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RESEARCH ARTICLE

Suspended Execution beyond China's Borders

Tobias Smith[1]* and Daniel Pascoe[2]

[1]Wilson Center and [2]School of Law, City University of Hong Kong
*Corresponding author. E-mail: tobiasjsmith@sfsu.edu

Abstract

Although China remains the world's most prolific death-penalty jurisdiction, it has also reportedly reduced executions in the twenty-first century. China achieved this reduction in part through the use of a nominal capital sentence called "suspended execution." The success of suspended execution as a diversionary tool has produced calls for its introduction elsewhere. However, there has been no empirical research on suspended execution outside China. This article fills this gap by identifying neighbouring countries where suspended-execution proposals have been considered, determining why these countries considered it, and examining how proposals were structured. We identify four Asian jurisdictions—Taiwan, Japan, Vietnam, and Indonesia. We find that all of these countries looked to China for inspiration; each did so independently and for reasons unrelated to China's death-penalty reforms. Our findings provide insights about capital punishment in Asia, the appeal of suspended execution, and the role of China in regional penal practice.

Keywords: death penalty; China; legal diffusion; suspended execution; comparative criminal law

1. Introduction

This article examines the proposed introduction of suspended execution—a distinctive Chinese innovation in capital-punishment administration—into other jurisdictions in Asia. In the People's Republic of China ("PRC" or "China"), suspended execution is a formal death sentence for which execution of the condemned is withheld for a set period of two years, conditional on the behaviour of the condemned. If the condemned individual commits a new "intentional crime" under "heinous circumstances" during the period of suspension, a petition is to be sent to the Supreme People's Court for ratification, after which the execution may be carried out; otherwise, at the end of the two-year period, the death sentence is converted into a custodial sentence of incarceration.[1] It is estimated that upwards of 99% of people who are sentenced to suspended execution avoid death.[2] China's Supreme People's Court is credited with expanding the use of suspended execution as a diversionary legal tool to drastically reduce executions in the early twenty-first century.[3] Because the sanction of suspended execution packs both the symbolic wallop of a tough, official condemnation to death and a built-in mechanism that automatically diverts the actual killing in the vast majority of cases, it has been described as "an almost perfectly double-sided response to the problem of the death penalty," as "the death penalty that isn't" and as a "natural consolation prize for prosecutors and victims' families."[4]

[1] Criminal Law of the PRC 1997 (Tenth Amendment), Arts 48, 50.
[2] Seet (2017), p. 467; Miao (2016).
[3] Trevaskes (2012), pp. 115–42.
[4] Trevaskes (2013a), p. 487; Trevaskes (2013b), p. 222; Zimring & Johnson (2012), p. 195.

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The success of suspended execution in reducing executions in China has provoked some commentators to suggest that it could be adopted elsewhere, particularly in Asia,[5] yet, until now, there has been no sustained empirical investigation of suspended execution outside China. In this article, we seek to move research forward by asking *where*, *why*, and *how* suspended execution has been considered and adopted or rejected beyond China's borders. *Where* is a question we answer inductively. While capital-punishment regimes have a wide variety of mechanisms to divert death,[6] here we looked for jurisdictions that have considered amendments to capital punishment exhibiting the three characteristics we believe together make suspended execution unique: (1) the formal institution of a capital sanction, along with (2) a statutory provision for delay in the execution of the death sentence for a non-indefinite period and (3) a legal mechanism conditioned on the behaviour of the condemned for determining whether the execution should be carried out or the sentence should be modified at the end of this delay. We identify four jurisdictions other than the PRC that have considered or adopted a suspended-execution provision that meets this definition. Taiwan and Japan considered and rejected suspended execution between the 1970s and 2000s. Vietnam has now adopted a limited form of suspended execution for economic crimes. And Indonesia's revised draft Criminal Code contains a provision directly inspired by the Chinese model. *Why* these jurisdictions have considered or adopted suspended execution is a question of comparative policy—we ask whether suspended execution is appealing as a way to reduce execution or addresses some other political concern. *How* such statutes are drafted is a question of comparative law—we ask whether and to what extent the legal structure of suspended execution resembles the mechanism in China.

We believe that these questions now merit scholarly attention for three interrelated reasons. First, understanding which other countries entertain suspended execution—the *where* of suspended execution—can shed light on regional policy dynamics between China and its neighbours. The burgeoning literature on law-and-policy diffusion identifies a range of mechanisms for the international spread of law and policy in general[7] and for penal law and practice in particular.[8] Regimes may coerce or export penal practices through hard influence such as colonialism and soft-power approaches such as neoliberalism.[9] States may also seek out or import penal practices through policy learning in which countries adopt successful practices observed elsewhere.[10] Law and policy also diffuse through the construction of shared norms; countries may adopt penalties that are understood as global best practices through processes of consensus in a "world polity."[11] China has developed from a regional to a global powerhouse. Is China encouraging the introduction of suspended execution? Are other nations looking to China for policy direction? Is there an emerging Asian consensus on penal practice? The *where* of suspended execution can advance answers to these questions.

[5] Zimring & Johnson, *supra* note 4, pp. 195–6; Seet, *supra* note 2.

[6] Other forms of leniency employed in Asian death-penalty cases include extensive use of police and prosecutorial discretion (e.g. Hor, 2013), case attrition through multiple judicial appeals (e.g. Johnson & Zimring, 2009b; Liao, 2014), compulsory review by higher courts (Trevaskes, 2019; Hood & Hoyle, 2015), case reopening following new evidence (Butt & Lindsey, 2018; Hood & Hoyle, 2015), executive clemency in individual cases (e.g. Pascoe, 2019a; Pascoe, 2019c; Novak, 2015), group amnesties (e.g. Johnson & Zimring, 2009b; Hood & Hoyle, 2015), mercy shown by victims' relatives (e.g. Pascoe & Miao, 2017), and even leaving prisoners languishing on death row indefinitely (Hood & Deva, 2013; Garrett, 2017). Of these measures, only executive clemency in the form of a temporary reprieve might be considered a "suspension" of execution (Novak, 2015). Yet, unlike the mechanisms discussed in this article, a reprieve does have the ability to *permanently* modify the initial punishment imposed.

[7] Simmons & Elkins (2004); Elkins & Simmons (2005); Dobbin, Simmons, & Garrett (2007).

[8] Grattet, Jenness, & Curry (1998); Wacquant (2009); Frank, Camp, & Boutcher (2010); Rubin (2015).

[9] Wacquant, *supra* note 8.

[10] Dobbin, Simmons, & Garrett, *supra* note 7.

[11] *Ibid.*, pp. 450–1; Frank, Camp, & Boutcher, *supra* note 8.

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Second, the *why* of suspended execution merits attention because it engages the dynamics of death-penalty retention, reduction, and abolition. The majority of world executions take place in Asia.[12] Explaining Asia's regional commitment to the death penalty has become an important plank of the research agenda in comparative criminal justice.[13] And, within Asia, one country stands out: China. While the precise figure is a state secret, it is estimated that China executes thousands of people a year, making it far and away the world's leading executioner state.[14] But China has also reduced its executions drastically in recent years, due in part to the use of suspended execution. Suspended execution stands out as a distinctively home-grown solution to a Chinese criminal justice problem. Are other countries considering suspended execution as a way to reduce or abolish capital punishment? Or are they interested in suspended execution for other policy reasons unrelated to execution rates?

The four jurisdictions examined here—Taiwan, Japan, Vietnam, and Indonesia—all retain capital punishment in law and continue to use it in practice. Taiwan has edged toward abolition of the death penalty in the twenty-first century, although it performed executions in seven of the eight years between 2011 and 2018.[15] Japan's death-penalty practice has been described as "low volume with high salience,"[16] with little recent momentum towards abolition. By contrast, Vietnam executed 429 people between 8 August 2013 and 30 June 2016, and in 2018 Vietnam disclosed that it executed at least 85 people that year, making it one of the most active global executioner states, both in absolute numbers and per head of population.[17] Under President Joko Widodo, Indonesia remains enthusiastic about executing drug traffickers as a deterrent mechanism, most recently doing so 18 times in 2015 and 2016.[18] Only procedural obstacles have prevented more executions since then.[19] Confronting the *why* of suspended execution provides insights into the motives of retentionist countries in an increasingly abolitionist world, and also serves to explain the reasons for state differences in proposed suspended-execution models, as our final question moves on to address.

The legal structure of suspended-execution policies—the *how* of suspended execution—engages the question of whether suspended execution can be implemented in a way that has structural traction as an alternative to the death penalty in countries that retain capital punishment. As the abolitionist movement has gained force, jurisdictions have struggled to find alternatives to death that fulfil the many functional and symbolic tasks traditionally accomplished by execution.[20] Across the globe, deprivation of liberty in the form of incarceration is now the prevailing method of formal state punishment for serious offences, yet determining a proportional period of incarceration for formerly capital crimes has proved vexing and unsatisfactory for many states. One alternative, namely life without the possibility of parole (LWOP), has been adopted unevenly.[21] The US, for example, has embraced LWOP with gusto, even as it retains the death penalty in many state jurisdictions. Meanwhile, in Europe, where the death penalty has been effectively abolished,[22] the European Court of Human Rights has found LWOP violates the

[12] Amnesty International (2019).

[13] Johnson & Zimring, *supra* note 6; Hood & Deva, *supra* note 6; Pascoe (2016); Pascoe (2019a), *supra* note 6; Lindsey & Nicholson (2016).

[14] Amnesty International, *supra* note 12.

[15] Su (2018); Cornell Center on the Death Penalty Worldwide (2020a).

[16] Johnson & Zimring (2009a), p. 18.

[17] Amnesty International (2017), p. 27; Amnesty International, *supra* note 12, p. 9.

[18] Anya (2019).

[19] Pascoe (2019b).

[20] Hood & Hoyle, *supra* note 6.

[21] See generally Zyl Smit & Appleton (2016); Zyl Smit & Appleton (2019).

[22] With the exception of Belarus; see Amnesty International, *supra* note 12.

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European Convention on Human Rights.[23] LWOP is on its way to becoming as contentious as the death penalty it is proposed to replace in retentionist jurisdictions.

Despite the problems with LWOP, however, the world's penal systems have come up largely empty-handed in the search for other substitutes for the death penalty beyond long or whole-life sentences. In this context, scholars concerned with capital punishment have floated suspended execution as a possible replacement to the death penalty in several Asian retentionist jurisdictions.[24] In particular, suspended execution holds the potential to capture the unique symbolic gravitas elicited from condemnation of an offender, while avoiding the actual killing.[25] But China's capital regime also contains other unusual features, notably a lack of executive clemency provisions, that may make suspended execution uniquely effective as a diversionary mechanism in the PRC. Despite the desires of scholars and advocates, it is not clear that countries that adopt suspended execution can and will implement it as a penal release valve, like in China. *How* suspended execution is introduced into foreign jurisdictions provides a window into the way in which it can or will be used in the future.

The methodological approach to this research began inductively. The authors canvassed capital-punishment literature and spoke to policy experts to identify a total of four jurisdictions where suspended execution has been considered across Asia. After identifying the jurisdictions of interest, the authors drew on textual materials published in English, Chinese, Japanese, Vietnamese, and Indonesian. In addition, the authors conducted interviews with experts and policy-makers in China, Indonesia, Japan, and Taiwan between May 2018 and January 2020.

This article proceeds in the following five parts. Section 2 examines the history and practice of suspended execution in China and considers China's relationship with its Asian neighbours in terms of penal policy. Section 3 briefly discusses two jurisdictions that did not adopt suspended execution, despite considering it: Taiwan and Japan. Section 4 examines the case of Vietnam, a country that recently adopted a narrow version of suspended execution. Section 5 concerns Indonesia, which first encountered suspended execution decades ago and is still reshaping the penalty for domestic ends. In Section 6, we offer a comparative discussion of the preceding five jurisdictions' proposals and practices, in light of China's suspended-execution model, before reaching a set of final conclusions.

2. Suspended execution in China

> In many articles on the suspended execution system, there are two statements that deserve our attention. First, "suspended execution is China's original creation." Second, "Ming and Qing [Dynasty capital review practices] are the rudimentary form of suspended execution."[26] (Sun Jiahong, Legal Historian)

This section discusses China's use of suspended execution and its relationship with its neighbours regarding penal policy. Suspended execution (*sixing huanqi zhixing*, or *sihuan*) is a distinctive feature of China's capital-punishment system. In its broadest strokes, suspended execution is a formal capital sanction for which execution is withheld for a two-year period of review following sentencing. At the end of this two-year period, the sentence is virtually always converted into an indeterminate term of incarceration.[27]

[23] Zyl Smit & Appleton, *supra* note 21.
[24] Seet, *supra* note 2; Academia Sinica (2007); Muladi (2003).
[25] Johnson & Zimring, *supra* note 6.
[26] Sun (2007a), p. 59.
[27] Seet, *supra* note 2; Miao, *supra* note 2.

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Suspended execution therefore operates as both a nominal death sentence and a functional reprieve from execution.

Suspended execution has been a part of the punitive apparatus of the PRC since virtually its founding in 1949, but the punishment has gained newfound attention following its rise to prominence as a policy tool used by the Supreme People's Court to actively divert executions in China in recent years.[28] While China is widely reputed to be the world's leading executioner state, the annual number of executions in China is estimated to have fallen drastically in the twenty-first century,[29] due in part to the substitution of suspended (or nominal)-execution sentences for immediate (or enacted) execution sentences.[30] In 2007, the head of the Supreme People's Court stated that, for the first time in PRC history, the number of suspended-execution sentences surpassed the number of death sentences with immediate execution (i.e. with no suspension).[31] As the most-used capital sanction in the world's highest-executing jurisdiction, China's suspended-execution sentence is therefore likely to be the most frequently used capital-punishment provision in the world today.

The legal basis for suspended execution is situated within Chapter III Section 5 of China's Criminal Law,[32] which concerns the death penalty. Suspended execution is available for any of China's 46 capital eligible offences.[33] According to Article 48 of the PRC Criminal Law, a capital sentence of immediate execution is only to be applied to individuals who have committed "extremely serious" (*jiqi yanzhong*) acts. If an immediate execution is not deemed necessary, a suspension of execution for two years may be applied at the time of sentencing. At the expiration of the two-year period, if the offender has not committed a new "intentional crime" (*guyi fanzui*) under "heinous circumstances" (*qingjie elie*) while incarcerated, the sentence shall be converted into a term of imprisonment.[34]

The statutory distinction that divides immediate and suspended execution—life and death—is vague. Internal court guidelines and guiding cases from the Supreme People's Court have progressively narrowed the scope of eligibility for immediate execution. Nonetheless, criteria for determining what counts as an extremely serious criminal act remain publicly ambiguous and subject to political policy-making.[35] It is worth noting that both the initial sentencing decision and the sentencing review after two years are conducted entirely by the judiciary. China does not have a functioning executive clemency system—only a "unilateral" special amnesty scheme that has never been used in a death-penalty case since 1949.[36] China's lack of a clemency system is highly unusual within retentionist states[37] and provision for commutations and pardons is considered by the UN and the International Covenant on Civil and Political Rights (ICCPR) (Article 6(4)) to be a core safeguard within the death-penalty process.[38] Previous scholars have debated whether the suspended death sentence operates as a substitute for executive clemency.[39]

[28] Trevaskes, *supra* note 3.

[29] The Dui Hua Foundation (2020).

[30] Trevaskes, *supra* note 3, pp. 116–42; Amnesty International, *supra* note 17.

[31] Trevaskes (2010), p. 179.

[32] Criminal Law of the PRC 1997 (Tenth Amendment).

[33] In practice, most capital sentences are likely issued for a small number of offences involving drugs or violence. See Xiong (2016), p. 225.

[34] Criminal Law of the PRC 1997 (Tenth Amendment), Art. 50.

[35] Trevaskes (2013a), *supra* note 4, p. 488.

[36] Xiong (2020).

[37] Pascoe (2019c), *supra* note 6; Novak, *supra* note 6.

[38] Hood & Hoyle, *supra* note 6.

