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From retribution to humanity: Adapting the "rarest of the rare" doctrine in Indonesian criminal law

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Abstract
This study examined the legal relevance and urgency of applying the Rarest of the Rare doctrine within the Indonesian criminal justice system as a limiting principle on judges' authority to impose the death penalty. Law No. 1 of 2023 brings fundamental changes by no longer categorising the death penalty as a primary punishment but rather as an alternative special punishment subject to strict substantive and procedural requirements. This research employed a normative legal research method through statutory, conceptual, and comparative approaches and refers to several jurisprudences of the Supreme Court of India, such as in the case of Bachan Singh v. State of Punjab. This doctrine requires that the death penalty be imposed only in extremely exceptional cases with a high level of brutality, demonstrating moral depravity, and when the rehabilitation of the perpetrator is deemed impossible. This research recommended the establishment of judicial guidelines in Indonesia to limit judicial discretion, ensure accountability of decisions, and align penal practices with the values of Pancasila and the theory of dignified justice. This doctrine was proposed as a filtering mechanism so that the death penalty is applied only as an *ultimum remedium* in a proportional, cautious, and humane manner to protect the right to life and reflect a more just and humane direction in criminal law policy

Keywords:
death penalty; rarest of the rare; judge; dignified justice; Pancasila

Introduction

The death penalty is one of the heaviest types of punishment regulated in the Indonesian legal system. In the constitutional system, judges hold a strategic role as independent and autonomous actors of the judiciary in upholding law and justice, as emphasised in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (Indonesian Constitution)[1]. Based on this constitutional mandate, judges have the discretion to impose sentences on defendants who are proven by law and convincingly to have committed a crime. However, the Indonesian Constitution also guarantees a very fundamental right for every citizen, namely the right to live. This is reflected in Article 28A, which states that everyone has the right to live and to defend their life and livelihood. Furthermore, Article 28H paragraph (1) emphasises the right to a prosperous life and a satisfactory living environment, while Article 28I paragraph (1) mentions that the right to live is a human

[1] Constitution of the Republic of Indonesia. (1945, August). Retrieved from https://www.dpr.go.id/jdih/uu1945.

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right that cannot be reduced under any circumstances. In the old Indonesian Penal Code[1] (IPC), the death penalty was established as the primary punishment and occupied the first position in the list of types of punishments, as stated in Article 10. However, in the new IPC[2] based on Law of the Republic of Indonesia No. 1 of 2023, which will come into effect in 2026, the death penalty is no longer categorised as a primary punishment but rather as a special punishment, as regulated in Article 67.

Various previous studies have shown that the death penalty is a complex and controversial legal issue in relation to human rights and Indonesia's social dynamics. Law No. 1 of 2023[3] introduces a death penalty scheme with a 10-year probation period, during which the sentence can be converted to imprisonment if the convicted person demonstrates good behaviour. The legislation reflects a compromise position that seeks to bridge the debate between pro and contra groups while aligning with the values of human rights and Islamic law (Tongat, 2024). Islamic law, in this case, is considered to have a significant influence on the formulation of the death penalty policy in Indonesia because it prioritises the principle of balanced justice and deterrence against serious criminals. One of the issues that has sparked sharp controversy is the application of the death penalty to drug offenders. This practice often receives criticism, for example in study S. Suyatno & H. Yusuf (2023), because it is considered to violate the right to life and is deemed cruel. Nevertheless, some circles still view the death penalty as legitimate to apply to safeguard public interest, as long as it is carried out in accordance with legal provisions. In comparative research with China I.K. Duan & M.D. Susilawati (2023) showed that, although both countries still retain the death penalty in their legal systems, Indonesia has positioned it as a special punishment within the framework of Law No. 1 of 2023. On the other hand, there is an urgent need to reform the penal system so that Indonesia's legal system aligns with the dynamics of social values and the development of international law. One form of this reform is the introduction of the concept of the conditional death penalty as a compromise between the retributive and rehabilitative approaches. На думку J. Cahyono & F. Santiago (2023), in this framework the death penalty is no longer regarded as the primary punishment but rather as a last resort when rehabilitation is no longer possible. As indicated in the study by P. Riyadi (2023), the debate between guaranteeing the right to life in the constitution and the continued existence of the death penalty persists, further complicated by execution-related issues that generate legal uncertainty and conflicts among law enforcement institutions (Sidabukke, 2023). According to D.R. Dewanto & R. Susanti (2023), although Law No. 1 of 2023 embodies a spirit of reform, the death penalty remains a significant subject of reflection within the context of human rights and the nation's fundamental ethical values.

