcotics offenses, and other offenses with severe social impact	Both apply capital punishment to extraordinary crimes
Philosophical Basis of Punishment	Protection of society, deterrence, and public order	Protection of society, public security, and crime prevention	Both pursue the protection of security and social order
Relationship with Human Rights	Human rights principles accommodated through sentencing reform	Human rights principles accommodated through restricting the application of capital punishment	Both seek to align national law with international human rights developments
Position within the Criminal Justice System	Remains part of the national sentencing system	Remains part of the national sentencing system	Demonstrates a shared commitment to retaining capital punishment
Influence of International Law	Considers developments in international human rights standards	Considers developments in international human rights standards	Both are influenced by international legal developments concerning capital punishment
Objectives of Punishment	Prevention, retribution, and social protection	Prevention, social protection, and law enforcement	Both share similar sentencing objectives
Reform Policy	Reform without abolishing capital punishment	Reform without abolishing capital punishment	Both countries prefer reform rather than total abolition
Character of the Legal System	Retentionist state	Retentionist state	Both remain retentionist jurisdictions

The convergence identified in Table 1 demonstrates that Indonesia and Thailand continue to recognize capital punishment as a legitimate instrument of criminal law policy. The principal areas of convergence include the legal status of capital punishment, its application to serious offenses, the philosophical justification of punishment, and the influence of international human rights standards. Both countries maintain the death penalty while simultaneously undertaking legal reforms aimed at accommodating humanitarian principles.

From the perspective of comparative criminal law, this finding reflects a form of legal convergence, as both jurisdictions recognize capital punishment as a mechanism for addressing serious crime, particularly premeditated murder, narcotics offenses, and crimes threatening national security. In comparative law scholarship, convergence does not necessarily require identical legal norms; rather, it refers to the similarity of legal objectives and functions in responding to comparable social problems.¹⁹ Consequently, the continued existence of capital punishment in Indonesia and Thailand demonstrates that both states still regard the death penalty as an instrument of social protection and a strategic component of criminal policy.

These findings are consistent with the research of Yingyos Leechaianan and Dennis R. Longmire, who argue that Southeast Asian countries tend to retain capital punishment as a response to crimes perceived as threatening social stability and national security. Similarly, David T. Johnson and Franklin E. Zimring have shown that Asia remains one of the regions with the highest levels of capital punishment retention, influenced by political factors, legal culture, and public perceptions of security. Thus, the convergence between Indonesia and Thailand is not merely normative in nature but is also shaped by the socio-political characteristics of Southeast Asia.

Viewed through the lenses of retributive and utilitarian theories of punishment, these findings indicate that both countries continue to justify capital punishment on the grounds of retribution for serious offenses and deterrence for society at large. Although the effectiveness of deterrence remains contested in international scholarship, it continues to serve as a significant foundation for criminal law policy in many retentionist states.²⁰

Divergence in Criminal Law Reform

Despite their convergence in retaining capital punishment, Indonesia and Thailand demonstrate different approaches to regulating its application. Indonesia has introduced a distinctive sentencing mechanism through Law Number 1 of 2023 concerning the Criminal Code (KUHP). Articles 98 and 100 classify capital punishment as a special punishment and provide for a ten-year probationary period. This reform marks a doctrinal transformation in the nation's penal policy, shifting the death penalty from a principal and absolute punishment to a conditional, alternative sanction. Under Article 100, the court imposes the death penalty with a ten-year probationary period by considering, among other factors, the offender's remorse, prospects for rehabilitation, and role in the offense. If the convicted person

¹⁹ Pakes, *Comparative Criminal Justice*.

²⁰ Simpson, Galvin, and Loughran, "Perceptions of White-Collar Crime Seriousness : Unpacking and Translating Attitudes into Policy Preferences."

demonstrates commendable conduct during the probationary period, the death sentence may be commuted to life imprisonment by Presidential Decree after consideration by the Supreme Court. Conversely, if the offender fails to demonstrate commendable conduct and there is no prospect of rehabilitation, the death sentence may be executed on the order of the Attorney General. This new Criminal Code took effect on 2 January 2026, and if Indonesia carries out no further executions during 2026, it will approach *de facto* abolitionist status, having gone a full decade without an execution.