[39] He (2008); Hong (2009); Xiong, *supra* note 36; Pascoe & Miao, *supra* note 6.

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2.1 History, change, and continuity

While suspended execution has become a topic of interest in international policy circles following its increased use in the early twenty-first century, the practice itself has a much longer history in China. Scholars have noted the strong similarities between contemporary suspended execution and the death-penalty system of imperial China.[40] In imperial China, every death sentence handed down throughout the empire was sent to the Board of Punishments in the capital, which would ultimately refer the decision to the emperor with a recommendation of either immediate execution or delay until consideration at an annual review (also called the autumn assizes, or *qiushen*). During annual review, cases were divided into categories, with some categories presumptively meriting a reduction in punishment. One category, deferred execution, is particularly resonant: the sentence was typically suspended for two years, after which it was generally converted to a lesser punishment.[41]

Suspended execution traces its more recent roots in the early history of the Chinese Communist Party ("CCP"). Well before the CCP gained control of China and established the PRC, the Party used forms of reprieve in wartime areas.[42] Following the founding of the PRC (1949–present), Party leaders immediately sought to consolidate power through the Campaign to Suppress Counterrevolutionaries (1950–53).[43] The Campaign mobilized a nationwide effort to ferret out perceived state enemies and led to the execution of more than 700,000 people.[44] As the death toll mounted, Mao Zedong issued a directive that execution

> shall be confined to those who owe blood debts ... while the policy towards the rest shall be one of passing the death sentence, granting a two-year reprieve and subjecting them to forced labor during this period to see how they behave.[45]

This directive became a guiding penalty and was eventually integrated into the PRC's first codified Criminal Law (1979) more than 25 years later.[46]

Although the 1979 Criminal Law was promulgated after the end of the Cultural Revolution, it retained the strong ideological flavour of the PRC's socialist origins. Counter-revolution continued to be a crime, re-education through labour was a criminal justice staple, and repentance remained the criterion for commutation of a prisoner's suspended death sentence. In 1997, the Criminal Law underwent major revision. The crime of counter-revolution was replaced with the crime of endangering state security and overtly political revolutionary language was supplanted with increasingly technocratic or legalistic language. In place of repentance, the 1997 Criminal Law specified that a person's suspended death sentence would be converted after two years so long as the offender did not commit a new "intentional crime" (*guyi fanzui*).

Since the last major revision to the Criminal Law in 1997, China's legislature has repeatedly amended the law on suspended execution, primarily in order to address a perceived gulf in proportionality between suspended and immediate death sentences. Traditionally, prisoners who had suspended-execution sentences converted to imprisonment typically served less than two decades in prison; concerns about sentencing disparities led the legislature to introduce beefed-up terms of incarceration for suspended execution in the

[40] E.g. Sun (2007b), pp. 369–77; Zhang (2005).
[41] Bodde & Morris (1967), p. 138; Sun, *supra* note 40.
[42] Zhang (2004), p. 12.
[43] Yang (2008); Zhang (2008).
[44] Yang, *supra* note 43, p. 60.
[45] Mao (1951).
[46] Zhao (2005), p. 55.

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eighth (2011) and ninth (2015) Amendments to the Criminal Law. These more punitive measures effectively raise the minimum possible prison sentence following suspended execution by five years, prohibit sentence reductions for some types of repeat offenders, and—for the first time in Chinese history—introduce the possibility of a whole-life sentence (life without parole) in capital corruption cases.[47]

The long history of suspended execution covers a variety of legal regimes—imperial, revolutionary, liberal-legal—in which the penalty has assumed different valences. A number of elements remain consistent through the arc of this practice. First, throughout its history, suspended execution has remained (nominally) a capital sentence, situated within the law as a form of administration of the death penalty. This is the case despite the fact that suspended execution is intended to act as a diversionary sentence; the typical outcome for the offender is presumptively not death, but a lesser punishment. Second, suspended execution dictates a delay before a final decision regarding execution is rendered. However, an offender is not in limbo for an indefinite amount of time. Third, suspended execution provides criteria for determining whether to enact or convert the death sentence at the end of the period.

2.2 *China, its neighbours, and regional penal practice*

China is the originator of the practice of suspended execution, so an obvious first place to look for explanations for the *where*, *why*, and *how* of introduction of suspended execution elsewhere lies in China's own active international policy decisions. The literature on legal transmission and diffusion identifies a number of ways that countries intentionally or inadvertently promote the adoption of domestic legal practices into other jurisdictions.[48] Most directly, powerful states may export legal policies abroad overtly through coercive practices such as colonialism. Colonial Britain, for example, pushed the adoption of its criminal law and penal institutions both inside and outside its colonies. (The first prison in mainland China, for example, was built by the British in a treaty concession in Shanghai.[49]) Less overtly, powerful states may promote international frameworks that encourage the reproduction of legal practices abroad. The logic of US neoliberalism, for example, created economic and political carrots and sticks that fostered the proliferation of American penal practices throughout much of the developing world.[50]

Is China pushing suspended execution on its neighbours? China's own historical development over the long haul points to some of these dynamics with regional neighbours in the past. Taiwan was annexed by the Qing Dynasty empire in 1683, subjecting Taiwan to Chinese legal rule by force in until Japan occupied the island in 1895. In Sino-Vietnamese relations, China has been the larger and more influential actor through three millennia, in periods of both conflict and co-operation.[51] In more recent years, China has projected soft power beyond its neighbours and across the world through infrastructural initiatives such as One Belt, One Road.

But, while the PRC does project its power aboard, it does not have a history of exporting legal practices. China's current political regime, the CCP, has an ambivalent relationship to law as a mode of governance.[52] China is openly critical of institutions that aim to replicate US-style legal norms abroad and while, in other areas, China has created its own versions of US foreign policy institutions that it critiques, it has not yet done so with law. Within

[47] Miao, *supra* note 2, pp. 8–9; Smith & Jiang (2019).
[48] Dobbin, Simmons, & Garrett, *supra* note 7.
[49] Dikötter (2002).
[50] Wacquant, *supra* note 8; Macaulay (2013).
[51] Womack (2006), p. 1.
[52] Lubman (1999); Peerenboom (2002); Minzner (2018).

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this project, the authors found no evidence that China is promoting—or even considering—the practice of suspended execution outside its borders. The Chinese academic and policy literatures do not indicate interest by either Chinese state or non-state actors such as lawyers or academics in the transmission of suspended execution elsewhere. The authors interviewed prominent Chinese criminal justice scholars and legal officials. Interviewees uniformly showed no knowledge of or interest in suspended-execution practices outside China, and expressed scepticism that China was promoting suspended execution outside its borders.[53] No person interviewed in China, nor in any of the other jurisdictions, could point to any Chinese event or initiative—such as a China-sponsored judicial tour or programme—encouraging suspended execution abroad. These findings indicate that explanations for the *where*, *why*, and *how* of suspended execution lie outside the People's Republic. We turn now to those other places.

3. Taiwan, Japan, and the path not taken

> [Before importing] any system from the PRC, you should think about it twice. (Interview with Taiwanese NGO Staff[54])

In looking for cases of suspended execution beyond the PRC, Taiwan is an obvious place to start. Taiwan is an island off the coast of Fujian province that shares a historical and cultural lineage with the mainland and a vexed relationship in politics and law. First annexed by imperial China in the seventeenth century, Taiwan was under the control of the Qing Dynasty until it was occupied by Japan at the end of the nineteenth century. In 1949, during the Chinese civil war, the *Kuomintang* Nationalist government ("KMT") retreated to Taiwan, establishing the island as the centre of government for the Republic of China ("ROC"), which claimed sovereign rule over all of greater China *in absentia*. The KMT brought their mainland legal tradition with them. While the Criminal Code of the ROC (first promulgated in 1912) that Taiwan inherited included capital punishment,[55] it did not incorporate any form of suspended execution that had existed in imperial China.

The post-1949 divergence in suspended-execution practice between the ROC and PRC is arguably a matter of historical contingency. Immediately after seizing control over the mainland, Mao Zedong launched a bloody initiative, the Campaign to Suppress Counterrevolutionaries, to consolidate power.[56] Mao introduced suspended execution as a practice in the PRC in 1951 in an effort to moderate the violence of the campaign. Upon arriving in Taiwan, the ROC's leader Chiang Kai-Shek took a similarly punitive approach to the consolidation of power. He imposed martial law, which remained in effect for 38 years until 1987. During this period, the KMT applied state killing on a scale that at some points perhaps equalled that of the PRC,[57] but the KMT never introduced a suspended-execution provision to divert killings as Mao had done, perhaps because of the reduced potential for social unrest within a smaller territory already pacified through martial law, or because the KMT did not face the risk that it would lose central control of criminal justice policy, as with the radically populist penal politics encouraged by the CCP.

While the PRC continued to use capital punishment on a massive scale throughout the late twentieth century, after Taiwan was liberalized in the 1980s, the use of capital punishment eventually diminished, falling from a post-martial-law peak of 78 executions in

[53] Interviews in Beijing, May to June 2018.
[54] Interview with Taiwanese NGO Staff, 7 January 2020.
[55] Dikötter, *supra* note 49.
[56] Yang, *supra* note 43; Zhang, *supra* note 43.
[57] Johnson & Zimring, *supra* note 6.

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1990 to zero executions between 2006 and 2009 and in 2017 and 2019.[58] At the same time, a flourishing civil society produced a vocal abolitionist movement.[59] In 2000, Chen Shui-Bian was elected president. Chen, as leader of the Democratic Progressive Party (DPP), has been the only president of Taiwan to take an abolitionist platform in both policy and practice.[60] During Chen's second term in office, Minister of Justice Morley Shih enforced an official moratorium on executions by refusing to sign execution warrants for the 19 defendants who then remained on death row.[61] However, holding only a plurality of seats in the Taiwanese legislature and with a reluctance to defy public opinion, Chen's party was not able to formally abolish the death penalty in law before the end of his presidential term in 2008.[62] Against high hopes that Taiwan would get rid of the death penalty, Taiwan resumed executions in 2010.[63]

Although the ROC did not adopt suspended execution like the mainland did in the 1950s, the penalty has been a topic of discussion on the political and academic agenda in Taiwan for the past several decades. Since the end of martial law, several academic scholars have proposed a suspended-execution model as a means of reducing execution numbers without the need for formal death-penalty abolition.[64] For example, during the early 1990s, participants at a legislative hearing on the possibility of abolishing capital punishment suggested adopting a "probation system" allowing time for prisoners to show repentance, as the PRC had done.[65] Ultimately, executions continued to take place in Taiwan, yet the numbers declined significantly throughout the 1990s following other reforms, such as the abolition of non-violent capital crimes such as drug offences, the restriction and eventual abolition of the mandatory death penalty, and the creation of the Ministry of Justice's Implementation Guidelines for Reviewing Death Sentence Execution in 1999.[66]

Suspended execution re-emerged as a legislative possibility in Taiwan in the mid-2000s, under the abolition-minded President Chen.[67] In late 2005, Minister of Justice Morley Shih stated that his ministry was evaluating the introduction of a suspended-execution statute modelled on China as a step towards the abolition of the death penalty.[68] The Ministry of Justice commissioned Academia Sinica, the National Academy of the ROC, to produce a report on alternatives to the death penalty. Its 424-page report, *A Study on the Abolition of the Death Penalty and Its Alternatives*,[69] devotes a section to suspended execution, discussing its historical significance and development in China as well as its proposed introduction in Japan. At the same time, although the Taiwanese public continued to favour retention over outright abolition,[70] an opinion survey found that 62% of respondents supported suspending execution in favour of life or long-term imprisonment if the convicted person showed repentance during a probation period.[71]

[58] Su, *supra* note 15; Cornell Center on the Death Penalty Worldwide, *supra* note 15.

[59] Bae (2016); Qian (2009).

[60] Su, *supra* note 15.

[61] *Ibid.*; Hood & Hoyle, *supra* note 6.

[62] Liao (2010); Chiu & Hood (2019).

[63] Su, *supra* note 15.

[64] Academia Sinica, *supra* note 24; corroborated by: Interview with Taiwanese Law Professor, 3 January 2020; Interview with Taiwanese Criminal Defence Lawyers, 9 January 2020; Interview with Taiwanese Law Professor #4, 13 January 2020; Interview with Taiwanese Prosecutor, 13 January 2020.

[65] Lee (1993).

[66] Liao (2008); Chang (2006).

[67] Academia Sinica, *supra* note 24.

[68] United Daily News (2005); Chang, *supra* note 66.

[69] Academia Sinica, *supra* note 24.

[70] Johnson & Zimring, *supra* note 6, p. 212.

[71] *Ibid.*, p. 219. For the results of a more recent survey in Taiwan incorporating a question on the suspended death penalty, see Jou & Hebenton (2019).

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Nevertheless, the Academia Sinica report rejects suspended execution as a viable policy for Taiwan. The report criticizes the legal structure of suspended execution in the PRC, pointing out that the criterion of "extremely serious" criminal acts on which suspension of execution turns is overly vague and inimical to the rule of law.[72] While the report decries the legal indeterminacy of suspended execution, it ultimately rejects suspended execution as a matter of principle, rather than of implementation. The authors of the report—who were charged with considering alternatives to capital punishment—find that, as a method of diversion, suspended execution still "allows the continued operation of the death penalty system, only on a less intensive scale."[73] Several other Taiwanese interviewees expressed a similar view that suspended execution in fact perpetuates the death penalty.[74]

The Ministry of Justice therefore shelved plans to introduce suspended execution to the legislature and, in 2008, the DPP was voted out of power in both the legislative and presidential elections. In the years since Chen Shui-bian left office, at least one advocate has called for a reconsideration of suspended execution,[75] but no proposal has been introduced for legislation. Retentionist politicians are preoccupied with implementing capital punishment more often, rather than alleviating it.[76] Abolitionists, meanwhile, have instead proposed other changes to the current system to move Taiwan toward abolition, including the establishment of Life Without Parole as a sentencing alternative,[77] activating the dormant executive clemency system to commute existing sentences,[78] reinstituting an executive-led moratorium on executions,[79] or requiring agreement from all judges on a panel before a death sentence may be imposed.[80] Moreover, in addition to their principled or procedural criticisms of suspended execution as a self-contained policy model, some abolitionists also see inherent problems in adopting a reform from Taiwan's authoritarian rival across the strait.[81]

Japan's engagement with suspended execution is similar to Taiwan's. Proposals to adopt suspended execution in Japan were inspired by the Chinese practice and have an even longer history than in Taiwan. Between 1963 and 1974, the 50-member Japanese Ministry of Justice's Special Committee for Criminal Law of the Legal System

[72] Academia Sinica, *supra* note 24. Indeed, in the early 2000s, many Chinese academics voiced similar concerns about suspended execution; in response, the National People's Congress amended the Criminal Law to increase the legal specificity of the suspended-execution process and the Supreme People's Court issued directives further clarifying the application of the sanction (Trevaskes, *supra* note 3). At the time of writing, Taiwanese scholars remain concerned about the potential for wealth or political connectedness to sway the post-suspension decision (Interview with Taiwanese NGO Staff, 7 January 2020; Interview with Taiwanese Law Professor #3, 8 January 2020; Interview with Taiwanese Law Professor #4, 13 January 2020).

[73] Academia Sinica, *supra* note 24, p. 74.

[74] Interview with Taiwanese Law Professor #3, 8 January 2020; Interview with Taiwanese Criminal Defence Lawyers, 9 January 2020; Interview with Taiwanese Cabinet Minister, 14 January 2020.

[75] Wang & Loa (2013). Interview with Taiwanese NGO Staff, 7 January 2020 and Interview with Taiwanese Prosecutor, 13 January 2020 also discussed some residual support within the legislative and supervisory branches of government in Taiwan.

[76] Interview with Taiwanese Law Professor #3, 8 January 2020; Interview with Taiwanese Criminal Defence Lawyers #2, 9 January 2020.

[77] Garrett (2019); corroborated by Interview with Taiwanese Law Professor, 3 January 2020.

[78] Liao, *supra* note 62; Death Penalty Project (2014). Corroborated by Interview with Taiwanese Cabinet Minister, 14 January 2020. See also Pascoe & Novak (2020).

