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Capital
Punishment
Justice
Project

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SUBMITTED BY:



Komisí untuk Orang Hilang dan Korban
Tindak Kekerasan
The Commission for the Disappearances and
Victims of Violence

➤ **KontraS** is a national human rights non-governmental organization based in Jakarta, Indonesia. Its main activities are geared towards support for the victims of human rights violations. It seeks to improve respect and protection for human rights within Indonesia through advocacy, investigations, campaigns, and lobbying activities. KontraS monitors several issues such as enforced disappearances, torture, impunity, and violations of civil, political, economic, social, and cultural rights.



INSTITUTE FOR
CRIMINAL JUSTICE
REFORM

➤ **The Institute for Criminal Justice Reform (ICJR)** is an independent research institute established in 2007. ICJR focuses on criminal law and justice reform, and general law reform in Indonesia. ICJR takes initiative by providing support in the context of establishing respect for the Rule of Law and at the same time establishing a fervent human rights culture in the criminal justice system.



➤ **ECPM (Ensemble contre la peine de mort/Together Against the Death Penalty)** is a French non-governmental organisation that fights against the death penalty worldwide and in all circumstances by uniting and rallying abolitionist forces across the world. The organisation advocates with international bodies and encourages universal abolition through education, information, local partnerships and public awareness campaigns. ECPM is the organiser of the World Congresses against the death penalty and a founding member of the World Coalition Against the Death Penalty. In 2016, ECPM was granted consultative status with ECOSOC.

Capital
Punishment
Justice
Project

➤ **Capital Punishment Justice Project (CPJP)** stands for a world without the death penalty. CPJP works with partner organisations, volunteers, interns, and our board to develop legal and policy solutions on the death penalty that will help save lives. CPJP was founded in Melbourne Australia in 2001 by criminal barristers Richard Bourke and Nick Harrington to provide legal representation and humanitarian assistance to those at risk of execution. CPJP's Australian base offers strategic advantages for the work, despite our regional outlook. Australia has identified abolition of the death penalty as one of its human rights priority areas, and there is much that can be done to ensure that Australia is a leading voice on abolition.



➤ **The World Coalition Against the Death Penalty** is composed of more than 150 NGOs, bar associations, local authorities and unions. It aims to strengthen the international dimension of the fight against the death penalty. The World Coalition provides a global dimension to the action taken by its members in the field, who are sometimes isolated. Its work complements their initiatives while respecting their independence.

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➤ **Anti-Death Penalty Asia Network (ADPAN)** is an independent inter-regional network committed to working to end the death penalty in the Asia-Pacific region. ADPAN is made up of NGOs, organisations, groups from civil society, lawyers and individual members. It is not linked to any political party, religion or government.

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I LEGAL FRAMEWORK REGARDING THE APPLICATION OF THE DEATH PENALTY IN INDONESIA

- I.1** In the 3rd Cycle – 27th session in 2017, Indonesia supported several recommendations regarding death penalty in Indonesia. These recommendations were:

Consider establishing a moratorium on executions with a view to abolishing the death penalty (Austria); Consider establishing a de jure moratorium on capital punishment and commute the existing death sentences (Italy); Consider reverting to the moratorium on executions and take steps towards the abolition of the death sentence (Namibia). Ensure the respect of the right to a fair trial, as provided by article 14 of the International Covenant on Civil and Political Rights (ICCPR), including the right to appeal for persons sentenced to death (Republic of Moldova).

I.2 INTERNATIONAL LEGAL FRAMEWORK

Indonesia has ratified international instruments aiming at the abolition of the death penalty. Indonesia ratified the ICCPR in 2006, the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) in 1998 and the Convention on the Rights of the Child in 1990. However, Indonesia did ratify neither the Optional Protocol to the CAT providing for a National Prevention Mechanism of torture, nor the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty. From 2007 to 2010 Indonesia voted against the United Nations General Assembly Resolution calling for a universal moratorium on the use of the death penalty. Indonesia shifted from a negative vote to an abstention in 2012 and has remained abstaining up to and including the most recent vote in December 2020.

I.3 NATIONAL LEGAL FRAMEWORK

There is no mention of the death penalty in the Indonesian Constitution but Article 28A of the Constitution states that “Everyone has the right to live and to defend his/her life and livelihood.” The constitutionality of the death penalty has been unsuccessfully challenged before the Constitutional Court (MKRI). The Indonesian legal system imposes the death sentence for numerous offenses. The death penalty is applicable in several Indonesian legislation including the Criminal Code of 1946 (KUHP), the Law no.35/2009 on Narcotics and the Military Criminal Code (KUHPM). The death penalty is also applicable in :