However, among all the studies, none have explicitly examined and compared the application of the death penalty in Indonesia with the "rarest of the rare" doctrine used in criminal law in India. The "rarest of the rare" doctrine in India is a principle of very strict limitation on the use of the death penalty, which can only be imposed under the most extraordinary conditions, when the crime committed reaches a level of brutality or moral repugnance that is extremely high and rehabilitation, as stated M. Deshpande & S. Gurpur (2023), is deemed impossible. This doctrine serves as an important guideline for judges in India in determining the proportional and cautious imposition of the death penalty (Phulwary, 2018).

Judges, as the last bastion of justice, hold a moral and constitutional responsibility in deciding someone's life (Widijowati & Adji, 2020). Therefore, clear, careful, and justice-oriented guidelines are needed in imposing the death penalty. In this context, it is important to build a relevant concept for judges in Indonesia by adopting best practices from India through the "rarest of the rare" doctrine. This research aims to address two issues: first, the regulation and application of the "rarest of the rare" doctrine within the Indian legal system; and second, how this doctrine can be normatively and practically adapted for use by judges in Indonesia. Thus, the aim of this research lied in the effort to build a more measured and cautious framework for the death penalty in Indonesia by drawing lessons from practices in India that have developed mechanisms to limit the death penalty through the Rarest of the Rare doctrine. This approach has not been comprehensively discussed in previous studies, and it is expected to contribute to the formulation of a more just criminal law policy in line with Pancasila as the philosophy of the Indonesian nation.

Materials and Methods

This study employed a normative legal research method using three complementary approaches: statutory, conceptual, and comparative. The statutory approach was used to examine the formulation and positioning of the death penalty under Indonesian criminal law, particularly the transformation under Law of the Republic

[1] Penal Code of Indonesian. (1915, May). Retrieved from https://peraturan.bpk.go.id/Details/44289/kuhp.
[2] Law of the Republic of Indonesia No. 1 "On Criminal Code". (2023, January). Retrieved from https://peraturan.bpk.go.id/Details/226204/uu-no-1-tahun-2023.
[3] Ibidem, 2023.

of Indonesia Number 1 of 2023[1]. This included analysis of relevant provisions such as Articles 64, 65, 67, 98, and 100, which reclassify the death penalty as a special and conditional punishment. The statutory analysis served as a foundation to identify the legal status and constraints of the death penalty in the Indonesian criminal code reform.

The conceptual approach was employed to examine the underlying philosophical and normative principles that govern the imposition of the death penalty. This included an in-depth analysis of the "Theory of dignified justice" developed by T. Prasetyo (2019), which positions human dignity as the core of legal reasoning, balancing legal certainty, justice, and utility. This approach was crucial for assessing whether Indonesia's evolving penal policy aligns with Pancasila values and international human rights standards. Key concepts such as *ultimum remedium*, individualisation of punishment, and restorative justice are critically explored within this framework.

The comparative approach was utilised to examine the Indian "rarest of the rare" doctrine through case law analysis and jurisprudence from the Supreme Court of India. Seminal cases such as Bachan Singh v. State of Punjab[2], Santosh Kumar Bariyar v. State of Maharashtra[3], and Manoj v. State of Madhya Pradesh[4] are scrutinised to extract applicable criteria and judicial reasoning that could inform Indonesian legal practice. The aim was to assess the feasibility of adopting such a doctrine to limit judicial discretion and ensure proportional sentencing. The research methodology followed a systematic sequence. First, identified the doctrinal shift in Indonesian criminal law. Second, was analysed the philosophical justifications and normative values that underpin death penalty reforms. Third, was compared these findings with the Indian jurisprudential model. Finally, it offered normative recommendations for adapting the "rarest of the rare" doctrine in Indonesia. The uniqueness of the source base lied in the integration of two national legal systems (Indonesia and India), linked through shared constitutional commitments to the right to life but differentiated in their doctrinal and jurisprudential approaches to capital punishment. The inclusion of philosophical concepts such as dignified justice and restorative justice allowed this research to move beyond textual analysis and propose a transformative model of judicial sentencing.