[79] Hubert (2013); DeAeth (2018). Interview with Taiwanese Law Professor #3, 8 January 2020; Interview with Taiwanese Law Professor #4, 13 January 2020; Interview with Taiwanese Cabinet Minister, 14 January 2020.

[80] Death Penalty Project, *supra* note 78; Maxon (2019); Interview with Taiwanese Criminal Defence Lawyer #2, 9 January 2020.

[81] *Supra* note 54; Interview with Taiwanese Law Professor #3, 8 January 2020; Interview with Taiwanese Law Professor #4, 13 January 2020.

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Deliberation Council discussed the possibility of implementing a Revised Penal Code.[82] During the years that the Revised Penal Code was under discussion, there was a proposal within the Special Committee's punishment subcommittee to introduce an optional sentence of suspended execution, based on a five-year probation period imposed by the sentencing court. After five years had elapsed, the court would consider the opinion of a Committee for the Review of Death Sentences established through the Ministry of Justice as to whether the offender should be resentenced to life imprisonment, with eligibility for parole set at 20 years.[83]

Nevertheless, the Legal System Deliberation Council never adopted such an idea[84] due to concerns about compromising the deterrent effect of the death penalty, failing to differentiate sentences of death and life imprisonment, prolonging uncertainty for prisoners, and the inapplicability of a "copy and paste" model from the PRC's contemporaneous practice.[85] In the end, the draft Bill for a Revised Penal Code was never submitted to the National Diet.[86] Well into the twenty-first century, Japan has continued to employ its original Penal Code, promulgated in 1907, with only minor alterations.[87] Outside of the regular judicial appeal process, death sentences may be mitigated within multiple retrials upon the production of new evidence and following extraordinary appeals by prosecutors due to illegality.[88] Evidence of the defendant's rehabilitation on death row remains inapplicable to capital sentencing.[89]

In the years since the Special Committee's work was abandoned, suspended execution has again been raised in Japanese academic circles and among political groups as an idea for reform. The possibility of implementing suspended execution was discussed by, variously, the Komeito Party during the early 1990s,[90] the Diet Members' League for Abolition of the Death Penalty (between 2003 and 2005), and its successor the All-Party Parliamentary Group to Consider the Future of the Death Penalty in Japan (since 2012).[91] However, it has never become an official policy platform of a political party, nor has it ever been put to a vote in the National Diet. Interviewees advanced a variety of reasons for the recent lack of political enthusiasm for suspended execution. Mirroring the criticisms of Taiwanese abolitionists, above, Japanese informants worried that suspended execution preserves a sentence of capital punishment, thereby maintaining the risk of execution.[92] It also grants prison wardens or other civil servants the power to determine life or death based on vague determinants of prisoner behaviour,[93] and creates

[82] Uematsu (1964); Shikita & Tsuchiya (1992).

[83] Academia Sinica, *supra* note 24; Suzuki (1971a).

[84] Hirano (1973); Kim & Garcia (1989). Japanese Criminal Defence Lawyer, personal communication, 13 December 2019; Interview with Japanese Criminology Professor, 2 December 2019. See also Johnson and Zimring, *supra* note 6, p. 219 n34.

[85] Suzuki (1971b), pp. 118–9; Mao, *supra* note 45; Zhao, *supra* note 46.

[86] Shikita & Tsuchiya, *supra* note 82; Kim & Garcia, *supra* note 84.

[87] International Federation for Human Rights (2008).

[88] Schmidt (2002).

[89] Métraux (2009); Obara-Minnitt (2016). Executive clemency, notionally available in cases of rehabilitation (Offenders Rehabilitation Act 2007 (Japan), s. 90(1)), has not been granted since 1975 (Johnson, 2019). See further Pascoe & Novak, *supra* note 78.

[90] Interview with Japanese Criminology Professor, 2 December 2019; Interview with Former Japanese Cabinet Minister, 4 December 2019; Interview with Japanese Capital Defence Lawyer #2, 10 December 2019.

[91] Interview with Japanese Member of Parliament, 12 December 2019. Since 1994, these caucuses have proposed both reductionist and abolitionist strategies. See further Kiroku (2003); Ambler (2008); International Federation for Human Rights, *supra* note 87.

[92] Interview with Japanese Member of Parliament, 12 December 2019; Interview with Japanese Capital Defence Lawyer #3, 13 December 2019. See also Academia Sinica, *supra* note 24.

[93] Interview with Japanese Capital Defence Lawyer #3, 13 December 2019.

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uncertainty among the relatives of victims and offenders.[94] As in Taiwan, suspended execution has proven less attractive to Japanese scholars and policy-makers because it originates from the authoritarian PRC. It is seen as a legislative alternative more relevant to systems with large numbers of death-row prisoners.[95] Japanese retentionists also disfavour suspended execution as it is "too easy" on death-row prisoners—a betrayal of the death sentence originally imposed and a disproportionately lenient punishment.[96]

4. The case of Vietnam

> We must have legislative techniques to make sure people who are executed should be executed, and not those who are not. (Lieutenant General Tran Van Do, former Chief Justice of the Central Military Court[97])

This section examines a death-penalty diversion mechanism that was introduced as part of the 2015 Amendment to Vietnam's Criminal Code. Some Western scholars have described this diversion mechanism as a form of suspended execution that resembles the practice in China.[98] Section 4 begins with background on Vietnam's penal law and its historical relationship with China. We then discuss the political context of the 2015 Amendment to Vietnam's Criminal Code. Finally, we consider the death-penalty provision itself.

4.1 Background

Vietnam is an active executioner state. Exact data are hard to come by because Vietnam is one of only three states (along with Belarus and, notably, China) where death-penalty statistics are state secrets.[99] Nonetheless, partial data over recent decades suggest that Vietnam executes frequently.[100] In 2018, Vietnam disclosed that it executed at least 85 people that year, leading Amnesty International to rank it among the world's five most prolific executioner states.[101] On a per-capita basis, Vietnam may now rival China in its frequency of execution.

After Taiwan, Vietnam is arguably the most obvious place to look for the influence of Chinese penal practices on capital punishment outside the PRC.[102] The relationship between the two countries is asymmetric, as "China has always been a much more important presence for Vietnam than Vietnam has been for China."[103] This influence is often noted in areas of law and policy.[104] In their survey of capital punishment in Asia, Johnson and Zimring note that:

[94] Interview with Japanese Member of Parliament, 12 December 2019.

[95] Interview with Japanese Capital Defence Lawyer #3, 13 December 2019; Interview with Japanese Criminology Professor, 2 December 2019.

[96] Interview with Japanese Capital Defence Lawyer #3, 13 December 2019; Interview with Former Japanese Cabinet Minister, 4 December 2019.

[97] TT (2015b), commenting on proposed changes to Vietnam's Criminal Law in 2015.

[98] Lindsey & Nicholson, *supra* note 13, p. 273, observing that "other proposals include: an age-based exemption from the death penalty for those over 70 years old; a limitation of the death penalty to 'particularly serious cases;' and the possible introduction of a suspended death penalty, as in China."

[99] Amnesty International, *supra* note 12, p. 6.

[100] Pascoe (2016), *supra* note 13.

[101] Amnesty International, *supra* note 12, p. 9.

[102] Gillespie and Chen (2010), p. 2.

[103] Womack, *supra* note 51.

[104] E.g. Liebman et al. (2019), p. 6, commenting on Vietnam's 2017 decision to follow China's lead in creating a national legal-case database.

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> comparative chronologies of the various Asian communisms show that policy initiatives not only came from China on a regular basis, they were frequently followed so closely that "the similarity sometimes seems to border on cloning." In death penalty policy more particularly, Vietnamese practices bear a striking resembling to the patterns that have prevailed in China.[105]

China's direct influence on Vietnam's penal practice goes back thousands of years.[106] The Le Dynasty's (1428–1788) Hong Duc Code of 1483 borrows heavily from Chinese dynastic codes.[107] The penal provisions in the 1812 Gia Long Code, the legal code of Vietnam's last dynasty (Nguyen Dynasty, 1802–1945), are a "faithful copy of China's [Qing Dynasty] code," which itself contained extensive capital-punishment measures, including a system of deferred execution that stands as a precursor to China's contemporary suspended-execution penalty.[108] China's influence on Vietnam's penal law waned as French civil law dominated during the colonial period (1858–1945). However, under Ho Chi Minh, North Vietnam developed a close relationship with the CCP extending through reunification in 1975. Under socialism, the two countries were frequently described to be as close as "lips and teeth."[109] Like the PRC, the early Socialist Republic of Vietnam ("SRV") had no codified criminal law. And, like the PRC, which codified its criminal law in 1979 as part of comprehensive social and economic reform, Vietnam codified its first Criminal Code since 1812 in 1985 amidst the *Doi Moi* reforms.[110] The 1985 SRV Criminal Code that emerged during these reforms marks the beginning of contemporary capital punishment in Vietnam.[111]

While many aspects of the 1985 SRV Criminal Code bear strong resemblance to China, no suspended-execution provision is included in the Code. One scholar writing about China's influence on the Code at the time of introduction observed that

> The death penalty provision is one in which such an influence might appear, since Chinese law has an unusual procedure that permits reprieve after a period of time if the offender shows repentance. This procedure is followed even in contemporary Chinese law. No such procedure appears in the death penalty provision of the S.R.V. Code.[112]

The SRV Code has been revised several times since 1985, notably in 1999. The 1999 Amendment reduced the number of capital eligible offences from 44 to 22 and further limited the extent of capital-punishment policy.[113] Again, it did not include any provisions resembling suspended execution.

[105] Johnson & Zimring, *supra* note 6, p. 393. Johnson & Zimring (*ibid.*, p. 382) also note that "In Vietnam, the result is a contemporary system that in several central respects looks a lot like China's, with high levels of execution, a wide range of capital offenses, heavy reliance on confessions, few due process protections, strict control of death-penalty information, little public criticism of the party-state's policy, and a leading role for the Communist Party in capital punishment policy-making."

[106] Quigley (1988), p. 145. See also e.g. the centrality of the same five traditional punishments in both penal systems; Bodde & Morris, *supra* note 41, p. 76; Tran & Vu (2019), p. 4.

[107] Quigley, *supra* note 106.

[108] Hooker (1978), p. 80.

[109] Womack, *supra* note 51, p. 163.

[110] Quigley, *supra* note 106, p. 144.

[111] Pascoe (2016), *supra* note 13.

[112] Quigley *supra* note 106, p. 178. Quigley's article makes this observation immediately following his assessment that the 1985 Code does not bear close resemblance to China's Code. We disagree.

[113] Tran & Vu, *supra* note 106, p. 7.

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4.2 2015 Amendment

In 2015, Vietnam introduced significant amendments to its Criminal Code. Among the most hot-button topics on the revision agenda was capital punishment. Debates on the amendments highlighted a significant policy rift among Vietnamese leaders on the future of the death penalty. On the one hand, some leaders—notably within the judiciary—wanted to reduce the scope of capital punishment and bring Vietnam's capital regime in line with international law and human rights norms.[114] On the other hand, many policy-makers remained committed to the death penalty as part of a tough-on-crime deterrence strategy. The 2015 Amendment ultimately narrowed the formal legal scope of the death penalty somewhat, reducing the number of capital eligible crimes by seven and tightening the definition of "particularly serious crimes" for which the death penalty may be applied.[115]

Among the most contested capital-punishment changes in the draft amendment was a provision for the suspension of the death penalty in capital cases in which the offender returns stolen assets. Corruption is a serious problem in Vietnam and a representative of the Ministry of Justice who advocated for the policy indicated that the state recovers only slightly more than 10% of stolen assets.[116] The debate over the measure became a microcosm of the larger capital-punishment debate. Deputy Minister of Justice Dinh Trung Tung described the proposal as being in line with judicial-reform goals of reducing capital punishment.[117] Meanwhile, in a 2015 newspaper roundup of opinions on amending capital-punishment provisions, Dr Nguyen Tat Vien, Permanent Member of the Central Judicial Reform Steering Committee, supported maintaining capital punishment for corruption, arguing that corruption causes widespread social harm and damages the prestige of the state.[118] Other officials worried that the provision would be tantamount to buying justice. Nguyen Duc Chung, director of the Hanoi Police Department, stated:

> The poor, who are unable to afford [to live], are forced to trade in drugs for a living, [and] still face the death penalty. Meanwhile, people who are knowledgeable about the law, educated, hold[ing] big positions, but [have] embezzled large sums of money, [escape] the death penalty. Just by looking at these two examples, there are inadequacies and unfairness in the law.[119]

Ultimately, a measure to divert capital punishment in cases involving reparation was included in the 2015 Amendment. The mechanism is defined under Article 40(3), which also prohibits the execution of pregnant woman, mothers of children under three, and people who are 75 or older. Article 40(3)(c) provides that, in cases where a death sentence is pronounced, it shall not be executed if

> the person sentenced to death for embezzlement or taking bribes, after being sentenced, has returned at least one-third of the property embezzled or bribes taken, closely cooperates with the authorities in the process of investigation or trial, or has made reparation in an effort to atone for the crime.

Article 40(4) indicates that, if the death sentence is commuted, it shall be replaced by life imprisonment (which in Vietnam, as in China, is a sentence of indeterminate length

[114] *Ibid.*, p. 13. For more detail on the judiciary's efforts to gain international legitimacy, see Nguyen (2019).
[115] Tran & Vu, *supra* note 106. See also Vietnam Committee on Human Rights (2016).
[116] Datviet (2015b).
[117] TT (2015a).
[118] TT, *supra* note 97.
[119] DKN (2015) (translated using Google Translate).

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that may be further commuted to a fixed term).[120] Article 63(6) on commutations clarifies that, even with further commutations, a convicted person initially sentenced to death must serve at least 30 years in prison.

The procedure for applying Article 40(3)(c) is not immediately clear. The Code provides no further detail on the definitions of "closely cooperates," nor on the timeframe within which the prisoner must carry out such mitigation. The proviso that the condemned return the money "after being sentenced" suggests that this is a post-conviction sentence conversion. However, the two other parts of Article 40(3), which prohibit executions of pregnant women, mothers of children under three, and people 75 and older, would most likely be assessed before sentencing. Article 40(3)(c) also implies that authorities might have reason to delay execution so as to encourage reparations, but no timeline for this process is specified. Nor is it clear who initiates the process.

4.3 China's influence

Law-makers explicitly pointed to China in debates on the introduction of Article 40(3)(c). For example, Tran Van Dung, Deputy Director of the Department of Administrative Criminal Law at the Ministry of Justice, told reporters that the ministry looked to China for anti-corruption measures, specifically regarding the measure to defer capital punishment if assets were collected.[121] The Vietnamese debate also bears an uncanny parallel to debates taking place at the same time in China, where asset recovery is also a priority.[122] China's National People's Congress considered abolishing capital punishment for corruption and bribery as part of both the eighth (2011) and ninth (2015) amendments to the Criminal Law.[123] With competing factions unwilling to either remove corruption from the roster of capital offences or keep it on the books in unmodified form, China's legislature settled on a compromise, introducing a new, one-off sanction—whole-life imprisonment—for corruption. Corruption remains the only one of China's 46 capital eligible crimes for which this punishment is available. Notably, while whole-life imprisonment may intuitively appear as a sentencing alternative to suspended execution, it is in fact structured as a sentencing enhancement to a suspended-execution penalty. In order to impose the whole-life sentence for corruption, a Chinese court must therefore first determine that corruption meets the threshold for capital eligibility, then determine that the crime nonetheless warrants a suspension of the death sentence, and then finally attach an enhancement specifying a whole-life sentence.[124]

4.4 Conclusion

Is Vietnam's corruption measure a form of Chinese suspended execution? Previous scholarship has suggested in passing that it might be.[125] Although Vietnam's form of suspended execution looks somewhat different from the PRC's, it meets our stated definition, in that the formal death sentence is still imposed by the Vietnamese authorities, subject to a non-indefinite period of delay in execution, with the latter conditional upon the actions of the defendant while incarcerated. Despite the distinct way in which it is designed to operate, limited solely to the white-collar offences of embezzlement and bribery, the connection

[120] Interestingly, media reports suggest that the executive clemency mechanism has previously been used, on a more ad-hoc basis, to achieve the same kinds of policy goals. See Pascoe (2019a), *supra* note 6, p. 177.