Thailand, by contrast, retains death as one of the criminal penalties under Section 18 of the Thai Penal Code and continues to prescribe capital punishment for certain serious offenses, including aggravated murder under Section 289. However, Thai law contains specific statutory limitations on its application. Criminal Code Amendment Act (No. 16), B.E. 2546 (2003) amended Section 18 to prohibit the imposition of death and life imprisonment on persons who committed an offense while under eighteen years of age and to replace those punishments with imprisonment for fifty years. The same amendment revised Section 19 by replacing execution by shooting with lethal injection and requiring the criteria and procedures for execution to be established by Ministry of Justice regulations published in the Royal Gazette.

The legislative rationale expressly linked these amendments to Thailand's obligations under Article 6(5) of the ICCPR and Article 37(a) of the Convention on the Rights of the Child. Thailand's restrictive trajectory is not confined to the 2003 amendment: in 2021 Thailand repealed its earlier narcotics legislation and enacted a new Narcotics Code that adopted a public-health rather than a purely punitive approach to drug control, tightening the criteria for capital punishment so that the death penalty may now be imposed only on persons who are leaders, commanders, or managers of criminal networks, or where the offense threatens state stability or public order a marked narrowing from the earlier regime, which allowed the death penalty for mere production, importation, exportation, or possession of narcotic drugs. Under the new Code, presumption-of-trafficking thresholds were also relaxed and mandatory sentencing for drug offenses was eliminated, with courts directed to prioritize rehabilitation over punishment in non-serious drug cases. This confirms that Thailand's divergence from Indonesia's model is not limited to the age-based exclusion analyzed above, but extends to a broader pattern of narrowing death-eligible conduct through subsequent legislation outside the Penal Code itself.

Accordingly, the divergence between the two jurisdictions is more accurately characterized as a difference in regulatory and sentencing mechanisms, rather than simply as a difference between reducing and retaining the categories of capital offenses. Indonesia has incorporated a conditional and rehabilitative mechanism directly into its new sentencing framework, whereas Thailand has retained capital punishment while establishing statutory safeguards concerning the age of offenders, the execution procedure, and as the Narcotics Code reform shows the substantive scope of death-eligible drug offenses. This distinction demonstrates two different pathways of criminal-law reform: Indonesia transforms the legal consequences attached to a death sentence, while Thailand regulates and limits the circumstances and manner in which capital punishment may be applied. Comparative research on Southeast Asia's death penalty for drug offenses places

Indonesia and Thailand together among the region's retentionist states that are, nonetheless, "more than halfway towards achieving de facto abolitionist status," with Thailand's last execution occurring in 2018 and Indonesia's in 2016. These differences are consistent with Nelken's theory of legal divergence, according to which states exposed to similar international legal and human-rights pressures may develop different legal responses because reform is mediated by domestic legal structures, institutional arrangements, and national policy priorities.

Table 2. Divergence Analysis of Capital Punishment Reform in Indonesia and Thailand

Analytical Aspect	Indonesia	Thailand	Form of Divergence
Legal status of capital punishment	Capital punishment is retained as a special punishment under Articles 67 and 98 of Law No. 1 of 2023.	Death is retained as a criminal penalty under Section 18 of the Thai Penal Code.	Both retain capital punishment, but Indonesia restructures its legal status as a special punishment, whereas Thailand retains it within the general list of criminal penalties.
Sentencing mechanism	Article 100 provides for a death sentence accompanied by a ten-year probationary period.	The Penal Code does not establish an equivalent ten-year probationary mechanism for death sentences.	Conditional sentencing vs. conventional death-penalty framework.
Rehabilitation mechanism	The court considers remorse, prospects for rehabilitation, and the offender's role in the offense.	No equivalent statutory rehabilitation-based conversion mechanism is established in the cited Penal Code provisions.	Indonesia expressly incorporates rehabilitation into the death-penalty sentencing mechanism.
Sentence conversion	A death sentence may be converted into life imprisonment by Presidential Decree following Supreme Court consideration if the offender demonstrates commendable conduct.	The cited Thai provisions do not establish an equivalent post-sentencing conversion mechanism based on ten-year behavioral evaluation.	Statutory sentence-conversion mechanism vs. absence of equivalent mechanism.
Age limitation	The new Criminal Code regulates capital punishment within its general sentencing framework.	Section 18, as amended by Act No. 16 B.E. 2546, prohibits death and life imprisonment for	Thailand has an explicit age-based statutory exclusion supported by a specific amendment.

		offenses committed by persons under 18 and substitutes imprisonment of 50 years.	
Execution procedure	Article 100 regulates the circumstances under which execution may proceed following the probationary period.	Section 19 provides for lethal injection and requires Ministry of Justice regulations concerning execution procedures.	Different procedural approaches to implementation of capital punishment.
Reform orientation	Internal transformation of the sentencing consequences of capital punishment through conditional application and potential conversion.	Restriction through statutory safeguards, particularly age limitations and regulation of execution.	Conditional transformation vs. regulatory limitation.
Human-rights accommodation	Rehabilitation and the possibility of conversion are incorporated into the death-penalty mechanism.	The 2003 amendment expressly responded to Thailand's obligations under ICCPR Article 6(5) and CRC Article 37(a).	Different legal mechanisms for incorporating human-rights considerations into capital punishment.