Results

Regulation and implementation of the rarest of the rare doctrine in India. The term "rarest of rare" does not have an official definition in Indian legislation. Its meaning has evolved through the jurisprudence of the Supreme Court and is determined based on the facts and circumstances of each case, including the degree of brutality of the act, the character of the accused, their criminal history, and the possibility of rehabilitation (Rajkumari & Singh, 2022). Although normatively India limits the death penalty to extraordinary cases classified as "rarest of rare", court practices show that the death penalty is still imposed quite frequently, especially by first-instance courts. This phenomenon raises concerns about the consistency in the application of the doctrine. Since 1962, the Indian Law Commission has been discussing this issue. At that time, it was concluded that India was not yet ready to abolish the death penalty. However, in 2015, the Commission recommended abolishing the death penalty for general crimes while retaining it only for acts of terrorism and treason. One of the reasons underlying the recommendation is that the death penalty is final, irreversible, and highly susceptible to judicial errors (Rao & Sharma, 2022).

In India, judicial discretion plays a central role in imposing the death penalty because, prior to the existence of clear guidelines, verdicts heavily depended on the individual judgment of each judge. This has the potential to create inconsistencies that threaten the principle of justice. Through the ruling in Bachan Singh v. State of Punjab[5], the Supreme Court of India established that the death penalty can only be imposed in truly extreme situations and when there are no adequate alternative punishments. The "rarest of rare" doctrine was born to limit the judge's excessive discretion and reduce the chances of deviation (Jain, 2025).

The Court then reaffirmed this principle in Santosh Kumar Bariyar v. State of Maharashtra[6], stating that the death penalty is only an exception to the general principle of life imprisonment. The provision of Article 21 of the Indian Constitution[7], which guarantees the right

[1] Law of the Republic of Indonesia No. 1 "On Criminal Code". (2023, January). Retrieved from https://peraturan.bpk.go.id/Details/226204/uu-no-1-tahun-2023.
[2] Judgement of the Supreme Court of India in Case No. 273 "Bachan Singh v. State of Punjab". (1980, May). Retrieved from https://indiankanoon.org/doc/1235094/.
[3] Judgement of the Supreme Court of India in Case No. 1478 "Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra". (2009, May). Retrieved from https://indiankanoon.org/doc/1312651/.
[4] Judgement of the Madhya Pradesh High Court in Case No. 4069 "Manoj v. The State Of Madhya Pradesh". (2025, May). Retrieved from https://indiankanoon.org/doc/113383276/.
[5] Judgement of the Supreme Court of Undia in Case No. 273 "Bachan Singh v. State of Punjab". (1980, May). Retrieved from https://indiankanoon.org/doc/1766147/.
[6] Judgement of the Supreme Court of India in Case No. 1478 "Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra". (2009, May). Retrieved from https://indiankanoon.org/doc/1312651/.
[7] Constitution of India. (1950, January). Retrieved from https://legislative.gov.in/sites/default/files/COI_1.pdf.

to life, necessitates a highly selective and proportional application of the death penalty, considering its irrevocable nature (Jain, 2025). Problems arise when the application of that doctrine is not always consistent. In the Death Penalty India Report, it was found that many death sentences were given discriminatorily against marginalised groups – those who are poor, have low education, or come from minority communities (Rao & Sharma, 2022). During the investigation process, death row inmates often experience torture and do not receive timely legal assistance; additionally, their families become victims of pressure from the authorities (Rao & Sharma, 2022).

The Supreme Court of India reinforced caution in death penalty cases through the ruling in Mohd. Arif v. Registrar[1], which stipulated that petitions for review of the death penalty must be heard in open court, rather than merely through file examination. This decision is based on the principle that the death penalty is irreversible and has a direct implication on a person's right to life (Chaturvedi, 2023). An example of the application of this doctrine can be seen in the case of Ishwari Lal Yadav v. State of Chhattisgarh[2], where the perpetrator kidnapped and sacrificed a child in a mystical ritual. Because his crime was classified as extremely heinous and inhumane, the Court imposed the death penalty. On the other hand, in State of UP v. MK Anthony[3], the Court did not impose the death penalty because the perpetrator's actions were influenced by economic pressure and medical disturbances, resulting in a life imprisonment sentence. The Supreme Court of India has also classified crimes that can be categorised as the rarest of the rare into five groups:

- extreme cruelty that shocks the public conscience;
- the motive for the crime that indicates the moral depravity of the perpetrator;
- widespread social impact, such as genocide;
- large-scale criminal acts;
- the characteristics of the victims, such as children or the elderly.

Nevertheless, there are still many rulings that deviate from that principle. After Bachan Singh[4], many judges have used penological arguments such as deterrence and public morality as the main justification for imposing the death penalty. These arguments should only be used in the general discourse on the death penalty's existence, not as concrete reasons in case-by-case situations. This approach leads to a crime-centric penal system and neglects the principle of individualisation in punishment upheld by Bachan Singh.