[121] Datviet (2015a).

[122] Xinhua (2019). China's asset recovery programme, darkly named "Sky Net," has reportedly netted over 2 billion US dollars since 2014.

[123] Smith & Jiang, *supra* note 47, p. 78.

[124] *Ibid.*, pp. 78–9.

[125] Lindsey & Nicholson, *supra* note 13, p. 273.

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between Vietnam's provision and Chinese practice cannot be dismissed. Vietnam evidently looked to China for a compromise penalty that could divert executions and recover assets in corruption cases. In China, that penalty is embedded within an overarching regime of suspended execution. Vietnam did not adopt suspended execution for all capital crimes, but nonetheless modelled a practice that may be situated within China's suspended-execution paradigm.

5. The case of Indonesia

> [C]apital punishment in Indonesian law could be reformulated as a special exception . . . based on a review of Chinese criminal law. (Former Indonesian Minister of Justice Muladi[126])

This section discusses suspended execution in Indonesia. Indonesia and China suffered a fraught relationship during the Cold War era, with President Suharto's military-authoritarian regime (1967–98) providing the US with a bulwark against the spread of communism is Southeast Asia.[127] Following the failed Indonesian Communist Party coup in October 1965 that eventually brought Suharto to power, one of the twentieth century's most extensive episodes of mass killing took place, targeting alleged Communist sympathizers and ethnic Chinese among other groups, across the Indonesian archipelago.[128] In 1950, under President Sukarno, Indonesia had been the first country in Southeast Asia to recognize the People's Republic as the official government of China yet, in 1967, in the aftermath of the coup, Indonesia broke off its diplomatic relations with the PRC, not normalizing them until 1990.[129] In diplomacy, trade, aid, and tourism, Indonesia was largely absent from China's sphere of influence in Asia for more than 20 years.[130]

It seems incongruous, then, that Indonesian policy-makers have long considered introducing a Chinese-style "probationary" death sentence as part of Indonesia's prolonged effort to restructure capital punishment through a Revised Criminal Code (*Rancangan Kitab Undang-Undang Hukum Pidana*, or RKUHP). Over the past few years, it finally seems as if efforts to reach a political compromise on death-penalty retention will come to legislative fruition through this process. At the time of writing, although the Revised Criminal Code has not yet been passed by the Indonesian legislature, the present death-penalty provisions, including a probationary death sentence, attract little disagreement among opposing political factions.[131] Of the four Asian jurisdictions that, to our knowledge, have considered enacting a suspended-execution model, influenced by the PRC's practice, Indonesia has clearly come closest to enacting a scheme to mitigate punishment for all capital crimes that resembles the one in place in China.

5.1 Background to criminal-law reform in Indonesia

Plans to revise Indonesia's Criminal Code (*Kitab Undang-Undang Hukum Pidana*, or KUHP), with its attendant death-penalty provisions, are almost as old as the country itself.[132] The KUHP has only been amended nine times since its promulgation in 1915 as the *Wetboek van*

[126] Arba'i (2012), p. 8.
[127] Mehr (2009) pp. 68–93, describes Indonesia's role within the purported "domino theory" in Southeast Asia.
[128] McGregor et al. (2018); Melvin & Pohlman (2018).
[129] Ku (2002).
[130] Storey (2000).
[131] Budiman et al. (2017); Napitupulu et al. (2018).
[132] Tilemann (2016a); Eddyono et al. (2015a).

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Strafrecht voor Nederlandsch-Indie (Criminal Code for the Netherlands Indies) under Dutch rule.[133] Redrafting attempts began in earnest in 1980 and resulted in the first complete draft in 1993.[134] However, the 1993 draft was never brought before the Indonesian legislature (*Dewan Perwakilan Rakyat*—People's Representative Council, or DPR) and therefore never became law. The current version was introduced by the government in the DPR in 2013, and is still being revised and debated.[135] At the time of writing, progress appears to have stalled in light of domestic and international criticism of several controversial articles within the Bill, notably those criminalizing sex outside marriage, same-sex relations, insulting the president (lèse-majesté), and abortion (other than in cases of medical emergency or rape).[136] Nevertheless, the chances remain high that, in the near future, Indonesian law-makers will pass an entirely new Criminal Code—Indonesia's first in more than a century.

Within the present RKUHP draft, the implementation of the death penalty as a judicial punishment is governed by Book 1 (General Principles), whereas the death penalty also appears as a punishment for individual crimes listed in Book 2 (Crimes). If the DPR proceeds to enact the current draft or something close to it, there will be three main changes to the general implementation of the death penalty within Book 1. All three changes show an effort to balance retentionist and abolitionist perspectives in the Indonesian legislature, government drafting body, and among the broader public.[137]

The RKUHP's first change will be the categorization of the death penalty as its own unique "special punishment" (*pidana khusus*) to be applied "alternatively, as a last resort" (Articles 67, 98) rather than as one of the "principal punishments" (*pidana pokok*) or "supplementary punishments" (*pidana tambahan*) (Articles 64–66) within Book 1.[138] In the existing KUHP, the death penalty is listed as a "principal punishment" (Article 10). Nevertheless, several sources cast doubt on whether this re-categorization would have any substantial impact on death-penalty practice in the future.[139] The death penalty is, after all, still retained as a maximum punishment for a wide variety of crimes in Book 2, including treason, premeditated murder, robbery resulting in death, and a variety of drug offences.

For present purposes, of greater potential significance are the second and third major changes in death-penalty regulations proposed by the RKUHP. These are the provision of a new "probationary" death sentence and the president's ability to reconsider a clemency rejection. All three moves (designation as a special and alternative punishment, suspended execution, and clemency reversal) are now relatively uncontroversial among law-makers and the government's drafting body.[140] It is therefore likely that the probationary death sentence will shortly become part of Indonesia's formal death-penalty scheme.

[133] RKUHP 2019, General Elucidation.

[134] Reksodiputro (2007); McRae (2018).

[135] Eddyono et al., *supra* note 132; Suroyo & Da Costa (2019).

[136] Suroyo & Da Costa, *supra* note 135; Akbari (2019); Human Rights Watch (2019).

[137] Aliansi Nasional Reformasi KUHP (2015).

[138] Principal punishments consist of imprisonment, detention, probation, fines and community service (Art. 65(1)). Supplementary punishments consist of the revocation of civil rights; forfeiture; publicizing the judicial decision; compensation; revocation of licence; and fulfilment of customary duties (Art. 66(1)).

[139] Aliansi Nasional Reformasi KUHP, *supra* note 137; Interview with Indonesian NGO Staff #5, 21 May 2018. By contrast, Interview with former Constitutional Court Justice, 7 May 2018, stated that this change would "presumably" result in lower numbers of death sentences as a result of sentencing discretion, even before considering the suspended-death-sentence provision.

[140] Budiman et al., *supra* note 131; Napitupulu et al, *supra* note 131. Corroborated by Interview with Former Indonesian Cabinet Minister, 9 May 2018.

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5.2 The probationary death sentence and clemency-reconsideration provisions

The new provision shares many similarities with the Chinese provision and merits quoting at length. As at September 2019, the relevant sections of the RKUHP draft read as follows:

Article 100

(1) A judge may impose a death sentence with a probation period of 10 (ten) years if:
   a. the prisoner shows remorse and the potential for rehabilitation;
   b. the role of the accused in the crime was not very significant; or
   c. there are mitigating factors.

. . .

(3) The 10-year probation period begins 1 day after the court ruling obtains permanent legal force.
(4) If the prisoner demonstrates commendable attitude and behavior during the probation period, the death sentence may be converted to life imprisonment by Presidential Decree, after obtaining an opinion of the Supreme Court.
(5) If the prisoner does not demonstrate commendable attitude and behavior during the probation period and there is no prospect of rehabilitation, the death sentence may be executed on the order of the Attorney General.

Article 101

If the prisoner's clemency petition has been rejected but, other than due to escape from prison, the death sentence has not been carried out for 10 years thereafter, the death sentence may be converted to life imprisonment by Presidential Decree.

In Bahasa Indonesia, the probationary death sentence described in Article 100, above, is widely known as *pidana mati bersyarat* (a conditional death sentence) or *pidana mati penundaan* (a suspended death sentence).[141] How it will operate is as follows. A judge passing the death sentence, whether at trial in a district court or on appeal, may suspend the execution of the sentence for ten years (but for no lesser or greater period), based on the criteria outlined in subsection (1)(a)(b)(c), including taking account of the community's reaction to the crime "wherever possible."[142] The word "may" in Article 100(1) suggests that the currently applicable death sentence, with no suspension period, will continue to exist alongside the probationary death sentence.[143] The prisoner's attitude and behaviour will then be observed by prison officials during the course of the ten-year probation period, which begins after the judicial decision attains "permanent legal force," meaning either when the Supreme Court has disposed of the cassation appeal or when the prisoner has abandoned appeals or is out of time (Butt and Lindsey, 2018, p. 99). The present subsection (3) suggests that death-row prisoners' final procedural options—case reopening by the Supreme Court (*peninjauan kembali*) and petitioning for executive clemency to the

[141] Arief (2008), p. 371; Eddyono et al. (2015b), p.18.

[142] RKUHP 2019, Elucidation to Article 100(1). When the probation period provision first appeared in the 1993 RKUHP draft, no decision-maker on the initial suspension was explicitly identified. These details would be resolved later, possibly through subordinate legislation (Interview with Indonesian Law Professor, 14 May 2018; Interview with Indonesian Law Professor #2, 16 May 2018; Interview with Senior Indonesian Civil Servant, 22 May 2018). The judge as decision-maker on suspension was only added in a May 2018 revision. NGO KontraS previously raised concerns that leaving the decision on suspension to the Attorney-General's Office, responsible for carrying out executions, would prove too arbitrary (KontraS, 2018).

[143] Aliansi Nasional Reformasi KUHP, *supra* note 137; Alford (2015); Institute for Criminal Justice Reform (2018).

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president of Indonesia (*grasi*)—will take place during the currency of the ten-year probation period (Pascoe 2019b).

After ten years' detention, a second decision becomes due, on whether the probation period has been successful, based on the criteria set out in subsection (4). The legislation implies that, for cases where courts choose the probationary-death-sentence option, executions will be few and far between.[144] The September 2019 draft lists the president of Indonesia as the final decision-maker on sentence reduction, in contrast with the minister of law and human rights, who bore this responsibility within the 2000, 2013, and 2016 drafts. It was only in 2017 that the president assumed the final decision-making power over mitigation, and only in the 2018 draft that the Supreme Court was called upon to provide mandatory advice to the president, mirroring the position for executive clemency, in Article 14(1) of the Constitution of Indonesia 1945. Indeed, several interviewees suggested that the reason for the shift to the president as final decision-maker is that only the head of state should have the power to alter a finalized judicial decision, as with the clemency power in Indonesia's Constitution. Moreover, given that the Supreme Court's decision to leave the death sentence in place on appeal (or to impose it in the first place) is the ruling being affected, the Supreme Court itself must be consulted.[145]

The second means of restricting execution that the RKUHP proposes might be more appropriately labelled a "second chance for clemency" from the president, albeit without a formal request or petition. If, despite the prisoner not receiving a probation period as described above, the death penalty is not executed for a total of ten years (for any reason, other than due to escape from prison), then the president *may* alter the death sentence to life imprisonment by decree. This provision serves a redemptive function similar to that of the probation period in Article 100. Article 101 provides the prisoner a lifeline long after clemency has been rejected, although this new presidential power should be interpreted as a concession to humanity after a long period spent on death row, rather than as a legislative attempt at incentivizing rehabilitation.[146] Current death-row prisoners are restricted to a single opportunity to apply for clemency, and the Indonesian president one opportunity to grant it, even if a prisoner has not been executed after many years on death row.[147] The wording of Article 101 suggests that the section may benefit existing long-term death-row prisoners, and not merely those prosecuted or sentenced after the Bill is passed.[148]

5.3 China's influence

What is the origin of the reforms contemplated by Articles 100 and 101? Indonesia's proposed probationary death sentence certainly bears a strong circumstantial resemblance to China's suspended death sentence—a similarity that Indonesian scholars themselves have noted.[149] This resemblance notwithstanding, one prevailing—and mistaken—view is that the drafters of the RKUHP borrowed the idea from the Constitutional Court in *Sianturi v. State*—a 2007 ruling upholding the constitutionality

[144] RKUHP 2019, Elucidation to Book 1; Mann (2015).

[145] Interview with Indonesian Law Professor, 14 May 2018; Interview with Senior Indonesian Civil Servant, 22 May 2018. Prison officials are also likely to provide advice to the president on the death-row convict's rehabilitation (Interview with Indonesian Law Professor, 14 May 2018; Interview with Indonesian Law Professor #2, 16 May 2018).

[146] Interview with former Constitutional Court Justice, 7 May 2018; Interview with Indonesian Law Professor, 14 May 2018; Interview with Indonesian NGO Staff #4, 21 May 2018.

[147] Law 5/2010 on Clemency (Indonesia), Art. 2(3).

[148] Napitupulu et al., *supra* note 131; Aritonang (2017).

[149] E.g. Asmarawati (2013); Hariyono (2009); Lalu (2015).

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of capital punishment for drug offences.[150] In his opinion in *Sianturi*, Chief Justice Jimly Asshiddiqie did suggest a number of potential death-penalty reforms to the legislature including a ten-year probation period and the designation as a "special" punishment.[151] However, in reality, these suggestions are themselves borrowed, appearing in earlier drafts of the RKUHP as early as 1993. This point is openly acknowledged in the judgment itself, which cites expert opinion by Indonesian criminal-law scholars Dr Rudi Satrio and Dr Mudzakir, referring to the contemporaneous RKUHP draft.[152]

So where did the Indonesian proposal for a "probationary" death sentence come from? It came from China. Indonesian policy-makers may in fact have learned about China's use of suspended execution in 1980, at the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in Caracas, Venezuela. Seventy-four national delegations to the Congress presented data, outlining, among other matters, various legal tools to make capital punishment more humane. Among these mitigatory options were methods to delay execution or to mitigate the penalty altogether.[153] There is no documentary evidence that the list of measures presented included the PRC's sentence of suspended execution. However, both Chinese and Indonesian delegations were present at the Congress.[154] In a conspicuous coincidence, the PRC had just promulgated its first Criminal Law (1979) the previous year and, as discussed above, suspended execution features prominently in it. It is likely, although we have no direct evidence to support this claim, that the Indonesian delegation left the Congress replete with new policy ideas such as to suspend the execution of death sentences for a limited period of time while observing prisoner rehabilitation.

Regardless of whether Indonesian policy-makers first encountered suspended execution in Caracas in 1980 or slightly later, they did get the idea from China. Interviewees confirm that the suspended-execution provisions that first appeared in the 1993 draft of the Indonesian RKUHP were based upon research on the 1979 PRC Criminal Law conducted by Professor Muladi[155] and his fellow drafters during the mid-1980s.[156] Whether the original catalyst for its adoption was an earlier interaction at the UN Caracas Congress or not, the history of the proposed probationary death sentence may therefore be traced directly back to Article 43 of the 1979 PRC Criminal Law, as well as earlier drafts of what eventually became the 1997 PRC Criminal Law.[157] In adapting the idea from the PRC,[158] during the 1980s and early 1990s, the Indonesian drafting team saw a ten-year probationary period as an ideal way to balance retentionist and abolitionist perspectives among different drafters.[159]

[150] This view is summarized by Tilemann, who writes that "Some of the provisions in the Draft [Criminal Code] regarding the death penalty adopt remarks in an Indonesian Constitutional Court decision regarding the death penalty" (Tilemann, 2016b, p. 4, n. 11). See also Susanto & Ramdan (2017).

[151] *Sianturi v. State*, Nos 2-3/PUU-V/2007 (Indonesian Constitutional Court, 23 October 2007), p. 56; Asshiddiqie (2015), p. 10.