The divergence reflected in Table 2 demonstrates fundamentally different reform paradigms. Indonesia seeks to humanize the death penalty through conditional capital punishment, introducing opportunities for rehabilitation and sentence conversion, whereas Thailand adopts a restrictive application model by reducing the range of offenses punishable by death and limiting its use within the criminal justice process.

This divergence may be explained through David Nelken's theory of legal divergence, which suggests that states experiencing similar global pressures do not necessarily adopt identical legal policies because legal reform is shaped by political structures, legal culture, and national priorities. Indonesia has chosen an internal transformation model through conditional capital punishment, while Thailand has adopted a restrictive model through the gradual limitation of the death penalty.

The findings of this study reinforce the argument of who contend that conditional capital punishment under Indonesia's new Criminal Code represents a compromise between international demands for abolition and domestic concerns regarding extraordinary crimes. They view the probationary period as a mechanism that operationalizes the principles of proportionality and *due process*, thereby maintaining the moral legitimacy of state punishment without requiring the formal abolition of capital punishment.²¹ This interpretation is further supported doctrinal

²¹ "Conditional Death Penalty Sentencing in The New Indonesian Criminal Code: A Non-Derogable Rights Perspective."

analysis, which characterizes the 2023 Criminal Code as “progress amid the gloom,” rather than as a comprehensive shift toward abolition.²² In contrast, Thailand’s reform reflects a gradual and sector-specific restrictive approach, as demonstrated by the 2003 amendment to the Criminal Code and the 2021 *Narcotics Code*. Similar patterns can be observed in several Asian countries seeking to reduce the practical application of capital punishment without formally abolishing it. Argues in the broader ASEAN context, this reductionist rather than abolitionist approach reflects a regional trajectory characterized by “hopeful baby steps toward fundamental change” in countries such as Indonesia, Malaysia, and Thailand.²³ These findings provide empirical support for Nelken’s proposition that common international pressures may produce domestically mediated and non-identical legal responses, resulting in differentiated reform trajectories rather than uniform convergence toward the abolition of capital punishment.

Influence of International Human Rights Standards

Before assessing the influence of international law on capital-punishment reform in Indonesia and Thailand, it is necessary to distinguish clearly between two instruments that are frequently conflated in comparative literature: the ICCPR itself and the Second Optional Protocol to the ICCPR (OP2). The two create fundamentally different obligations, and neither Indonesia nor Thailand stands in an identical relationship to them.

Table 3. Influence of International Human Rights Standards on Capital Punishment Reform in Indonesia and Thailand

Analytical Aspect	Indonesia	Thailand	Implications for International Human Rights
Direction of Reform	Adoption of conditional capital punishment under the 2023 Criminal Code	Restriction of capital punishment to specific offenses	Demonstrates adaptation to evolving international human rights norms
Policy Approach	Moderate and transitional	Restrictive and gradual	Both countries prefer gradual reform rather than complete abolition
Implementation of the Right to Life	Provides opportunities for evaluation and sentence conversion	Reduces the frequency of capital punishment	Accommodates the internationally recognized protection of the right to life

²² “Indonesia’s Revised Criminal Code and the Death Penalty: Progress Amid the Gloom?,” *Australian Journal of Asian La* 24, no. 1 (2023): 67–81.

²³ “Death Penalty for Drug Offenders in Southeast Asia: Weakening of Resistance to Change?,” *International Journal for Crime, Justice and Social Democracy* 14, no. 4 (2025): 133–144, <https://doi.org/10.5204/ijcjsd.3681>.