The issue of inequality also arises in the context of gender, where it is found that domestic crimes or honour-based violence are often considered momentary deviations and forgiven, while crimes in public spaces are more quickly categorised as deserving of the death penalty. This reflects that a normatively neutral legal system actually reinforces structural inequalities if it does not take into account the vulnerabilities of certain groups (Chandra, 2012). In the case of Manoj v. State of Madhya Pradesh[5], the Court began to consider the potential for rehabilitating the offender before imposing the death penalty. Now, the task of evaluating the possibility of reform is entrusted to probation officers in accordance with the Probation of Offenders Act of 1958[6]. This step is considered an important reform in the practice of capital punishment, making it more humane and based on procedural justice (Bhaskar, 2023).

Historically, the implementation of the death penalty in India has deep roots. Since ancient times in India, the death penalty has been carried out to eliminate dangerous elements from society. During the British colonial period, although there were ideas about abolishing the death penalty, the colonial government continued to uphold it. After independence, Godse was sentenced to death for killing Mahatma Gandhi, and since then the death penalty has been strictly regulated in the Indian Penal Code[7] and the Code of Criminal Procedure[8].

The judges face a major dilemma when deciding on the death penalty. A wrong decision will have fatal consequences and cannot be corrected. Therefore, the Indian legal system provides various legal remedies such as appeals, review petitions, curative petitions, and clemency to the President or Governor. Many cases where the trial court imposed the death penalty have been overturned or commuted by the Supreme Court (Pattnaik & Shahi, 2024). However, a survey of Supreme Court decisions between 2000 and 2011, as examined by Deva,

[1] Judgement of the Supreme Court of India in Case No. 77 "Mohd. Arif Ashfaq v. The Reg. Supreme Court of India & Ors". (2014, September). Retrieved from https://indiankanoon.org/doc/80457116/.
[2] Judgement of the Supreme Court of India in Case No. 1095 "Ishwari Lal Yadav v. State of Chhattisgarh". (1978, January). Retrieved from https://indiankanoon.org/doc/51591697/.
[3] Judgement of the Delhi District Court in Case "State of U.P. v. M.K. Anthony". (1984, November). Retrieved from https://indiankanoon.org/doc/1381651/.
[4] Judgement of the Supreme Court of India in Case No. 273 "Bachan Singh v. State of Punjab". (1980, May). Retrieved from https://indiankanoon.org/doc/1766147/.
[5] Judgement of the Madhya Pradesh High Court in Case No. 4069 "Manoj v. The State Of Madhya Pradesh". (2025, May). Retrieved from https://indiankanoon.org/doc/113383276/.
[6] Law of India No. 20 "The Probation of Offenders Act". (1958, May). Retrieved from https://www.indiacode.nic.in/bitstream/123456789/15408/1/the_probation_of_offenders_act%2C_1958.pdf.
[7] Penal Code of India. (1860, October). Retrieved from https://www.indiacode.nic.in/repealedfileopen?rfilename=A1860-45.pdf.
[8] Code of Criminal Procedure (Amendment) Act of India. (2005, June). Retrieved from https://www.mha.gov.in/sites/default/files/2022-09/TheCCP%28Amendment%29Act%2C2005%5B1%5D.pdf.

shows that there is not always a consistent standard in imposing or rejecting the death penalty, thereby opening up excessive discretionary space. This shows that although the Supreme Court is viewed as progressive in Bachan Singh, in practice, there are still interpretative gaps (Deva, 2014). J. Diwakar's (2022) research proposes detailed criteria for applying this doctrine:

1) it should be applied only to extremely extraordinary crimes with extreme culpability;

2) the death penalty must be considered an exception, not the rule;

3) it should be imposed only if no other alternatives exist;

4) each case must be assessed individually and contextually;

5) there must be a balance between aggravating and mitigating factors;

6) the interpretation of mitigating factors should be broad, including potential for rehabilitation;

7) it is insufficient that the crime is rare; it must also exhibit extreme brutality.

Several other cases also demonstrate the flexibility of this doctrine. In Shankar Kisanrao Khade v. State of Maharashtra[1], the Court deemed that the severity of the crime did not meet the threshold of the rarest of rare, despite its cruelty. Conversely, in Deepak Rai v. State of Bihar[2] and Md. Mannan Abdul Mannan v. State of Bihar[3], the Court imposed the death penalty because there were no other alternatives and because the crime was truly heinous and deeply undermined human values.