[152] *Sianturi v. State* (2007), pp. 17, 23.

[153] Eddyono et al., *supra* note 141; Badan Pembinaan Hukum Nasional (2015); Aliansi Nasional Reformasi KUHP, *supra* note 137.

[154] United Nations Secretariat (1981).

[155] A senior member of the RKUHP drafting team in the 1980s, Muladi (1943–2020) later became the Indonesian minister of justice between March 1998 and October 1999, serving under Presidents Suharto and Habibie.

[156] Muladi (1995). Corroborated by Interview with Indonesian Law Professor, 14 May 2018; Bernie (2019).

[157] See Dobinson (2002) on the drafting history of China's 1997 Criminal Law.

[158] Siems (2014), p. 192.

[159] Interview with Indonesian NGO Staff, 9 May 2018; Interview with Indonesian Law Professor, 14 May 2018; Arba'I, *supra* note 126. However, the proposal for a probationary death sentence still attracts criticism from Indonesian NGOs in particular, for being a potential avenue for corruption (Interview with Indonesian NGO Staff, 9 May 2018; Interview with Indonesian NGO Staff #2, 11 May 2018), for its vague criteria on rehabilitation

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While the PRC may have been an inspiration for Indonesia's early death-penalty-reform proposals, there is scant evidence to link the present Article 101, enabling prisoners with a "second chance" at clemency, with PRC policy. Instead, to a certain extent, this provision codifies a long-established Indonesian practice whereby prisoners whose clemency appeals have been rejected by previous presidents are left on death row indefinitely if their execution is not deemed a political priority.[160] Although the Article 101 provision loosely resembles the situation in several common-law jurisdictions whereby the courts have barred executions on human-dignity grounds, following excessive delay,[161] it is instead an Indonesian domestic-policy invention, designed to prevent "double punishment."[162] In any case, the Indonesian drafting body could not possibly have borrowed this policy idea from the PRC itself, given that China has never made functional use of executive clemency in death-penalty cases since 1949.[163]

5.4 Conclusion

As with the situation in Vietnam, we can see the long shadow cast by the PRC in recent Indonesian death-penalty-policy debates. Yet, the PRC influence on suspended-execution proposals in Indonesia seems both attenuated and unintentional. Drafters of the RKUHP "borrowed" the idea of a death-penalty probation period from the PRC so early on that many contemporary commentators no longer recognize its origins. As with other key elements of Indonesia's capital-punishment system, such as execution by firing squad,[164] and the president's constitutional power to grant clemency to death-row convicts,[165] the probationary-death-sentence model has been adopted from outside of Indonesia. The frequency and diversity of Indonesia's borrowing practices in the area of capital punishment do not indicate that there is anything particular, or particularly important, about China's penal influence there. Balancing different political positions on the death penalty and finding a unique retentionist solution has been endorsed as the "Indonesian way,"[166] reflecting a deep-seated cultural preference for collective decision-making and "consensual deliberation."[167] However, as this section has demonstrated, one of the central pillars of proposed death-penalty reform in Indonesia does not have indigenous origins—it is, in fact, a transplant from another jurisdiction further north—the PRC.

6. Discussion

6.1 Where?

What can we learn from the cases of these four countries that have considered adopting suspended execution? Our first observations concern the *where* of suspended execution. The four countries on our list all retain capital punishment and are all currently active

(Bernie, *supra* note 156), and, in particular, its potential to exacerbate the "death-row effect" through imposing double punishment (Akbari, *supra* note 136; KontraS, *supra* note 142; Eddyono et al., *supra* note 141).

[160] Interview with former Indonesian Constitutional Court Justice, 7 May 2018; Interview with Indonesian NGO Staff #4, 21 May 2018; Interview with Indonesian Law Professor #2, 16 May 2018. See also Pascoe (2019a), *supra* note 6, on this practice under President Suharto.

[161] Hood & Hoyle, *supra* note 6; Novak (2014).

[162] Interview with Senior Indonesian Civil Servant, 22 May 2018; Interview with Indonesian NGO Staff #4, 21 May 2018.

[163] Xiong, *supra* note 36.

[164] Imparsial (2010).

[165] Sahid (2014).

[166] Budiman et al. (2017), *supra* note 131, p. 32; Nadlir (2017); Napitupulu et al., *supra* note 131, pp. 29–30.

[167] Nicholson (2009), p. 273; Napitupulu et al. (2019). See also Constitution of Indonesia 1945, Preamble.

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executioners. Otherwise, they have little in common. Our list contains both democratic and communist states; civil-law and socialist-law traditions; it includes a state (Taiwan) so culturally close to China that the PRC considers it sovereign territory and another (Indonesia) that broke off diplomatic relations with China entirely between 1967 and 1990. It contains states with a variety of religious faiths, including Buddhism, Taoism, Shinto, and Islam. It contains one archipelagic nation that is the fourth most populous country on Earth (Indonesia) and another island nation with a population smaller than that of Shanghai (Taiwan). Only one of the four countries in question (Vietnam) has a land border with China; of the other six retentionist countries that do share a land border with China, none has introduced suspended execution. In short, within Asia, our four examples are dissimilar in many ways, although they are each broadly classifiable as forming part of the subregions of "Southeast" or "East" Asia. We are not aware of any South Asian, Central Asian, or Middle Eastern nations that have seriously considered adopting the PRC's policy of suspended execution.

The most straightforward observation about the *where* of suspended execution may also be the most important: in relation to China, these countries are all over the map, both literally and figuratively. Indeed, we found no evidence that China is promoting the sanction abroad through either hard-power coercive techniques or soft-power policy guidance.[168] Nor did we identify a Chinese ideology or hegemonic political logic—like the US's promotion of neoliberalism[169]—that accounts for consideration of these policies. In the language of legal diffusion, we do not see evidence of "coercion."[170] This finding makes sense. As the world's leading executioner state—and a country that endures sustained international criticism for that distinction[171]—China takes a firm position that capital punishment is an internal affair of state.[172] There is little reason to think that China would draw additional attention to its domestic death-penalty policies by peddling them elsewhere.

Although we find no evidence that China is promoting suspended execution, in all four cases, the host countries recognize China as the point of origin for suspended execution in their policy discussions. This is explicit in published materials on the proposals in Taiwan, Japan, Vietnam, and Indonesia, and is supported in related field interviews.[173] Indeed, Indonesia, Japan, Taiwan, and Vietnam each deliberated on the *Chinese* practice of suspended execution before choosing to adopt or reject a variant of it. In the academic literature, this style of legal transmission in which countries evaluate the efficacy of policies in other jurisdictions before adopting a variant for themselves is sometimes termed a "learning" or a "borrowing" mode of conveyance.[174] This finding is important because it engages the reasoning employed by scholars who advocate for suspended execution—namely that other countries might "emulate China" by adopting suspended execution.[175] Other accounts of legal transmission notwithstanding, in the case of suspended execution, the four countries we identified did in fact look to learn from China, but did so with trepidation. In the cases of Taiwan and Japan in particular, the Chinese pedigree of the sanction was a mark against it.

[168] Interviews in Beijing, *supra* note 53.

[169] Wacquant, *supra* note 8; Macaulay, *supra* note 8.

[170] Dobbin, Simmons, & Garrett, *supra* note 7, pp. 454–7; Bignami (2016), p. 28.

[171] Miao (2013); Amnesty International, *supra* note 12; Amnesty International, *supra* note 17.

[172] Zeng (2004); Miao, *supra* note 171; Smith (2020).

[173] However, in Taiwan, the flagship Academia Sinica report referred to in Section 3 evaluated both the PRC's active practice and Japan's earlier abandoned proposal; see Academia Sinica, *supra* note 24.

[174] Dobbin, Simmons, & Garrett, *supra* note 7, pp. 460–2; Bignami, *supra* note 170; Siems, *supra* note 158.

[175] Johnson & Zimring, *supra* note 6, p. 219.

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6.2 Why?

The lessons that other countries draw from China's suspended execution bring us to our second set of observations: the *why* of these proposals. Although it has been suggested that foreign jurisdictions might be attracted to suspended execution as a mechanism to reduce executions because of PRC success in this area,[176] we find that the empirical evidence for this hope is thin. It is worth reiterating that, while suspended execution has a long history as a diversionary capital sentence, it only gained international prominence as a policy to constrain capital punishment in the early 2000s when the Supreme People's Court actively deployed it for this purpose.[177] If this policy association were the sanction's most salient feature, we might expect to see more states considering the policy over the last decade. That is, the *when* of suspended execution is indicative of the *why*. If jurisdictions entertained suspended-execution proposals since China's twenty-first-century death-penalty reforms, that would be strong circumstantial evidence of the influence of reform in policy appeal. Instead, we find that three of our four cases predate China's reforms.

In fact, one feature that makes suspended execution so attractive as a method of reducing executions—its symbolic value as the "the death penalty that isn't"—may make it less appealing to jurisdictions looking to change the course of capital-punishment policy.[178] This is particularly the case for states with civil-society constituencies that categorically oppose the death penalty. Under an abolition-minded administration, Taiwan decided not to adopt suspended execution because, although it mitigates executions, it still constitutes a form of capital punishment itself. Since the early 1990s, the abolitionist members of Japan's National Diet who initially considered suspended execution have also come to the same view.

If suspended execution is unappealing to states with vocal abolitionist constituencies, does it at least appeal to reductionist retentionist states? Indonesia is an ambiguous case. Joko Widodo's present administration remains keen to execute drug traffickers in particular, whereas the country's consideration of suspended execution derives from the early to mid-1980s—a period when China was still executing at a furious pace, despite the existence on the books of suspended execution.[179] We find no evidence that policy-makers in Indonesia have reconsidered suspended execution in a new light following China's own success with the sentence as a tool of death-penalty reform. Indeed, Indonesia's retention of suspended execution as a policy idea owes more to maintaining a political compromise between the retentionist and abolitionist blocs in the RKUHP drafting body and the legislature, rather than any overt desire to further restrict the country's already sporadic execution practice.

Only Vietnam embraced suspended execution *after* China's death-penalty reform. Yet, the case of Vietnam illustrates that suspended execution may appeal to jurisdictions for reasons other than reducing executions. Vietnam—a high-volume executioner—sees suspended execution as a policy prescription for a different reason: recovering state assets lost to corruption. That is the reason that Vietnam's suspended-execution model looks noticeably different from China's, Indonesia's, and the earlier Japanese proposal. The threshold for commutation is much higher, requiring restitution of two-thirds of the funds embezzled, and the only crimes that are eligible for suspension contemplating mitigation are white-collar offences. However, as we noted above, Vietnam's scheme ultimately falls within our broad definition of "suspended execution."

[176] *Ibid.*; Seet, *supra* note 2.

[177] Trevaskes (2016).

[178] Trevaskes (2013a), *supra* note 4, p. 487.

[179] It is estimated that 30,000 people were sentenced to death during China's first major tough-on-crime "strike hard" campaign from 1983 to 1986, making it the "bloodiest period in post-Mao Chinese politics" (Tanner 2005, p. 175; Tanner, 2000, p. 93).

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Comparing Japan, Taiwan, Indonesia, and Vietnam raises a conundrum: nations with vocal constituencies committed to abolishing capital punishment may pass over suspended execution precisely because it leaves the death penalty in place; meanwhile, in retentionist states with less explicit abolition goals, suspended execution may appeal only where it can serve other policy ends while leaving capital punishment intact, much like in China itself. In Japan, abolitionist politicians and attorneys now tend to view suspended execution as an unwarranted continuation of capital punishment deriving from an authoritarian state. In Taiwan, the minister of justice during President Chen Shui-bian's second term, Morley Shih, floated the idea to introduce suspended execution in keeping with the administration's goal of doing away with the death penalty. However, the proposal was rejected by both death-penalty opponents and national-policy analysts because suspended execution did not go far enough: while suspended sentences might divert some capital verdicts, a suspended-execution regime requires the continuance of capital punishment. During President Chen's administration, Democratic Progressive Party law-makers and civil society in Taiwan were evidently unable to see suspended execution as an incremental step towards *de jure* abolition—the equivalent of well-established measures such as reducing the number of capital crimes, exempting certain individuals from the scope of capital punishment, pardoning offenders en masse, or even imposing a formal moratorium on executions.[180] That is entirely understandable, given the origins of suspended execution in China, by far the world's most aggressively executing state.

A form of suspended execution has so far only been adopted by two nations (Vietnam and Indonesia) that intend to keep using capital punishment in the medium term. Their motivations are quite different from Taiwan's under Chen Shui-bian. In Vietnam, as mentioned, the state's limited form of suspended execution is a means of recouping state funds lost in massive incidents of corruption. Vietnam's persistently high execution rates demonstrate that, irrespective of apparent reductionist measures directed at an international audience,[181] the state does not presently intend to move towards eventual abolition. The country's adoption of a very limited form of suspended execution is also explainable by the ready availability of executive clemency as a potential safeguard against excessive execution totals, and as a means of achieving other utilitarian outcomes for the state, such as ensuring the co-operation of defendants with investigators and the maintenance of close international relations with abolitionist states whose citizens find themselves on Vietnam's death row.[182]

In Indonesia, where the country's large population, Islamic majority, conservative courts, and populist electoral politics may also prevent the abolition of capital punishment in the medium term,[183] suspended execution has long been proposed as a means of (1) reconciling abolitionist and retentionist political blocs; (2) paying heed to the cultural preference for negotiated, "middle-way" outcomes; and (3) contributing towards the decolonization and (purported) indigenization of the state's Dutch-era Criminal Code.[184] Although the first two of these objectives speak broadly to death-penalty reductionism, suspended execution in the guise of the RKUHP's "probationary death sentence" is not intended to be a precursor to *de jure* abolition.[185] If anything, once the RKUHP is passed by the Indonesian legislature, capital punishment will become further entrenched within Indonesia's criminal justice system.

[180] Hood & Hoyle (2009); Hood & Hoyle, *supra* note 6.

[181] Tran & Vu, *supra* note 106; Pascoe (2016), *supra* note 13.

[182] Pascoe (2016), *supra* note 13.

[183] McRae (2012); McRae (2017). See also Berrih & KontraS (2019); Wijaya (2016).

[184] For further background on the justifications for enacting Indonesia's new Criminal Code, see RKUHP 2019, General Elucidation; Suripatty & Kameo (2018).

[185] Interview with Former Indonesian Cabinet Minister, 9 May 2018; Interview with Indonesian NGO Staff, 9 May 2018; Interview with Indonesian Law Professor, 14 May 2018.

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6.3 How?

The final, and most complex, question we ask in this section is *how* each of the schemes works, particularly for the jurisdictions that have chosen to adopt some variant of the Chinese model: Vietnam and Indonesia.[186] The question of how suspended execution is structured is a technical one; it is also in these details of implementation that the rubber hits the road as a tool of death-penalty reduction or staged abolition.

In comparing the legal architecture of the three models under analysis here (China, Vietnam, and Indonesia), at least six features are relevant: (1) the offences to which the sentence applies; (2) which decision-maker suspends execution; (3) the criteria for suspension; (4) the length of suspension; (5) the criteria for formal mitigation of punishment; and, finally, (6) the identity of the decision-maker on mitigation. Although the Chinese, Vietnamese, and Indonesian policies differ on each of the six components identified, common among all three schemes is that the sentence of suspended execution remains a formal death sentence, albeit subject to a compulsory postponement for a non-indefinite period, complete with an assessment based on the defendant's behaviour to determine whether to formally commute the sentence at the end of the suspension period.