Influence of the ICCPR	Serves as a reference for developing a more humane sentencing policy	Forms the basis for restricting the application of capital punishment	Demonstrates harmonization with global human rights standards
Protection Mechanisms for Offenders	Capital Ten-year probationary period and potential sentence conversion	Greater emphasis Reduction in the use of capital punishment in judicial practice	Strengthens protection of the rights of convicted offenders
Principle of Proportionality	Applied through individualized evaluation of offenders	Applied through limiting the categories of punishable offenses	Aligns punishment with the seriousness of the offense
Principle of Humanity	Emphasizes rehabilitation and behavioral reform	Emphasizes restricting the use of capital punishment	Reflects stronger humanitarian values within criminal law
Harmonization with International Law	Reform without abolishing capital punishment	Reform through narrowing the application of capital punishment	Demonstrates partial harmonization with international legal norms
Position toward Abolition	Does not fully abolish capital punishment	Does not fully abolish capital punishment	Both remain retentionist states
Impact of Reform	Creates a more flexible and human rights-oriented sentencing system	Creates a more restrictive and proportionate sentencing system	Indicates a broader trend toward more humanistic criminal law reform

The ICCPR does not prohibit capital punishment.²⁴ Article 6(2) of the ICCPR permits states that have not abolished the death penalty to retain it, provided its imposition is confined to the "most serious crimes." The UN Human Rights Committee's General Comment No. 36 gives this phrase an authoritative and restrictive reading, confining "most serious crimes" to offenses involving intentional killing.²⁵ Both Indonesia and Thailand are bound by this threshold as ICCPR states parties: Indonesia ratified the ICCPR through Law No. 12 of 2005, which binds it to Article 6's "most serious crimes" standard, while Thailand acceded to the Covenant in 1996 and unlike several of its other treaty reservations, which remain

²⁴ OHCHR., "Second Optional Protocol to the ICCPR: Ratification Toolkit," 2024, <https://www.ohchr.org/sites/default/files/2024-08/OP2-ICCPR-Ratification-Toolkit-en.pdf>.

²⁵ United Nations Human Rights Committee, *General Comment No 36 (2018), on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life* (UN Doc CCPR/C/GC/36, 2018).

outstanding has withdrawn its reservations to Articles 6 and 9 of the ICCPR, meaning the right-to-life provision now applies to Thailand without qualification.

The Second Optional Protocol is a categorically different instrument. Adopted in 1989, OP2 commits its states parties to abolish the death penalty entirely, providing that no one within their jurisdiction shall be executed and that each state party must take all necessary measures to abolish capital punishment. As of August 2024, OP2 had 91 states parties and neither Indonesia nor Thailand is among them. Indonesia has explicitly not ratified the Second Optional Protocol, a fact directly linked in recent scholarship to the continued operation of the death penalty within its legal system. Thailand likewise remains outside OP2's membership.

This distinction carries direct interpretive consequences for the present comparison. Because neither state has undertaken the binding treaty-based abolition commitment created by OP2, the reforms examined in this study Indonesia's conditional death penalty under Articles 98 and 100 of the 2023 Criminal Code, and Thailand's age-based exclusion and method-of-execution reform under the 2003 amendment to Sections 18–19 cannot be characterized as compliance with an international *obligation to abolish*. Rather, both reforms are more accurately understood as domestic exercises of the discretion states retain under ICCPR Article 6(2) to narrow the scope, procedure, and severity of capital punishment while remaining formally retentionist. Thailand's own legislative rationale for the 2003 amendment framed the change as a response to obligations under Article 6(5) of the ICCPR (which separately prohibits the death penalty for offenders under eighteen) and Article 37(a) of the CRC not as a step toward the general abolition contemplated by OP2. Indonesia's reform, similarly, responds to the "most serious crimes" and proportionality logic of Article 6(2) and General Comment No. 36, without engaging the abolitionist obligation found only in OP2. A global diffusion analysis supports this reading: they find that abolitionist policy transfer typically proceeds through staged domestic reform *before*, and often long before, formal treaty ratification, rather than the reverse.²⁶

Accordingly, the influence of international human-rights law on both jurisdictions should be described as partial harmonization with ICCPR Article 6(2) restrictions on death-eligible offenses and sentencing procedure, not as movement toward the treaty-mandated abolition obligation under OP2 a proposition this study's legal materials do not support and which the preceding draft did not adequately distinguish.

Implications for Criminal Law Reform in Southeast Asia

The comparison of Indonesia and Thailand identifies two distinct approaches to the regulation of capital punishment that may provide a basis for considering broader implications for criminal law reform in Southeast Asia. Indonesia adopts a conditional retention model, in which capital punishment is retained but subject to a ten-year probationary mechanism and potential commutation under the conditions established by Law Number 1 of 2023 concerning the Criminal Code. Thailand, by contrast, retains capital punishment while incorporating statutory restrictions and safeguards concerning its application, including age-related limitations and regulated execution procedures. These differences suggest that

²⁶ "Diffusion and the Abolition of the Death Penalty : A Global Comparison."

retentionist states may pursue different pathways in responding to human-rights concerns and international legal developments without immediately abolishing capital punishment.