Thus, the "rarest of the rare" doctrine in India has developed as a limiting principle rooted in jurisprudence and is used to ensure that the death penalty is imposed only in truly extreme conditions, when no other punishment is adequate. Through a series of important rulings, the Supreme Court of India emphasised the importance of a selective, proportional approach based on a thorough evaluation of the offender's character, the level of brutality of the crime, and the possibility of rehabilitation. This doctrine reflects the judges' prudence in imposing sentences and demonstrates the transformation of punishment toward a more humane and just approach.

The concept of the "rarest of the rare" doctrine is relevant for judges when imposing the death penalty in Indonesia. In the old Indonesian criminal justice system, the death penalty occupied the highest position as the main type of punishment, as stated in Article 10, letter a, of the IPC[4], a remnant of Dutch colonialism (Lumbanraja, 2023). This model of punishment assumes that the death penalty can be imposed on certain types of crimes normatively, without first undergoing a contextual assessment of proportionality elements, the background of the perpetrator, or rehabilitation opportunities. The pattern of punishment reflects a classical retributive approach that prioritises retribution for criminal acts (Clemens Dion, 2023).

However, this paradigm underwent a fundamental change with the enactment of Law No. 1 of 2023[5], which is the result of national codification based on the spirit of criminal law reform (Susilo, 2025). Law No. 1 of 2023 no longer categorises the death penalty as a primary punishment. Article 65, paragraph (1), of Law No. 1 of 2023 explicitly mentions five types of primary punishments, namely "imprisonment, confinement, supervision, fines, and community service". Meanwhile, the death penalty is classified as a special alternative punishment, as stated in Article 64, Letter C, and Article 67. This systematic change indicates a shift in orientation from retributive punishment to a more humanistic and corrective approach, which makes substantive justice and the protection of human rights the main pillars (Tri Setiawan & Kurnianingsih, 2023; Zulkipli, 2023). The placement of the death penalty as a conditional sanction – not a normative obligation – implies that its execution can only be carried out after a comprehensive evaluation of the perpetrator's circumstances and the impact of their crime.

Furthermore, Law No. 1 of 2023[6] introduces an important mechanism in the form of a probation period for the death penalty through Article 100 (Fitriani, 2023). This provision allows judges to impose the death penalty with a ten-year probation period in cases where there are mitigating circumstances such as the defendant's remorse, a non-dominant role in the crime, or the potential for rehabilitation. If during the probation period the convict shows exemplary behaviour, the death penalty can be commuted to life imprisonment through a Presidential Decree with consideration from the Supreme Court. Law No. 1 of 2023 also regulates the postponement of the death penalty execution under special conditions as stipulated in Articles 98 to 102, such as when the convict is pregnant, suffers from a mental disorder, or is applying for clemency. The execution of the death penalty must also not be carried out in public.

[1] Judgement of the Supreme Court of India in Case No. 362-363 "Shankar Kisanrao Khade v. State of Maharashtra". (2013, April). Retrieved from https://indiankanoon.org/doc/79577238/.
[2] Judgement of the Supreme Court of India in Case No. 249-250 "Deepak Rai v. State of Bihar". (2013, September). Retrieved from https://indiankanoon.org/doc/178668154/.
[3] Judgement of the Supreme Court of India in Case No. 308 "Md. Mannan Abdul Mannan v. State of Bihar". (2019, February). Retrieved from https://indiankanoon.org/doc/125632384/.
[4] Penal Code of Indonesian. (1915, May). Retrieved from https://peraturan.bpk.go.id/Details/44289/kuhp.
[5] Law of the Republic of Indonesia No. 1 "On Criminal Code". (2023, January). Retrieved from https://peraturan.bpk.go.id/Details/226204/uu-no-1-tahun-2023.
[6] Ibidem, 2023.

This normative framework aligns with the "rarest of the rare" doctrine developed by the Supreme Court of India in the case of Bachan Singh v. State of Punjab[1] (1980), which emphasises that the death penalty can only be imposed in cases that reach an extraordinary level of brutality and cruelty and when there are no adequate alternative punishments to fulfil the objectives of sentencing (Bharadwaj, 2021). This doctrine serves as a judicial filter to prevent the excessive and disproportionate use of the death penalty. It demands caution and a restrictive approach, which is consistent with the spirit of the 2023 Penal Code[2] in placing the death penalty as an *ultimum remedium* (Sulistiani & Fakhriah, 2023). Related to Indonesia, the application of the death penalty must be accompanied by a strict filtering mechanism to ensure that the judge's decision truly reflects justice. Therefore, the adoption of the "rarest of the rare" doctrine becomes relevant, both as a limiting principle in criminal justice practice and as a guideline for judges in drafting their decisions.