How do the sentencing schemes differ? The first and most obvious difference concerns offences. The Vietnamese scheme differs from its Chinese and Indonesian counterparts in that it only applies to bribery and embezzlement, rather than to murder and drug trafficking, which form the most common capital offences, not only in the PRC and Indonesia, but also in Vietnam itself.[187] As described within the preceding subsection, the reason for Vietnam's adoption of suspended execution (to recover state funds lost through white-collar crimes) serves to explain its distinct statutory model. The Vietnamese legislature did not aim to substantially reduce execution totals by amending the Penal Code in 2017. Instead, the purpose of the Vietnamese scheme is only to address the hot-button concern of lost state assets. It would be almost impossible to develop a suspended-execution system under the same auspices in a retentionist jurisdiction like Indonesia, where death sentences are, in practice, only passed for murder, drug offences, and terrorism, rather than for white-collar crimes. The Vietnamese Amendment's closest analogy in murder cases across the retentionist world is the victim-perpetrator pecuniary reconciliation agreement, which can result in a suspended death sentence in China (sometimes known as "cash for clemency"), or in a lesser prison sentence, or even in an outright pardon in parts of the Islamic world.[188] It is worth noting again that, in 2015, China instituted its own one-off punishment for corruption: whole-life imprisonment. However, the Chinese penalty of whole-life imprisonment is in fact legally structured as an enhancement following a suspended-execution sentence.[189]

The second characteristic feature of the schemes under study is the decision-maker. In Indonesia, as with the PRC and the abandoned Japanese proposal, it will be a panel of sentencing judges who make the initial discretionary decision on a suspended-execution sentence. The Indonesian proposal formally adopted judicial decision-making on suspension only in 2018, with the previous position being uncertain on the face of the legislation.[190] Article 48 of the PRC Criminal Law also clearly designates courts. The Vietnamese provision is different still, with the contingent reprieve not requiring any action on the part of

[186] We also briefly consider the elements of the Japanese Ministry of Justice's proposal, abandoned in 1974.

[187] Luong (2014). The Japanese scheme was also general in application, Suzuki, *supra* note 83; Suzuki, *supra* note 85; Academia Sinica, *supra* note 24.

[188] Pascoe & Miao, *supra* note 6.

[189] Smith & Jiang, *supra* note 47.

[190] Several interviewees assumed that, in 2018, it would be the Attorney-General's Office that would decide to suspend death sentences imposed by the judicial branch (Interview with Indonesian Criminal Defence Advocate, 3 May 2018; Interview with Indonesian Law Professor #2, 16 May 2018; Interview with Indonesian NGO Staff #4, 21 May 2018; Interview with Senior Indonesian Civil Servant, 22 May 2018). The Attorney-General's Office bears responsibility for carrying out executions, as reiterated in RKUHP 2019, Art. 100(5).

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the sentencing judge, nor any confirmation by the executive. As soon as a death sentence is passed for a corruption or embezzlement offence, the defendant is entitled to mitigate the death sentence if he or she is able.

Although both the Indonesian and the Chinese sentencing courts enjoy front-end discretion as to whether execution should be suspended or not, under the present Chinese model, there is very little back-end discretion. So long as the prisoner does not commit an "intentional crime" (*guyi fanzui*) under "heinous circumstances" (*qinglie elie*) in prison during the two-year probation period, the execution will not go forward and the death sentence will be converted into a sentence of incarceration of indeterminate length (*wuqi tuxing*).[191] If the prisoner performs "major meritorious service," then the sentence may be directly commuted to a fixed term of 25 years.[192] Even if the prisoner has in fact committed a new intentional crime under heinous circumstances during the period of suspension, a submission must be made to the Supreme People's Court for further direction.

The position of prisoners in the proposed Indonesian system will be far more fraught than with the PRC, given the much longer period under observation (ten years) and the more subjective definition of rehabilitation itself, as "commendable attitude and behavior" (RKUHP 2019, Article 100(4)). Certainly, the commission of a felony in prison is likely to fail the test, but Article 100(5) also envisages more ambiguous situations where the prisoner fails to demonstrate good behaviour during the ten-year probation period, has no prospect of doing so in the near future, and thus is executed. In this respect, the present Indonesian proposal more closely resembles the earlier 1979 PRC Criminal Law that the Indonesian drafters originally borrowed from, which was more ambiguous and required repentance (*huigai*) as a condition of commutation.

As noted, the length of the suspension period in China is the shortest of any of the systems under study, at two years. In the failed Japanese proposal, the probation period was set at five years,[193] whereas, in Indonesia, prisoners will be under observation for a full decade. For future death-row prisoners in Indonesia, the effects of the proposed new law are difficult to predict—ten years provides far more opportunity to demonstrate remorse and rehabilitation, for the executive to sour on capital punishment, and for foreign and civil society lobbying to mitigate the sentence.[194] However, ten years also provides more time for things to go wrong (such as committing further crimes in prison), not to mention exacerbating the "death-row effect"—that is, the cruelty of an uncertain and hopeless wait for execution—which was the very reason that the RKUHP drafting team incorporated the complementary "second chance at clemency" provision.[195]

The main justifications suggested for the much longer probation period in Indonesia are a need to balance retentionist and abolitionist factions among drafters and politicians[196] and the need for a necessarily lengthy period during which a prisoner's remorse and

[191] Criminal Law of the PRC 1997 (Tenth Amendment), Art. 50. Although "indeterminate sentence" is often translated into English as a "life sentence," this terminology is misleading. Chinese corrections does not employ a parole mechanism. Rather, indeterminate sentences are first converted into fixed-term sentences, and then sentence reductions are applied. In practice, individuals given indeterminate sentences are typically released after a few decades (Smith & Jiang, *supra* note 47).

[192] Criminal Law of the PRC 1997 (Tenth Amendment), Art. 50.

[193] Textual sources are unclear on why the Ministry of Justice's Special Committee for Criminal Law proposed a probation period of five years, rather than the two years then in place in the PRC (Suzuki, *supra* note 83; Suzuki, *supra* note 85; Academia Sinica, *supra* note 24; Japanese Criminal Defence Lawyer, personal communication, 13 December 2019). However, the likely explanation presumably matches one of Indonesia's reasons—prisoners require a sufficiently lengthy period under observation to display rehabilitation.

[194] Interview with Indonesian NGO Staff, 9 May 2018; Interview with Indonesian NGO Staff #2, 11 May 2018; Interview with Indonesian Law Professor, 14 May 2018.

[195] RKUHP 2019, Art. 101.

[196] Interview with Former Indonesian Cabinet Minister, 9 May 2018; Interview with Indonesian Human Rights Advocate, 16 May 2018.

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rehabilitation might be observed.[197] Several interviewees believed that two years would not be long enough to observe significant changes in behaviour.[198] The ten-year period in Indonesia's suspended-execution proposal also has a practical significance. Conditional release (parole) is granted by the minister for law and human rights for good behaviour and rehabilitation in prison, and may reduce time spent incarcerated by a up to a third.[199] Within the present RKUHP draft, the maximum length of fixed-term imprisonment absent aggravating factors is 15 years (Article 68(2)), two-thirds of which is ten years, hence a proposed probation period of the same length.[200]

This takes us to the operation of the Vietnamese provision. Unlike in the PRC (two years) and Indonesia (ten years), the length of the suspension period is undefined for corruption and embezzlement cases. It may take some time for a prisoner to raise or to liquefy the funds so as to pay back the state for the money stolen. Moreover, an opportunity to "closely cooperate ... with the authorities" might not arise until after several years on death row.[201] Setting an artificial deadline would only *reduce* the chances of repayment and co-operation, thereby compromising the very object of the scheme. Indeed, with the amount of money involved in embezzlement from state-owned enterprises in Vietnam and the complexity of such investigations,[202] a typical defendant might not meet the set conditions for the equivalent length of time as the PRC's (active) or Japan's (abandoned) suspension period.[203] Yet, at the same time, the period available for capital prisoners to justify mitigation is non-indefinite. The Vietnamese authorities made a conscious decision to retain capital punishment for white-collar offences in 2015, and presumably reserve the right to keep enforcing it. Absent empirical data, the practical operation of the Vietnamese suspended-execution provision, including the percentage of white-collar cases that are commuted and the length of time it takes successful prisoners to fulfil the conditions of the new Article 40, remains a topic for future academic inquiry.

Finally, as with the Indonesian proposal, and in contrast to the PRC's established practice,[204] for mitigation of punishment, the Vietnamese scheme depends not on judicial verification, but rather on the executive branch. In Indonesia, it is not the prosecutorial equivalent, the Attorney-General's Office,[205] but rather the president himself who commutes the death sentence, albeit after considering the advice of the Supreme Court (RKUHP 2019, Article 100(4)). The Indonesian drafters' greater concern over the separation of powers eventually led them to reallocate the power to mitigate suspended death sentences from the minister of law and human rights to the president.[206] With the Vietnamese authorities evincing less of a concern in blurring judicial and executive functions,[207] plus with the more technical criteria that prisoners must work together with law enforcement

[197] Halim (2019).

[198] Interview with Former Indonesian Cabinet Minister, 9 May 2018; Interview with Indonesian Human Rights Advocate, 16 May 2018; Interview with Indonesian Law Professor #3, 7 May 2018; Interview with Senior Indonesian Civil Servant, 22 May 2018.

[199] Lindsey & Nicholson, *supra* note 13, pp. 109–10.

[200] Interview with Senior Indonesian Civil Servant, 22 May 2018; Interview with Indonesian Law Professor #3, 7 May 2018.

[201] Vietnamese Criminal Code 2015, 2017 Amendment, Art. 40.

[202] E.g. Hood & Hoyle, *supra* note 6; Cornell Center on the Death Penalty Worldwide (2020b).

[203] *Supra* note 193 and associated text.

[204] The abandoned Japanese proposal allowed the sentencing court to reconsider the death sentence initially imposed five years later. However, the court would be advised by a special committee formed by the Ministry of Justice. Thus, decision-making power would be split between the judicial and executive branches (Academia Sinica, *supra* note 24).

[205] See *supra* note 140; Pascoe & Miao, *supra* note 6.

[206] See *supra* note 143 and associated text.

[207] Hoang (2017).

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to satisfy, in Vietnam, leaving the national leadership out of the decision-making process was the best solution.

7. Conclusion

In this article, we investigated the introduction of suspended execution—a Chinese legal innovation—in jurisdictions beyond China. We identified four jurisdictions that have considered suspended-execution proposals. Two of those jurisdictions (Vietnam and Indonesia) embraced suspended execution in some modified form, while two jurisdictions (Japan and Taiwan) rejected it entirely. No jurisdiction imported the Chinese practice whole cloth.

We initially supposed that China's growing international influence and well-publicized death-penalty reforms might boost the appeal of suspended execution among China's regional neighbours. Our findings refute that hypothesis. In both Japan and Taiwan, democratic retentionist jurisdictions with strong abolitionist constituencies, suspended execution's Chinese provenance was a mark against it. For policy-makers in these countries on both sides of the debate, China's history of procedural laxity and high-volume execution was more salient than its recent reforms. Meanwhile, committed retentionists in Indonesia and Vietnam were not enticed to consider suspended execution as a result of China's reforms because these countries were not looking for mechanisms to reduce execution totals. Indeed, Vietnam is the only country in our study that considered suspended execution after China's death-penalty reforms. In Vietnam, suspended execution was appealing as a mode of recovering state assets, not as a mode of reducing state killing.

We also did not identify any other single alternative common point of origin that explains why suspended execution was considered (and modified or rejected) across all four of our cases. We did not, for example, find a particular UN resolution, global conference, regional trade agreement, geopolitical event, or international provocation that led all these countries to consider suspended execution. Nor did we find that these four countries all framed the discussion of suspended execution around a single emerging global norm, best practice, or international consensus. The circumstances of the debate over the adoption of suspended execution were particular to each country under consideration and varied across time, political context, and international conditions. This variation may be nothing more than the obvious path of policies that do not enjoy widespread adoption. But this heterogony could also point to something more particular: if death-penalty abolition is now the global norm, then debates about death-penalty practices in retentionist countries today may be unusually likely to be animated by specific national dynamics that overwhelm the influence of global trends.[208] It remains an open question for future research whether death-penalty practices in general are less likely to diffuse today than other penal laws and policies.

What is the future of suspended execution outside China? Does it have a role to play in the abolitionist movement, or will its spread perpetuate the death penalty in states that would otherwise have abolished or enforced moratoria? The limited evidence from this study is that suspended execution will tend to only appeal to countries that plan to keep executing, rather than nations seemingly on their way to abolition (e.g. South Korea). Vietnam intends to keep executing, and so does Indonesia. And Japan came close to adopting suspended execution at a time when it displayed reductionist, not abolitionist, characteristics.[209]

[208] David Garland writes that "[l]ike Tolstoy's families, abolitionist nations all seem alike, but every death penalty nation is retentionist in its own way" (2010, p. 22). David Johnson has referred to this as the "Karenina principle" (2020, p. 1). We thank the anonymous reviewer who highlighted the significance of variation in death-penalty jurisprudence in relation to our findings.

[209] Johnson & Zimring, *supra* note 6.

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Where might it be adopted next? Within East and Southeast Asia, where China has most cultural influence (and where many states still retain the death penalty), the range of potential adopters extends to states such as Myanmar, Thailand, Malaysia, Singapore, and North Korea. Yet, Thailand has good reason to maintain its existing system: to perpetuate the king's authority and benevolence through individual and mass commutations in lieu of execution;[210] North Korea has shown few outward signs of modifying its penal policies or looking elsewhere for policy guidance.[211] Singapore is a possible adopter, given its famous aversion to executive clemency.[212] But, given its provenance from China, Singapore might also find suspended execution inimical to its "rule of law" governance ideology,[213] as with the abolitionist critics interviewed as part of this study in Indonesia, Japan, and Taiwan. If any, Malaysia and Myanmar seem the most likely to follow. Each are Southeast Asian states that have displayed some ambivalence over capital punishment in recent years, including concern over how retention and usage impact their international reputation. Yet, as social scientists, we know that the future is difficult to predict. Overall, we are doubtful that China's model of suspended execution will find much future traction elsewhere in the region, or farther afield. For now at least, China is not selling the practice, and its neighbours don't appear to be buying it.

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References

Academia Sinica (2007) "A Study on the Abolition of the Death Penalty and Its Alternatives," https://www.moj.gov.tw/cp-143-61799-d4adf-001.html (accessed 14 December 2020).

Akbari, Anugerah Rizki (2019) "Indonesians Better Get Ready for Jail, as Flawed New Criminal Code Looks Set to Pass," *Indonesia at Melbourne*, 3 September, https://indonesiaatmelbourne.unimelb.edu.au/indonesians-better-get-ready-for-jail-as-flawed-new-criminal-code-looks-set-to-pass/?fbclid=IwAR2gKCLw1z1pjHJh8U5BGe_ZO9KAqRdfagwkddOG8AaKpy6sXzumFsEzMX8 (accessed 14 December 2020).

Alford, Peter (2015) "Joko Sits on Law to Restrict Execution," *The Australian*, 7 May.

Aliansi Nasional Reformasi KUHP (2015) *Hukuman Mati Dalam R KUHP 2015*. Jakarta: Institute for Criminal Justice Reform.

Ambler, Leah (2008) "The People Decide: The Effect of the Introduction of the Quasi-Jury System (Saiban-In Seido) on the Death Penalty in Japan." 6(1) *Northwestern Journal of International Human Rights*, https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1064&context=njihr (accessed 5 January 2021).

Amnesty International (2017) "China's Deadly Secrets," https://www.amnesty.org/en/documents/asa17/5849/2017/en/ (accessed 14 December 2020).

Amnesty International (2019) "Death Sentences and Executions: 2018," https://www.amnesty.org/en/documents/act50/9870/2019/en/ (accessed 14 December 2020).

Anya, Agnes (2019) "15 Foreigners among 48 Handed Death Penalty in Indonesia Last Year: Amnesty," *The Jakarta Post*, 11 April, https://www.thejakartapost.com/seasia/2019/04/11/15-foreigners-among-48-handed-death-penalty-last-year-amnesty.html. (accessed 14 December 2020).

Arba'i, Yon Artiono (2012) *Aku Menolak Hukuman Mati*. Jakarta: Perpustakaan Populer Gramedia.

Arief, Barda Nawawi (2008) *Bunga Rampai: Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru*, 2nd edn. Jakarta: Kencana.

[210] Pascoe (2017).

[211] Kim (2006).

[212] Hor, *supra* note 6.

