

THE DEATH PENALTY IN LAW AND IN PRACTICE INDONESIA



EC
PM **TOGETHER
AGAINST
THE DEATH
PENALTY**

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

THE DEATH PENALTY IN LAW AND IN PRACTICE INDONESIA



INDONESIA

AREA

1,904,569 km²

CAPITAL

Jakarta

POPULATION

276,361,788
(2021, World bank)

OFFICIAL LANGUAGE

Indonesian

#2

HEAD OF STATE

Joko Widodo

is the President of Indonesia since the 2014 elections and was re-elected in 2019 for a second five-year term. His political party is the Indonesian Democratic Party of Struggle (PDI-P).

MINISTER OF FOREIGN AFFAIRS

Ms. Retno Marsudi

MINISTER OF LAW AND HUMAN RIGHTS

M. Yasonna Laoly

MINISTRY IN CHARGE OF THE PENITENTIARY ADMINISTRATION

Ministry of Law and Human Rights

#3



**STATUS
RETENTIONIST**

**DATE OF THE LAST EXECUTION
2016**

**NUMBER OF DEATH SENTENCES IN 2021
31**
(DIRECTORATE GENERAL FOR CORRECTION FACILITIES)

**NUMBER OF PRISONERS ON DEATH ROW (2021)
401**

DEATH PENALTY APPLICATION AND CONDITIONS OF DETENTION OF DEATH ROW PRISONERS

THE CONDITIONS OF DETENTION OF DEATH ROW PRISONERS

The number of death sentences has increased considerably over the last ten years, particularly since Indonesia's "war on drugs". In this context, the prisoners' rights are not ensured: the confidentiality of interviews with lawyers is not always respected and several people sentenced to death have been beaten by the police forces until they confessed their alleged crimes. According to death row prisoners interviewed during the fact-finding mission conducted by Together against the death penalty (ECPM), KontraS and the Anti-death penalty Asia network (ADPAN), their lawyers were not interested in their cases and some have acted against their interests.

The conditions of detention of some death row prisoners in Indonesia resemble an inhuman and cruel treatment. Every prisoner is attached to a level of security: according to the legislation, all prisoners sentenced to death must be sent to Class I prisons but due to overcrowding, some are sent to Class II prisons. Contrary to those in Class II who have access to cultural, educational and sporting activities and can meet with their families, Class I death row prisoners don't. They are held in prisons with very high security standards where they are only allowed to walk an hour a day in front of their cells, handcuffed and leg-cuffed, and to practice religious activities. Due to the low level of spending on food and healthcare, prisoners have to count on their families to send additional food or external medicines. Those whose families live far from the prison or abroad are particularly affected by the situation. Many people sentenced to death have been detained on death row for decades, fearing executions every day, which deeply affects their mental health. Suicide attempts are considered reprehensible behaviour and punished by solitary confinement.

Many prisoners sentenced to death are isolated: in the prisons on Nusakambangan Island, visits by relatives have been describes as "extremely complicated and costly" by the Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment in 2008. Each prison has its own regulation for the length of family visits: in Batu prison, visits are allowed once a month for a maximum duration of 30 minutes under the supervision of five prison guards.

CLEMENCY

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 in practice. The Supreme Court doesn't mention the names of prisoners or their type of sentences in its annual report on clemency. Moreover, Amnesty International reported prisoner's rights violation in 2015 as several prisoners were executed in 2015 while their clemency petition was still pending.

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.

FACING THE INDONESIAN CRIMINAL JUSTICE SYSTEM AND THE INDONESIAN DEATH ROW AS A FOREIGN PRISONER

According to Indonesian authorities, there were 70 foreign nationals sentenced to death in July 2019. They represent more than a quarter of the people on death row in Indonesia. In 2016, KontraS reported 16 different nationalities, including eight Nigerian, six Malaysian and six Chinese.

FOREIGN NATIONAL: A TARGET OF INDONESIAN 'WAR ON DRUGS'

In 2005, nine Australian citizens were arrested for attempting to smuggle drugs out of Indonesia. Two of them, Andrew Chan and Myuran Sukumaran, were sentenced to death and executed by firing squad on 29 April 2015.

Indonesia's anti-drug legislation is among the most restrictive in the world and the vast majority of foreign national on death row are convicted of drug trafficking. After a four-year moratorium (between November 2008 and 2013), the President Susilo Bambang Yudhoyono had brought back the death penalty for drug trafficking. According to the authorities, drug is the most important new threat to the nation, which is reported to come from abroad and brought in by foreign nationals.

LIMITATIONS AND ABUSES OF FOREIGN PRISONERS' RIGHTS TO A FAIR TRIAL

The lack of appropriate interpreters has been reported in many cases even if the Indonesian Criminal Procedure Code sets out the right to be assisted by an interpreter. One foreign national reported to ECPM, KontraS and ADPAN that his interpreter had told the police that he had admitted to committing the crime, something he never said.