The Supreme Court needs to issue judicial guidelines or Supreme Court Regulations to ensure that the implementation of this doctrine has normative power and is operationalised consistently, providing judges with a practical basis for its application. In the guidelines, it must be emphasised that the death penalty can only be imposed if three cumulative conditions are met, namely: the crime committed has a very high degree of cruelty and shakes the collective conscience of society; the perpetrator shows no potential for rehabilitation, either socially or psychologically, based on an objective and scientific assessment; all other forms of punishment are deemed incapable of achieving the goals of justice, security, and protection for society.

Practically, the application of this doctrine requires the use of a multifactorial assessment approach by judges (Gunawardena *et al*., 2017), which includes analysis of (a) the personal character of the perpetrator, including age, psychological condition, and socio-economic background; (b) the characteristics of the crime, including modus operandi, escalation of violence, and impact on victims and society; and (c) the vulnerability of the victim related to power relations, age, or physical condition. All these elements must be analysed based on objectively testable data, not just the judge's opinion.

In the procedural dimension, it is very important to form a rehabilitative assessment team consisting of community supervisors, forensic psychologists, and criminal law experts. This team is tasked with preparing a pre-sentencing report, which is an instrument that must be considered by the judge when imposing the death penalty. Judges must publicly state, based on the report, that all other forms of punishment have been considered but deemed insufficient to achieve substantive justice. To ensure judicial accountability and public control, every death penalty ruling must include detailed, argumentative, and evidence-based legal reasoning that explicitly explains why the case falls into the "rarest of the rare" category.

The above concept is in line with the Indonesian nation, which cannot be separated from the values of Pancasila and the living legal character in society (Wijayanto, 2022). Therefore, appreciation for community-based conflict resolution mechanisms such as forgiveness from the victim's family or customary-based penal mediation can be considered as long as they do not contradict public interest and the principle of justice. This approach reflects the importance of considering sociocultural aspects in sentencing without diminishing the authority of national law. Thus, the "rarest of the rare" doctrine can serve as a substantive standard in assessing the appropriateness of the death penalty and as an embodiment of the principle of dignified justice. It prioritises life above all else, allowing it to be sacrificed only in extreme situations. Law No. 1 of 2023 changes the position of the death penalty to conditional and special penalties, reflecting the transformation of Indonesian legal values towards a more just direction (Andriawan, 2022). In this case, the role of judges becomes very central as protectors of the fundamental values of Pancasila, especially the first principle about the One and Only God (Syahlin *et al*., 2024) and the second principle regarding Just and Civilised Humanity (Prasetyo & Wartoyo, 2021). The law should not merely be a formalistic instrument but must be able to honour humans as legal subjects (Prasetyo, 2019). Therefore, the death penalty must truly be an *ultimum remedium* imposed only in extreme cases that tear apart the sense of collective justice.

In this case, the "Theory of dignified justice" developed by T. Prasetyo (2019) provides a strong philosophical foundation. This theory, as elaborated in his book and further examined in collaborative studies such as E. Sukardi *et al*. (2021), emphasises that law must balance legal certainty, justice, and utility by placing the human person at its centre. T. Prasetyo (2019) rejects the rigid positivistic paradigm that relies solely on normative texts and instead promotes a legal framework that integrates the moral, ethical, and spiritual values inherent in Indonesian society. In penal practice, particularly regarding the death penalty, this theory urges judges to go beyond formal legality by considering broader humanistic and spiritual dimensions. Applying the "rarest of the rare" doctrine in the spirit of the Theory transforms the death penalty from a mechanistic form of punishment into a reflection of judicial

[1] Judgement of the Supreme Court of India in Case No. 273 "Bachan Singh v. State of Punjab". (1980, May). Retrieved from https://indiankanoon.org/doc/1766147/.
[2] Law of the Republic of Indonesia No. 1 "On Criminal Code". (2023, January). Retrieved from https://peraturan.bpk.go.id/Details/226204/uu-no-1-tahun-2023.

prudence, social responsiveness, and respect for human dignity, which aligns with the Pancasila-based Indonesian legal system. Judges who embody these considerations are thus expected to deliver decisions that uphold justice as a profoundly humanistic ideal.