[213] Rajah (2012).

https://doi.org/10.1017/als.2021.19 Published online by Cambridge University Press

Aritonang, Margareth S. (2017) "Indonesia Refuses to Implement Moratorium on Death Penalty," The Jakarta Post, 12 April.
Asmarawati, Tina (2013) *Hukuman Mati dan Permasalahannya di Indonesia.* Yogyakarta: Deepublish.
Asshiddiqie, Jimly S. H. (2015) "Islam, Democracy and the Future of the Death Penalty," https://law.unimelb.edu.au/centres/alc/research/publications/alc-briefing-paper-series/islam,-democracy-and-the-future-of-the-death-penalty (accessed 14 December 2020).
Badan Pembinaan Hukum Nasional (2015) *Draft Naskah Akademik Rancangan Undang-Undang Tentang Kitab Undang-Undang Hukum Pidana (KUHP).* Jakarta: Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia.
Bae, Sangmin (2016) "The Abolitionist Movement in Death Penalty-Friendly Asia: The Cases of South Korea and Taiwan," in Jon Yorke, ed., *Against the Death Penalty: International Initiatives and Implications*, Abingdon: Routledge.
Bernie, Mohammad (2019) "RKUHP Buktikan Indonesia Tak Punya Komitmen Hapus Hukuman Mati," *Tirto*, 20 September, https://tirto.id/rkuhp-buktikan-indonesia-tak-punya-komitmen-hapus-hukuman-mati-eiqj (accessed 14 December 2020).
Berrih, Carole, & KontraS (2019) *Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia*. Paris: ECPM.
Bignami, Francesca (2016) "A New Field: Comparative Law and Regulation," in F. Bignami & D. Zaring, eds., *Comparative Law and Regulation: Understanding the Global Regulatory Process*, Cheltenham: Edward Elgar.
Bodde, Derk, & Clarence Morris (1967) *Law in Imperial China: Exemplified by 190 Ch'ing Dynasty Cases (Translated from the "Hsing-an Hui-Lan")*, Philadelphia: University of Pennsylvania Press.
Budiman, Adhigama A., Ajeng Gandini Kamilah, Erasmus A. T. Napitupulu, et al. (2017) *Overcoming the Execution in Limbo: Review on the Death Penalty Policy in Indonesia in 2017*, Jakarta: Institute for Criminal Justice Reform.
Butt, Simon, & Tim Lindsey (2018) *Indonesian Law*, Oxford: Oxford University Press.
Chang, Rich (2006) "Nation Keeps Death Penalty, but Reduces Executions," *Taipei Times*, 2 January, http://www.taipeitimes.com/News/taiwan/archives/2006/01/02/2003287050 (accessed 14 December 2020).
Chiu, H.-Y., & R. Hood (2019) "For or Against Abolition of the Death Penalty: Evidence from Taiwan," *The Death Penalty Project*, https://www.deathpenaltyproject.org/wp-content/uploads/2019/03/Taiwan-Public-Opinion-FINAL-ENG.pdf (accessed 14 December 2020).
Cornell Center on the Death Penalty Worldwide (2020a) "Death Penalty Database: Taiwan," *Death Penalty Worldwide*, https://dpw.pointjupiter.co/country-search-post.cfm?country=Taiwan (accessed 14 December 2020).
Cornell Center on the Death Penalty Worldwide (2020b) "Death Penalty Database: Vietnam," Death Penalty Worldwide, https://dpw.pointjupiter.co/country-search-post.cfm?country=Vietnam#a16-3 (accessed 14 December 2020).
Datviet (2015a) "Proposal to Reduce the Death Penalty, Corruption Is Paid Instead," *Datviet*, 18 April, https://baodatviet.vn/chinh-tri-xa-hoi/tin-tuc-thoi-su/de-xuat-giam-an-tu-hinhtham-nhung-duoc-nop-tien-thay-the-3243498/ (accessed 14 December 2020).
Datviet (2015b) "Proposal to Reduce the Death Penalty, Corruption Is Paid Replacement Money," *Datviet*, 18 April, https://baodatviet.vn/chinh-tri-xa-hoi/tin-tuc-thoi-su/de-xuat-giam-an-tu-hinhtham-nhung-duoc-nop-tien-thay-the-3243498/ (accessed 14 December 2020).
DeAeth, Duncan (2018) "Tsai Administration Criticized for Taiwan's 1st Execution since 2016," *Taiwan News*, 4 September, https://www.taiwannews.com.tw/en/news/3522121 (accessed 14 December 2020).
Death Penalty Project (2014) "The Death Penalty in Taiwan," https://www.deathpenaltyproject.org/knowledge/the-death-penalty-in-taiwan/ (accessed 14 December 2020).
Dikötter, Frank (2002) *Crime, Punishment, and the Prison in Modern China*, New York: Columbia University Press.
DKN (2015) "Should the Death Penalty be Removed for International Integration?" *DKN.tv*, 28 May, https://mb.dkn.tv/thoi-su/co-nen-bo-an-tu-hinh-de-hoi-nhap-quoc-te.html (accessed 24 March 2021).
Dobbin, Frank, Beth Simmons, & Geoffrey Garrett (2007) "The Global Diffusion of Public Policies: Social Construction, Coercion, Competition, or Learning?" 33 *Annual Review of Sociology* 449–72.
Dobinson, Ian (2002) "The Criminal Law of the People's Republic of China (1997): Real Change or Rhetoric?" 11 *Pacific Rim Law & Policy Journal* 1–62.
Dui Hua Foundation, The (2020) "Death Penalty Reform," https://duihua.org/resources/death-penalty-reform/ (accessed 17 December 2020).
Eddyono, Supriyadi W., Zainal Abidin, Arsil, et al. (2015a) "Brief Notes on the Proposed Discussion of 2015 C riminal Code Bill," *ELSAM*, 26 March, https://elsam.or.id/wp-content/uploads/2015/08/Brief-Notes-on-the-Proposed-Discussion-of-2015-Criminal-Code-Bill.pdf (accessed 14 December 2020).
Eddyono, Supriyadi W., Erasmus A. T. Napitupulu, & Ajeng Gandini Kamilah (2015b) "Hukuman Mati Dalam R KUHP: Jalan Tengah yang Meragukan," https://web.archive.org/web/20191101084951/http://icjr.or.id/data/wp-content/uploads/2015/11/Hukuman-Mati-dalam-RKUHP.pdf (accessed 14 December 2020).

https://doi.org/10.1017/als.2021.19 Published online by Cambridge University Press

Elkins, Zachary, & Beth Simmons (2005) "On Waves, Clusters, and Diffusion: A Conceptual Framework." 598 *Annals of the American Academy of Political and Social Science* 33–51.
Frank, David John, Bayliss J. Camp, & Steven A. Boutcher (2010) "Worldwide Trends in the Criminal Regulation of Sex, 1945 to 2005." 75 *American Sociological Review* 867–93.
Garland, David (2010) *Peculiar Institution: America's Death Penalty in an Age of Abolition*, Cambridge, MA: Harvard University Press.
Garrett, Brandon L. (2017) *End of Its Rope: How Killing the Death Penalty Can Revive Criminal Justice*, Cambridge, MA: Harvard University Press.
Garrett, Brandon L. (2019) "Innocence and the Global Death Penalty," in C. Steiker & J. Steiker, eds., *Comparative Capital Punishment*, Cheltenham: Edward Elgar.
Gillespie, John, & Albert H. Y. Chen (2010) "Comparing Legal Development in China and Vietnam: An Introduction," in J. Gillespie and A. Chen, eds., *Legal Reforms in China and Vietnam: A Comparison of Asian Communist Regimes*, London: Routledge, 1–26.
Grattet, Ryken, Valerie Jenness, & Theodore R. Curry (1998) "The Homogenization and Differentiation of Hate Crime Law in the United States, 1978 to 1995: Innovation and Diffusion in the Criminalization of Bigotry." 63 *American Sociological Review* 286–307.
Halim, David (2019) "Komnas HAM Usul Terpidana Mati yang Telah Jalani Hukuman 10 Tahun Dievaluasi," *Kompas*, 17 January, https://nasional.kompas.com/read/2019/01/17/10511841/komnas-ham-usul-terpidana-mati-yang-telah-jalani-hukuman-10-tahun-dievaluasi (accessed 14 December 2020).
Hariyono, Bambang (2009) "Kebijakan Formulasi Sanksi Pidana Terhadap Pelaku Tindak Pidana Narkoba di Indonesia." *Master diss.*, Diponegoro University.
He, Xianbing (2008) *Sixing de shiyong jiqi jiazhi quxiang [The Application and Value of the Death Penalty]*, Beijing: Gongan daxue chubanshe.
Hirano, Ryuichi (1973) "The Draft of the Revised Penal Code: A General Critique." 6 *Law Japan* 49–64.
Hoang, Chi Bao (2017) "'Separation of Powers' Is Not the Model of Choice for the State of Vietnam," *National Defence Journal*, 22 September, http://tapchiqptd.vn/en/research-and-discussion/separation-of-powers-is-not-the-model-of-choice-for-the-state-of-vietnam/10603.html (accessed 14 December 2020).
Hong, Daode (2009) "Teshe huibuhui lai? [Will Amnesty ever Arrive?]." 21 *Government Legality* 12–12.
Hood, Roger, & Surya Deva, eds. (2013) *Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion*, Oxford: Oxford University Press.
Hood, Roger, & Carolyn Hoyle (2009) *The Death Penalty: A Worldwide Perspective*, 4th edn, Oxford: Oxford University Press.
Hood, Roger, & Carolyn Hoyle (2015) *The Death Penalty: A Worldwide Perspective*, 5th edn, Oxford: Oxford University Press.
Hooker, M. Barry (1978) *A Concise History of Southeast Asia*, Oxford: Clarendon Press.
Hor, Michael (2013) "Singapore's Death Penalty: The Beginning of the End?" in R. Hood & S. Deva, eds., *Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion*, Oxford: Oxford University Press.
Hubert, Thomas (2013) "Death Penalty at the Heart of Human Rights Review," *World Coalition Against the Death Penalty*, 5 February, http://www.worldcoalition.org/taiwan-death-penalty-human-rights-review-moj-covenants-watch-iccpr.html (accessed 14 December 2020).
Human Rights Watch (2019) "Indonesia: Draft Criminal Code Disastrous for Rights," https://www.hrw.org/news/2019/09/18/indonesia-draft-criminal-code-disastrous-rights (accessed 14 December 2020).
Imparsial (2010) *Inveighing Against the Death Penalty in Indonesia*, Jakarta: Imparsial.
Institute for Criminal Justice Reform (2018) "ICJR: Government of Indonesia Should Consistently Promote 'Win-Win Solution' Regarding the Provisions of Death Penalty in the Penal Code Bill (RKUHP)," https://icjr.or.id/icjr-government-of-indonesia-should-consistently-promote-win-win-solution-regarding-the-provisions-of-death-penalty-in-the-penal-code-bill-rkuhp/ (accessed 14 December 2020).
International Federation for Human Rights (2008) "The Death Penalty in Japan: The Law of Silence," https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/JPN/INT_CCPR_NGO_JPN_94_9324_E.pdf (accessed 14 December 2020).
Johnson, David T. (2019) "A Factful Perspective on Capital Punishment." 11 *Journal of Human Rights Practice* 334–45.
Johnson, David T. (2020) *The Culture of Capital Punishment in Japan*, Cham: Palgrave Macmillan.
Johnson, David T., & Franklin E. Zimring (2009a) "Death Penalty Lessons from Asia." 7 *The Asia-Pacific Journal* 1–28.
Johnson, David T., & Franklin E. Zimring (2009b) *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia*, New York: Oxford University Press.
Jou, Susyan, & Bill Hebenton (2019) "Support for the Death Penalty in Taiwan? A Study of Value Conflict and Ambivalence." 15 *Asian Journal of Criminology* 163–83.

https://doi.org/10.1017/als.2021.19 Published online by Cambridge University Press

Kim, Chin, & Gary D. Garcia (1989) "Capital Punishment in the United States and Japan: Constitutionality, Justification and Methods of Infliction." 11 *Loyola of Los Angeles International and Comparative Law Journal* 253–79.

Kim, Soo-Am (2006) *The North Korean Penal Code, Criminal Procedures, and Their Actual Applications*, Seoul: Korea Institute for National Unification.

Kiroku, Hanai (2003) "Diet Group Takes Uneasy Steps toward Abolishing Death Penalty," The Japan Times, 23 June.

KontraS (2018) "A Moratorium on the Death Penalty Should Be a Priority for the Government of Indonesia," *KontraS*, 14 May, https://kontras.org/2018/05/14/a-moratorium-on-the-death-penalty-should-be-a-priority-for-the-government-of-indonesia/ (accessed 14 December 2020).

Ku, Samuel C. Y. (2002) "Indonesia's Relations with China and Taiwan: From Politics to Economics." 26 *Asia Perspective* 227–56.

Lalu, Nikson Gans (2015) "Pidana Mati dan Hak Asasi Manusia." 1 *Jurnal Hukum tô-râ* 57–66.

Lee, Rachel F. F. (1993) "Capital Punishment Issue Heats Up in Taiwan Society," The Free China Journal, 27 April.

Liao, Fort Fu-Te (2008) "From Seventy-Eight to Zero: Why Executions Declined after Taiwan's Democratization." 10 *Punishment & Society* 153–70.

Liao, Fort Fu-Te (2010) "The Abolition of the Death Penalty in Taiwan: Why a De Facto Moratorium Was Established and Lost." 11 *Asia-Pacific Journal on Human Rights and the Law* 1–22.

Liao, Fort Fu-Te (2014) "Why Taiwan's *De Facto* Moratorium Was Established and Lost," in Lill Scherdin, ed., *Capital Punishment: A Hazard to a Sustainable Criminal Justice System*, Aldershot: Ashgate Publishing Limited, 175–94.

Liebman, Benjamin L., Margaret Roberts, Racheal E. Stern, et al. (2019) "Mass Digitization of Chinese Court Decisions: How to Use Text as Data in the Field of Chinese Law," https://ssrn.com/abstract=2985861 (accessed 14 December 2020).

Lindsey, Tim, & Pip Nicholson (2016) *Drugs Law and Legal Practice in Southeast Asia: Indonesia, Singapore and Vietnam*, Bloomsbury: Bloomsbury Publishing.

Lubman, Stanley B. (1999) *Bird in a Cage: Legal Reform in China after Mao*, Stanford: Stanford University Press.

Luong, Hai Thanh (2014) "The Application of the Death Penalty for Drug-Related Crimes in Vietnam: Law, Policy, and Practice." 17 *Thailand Journal of Law and Policy*, http://thailawforum.com/articles/Vietnam-death-penalty.html (accessed 14 December 2020).

Macaulay, Fiona (2013) "Modes of Prison Administration, Control and Governmentality in Latin America: Adoption, Adaptation and Hybridity." 13 *Conflict, Security & Development* 361–92.

Mann, Tim (2015) "Missing History? Jimly Asshiddiqie on the Death Penalty in Indonesia," *Indonesia at Melbourne*, 11 August, https://indonesiaatmelbourne.unimelb.edu.au/missing-history-jimly-asshiddiqie-on-the-death-penalty-in-indonesia/ (accessed 24 March 2021).

Mao, Zedong (1951) "'Directive' Strike Surely, Accurately and Relentlessly in Suppressing Counterrevolutionaries," https://www.marxists.org/reference/archive/mao/selected-works/volume-5/mswv5_14.htm (accessed 14 December 2020).

Maxon, Ann (2019) "Association Pans Planned Combined Judicial System," *Taipei Times*, 20 March, http://www.taipeitimes.com/News/taiwan/archives/2019/03/20/2003711828 (accessed 14 December 2020).

McGregor, Katherine, Jess Melvin, & Annie Pohlman (2018) "New Interpretations of the Causes, Dynamics and Legacies of the Indonesian Genocide," in K. McGregor, J. Melvin, & A. Pohlman, eds., *The Indonesian Genocide of 1965: Causes: Dynamics and Legacies*, London: Palgrave.