- the Emergency Law No. 12/1951 relating to firearms
- the Presidential Decree No. 5/1959 on the Authority of the Attorney General in Terms of Aggravating the Threat of Punishment against Acts that Endanger the implementation of Food and Clothing Supplies
- the Government Regulation in lieu of Law No. 21/1959 on increasing the Punishment for Crimes against the Economy
- the Law No. 4/1976 on the Ratification and Addition of Several articles in the Criminal Code in relation to the extension of the implementation of Law on Aviation Crimes and Crimes against the Facilities /Infrastructures of Aviation
- the Law No. 5/1997 on Psychotropic Drugs

- the Law No. 26/2000 on Human Rights Courts
- the Law No. 20/2001 on Corruption
- the Law No. 23/2002 on Child Protection (as amended in 2016)
- the Law No. 15/2003 on Combating Criminals Acts of Terrorism (as amended in 2018)
- the Law No. 35/2009 on Narcotics.

Overall, Indonesian legislation has approximately 50 criminal offences that are punishable by death.

I.4 PERIODS OF DE FACTO MORATORIA ON EXECUTIONS

Between 2008 and 2013, under Susilo Bambang Yudhoyono's administration, the government had implemented a temporary and unofficial moratorium on executions, which was short-lived as executions resumed in 2013.

- I.5** After a series of executions between 2013 and 2016, Indonesia has not carried out any executions since 2017. However, during that same year 47 individuals were sentenced to death, 37 in 2018.

I.6 LACK OF OFFICIAL DATA

The exact number of people on death row is not clear as there are no published statistics. In 2019, authorities had provided a number of 268 death row prisoners, while NGOs had an estimate number fluctuating between 236 and 308 in 2018.

Considering the lack of official data on death row prisoners and based on the data that KontraS has collected between December 2020 - November 2021, at least 32 death sentences were recorded, though there may be more death penalty sentences. According to ICJR monitoring, from 2019 to 2021, 171 defendants were sentenced to death. Most of the sentences are handed down to convicts in drug cases, terrorism and murder.

RECOMMENDATIONS

- Remove capital punishment from all Draft pieces of legislation, including the RKUHP and the Draft anti-terrorist law.
- Bring national legislation into line with international standards by removing all offences that are not the "most serious crimes", as defined by the United Nations Human Rights Committee in 2018, from the scope of the death penalty.
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.
- Support the UN Resolution on the establishment of a universal moratorium on application of the death penalty.
- Publish annual data on the number of people sentenced to death, the nature of the offences for which they have been sentenced, the number of people sentenced to death being detained on the correctional facilities and the number of cases that are on trials/police investigation that warrant a death sentence.

II THE DEATH PENALTY IN INDONESIA DRAFT CRIMINAL CODE (RANCANGAN KITAB UNDANG-UNDANG HUKUM PIDANA: RKUHP)

- II.1** In 2015, legislative reform was initiated to revise Indonesian criminal legislation. The new legislation included the death penalty for at least 15 offences comprising treason, drug-related crimes, terrorism and corruption. However, the proposed Draft provided for a 10-year stay on executions, after which the death penalty could be commuted to life imprisonment or 20 years' imprisonment under certain conditions: 1) there is no strong public reaction against the prisoner; 2) the prisoner demonstrates remorse and there is hope for his or her rehabilitation; 3) the role of the prisoner was not essential in the committing of the crime.
- II.2** In 2019, a new version of the Draft of the Criminal Code (RKUHP) was initiated. The death penalty is confirmed as a form of criminal sanction. Namely, Article 98 of the 2019 Draft of the Criminal Code (RKUHP) states that the capital punishment is alternatively handed down as a last-ditch effort to prevent criminal acts and to protect the public and article 100(1) provides that judges can impose capital punishment with probation for 10 years that is subjected to the judgment.
- II.3** The Government of Indonesia (GoI) through the National Legal Development Agency (BPHN) has decided for the Draft Criminal Code to enter into the medium-term National Legislation Program in 2020-2024. Although the content and formulation of this Draft still receives many criticisms, the provisions regarding the death penalty in this regulation were appreciated by the public because it is considered to have taken a middle ground to bring together the abolitionist and retentionist on the use of the death penalty in positive law in Indonesia. Various socialization activities¹ have been carried out by the Ministry of Law and Human Rights. The Draft Criminal Code distributed to the Public in 2021 was the same as the Draft Criminal Code in 2019.²
- II.4** According to the 2019 Draft Criminal Code, the death penalty may be handed down to 10 years' probation and if during the probation the convict shows a commendable attitude then it can be commuted or reduced the criminal sanction into life imprisonment.
- II.5** Article 100 (1) of the Draft Criminal Code states that: *“(1) Judges can impose the death penalty with probation for 10 (ten) years if:*
- *the accused shows remorse and there is hope for improvement;*
 - *the role of the accused in the criminal act is not very important, or there is mitigating reason.”*