A third regional data point illustrates why this study deliberately avoids generalizing beyond the two jurisdictions examined. Malaysia's Abolition of Mandatory Death Penalty Act 2023 granted judges discretion over twelve capital offences, and by late 2024 had reduced the country's death-row population from over 1,300 to approximately 140.²⁷ This represents a *third* and structurally distinct reform model neither Indonesia's conditional-commutation mechanism nor Thailand's age- and offense-based statutory narrowing, but a shift from *mandatory* to *discretionary* sentencing at the point of judicial decision-making. Yet recent Scopus-indexed analysis of the Malaysian reform cautions that removing mandatory sentencing has not eliminated systemic bias but has instead relocated discretion into the comparatively opaque gatekeeping roles of law enforcement and prosecution policy, meaning capital punishment remains discretionary for twenty-seven offences. The Malaysian experience thus demonstrates a fourth possible reform pathway beyond those identified for Indonesia and Thailand, further confirming that "Southeast Asian reform" cannot be treated as a single trend line.

Table 4. Implications of Capital Punishment Reform for Criminal Law Development in Southeast Asia

Analytical Aspect	Indonesia	Thailand	Potential Implications for Southeast Asia
Reform Model	Conditional capital punishment	Retention with statutory restrictions on application	Illustrates alternative approaches that may inform comparative policy discussions in other retentionist jurisdictions
Sentencing Approach	Ten-year probationary mechanism and potential commutation	No equivalent statutory ten-year probation mechanism	Demonstrates different ways of incorporating safeguards into capital sentencing
Human Rights Approach	Rehabilitation and behavioral assessment are incorporated into the sentencing framework	Protection is reflected through statutory safeguards, including restrictions based on age	Suggests possible mechanisms for strengthening human-rights safeguards while capital punishment remains legally available
Legal Reform Instrument	Law Number 1 of 2023 concerning the Criminal Code, particularly Articles 98–100	Thai Penal Code, particularly Sections 18–19, as amended by Criminal Code	Demonstrates that domestic legislation is a principal instrument through which retentionist states can

²⁷ Nasrul Ismail, "Malaysia's Death Penalty: A Post-Abolition Research Agenda," *Global Social Challenges Journal*, 2026, 1–11, <https://doi.org/10.1332/27523349Y2025D000000067>.

		Amendment Act No. 16 B.E. 2546	modify the operation of capital punishment
International Law	Reform can be understood in light of international human-rights standards while retaining capital punishment	The 2003 amendment expressly referred to Thailand's obligations under the ICCPR and Convention on the Rights of the Child	Indicates the relevance of international obligations to domestic capital-punishment regulation
Direction of Reform	Internal transformation of sentencing consequences	Regulation and limitation of the application of capital punishment	Suggests that reform may occur through different domestic legal pathways rather than through a uniform regional model
Possible Regional Relevance	Potential reference for conditional sentencing mechanisms	Potential reference for statutory safeguards and restrictions	Provides comparative examples for further examination of capital-punishment reform in other Southeast Asian jurisdictions

The comparison therefore supports a more limited conclusion regarding regional criminal-law development. The findings do not establish that Southeast Asia as a whole is undergoing a uniform transformation of capital punishment policy. Rather, they demonstrate that Southeast Asian retentionist jurisdictions have responded differently to similar pressures concerning proportionality, human-rights protection, and the regulation of capital punishment: Indonesia has modified the consequences and implementation of a death sentence through a conditional sentencing mechanism; Thailand has maintained capital punishment while establishing specific statutory safeguards governing its application and, as the 2021 Narcotics Code shows, narrowing the substantive scope of death-eligible drug offenses; and Malaysia outside the two-country comparison at the core of this study, but instructive as a boundary case has instead shifted discretion from the legislature to individual judicial and prosecutorial actors without narrowing death-eligible offenses in the way Thailand has. This divergence within a single region is consistent with the broader observation that Global South jurisdictions confront comparative decolonisation challenges in criminal law reform that resist single-model explanations. These differences are consistent with Nelken's concept of legal divergence, whereby jurisdictions exposed to comparable international influences may develop different legal responses because of their respective legal institutions, regulatory traditions, and domestic policy priorities.