McRae, Dave (2012) "A Key Domino? Indonesia's Death Penalty Politics," https://www.lowyinstitute.org/publications/key-domino-indonesia-death-penalty-politics (accessed 14 December 2020).

McRae, Dave (2017) "Indonesian Capital Punishment in Comparative Perspective." 173 *Bijdragen tot de Taal-, Land- en Volkenkunde* 1–22.

McRae, Dave (2018) "Talking Indonesia: A New Criminal Code," *Indonesia at Melbourne*, 15 March, http://indonesiaatmelbourne.unimelb.edu.au/talking-indonesia-a-new-criminal-code/ (accessed 14 December 2020).

Mehr, Nathaniel (2009) *"Constructive Bloodbath" in Indonesia: The United States, Britain and the Mass Killings of 1965–66*, Nottingham: Spokesman Books.

Melvin, Jess, & Annie Pohlman (2018) "A Case for Genocide: Indonesia, 1965–1966," in K. McGregor, J. Melvin, & A. Pohlman, eds., *The Indonesian Genocide of 1965: Causes: Dynamics and Legacies*, London: Palgrave, 27–47.

Métraux, Daniel A. (2009) "The Nagayama Criteria for Assessing the Death Penalty in Japan: Reflections of a Case Suspect." 31 *Southeast Review of Asian Studies* 282.

Miao, Michelle (2013) "Examining China's Responses to the Global Campaign against the Death Penalty," in R. Hood & S. Deva, eds., *Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion*, Oxford: Oxford University Press, 46–67.

Miao, Michelle (2016) "Two Years Between Life and Death: A Critical Analysis of the Suspended Death Penalty in China." 45 *International Journal of Law, Crime and Justice* 26–43.

https://doi.org/10.1017/als.2021.19 Published online by Cambridge University Press

Minzner, Carl F. (2018) *End of an Era: How China's Authoritarian Revival Is Undermining Its Rise*, New York: Oxford University Press.
Muladi (1995) *Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana*, Semarang: Badan Penerbit Universitas Diponegoro.
Muladi (ed.) (2003) *Pengkajian hukum tentang asas-asas pidana Indonesia dalam perkembangan masyarakat masa kini dan mendatang*, Jakarta: Ministry of Justice and Human Rights, Republic of Indonesia.
Nadlir, M. (2017) "RUU KUHP Disahkan Januari 2018, Hukuman Mati Tak Dihapus," *Kompas*, 19 December, https://nasional.kompas.com/read/2017/12/19/21265411/ruu-kuhp-disahkan-januari-2018-hukuman-mati-tak-dihapus (accessed 14 December 2020).
Napitupulu, Eramus A. T., Genoveva Alicia, K. S. Maya, Iftitahsari, et al. (2018) "Perpetuating Lies: 2018 Indonesian Death Penalty Report," http://icjr.or.id/wp-content/uploads/2018/12/2018-Indonesian-Death-Penalty-Report-Perpetuating-Lies.pdf (accessed 14 December 2020).
Napitupulu, Eramus A. T., Genoveva Alicia K. S. Maya, Iftitahsari, et al. (2019) "A Game of Fate: Report on Indonesia Death Penalty Policy in 2019," https://icjr.or.id/wp-content/uploads/2019/12/A-Game-of-Fate.pdf (accessed 14 December 2020).
Nguyen, Trang Mae (2019) "In Search of Judicial Legitimacy: Criminal Sentencing in Vietnamese Courts." 32 *Harvard Human Rights Journal* 147–88.
Nicholson, David (2009) *Environmental Dispute Resolution in Indonesia*, Leiden: KITLV Press.
Novak, Andrew (2014) *The Global Decline of the Mandatory Death Penalty*, Abingdon: Routledge.
Novak, Andrew (2015) *Comparative Executive Clemency: The Constitutional Pardon Power and the Prerogative of Mercy in Global Perspective*, Abingdon: Routledge.
Obara-Minnitt, Mika (2016) *Japanese Moratorium on the Death Penalty*, London: Palgrave Macmillan.
Pascoe, Daniel (2016) "Explaining Death Penalty Clemency in the Socialist Republic of Vietnam." 10 *Vienna Journal on International Constitutional Law* 165–98.
Pascoe, Daniel (2017) "Singapore and Thailand: Explaining Differences in Death Penalty Clemency," in J. Lu, M. Travers, & L. Chang, eds., *Comparative Criminology in Asia*, Berlin: Springer.
Pascoe, Daniel (2019a) *Last Chance for Life: Clemency in Southeast Asian Death Penalty Cases*, Oxford: Oxford University Press.
Pascoe, Daniel (2019b) "Su'ud Rusli's Constitutional Court Challenge: Overhauling Clemency in Indonesian Death Penalty Cases?" 19 *Australian Journal of Asian Law* 1–18.
Pascoe, Daniel (2019c) "Towards a Global Theory of Capital Clemency Incidence," in C. Steiker & J. Steiker, eds., *Comparative Capital Punishment Law*, Cheltenham: Edward Elgar.
Pascoe, Daniel, & Michelle Miao (2017) "Victim-Perpetrator Reconciliation Agreements in Murder Cases: What Can Muslim-Majority Jurisdictions and the PRC Learn from Each Other?" 66 *International & Comparative Law Quarterly* 963–89.
Pascoe, Daniel, & Andrew Novak (2020) "Deadly Justice Without Mercy in East Asia?" *International Journal of Comparative and Applied Criminal Justice* (forthcoming), https://www.tandfonline.com/doi/full/10.1080/01924036.2020.1824873 (accessed 12 April 2021).
Peerenboom, Randall (2002) *China's Long March Toward Rule of Law*, Cambridge: Cambridge University Press.
Qian, Yijang Karina (2009) "The Institutionalization of Democratic Civil Society in Taiwan: A Case Study of NGOs Working on the Hsi-Chih Trio Case." 49 *Asian Survey* 716–39.
Quigley, John (1988) "Vietnam at the Legal Crossroads Adopts a Penal Code." 36 *American Journal of Comparative Law* 351–7.
Rajah, Jothie (2012) *Authoritarian Rule of Law: Legislation, Discourse and Legitimacy in Singapore*, Cambridge: Cambridge University Press.
Reksodiputro, Mardjono (2007) *Pembaharuan Hukum Pidana*, Jakarta: Universitas Indonesia.
Rubin, Ashley T. (2015) "A Neo-Institutional Account of Prison Diffusion." 49 *Law & Society Review* 365–400.
Sahid, K. (2014) "Pemberian Grasi Menurut Perundang-Undangan di Indonesia." Diss., Sunan Ampel State Islamic University, Surabaya.
Schmidt, Petra (2002) *Capital Punishment in Japan*, Boston: Brill.
Seet, Matthew (2017) "Finding Reprieve: Should the Global Movement against Capital Punishment Embrace China's Suspended Death Sentence as a Model for Other Retentionist States to Emulate?" 16 *Chinese Journal of International Law* 453–74.
Shikita, Minoru, & Shinichi Tsuchiya (1992) *Crime and Criminal Policy in Japan: Analysis and Evaluation of the Showa Era, 1926–1988*, New York, NY: Springer-Verlag.
Siems, Mathias (2014) *Comparative Law*, Cambridge: Cambridge University Press.
Simmons, Beth A., & Zachary Elkins (2004) "The Globalization of Liberalization: Policy Diffusion in the International Political Economy." 98 *American Political Science Review* 171–89.

https://doi.org/10.1017/als.2021.19 Published online by Cambridge University Press

Smith, Tobias (2020) "Body Count Politics: Quantification, Secrecy and Capital Punishment in China." 45 *Law and Social Inquiry* 706–27.
Smith, Tobias, & Su Jiang (2019) "Making Sense of Life without Parole in China." 21 *Punishment & Society* 70–88.
Storey, Ian James (2000) "Indonesia's China Policy in the New Order and Beyond: Problems and Prospects." 22 *Contemporary Southeast Asia* 145–74.
Su, Kai-Ping (2018) "Why the State Stops to Kill: The Death Penalty and the Rule of Law in Taiwan." 23 *Berkeley Journal of Criminal Law* 110–34.
Sun, Jiahong (2007a) "Lun Xianxing Sihuan Zhidu yu Qingdai Sixing Jianhou zhi Butong [Discussing the Difference Between the Current Suspended Execution System and the Qing Dynasty Autumn Assizes]." 52 *Journal of Jiangxi University of Finance and Economic* 59–62.
Sun, Jiahong (2007b) *Qingdai de Sixing Jianhou [Deferred Execution in the Qing Dynasty]*, Beijing: Shehui Kexue Wenxian Chubanshe.
Suripatty, Roximelsen, & Jeferson Kameo (2018) "Towards a New Indonesian Criminal Law." 6 *International Journal of Advanced Research* 366–72.
Suroyo, Gayatri, & Agustinus Beo Da Costa (2019) "Indonesia Postpones Vote on Bill Criminalizing Sex Outside Marriage," *Reuters*, 20 September, https://www.reuters.com/article/us-indonesia-politics-rights/indonesia-postpones-vote-on-bill-criminalizing-sex-outside-marriage-idUSKBN1W50Y3 (accessed 17 December 2020).
Susanto, Mei, & Ajie Ramdan (2017) "Kebijakan Moderasi Pidana Mati." 10 *Jurnal Yudisial* 193.
Suzuki, Yoshio (1971a) "The Making and Meetings of the Second Reference Case (Part 1)." 479 *Juristo* 128.
Suzuki, Yoshio (1971b) "The Making and Meetings of the Second Reference Case (Part 2)." 489 *Juristo* 117.
Tanner, Murray Scot (2000) "State Coercion and the Balance of Awe: The 1983–1986 'Stern Blows' Anti-Crime Campaign." 44 *The China Journal* 93–125.
Tanner, Murray Scot (2005) "Campaign-Style Policing in China and Its Critics," in B. Bakken, ed., *Crime, Punishment, and Policing in China*, Oxford: Rowman & Littlefield, 171–88.
Tilemann, Hal (2016a) "Indonesia's Long Wait for Its Own Criminal Code," *Indonesia at Melbourne*, 10 November, https://indonesiaatmelbourne.unimelb.edu.au/indonesias-long-wait-for-its-own-criminal-code/ (accessed 17 December 2020).
Tilemann, Hal (2016b) "Initiatives for Criminal Law Reform: Article 3." Unpublished Paper, on file with the authors.
Tran, Kien, & Cong Giao Vu (2019) "The Changing Nature of Death Penalty in Vietnam: A Historical and Legal Inquiry." 9 *Societies* 1–28.
Trevaskes, Susan (2010) *Policing Serious Crime in China: From "Strike Hard" to "Kill Fewer,"* London: Routledge.
Trevaskes, Susan (2012) *The Death Penalty in Contemporary China*, New York: Palgrave Macmillan.
Trevaskes, Susan (2013a) "China's Death Penalty, The Supreme People's Court, the Suspended Death Sentence and the Politics of Penal Reform." 53 *British Journal of Criminology* 482–99.
Trevaskes, Susan (2013b) "Suspending Death in Chinese Capital Cases," in R. Hood & S. Deva, eds., *Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion*, Oxford: Oxford University Press, 221–36.
Trevaskes, Susan (2016) "From Killing Many to Killing Fewer," in B. Liang & H. Lu, eds., *The Death Penalty in China: Policy, Practice, and Reform*, New York, NY: Columbia University Press, 123–55.
Trevaskes, Susan (2019) "The Death Penalty and Human Rights in China," in S. Biddulph & J. Rosenzweig, eds., *Handbook on Human Rights in China*, Northampton: Edward Elgar Publishing, 425–43.
TT (2015a) "Can Money be Used to Escape the Death Penalty?" *Tuoi Tre*, 15 May, https://tuoitre.vn/co-the-dung-tien-de-thoat-an-tu-hinh-729878.htm (accessed 17 December 2020).
TT (2015b) "Keep or Remove the Death Penalty?" *Tuoi Tre*, 12 December, https://tuoitre.vn/giu-hay-bo-hinh-phat-tu-hinh-732785.htm (accessed 17 December 2020).
Uematsu, Tadashi (1964) "Trends of the Revision of the Penal Code in Japan." 3 *Hitotsubashi Journal of Law and Politics* 1–15.
United Daily News (2005) "Sihuan zhi, fabu niyinji [Suspended Execution to be Introduced by Ministry of Law]," *United Daily News*, 31 December, https://www.taedp.org.tw/en/taxonomy/vocabulary3/14?page=36 (accessed 17 December 2020).
United Nations Secretariat (1981) "Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders," UN Doc A/CONF.87/14/Rev.1.
Vietnam Committee on Human Rights (2016) "The Death Penalty in Vietnam," https://www.fidh.org/IMG/pdf/2016_-_report_on_death_penalty_in_vietnam.pdf (accessed 17 December 2020).
Wacquant, Loïc (2009) *Punishing the Poor: The Neoliberal Government of Social Insecurity*, Durham: Duke university Press.
Wang, Chris, & Loa Lok-sin (2013) "DPP Slams Government Over Executions," *Taipei Times*, 10 January, http://www.taipeitimes.com/News/front/archives/2013/01/10/2003552171 (accessed 14 December 2020).

https://doi.org/10.1017/als.2021.19 Published online by Cambridge University Press

Wijaya, Callistasia Anggun (2016) "It's Impossible for Indonesia to Abolish Death Penalty: Expert," *The Jakarta Post*, 8 September, https://www.thejakartapost.com/news/2016/09/08/its-impossible-for-indonesia-to-abolish-death-penalty-expert.html (accessed 14 December 2020).
Womack, Brantly (2006) *China and Vietnam: The Politics of Asymmetry*, Cambridge: Cambridge University Press.
Xinhua (2019) "Nearly 6,000 Fugitives Return to China in Past Five Years," http://www.xinhuanet.com/english/2019–06/27/c_138176328.htm (accessed 14 December 2020).
Xiong, Moulin (2016) "The Death Penalty after the Restoration of Centralized Review: An Empirical Study of Capital Sentencing," in Bin Liang & Hong Lu, eds., *The Death Penalty in China: Policy, Practice and Reform*, New York: Columbia University Press, 214–46.
Xiong, Moulin (2020) "Executive Clemency in Capital Cases: Inadequate Laws and Inactive Practice in Contemporary China," in D. Pascoe & A. Novak, eds., *Executive Clemency: Comparative and Empirical Perspectives*, Abingdon: Routledge.
Yang, Kuisong (2008) "Reconsidering the Campaign to Suppress Counterrevolutionaries." 193 *The China Quarterly* 102–21.
Zeng, Huaqun (2004) "Promoting a New Bilateral Legal Framework for China-EU Economic Relations." 3 *Chinese Journal of International Law* 189.
Zhang, Ning (2005) "The Debate Over the Death Penalty in Today's China." 81 *China Perspectives* 85–96.
Zhang, Ning (2008) "The Political Origins of Death Penalty Exceptionalism Mao Zedong and the Practice of Capital Punishment in Contemporary China." 10 *Punishment & Society* 117–36.
Zhang, Zhengxin (2004) *Zhongguo de Sihuan Zhidu de Lilun Yu Shijian [China's Suspended Death Penalty System in Theory and Practice]*, Wuhan: Wuhan University Press.
Zhao, Zuojun (2005) "The Suspension-of-Execution System and Limiting the Application of the Death Sentence." 36 *Contemporary Chinese Thought* 53–76.
Zimring, Franklin, & David Johnson (2012) "Public Opinion and Death Penalty Reform in the People's Republic of China." 3 *City University of Hong Kong Law Review* 189–96.
Zyl Smit, Dirk van, & Catherine Appleton (2016) *Life Imprisonment and Human Rights*, Bloomsbury: Bloomsbury Publishing.
Zyl Smit, Dirk van, & Catherine Appleton (2019) *Life Imprisonment: A Global Human Rights Analysis*, Cambridge, MA: Harvard University Press.

Statutes

Constitution of Indonesia 1945
Criminal Law of the PRC (1979)
Criminal Law of the PRC (1997)
Criminal Code of Vietnam (1985/2015)
Criminal Code of Indonesia (1915) (KUHP)
Revised Criminal Code of Indonesia (RKUHP)

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