1 Public Relations, Law, and Cooperation Bureau of the Ministry of Law and Human Rights, 'Sosialisasi RUU KUHP Dimulai Kembali, Pemerintah Pastikan Buka Ruang Diskusi dan Masukan Publik (Socialization of the draft Bill of Penal Code Restarts, The Government Ensures a Public Discussion and Input) (Kemenkumham, 23 February 2021) <<https://kemenkumham.go.id/publikasi/siaran-pers/sosialisasi-ruu-kuhp-dimulai-kembali-pemerintah-pastikan-buka-ruang-diskusi-dan-masukan-publik>> accessed 26 November 2021

2 Aliansi Nasional Reformasi KUHP, 'Materi RKUHP Tidak Berubah dari September 2019: Aliansi Ingatkan Dasar Substansial Penundaan Pengesahan RKUHP (draft Bill of Penal Code Unchanged from September 2019: Alliance Reminds the Substantial Basis for the Delay in draft Bill of Penal Code Enactment)' (ICJR, 8 June 2021) <<https://icjr.or.id/rilis-media-aliani-nasional-reformasi-kuhp-materi-rkuhp-tidak-berubah-dari-september-2019-aliani-ingatkan-dasar-substansial-penundaan-pengesahan-rkuhp/>> accessed 6 December 2021

- II.6** Article 100 (4) of the Draft Criminal Code: *“If the convicted during probation as referred to in paragraph (1) shows commendable attitudes and deeds, the death penalty can be changed to life imprisonment by Presidential Decree after the consideration of the Supreme Court.”*
- II.7** Article 100 (2) of the Draft Criminal Code: *“The death penalty with probation as referred to in paragraph (1) shall be included in the court’s decision.”*
- II.8** According to Art 100, as Drafted in the 2019 Draft Criminal Code, two main conditions are now set out to qualify for the 10 years-probation period:
- 1 • the death penalty with 10 years of probation is not given automatically but when the judge decide that it fits the conditions as set under Article 100 (1), and
 - 2 • the decision must be included in the court ruling.

Whereas in the 2015 Draft Criminal Code, the probation was given automatically to persons sentenced to death³ without depending on the decision being included in the trial court ruling. This means that the 2019 Draft is stricter than the previous Draft, reducing the scope for people facing the death penalty to obtain the probation.

- II.9** The 2019 Draft Criminal Code does not explain the rationale behind the retention of the death penalty as a criminal sanction. The National Commission on Human Rights of Indonesia, Komnas HAM, argued that 5 (five) years of probation period should be sufficient, as in practice the incarcerated/death row prisoner has fulfilled all the correctional training.⁴ Members of Parliament and Gol representatives support the preservation of the death penalty because of ideological and political interests. The retentionists’ viewpoint is Indonesia as a religious country cannot abolish the death penalty because of religious values. During the Drafting Team Conference organized for the 2015 Draft Criminal Code, the Drafting Team Chairman, Muladi, argued that the death penalty with 10 (ten) years of probation could create a bridge between those in favor of the death penalty and those who are against it through the so-called ‘Indonesian Way’.^{5 6}

- II.10** The provisions in Article 52, Article 67, Article 99, Article 100, and 101 of the Draft Criminal Code concerning the death penalty are contrary to the purpose of criminal justice. Article 52,⁷ for instance, states that the *“prosecution is not intended to degrade human dignity”* while in its implementation there are many inhumane treatments towards death row prisoners. For example, as of 2020, 60 death row prisoners have been

3 Draft Criminal Code version 2015, Article 91 (1)

4 Erasmus Abraham Napitupulu, *Kertas Kebijakan Fenomena Deret Tunggu dan Rekomendasi Komutasi Hukuman Mati (Policy Paper Death Row Phenomenon and Death Penalty Commutation Recommendation)* (Komnas HAM & KuPP, 2020)

5 Constitutional Court Decision No. 2-3/PUU-V/2007, 439

6 Aliansi Nasional Reformasi KUHP, ‘Laporan Singkat Rapat Panja Komisi III DPR-Ri Dengan Pemerintah Dalam Rangka Pembahasan RUU Tentang Kitab Undang-Undang Hukum Pidana (Brief Report of Working Committee Meeting of Commission III of the House of Representatives with the Government in the Framework of Discussion of the Draft the Criminal Code’ (Jakarta, 15 January 2018)

7 Draft Criminal Code version 2019, Article 52

experiencing what is known as “Death row phenomenon”,⁸ as they have been on death row for more than 10 years in conditions⁹ that arguably meets the definition of inhumane and degrading treatment. Some countries have commuted death sentences based on the mental anguish of extended time on death row.¹⁰

RECOMMENDATIONS

- Open and guarantee a transparent discussion of the latest Draft Criminal Code and expand the expert pool to improve the Draft Criminal Code.
- Apply the probation mechanism to all people facing the death penalty, automatically and unconditionally.