Discussion

This study demonstrates the relevance and urgency of adopting the "rarest of the rare" doctrine as a guiding principle in the application of the death penalty in Indonesia. The transformation initiated by Law of the Republic of Indonesia Number 1 of 2023 on the Criminal Code[1] marks a substantial shift in the legal policy regarding capital punishment, wherein the death penalty is no longer considered a primary punishment but is repositioned as a special and conditional sanction. In contrast to Indonesia's statutory approach, the doctrine in India emerged from jurisprudential development, particularly through the seminal case of Bachan Singh v. State of Punjab[2], which restricted the death penalty to cases of extreme brutality and irredeemable offenders. This judicially created filter was later reaffirmed in other cases such as Santosh Kumar Bariyar v. State of Maharashtra[3] and Manoj v. State of Madhya Pradesh[4], stressing the exceptional nature of the death penalty and the need for individualised sentencing assessments. However, empirical studies such as the Death Penalty India Report revealed inconsistent applications and discriminatory tendencies, especially against marginalised groups (Rao & Sharma, 2022). Unlike India, where judicial discretion historically dominated sentencing in capital cases, Indonesia now has the opportunity to codify a coherent filtering mechanism through Articles 64, 65, and 100 of Law No. 1 of 2023[5]. The law introduces a 10-year probation period for death row convicts, allowing sentence conversion to life imprisonment upon demonstration of good behaviour. This structure inherently reflects the values of justice, humanity, and legal proportionality, aligning with A. Bharadwaj's (2021) interpretation of Bachan Singh as a framework of restraint, not vengeance.

The Indonesian approach is also philosophically grounded in the "Theory of dignified justice" developed by T. Prasetyo (2019), which centres legal decision-making on human dignity, moral responsibility, and the balance of justice, certainty, and utility. This differs from India's secular jurisprudence, where proportionality is viewed primarily through a liberal-legalist lens. The author's claims in the Indian context seem to be debatable because they often ignore spiritual and cultural elements that are essential in Indonesian legal philosophy. In implementing this doctrine, the creation of a rehabilitative assessment team is essential. Judges should not rely solely on their perception of remorse or potential for rehabilitation. As practiced in India following Manoj v. State of Madhya Pradesh[6], evaluation must be conducted by trained professionals under the Probation of Offenders Act, 1958[7]. In Indonesia, the introduction of similar mechanisms would improve the credibility of pre-sentencing reports and minimize judicial arbitrariness. S.A. Gunawardena *et al*. (2017) similarly argue for a multidisciplinary approach, incorporating forensic, social, and psychological evaluations.

Nonetheless, caution is necessary. In India, the misuse of penological justifications – such as deterrence and public morality – has often overshadowed individualised assessments (Surendranath *et al*., 2019). This is not consistent with the results of this study because the Indonesian model, based on Law No. 1 of 2023[8] and dignified justice, explicitly discourages automatic or mechanistic reasoning. The reason for the different interpretations may lie in the greater normative clarity offered by statutory reform compared to India's fragmented jurisprudence. Furthermore, this study supports A. Chandra's (2012) findings on the gender bias in Indian capital sentencing. Crimes against women in domestic contexts were frequently trivialised, while public crimes were deemed more deserving of the death penalty. In Indonesia, this highlights the need to incorporate sociological vulnerability assessments into the guidelines. The conclusions drawn by the researcher are quite appropriate, because, as the results of this study show, neutrality in law must not ignore structural inequalities. To operationalise the doctrine effectively, the Indonesian Supreme Court should issue a Supreme Court Regulation defining strict, cumulative criteria for death penalty cases: (1) the crime must involve extreme cruelty shocking the public conscience, (2) the

[1] Law of the Republic of Indonesia No. 1 "On Criminal Code". (2023, January). Retrieved from https://peraturan.bpk.go.id/Details/226204/uu-no-1-tahun-2023.
[2] Judgement of the Supreme Court of India in Case No. 273 "Bachan Singh v. State of Punjab". (1980, May). Retrieved from https://indiankanoon.org/doc/1766147/.
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[4] Judgement of the Madhya Pradesh High Court in Case No. 4069 "Manoj v. The State Of Madhya Pradesh". (2025, May). Retrieved from https://indiankanoon.org/doc/113383276/.
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perpetrator must demonstrate no potential for rehabilitation, and (3) no other punishment must be adequate to achieve justice and social protection. These criteria reflect J. Diwakar's (2022) proposal for a structured and contextualised application of capital punishment.