The comparison nevertheless permits a cautious inference concerning the possible relevance of these approaches to broader Southeast Asian debates. The Indonesian and Thai experiences indicate that criminal-law reform in retentionist states need not follow a single institutional pathway. Reform may instead involve conditional sentencing, stronger procedural safeguards, restrictions on eligibility, judicial discretion, or other mechanisms designed to reduce the risk of arbitrary or disproportionate application. However, whether these approaches are applicable to other Southeast Asian jurisdictions requires further comparative research involving

additional ASEAN states including Malaysia, whose post-2023 discretionary model raises its own distinct set of empirical questions concerning equitable application and their respective legislation, judicial practices, and international legal commitments. This study accordingly confines its comparative claims to Indonesia and Thailand and does not extrapolate its findings to the region as a whole.

This finding supports the argument of Petcharamesree et al., who contend that the future of capital punishment policy in ASEAN is likely to be determined not by revolutionary abolition but by gradual reform emphasizing proportionality, accountability, and the protection of human rights.²⁸ Their analysis identifies ASEAN's foundational principle of non-interference in member states' domestic affairs as the central structural barrier to coordinated regional abolition, meaning that even where a regional human-rights principle formally exists, it does little to compel individual states toward a common capital-punishment policy. Noting that the collection's central contribution is precisely its documentation of contradictory and politically contingent capital-punishment practices across ASEAN member states, rather than a single trajectory of reform. Consequently, criminal law development in Southeast Asia reflects an ongoing process of partial and uneven convergence toward international standards, while still preserving distinct national legal characteristics a reading that is consistent with, rather than contradicted by, the Malaysian case discussed above, since discretionary sentencing reform in Malaysia responds to the same proportionality concerns Petcharamesree et al. identify, without following either the Indonesian or Thai institutional pathway.

CONCLUSION

This study set out to analyze the convergence and divergence of capital punishment regulation in Indonesia and Thailand and to examine the implications of that comparison for criminal law reform in Southeast Asia, using seven functional comparators legal status, death-eligible offenses, sentencing discretion, commutation mechanisms, judicial and administrative review, execution procedures, and international human-rights obligations analyzed through Nelken's theory of legal divergence and Schabas's human-rights framework. Against those aims, the findings confirm convergence: both countries retain capital punishment as a criminal-justice instrument for offenses considered particularly serious, including premeditated murder, drug-related crimes, and, in Thailand's case, offenses against national security. They also confirm divergence: Indonesia, through Law Number 1 of 2023, has developed a conditional death penalty model built around a ten-year probationary period and the possibility of commutation to imprisonment, while Thailand has pursued a restrictive model that narrows death-eligible offenses through both the 2003 Penal Code amendment and the 2021 Narcotics Code and regulates execution procedure. Both trajectories represent partial harmonization with ICCPR Article 6 rather than compliance with the abolitionist obligation under the Second Optional Protocol, which neither state has ratified.

These findings should be read within the boundaries of the study's design. The analysis is confined to a two-country comparison; while Indonesia and Thailand were selected as functionally comparable retentionist states with contrasting reform models, the conclusions cannot be generalized to Southeast Asia or ASEAN

²⁸ ASEAN and the Death Penalty : Theoretical and Legal Views and a Pathway to Abolition.

as a whole. As the discussion of Malaysia's 2023 shift to discretionary sentencing illustrates, at least one other regional pathway exists that fits neither the Indonesian nor the Thai model, underscoring that regional criminal-law reform is plural rather than convergent toward a single paradigm. The study is further limited by its normative-doctrinal method: it examines the *law on the books* statutes, amendments, and international instruments rather than the *law in action*, including sentencing statistics, clemency practice, or the lived experience of those on death row in either jurisdiction.

Future research should accordingly extend this comparison in three directions: first, by incorporating additional ASEAN retentionist and abolitionist states including Malaysia, Vietnam, and the Philippines to test whether the convergence-divergence pattern identified here holds across a larger regional sample; second, by complementing this doctrinal analysis with empirical data on sentencing outcomes, clemency rates, and death-row demographics in Indonesia and Thailand, to assess whether formal statutory safeguards translate into equitable practice; and third, by monitoring the implementation of Indonesia's ten-year probationary mechanism once the 2023 Criminal Code takes full effect, since its practical operation including how "commendable conduct" is assessed remains untested and was flagged in this study only as a matter of statutory design.

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