8 Budiman and Rahmawati, *Fenomena Deret Tunggu (The Death Row Phenomenon in Indonesia)* (ICJR, 2020)

9 Carole Berrih, Arif Nur Fikri, et.Al., *Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia* (ECPM, 2019)

10 “The decision, announced on 3rd August, was explained to have been the result of careful consideration of the many prevailing factors relating to the death penalty, including the cruel and inhuman treatment caused by the mental anguish and suffering of those on death row for many years” <https://deathpenaltyproject.org/kenya-commutes-the-death-sentences-of-more-than-4000-prisoners/> Kenya, 2009

III COMMUTATION IN DEATH PENALTY AND CLEMENCY PROCEDURE

- III.1** On the imposition of the death penalty in the “Indonesian way”, upon adoption of the Draft, death row prisoners will be able to get a commutation/reduction of the sentence if within the 10 (ten) year probation period, that the person sentenced to death behaves commendably¹¹ and that the death row prisoner has not been executed within the 10 years following the rejection of the clemency request.¹²
- III.2** Currently, Indonesia does not have a mechanism of commutation or change of punishment for death row prisoners per se, except for the clemency mechanism by the President.

According to article 14 of the Constitution, the President has the constitutional power to grant clemency. Nevertheless, there are different dispositions to limit the right to seek clemency. Some are legal like the amendment to Law No.22/2002 which provides that only one petition for clemency may be submitted to the President. Other restrictions emanate from the lack of transparency and consistent guidelines in practice. The Supreme Court does not mention the names of prisoners or their type of sentences in its annual report on clemency. Given the Government’s anti-drug agenda in the context of “war on drugs”, clemency petitions are systematically rejected for drug-related crimes. From the election of Widodo in October 2014 to February 2016, the five clemency petitions which have been accepted were concerning individuals convicted of murder. In 2017, the Supreme Court ruled that presidential decrees on clemency were confidential information.

- III.3** Indonesia has a commutation mechanism known as remission. Remission is a reduction of the criminal sanction given to prisoners who have met the condition, one of which is “serving a temporary prison sentence and a prison sentence,”¹³ strictly speaking cannot be enforced for death row prisoners. One form of remission is based on humanitarian interests¹⁴ given to prisoners who have served for 1 (one) year, are over 70 (seventy) years old, and suffer from prolonged illness. Death row prisoners, on humanitarian account, should be able to be granted humanitarian remission (commutation) if they have been awaiting their executions for at least 10 years and has undergone the process of correctional training.
- III.4** Normatively Indonesia does not have a special place for death row prisoners to be detained before the execution, but in practice, death row prisoners are placed in correctional institutions scattered throughout Indonesia thus making death row prisoners the subject of a correctional training programs in the correctional institution. Based on the implementing rules of Law No. 12 of 1995 on Corrections, Government

11 Draft Criminal Code version 2019, Article 100 (4)

12 Draft Criminal Code version 2019, Article 101

13 President Decree No. 174 of 1999 on Remission, Article 1

14 Regulation of Ministry of Law and Human Rights No. 3 of 2018 on Terms and Procedures for Granting Remission, Assimilation, Family Visiting Leave, Parole, Release, And Conditional Leave

Regulation No. 31 of 1999 on the Training and Guidance of Correctional Inmates has stages of pieces of training to prepare and correct the sentenced persons to return to society.

RECOMMENDATIONS

- Introduce a commutation for those who have been on death row for at least more than 10 years.
- Under the Draft Criminal Code, apply remission mechanism to all death row prisoners who have been sentenced to death for more than 10 years have successfully completing correctional training program.
- Amend the law to ensure that Indonesian and foreigners can challenge the constitutionality of national laws and regulations before the Indonesian Constitutional Court (MKRI) without discrimination.
- Ensure transparency, consistency, and clear guidelines on clemency processes.
- Ensure that all clemency petitions are meaningfully considered and that no one, including people convicted of drug-related crimes, is a priori excluded from clemency procedures.