All of this is consistent with the philosophy of Pancasila and the Indonesian legal tradition that integrates community values and local wisdom. Incorporating elements such as forgiveness by the victim's family, customary reconciliation, and restorative measures would enhance legitimacy without weakening state authority (Wijayanto, 2022). Such hybridisation of justice reflects a broader humanistic commitment, similar to th e intention behind Article 10 of the Indonesian Penal Code[1] in the past, albeit now reformulated under Law No. 1 of 2023[2]. In sum, the Indonesian legal system is currently positioned to adopt a more structured and principled application of the death penalty. The adoption of the "rarest of the rare" doctrine – adjusted for Indonesia's normative landscape – can serve as both a judicial filter and a moral compass. This convergence of comparative jurisprudence and indigenous legal philosophy signifies a shift from punitive retribution to justice that humanises.

Conclusions

This Article focused on the relevance and possible adaptation of the rarest of the rare doctrine from India into the Indonesian criminal justice system, particularly in the context of imposing the death penalty. The study aimed to evaluate whether such a doctrine could serve as a limiting principle aligned with the recent penal reforms in Indonesia as stipulated in Law No. 1 of 2023. Through a normative and comparative legal analysis, the Article explored how the Indian model – especially as articulated in the Bachan Singh v. State of Punjab case – constructs a highly restrictive framework for the death penalty based on three critical criteria: the brutality of the act, the character of the offender, and the prospects of rehabilitation.

At each stage, the study examined the philosophical, doctrinal, and judicial underpinnings of the rarest of the rare doctrine in India, then contrasted them with the Indonesian penal structure, which is currently undergoing transformation toward a more humane and rehabilitative approach. This included an assessment of Indonesia's evolving legislative intent and judicial trends, which increasingly emphasise the dignity of the accused and the proportionality of punishment. It was found that the Indian doctrine offers a structured method for ensuring that capital punishment is not imposed arbitrarily but only in exceptionally extreme circumstances, thus aligning with the goals of penal moderation and human rights. The findings suggested that the conceptual core of the "rarest of the rare" doctrine – namely, restricting judicial discretion through objective criteria – provides significant insights for Indonesian judges navigating capital cases under the new Criminal Code. The analysis deepens the understanding of how comparative legal doctrines can be selectively adapted to strengthen safeguards against disproportionate sentencing and to promote a justice system grounded in humanity and restraint.

Future research could explore the practical integration of this doctrine into Indonesian jurisprudence, especially through judicial training and guideline development. It is also necessary to examine how this adaptation would interact with Indonesia's cultural, legal, and political context, including its constitutional provisions and human rights commitments. A limitation of this study is the absence of comprehensive empirical data on judicial attitudes toward the death penalty in Indonesia, as well as the restricted access to certain unpublished case decisions that might have enriched the comparative dimension of the analysis.

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Conflict of Interest

None.

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Від відплати до людяності: адаптація доктрини крайнього засобу в індонезійському кримінальному праві

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Анотація
У цьому дослідженні розглянуто правову актуальність і потенційну можливість застосування доктрини крайнього засобу в індонезійській системі кримінального правосуддя як обмежувального принципу щодо повноважень суддів призначати смертну кару. Закон № 1 від 2023 року вніс фундаментальні зміни, оскільки більше не класифікує смертну кару як основне покарання, а радше як альтернативне спеціальне покарання, що підлягає суворим матеріальним і процесуальним вимогам. У цьому дослідженні використано нормативно-правовий метод у межах законодавчого, концептуального та порівняльного підходів, і посилання на кілька судових рішень Верховного суду Індії, таких як справа Бачана Сінгха проти штату Пенджаб. Доктрина крайнього засобу вимагає, щоб смертну кару призначали лише в надзвичайно виняткових випадках з високим рівнем жорстокості, що демонструють крайню аморальність, і коли реабілітацію злочинця вважають неможливою. У дослідженні рекомендовано встановити в Індонезії керівні принципи для обмеження судових повноважень, забезпечення підзвітності рішень й узгодження кримінальної практики із цінностями Панкасіли й теорією гідного правосуддя. Цю доктрину запропоновано як механізм фільтрації, завдяки якому смертну кару застосовують лише як *ultimum remedium* пропорційно, обережно та гуманно, щоб захистити право на життя та відобразити справедливіший і гуманніший напрям у політиці кримінального правосуддя

Ключові слова:
смертна кара; крайній засіб; суддя; гідне правосуддя; Панкасіла