IV PROTECTION OF THE RIGHTS OF THOSE FACING THE DEATH PENALTY

- IV.1** Several capital cases in Indonesia have shown failures in the judicial process and the application of the law. For instance, Rodrigo Gularte who was arrested in 2004 and sentenced to death in 2005, was given legal assistance only 5 days after being arrested.¹⁵ Gularte was later executed in 2015 for a drug-related offense despite having been diagnosed with a paranoid schizophrenia¹⁶ mental disorder. Given his disabilities, the execution took place in contravention with the ICCPR standards¹⁷ and safeguards guaranteeing protection of the rights of those facing the death penalty.¹⁸
- IV.2** Humprey Ejike Jefferson was sentenced to death for possession of a 1.7kg heroin and executed in 2016. A year after the execution, the Indonesian Ombudsman stated that the execution was not in accordance with the provisions of the law as Jefferson, who at that time was applying for clemency, therefore should not have been executed. Referring to Law No. 22 of 2002 on Clemency,¹⁹ clemency applications submitted by death row prisoners can delay the execution.²⁰
- IV.3** In the case above, both verdicts account the “War on Drugs” as one of the aggravating factors in the judges’ consideration of the verdicts of Gularte and Jefferson. In Gularte’s case, the judges consideration mentioned that “The actions committed by Defendant [Gularte] is at the time of the Government and the people of Indonesia are actively waging war on Narcotics”²¹. Identical consideration was used in Jefferson’s case “The actions committed by the accused is at the time of the Government and all Indonesian people are declaring war on narcotics abuse so what is done can be categorized as a dissident against the determination of the government and all the people.”²²
- IV.4** The case of Yusman Telaumbanua (Yusman) is one of the non-drug-related cases that have many violations of fair trial standards. Yusman was suspected of premeditated murder when he was 15-16 years old.²³ At the time of his arrest and detention, Yusman – aged 19 - was then allegedly subjected to physical violence while at the time of interrogation and claims he was forced to claim to have signed the Interrogation

15 Ricky Gunawan, *Eligi Rodrigo Gularte (Rodrigo Gularte's Elegy)* in Al Araf, et.Al, *Unfair Trial: Analisis Kasus Terpidana Mati di Indonesia (Unfair Trial: Analysis of Death Penalty Cases in Indonesia)* (Imparsial and the Koalisi untuk Hapus Hukuman Mati, 2016) 48

16 Abidin et.Al., *Menyelisik Keadilan yang Rentan: Hukuman Mati dan Penerapan Fair Trial di Indonesia (Investigating Vulnerable Justice: The Death Penalty and the Application of Fair Trials in Indonesia)* (ICJR, 2019), 17

17 ICCPR, Article 7

18 Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, p. 1(d)

19 Ombudsman of Indonesia, ‘Kelalaian dan Perbedaan Perlakuan yang dilakukan oleh instansi Kejaksaan Agung dan Mahkamah Agung terhadap Humprey Ejike Jefferson tergolong tindakan maladministras (Negligence and Difference of Treatment carried out by the Attorney General’s Office and the Supreme Court against Humprey Ejike Jefferson is classified as an act of maladministration)’ (Ombudsman Press Release, 28 July 2017) <<https://www.ombudsman.go.id/news/r/kelalaian-dan-perbedaan-perlakuan-yang-dilakukan-oleh-instansi-kejaksaan-agung-dan-mahkamah-agung-terhadap-humprey-ejike-jefferson-tergolong-tindakan-maladministrasi>> accessed 26 November 2021

20 Law No. 22 of 2002 on Clemency, Article 3

21 Tangerang District Court Decision on Rodrigo Gularte No.1194/Pid.B/2004/PN.Tng, 52

22 Central Jakarta Court’s decision on Humprey Ejike aka Doctor No. 2152/Pid/B/2003/PN. JKT. PST, 18

23 Robertus Belarminus, ‘Kisah Yusman, Mantan Terpidana Mati di Bawah Umur yang Mengaku Kena Rekayasa (The Story of Yusman, a Former Minor Death Row Prisoner Who Claimed to Have Been Manipulated)’ *Kompas* (Jakarta 23, August 2017) <<https://nasional.kompas.com/read/2017/08/23/12060601/kisah-yusman-mantan-terpidana-mati-di-bawah-umur-yang-mengaku-kena-rekayasa?page=all>> accessed 26 November 2021

Report.²⁴ Even when he was assisted by his legal aid, KontraS Civil Society Organizations, Yusman did not speak fluent Bahasa. When Yusman managed to prove his age at the time of the event, it was acknowledged that he had been sentenced to death while he still was a juvenile²⁵ which is not in line with the ICCPR.²⁶ Yusman received remission on 17 August 2017 for the Independence Day and his death sentence was commuted to 5 years in prison.

IV.5 Normatively, the Supreme Court Circular Letter No. 7 of 2014, the submission of case review is only allowed once. While the sanction of the death penalty is a severe legal sanction, it should be regulated differently from other criminal sanctions, and therefore not be limited to one submission. Article 3 of the Supreme Court Circular Letter No. 7 of 2014 *“Based on the aforestated, the Supreme Court believes that the application for judicial review in a criminal case is limited to 1 (one) time”*.²⁷

RECOMMENDATIONS

- Establish guidelines for the application of the rights to a fair trial for people facing the death penalty in accordance with international standards.
- Review and overturn death sentences for people sentenced under the age of 18 and people suffering from mental impairment to be in line with the international treaties that Indonesia has ratified.
- Revising Supreme Court Circular Letter No. 7 of 2014 on Submission for Judicial Review, a person sentenced to death can apply for Judicial Review for more than once.
- The Attorney General’s Office performs supervising functions to the National Police in accordance with the laws and regulations, including monitoring and obtaining information on the investigation process in the Police.
- Define torture in the national legal framework and ensure that its definition complies with the Convention against Torture.
- Train police forces about the absolute prohibition of torture and ill treatment.
- Guarantee that interviews with accused individuals during the police investigation phase are conducted in official police offices.
- Ensure that alleged victims of torture or ill treatment have access to a forensic examination as soon as possible.
- Ensure that experienced, independent and competent lawyers represent those facing the death penalty as soon as they are arrested and throughout the judicial process.
- Significantly increase the budget allocated to legal aid.

²⁴ Yati Andriyani, “Belajar Dari Kasus Yusman Telaumbanua Pemerintah Harus Evaluasi Seluruh Penerapan Hukuman Mati di Indonesia (Learning From The Case of Yusman Telaumbanua The Government Must Evaluate the Entire Application of the Death Penalty in Indonesia)” (*KontraS*, 22 August 2017) <<https://kontras.org/2017/08/22/belajar-dari-kasus-yusman-telaumbanua-pemerintah-harus-evaluasi-seluruh-penerapan-hukuman-mati-di-indonesia/>> accessed 26 November 2021

²⁵ *Ibid.*

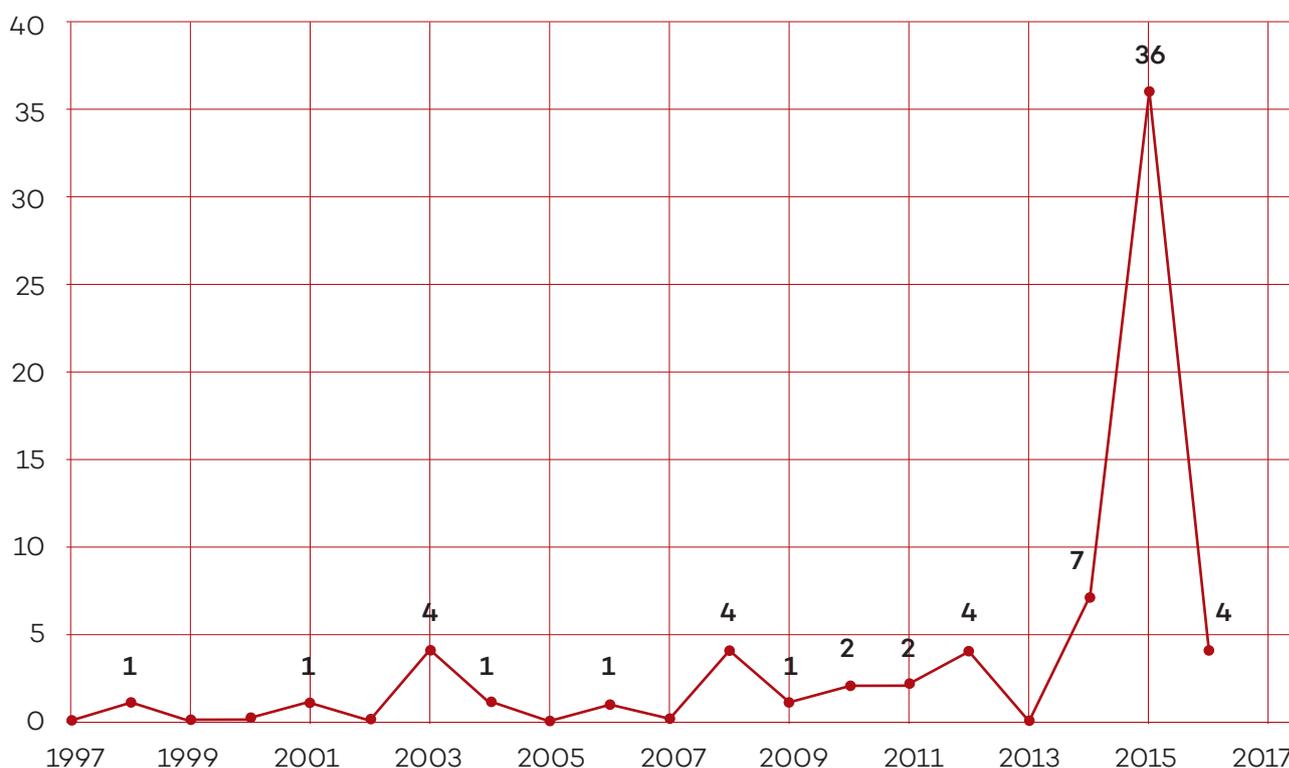
²⁶ ICCPR, Article (5)

²⁷ Supreme Court Circular Letter No. 7 of 2014 on the Submission of Judicial Review, Article 3

V WAR ON DRUGS

V.1 The problem of enforcing fair trials in criminal justice is left behind and worsened for the narrative of the War on Drugs.²⁸ Since 2015, Indonesia's president, Joko Widodo, has declared a war against narcotics to be "more vociferous, crazier, and more comprehensive."²⁹ President Joko Widodo's call to eradicate narcotics crime resulted in law enforcement officials racing to provide very strict actions and ended in the rise of the use of the death penalty. The narrative of War on Drugs is also stated in the court decision of death penalty cases in its charges, indictments, and the judgments of death penalty cases.³⁰ The Attorney General³¹ and the National Narcotics Board³² also consider that the death penalty provides a deterrent effect on drug offenders.

DEATH PENALTY ON DRUG-RELATED CRIME



Source: *Menyelisik Keadilan yang Rentan: Hukuman Mati dan Penerapan Fair Trial di Indonesia* (ICJR, 2019)

28 Abidin *et. Al.*, *op.cit.*, 262 - 263

29 Lily Rusna Fajirah, 'Jokowi Nyatakan Perang terhadap Bandar Narkoba (Jokowi Declares War on Drug Dealers)' *Sindonews* (Jakarta, 24 February 2016) <<https://nasional.sindonews.com/berita/1088003/13/jokowi-nyatakan-perang-terhadap-bandar-narkoba>> accessed 04 November 2021

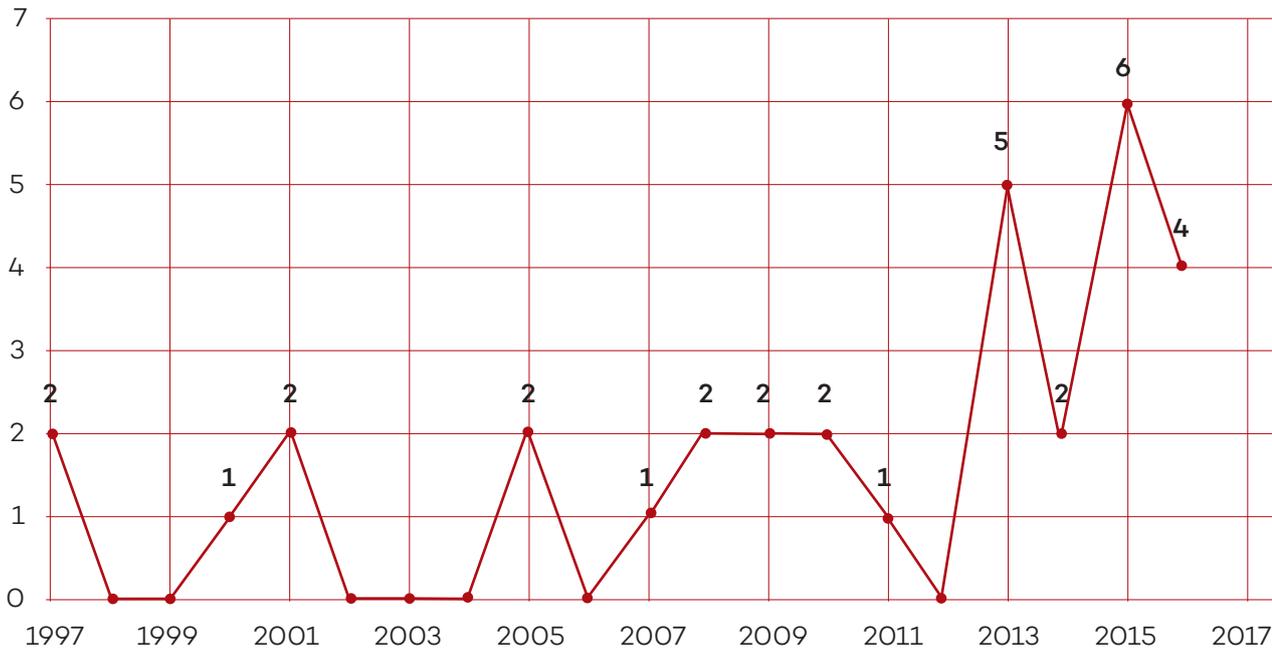
30 Budiman, *et. Al.*, *The Overlooked, She in the Vortex of Death Penalty* (ICJR, 2021)

31 Al Abrar, 'Jaksa Agung: Hukuman Mati Berdampak Efek Jera (Attorney General: Death Penalty Has Deterrent Effect)' *Metronews* (Jakarta, 20 March 2015) <<https://www.medcom.id/nasional/hukum/zNAOr36k-jaksa-agung-hukuman-mati-berdampak-efek-jera>> accessed 26 November 2021

32 Andrian Pratama Taher, 'BNN tetap Dukung Hukuman Mati (BNN Continues To Support The Death Penalty)' *Tirto* (19 January 2018) <<https://tirto.id/bnn-tetap-dukung-hukuman-mati-untuk-kasus-narkoba-cDt8>> accessed 26 November 2021.

V.2 In the context of the War on Drugs, the trend of death penalty crimes can rise as much as 404% as the call for War on Drugs was begun in 2015. With the average number of death penalty cases for drug-related cases per year being, from 1997 to 2013, between two or four cases, in 2014 it rose to seven and in 2015 to 36 cases. The tendency of the death penalty also affects other non-drug related cases, from the average case per year 2 cases sentenced to death, it rose in 2015 to 6 cases.³³

DEATH PENALTY ON NON-DRUG RELATED CRIME



Source: *Menyelidik Keadilan yang Rentan: Hukuman Mati dan Penerapan Fair Trial di Indonesia* (ICJR, 2019)

V.3 In the research of drug-related cases for female offenders facing the death penalty since 2016, of the 21 drug crimes with female perpetrators, only 1 court decision does not use the narrative of War on Drugs.³⁴ The narrative of the War on Drugs should not merely be the basis of a person to be sentenced to death, and it should be with more profound consideration.

RECOMMENDATIONS

- Amend the Narcotics Law to be in line with international standards by removing the death penalty for drug-related crimes that are not considered as the “most serious crimes”.
- Most people convicted with drugs related crimes and sentenced to death are vulnerable individuals targeted by those higher up in drug syndicates to be exposed to the high-risk roles of having physical contact with illicit drugs. Sentences must reflect the nature and crimes committed and the mitigating circumstances, with individuals being afforded a minimum term of imprisonment with a maximum of life imprisonment being imposed in only the most serious of cases.

³³ Abidin et.Al., *op.cit.*, 118

³⁴ Budiman, et. Al., *The Overlooked, She in the Vortex of Death Penalty* (ICJR, 2021), 36

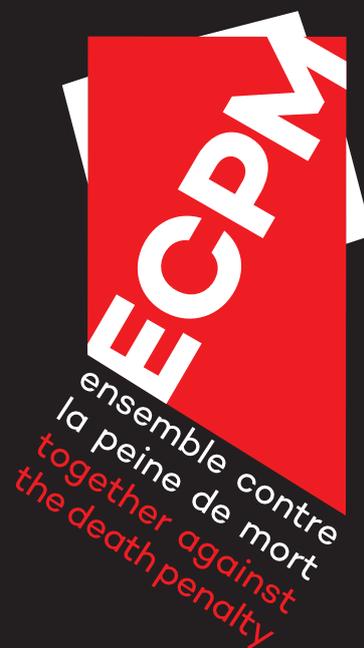
VI CONDITIONS OF DETENTION OF DEATH ROW PRISONERS

- VI.1** Another problem that accompanies the application of the death penalty is the inadequate living conditions of the accused as reflected in the conditions of detention and the phenomenon of death row. Not to mention, inadequate psychological and physical assistance to the accused who had gone through years of tension and despair while awaiting execution. Then, this condition is also exacerbated by prison conditions which often exceed capacity, causing limited food and lack of nutrition in the food.
- VI.2** The judicial process against death row prisoners which tends to be unfair in the judicial process also occurs when the convicts undergo a waiting period (death row) process in the Correctional Institution (LAPAS). After a fact finding mission carried out³⁵ in 2019 on the conditions of detention of death row prisoners in Indonesia, a number of important issues regarding the detention conditions were highlighted, such as poor medical conditions (physical and mental), lack of communication with the outside world, as well as related to the appropriateness of the conditions of the place of detention. Although the Ministry of Law and Human Rights through the Directorate General of Corrections have claimed to have implemented the Mandela Rules, in fact, there are still a number of violations of the rights of convicts, especially those sentenced to death.

RECOMMENDATIONS

- Abolish the death penalty and commute/re-sentence the sentences of all those on death row so that they are no longer subject to death row living conditions.
- Improve the conditions of detention of people sentenced to death :
 - Amend the prison regulations to comply with international standards, including the Nelson Mandela Rules, for all categories of prisons, including Batu high risk security prison;
 - Train prison guards on the treatment of detainees, including the specificity of housing death row prisoners;
 - Modify the prison surveillance system so that it respects the privacy of prisoners;
 - Ensure that regulations clearly describe the treatment of prisoners, including with regards to family visits, bedding, education, healthcare, library or sport;
 - Allow social, cultural, education and sporting activities for all male and female prisoners, in particular those sentenced to death;
 - Ensure a psychological support program, implemented by qualified professionals, for men and women sentenced to death;
 - Increase the healthcare budget to provide adequate medicine for prisoners. Allow prisoners access to medicines appropriate for their medical conditions;
 - Increase the food budget to improve the quantity and quality of food provided, especially in prisons where visitors are not allowed to bring food to their relatives;
 - Ensure that hygiene products are available to all prisoners in sufficient quantity.

35 Carole Berrih, Arif Nur Fikri, et.Al., *Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia* (ECPM, 2019)



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