Despite the existence of a legal mechanism to challenge the constitutionality of the law, the use of constitutional review is only opened to Indonesians. Moreover, NGOs revealed that many death row prisoners did not have information on their right to communicate with representatives of their country.

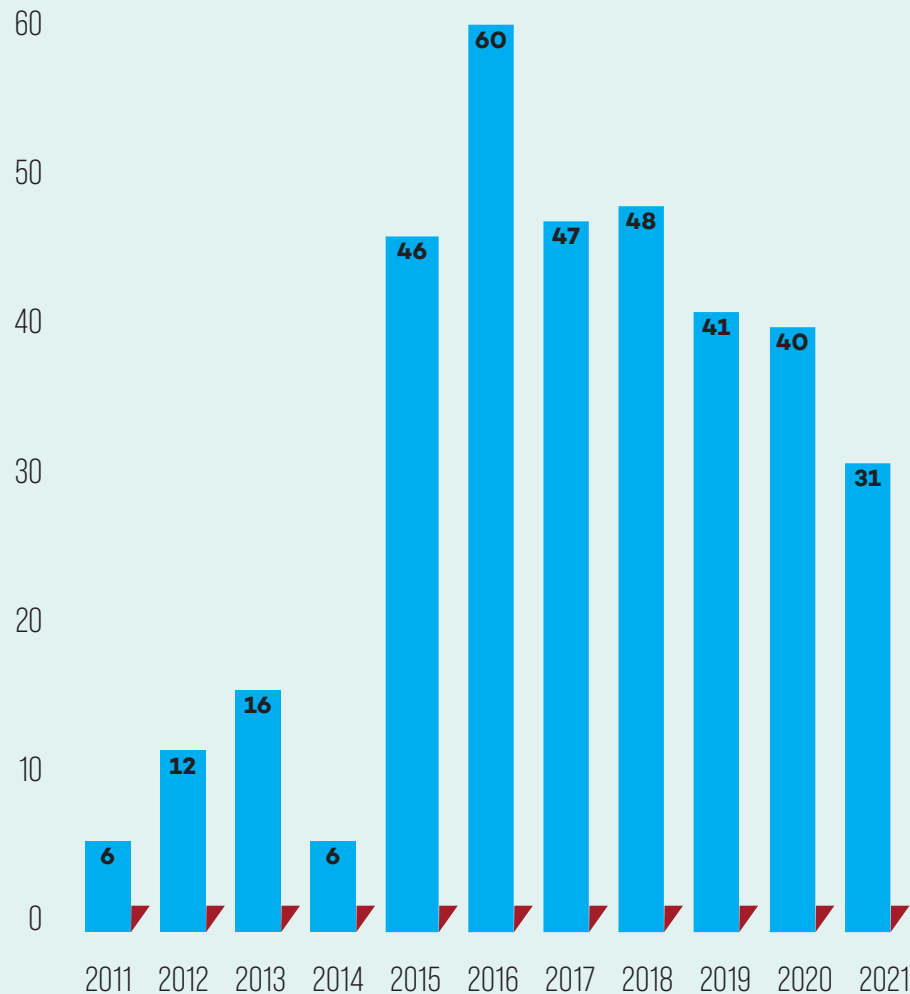
ISOLATION: AN AGGRAVATING FACTOR IN DETENTION

Prisons housing people sentenced to death are often difficult to access. The situation is particularly difficult for foreign nationals who could go for years without seeing their relatives due to the time and budget required for these visits to take place. Foreign nationals are also more vulnerable because their families cannot bring them additional food or medicines. A foreign national sentenced to death interviewed at Lapas Narkotika lost 20kg in three months and had food poisoning in prison.

FOREIGN PRISONERS: AN OVER-REPRESENTED CATEGORY AMONG EXECUTIONS

Among the eighteen executions of 2015 and 2016, fifteen were foreign nationals. When president Joko Widodo came to power, he announced at the beginning of his term in 2014 that he would reject clemency pleas from all prisoners on death row for drug-related crimes. As the vast majority of foreign nationals on death row are convicted for drug offences, they are more likely to be executed.

NUMBER OF DEATH PENALTY SENTENCES OVER THE LAST 10 YEARS



THE NATIONAL LEGAL FRAMEWORK

THE CONSTITUTION

There is no mention of the death penalty in the Indonesian Constitution of 1945 as amended in 1999, 2000, 2001 and 2002. Article 28A 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. However, the Indonesian legal arsenal provides for the death penalty for numerous offences, some of which are not considered as “most serious crimes” as it is defined in the International Covenant on Civil and Political Rights ratified by Indonesia in 2006.

THE CRIMINAL CODE

The Indonesian Criminal Code of 1946, Kitab Undang-undang Hukum Pidana (KUHP), is based on colonial legislation. According to the KUHP, the death penalty is provided for eleven crimes including passing intelligence to the enemy, insurgency, premeditated murder or extortion.

THE LAW NO. 35/2009 ON NARCOTICS

The death penalty for drug-related crimes was introduced in 1976 as an attempt to stop the flow of narcotics in Southeast Asia. In 1997, two new laws (one about psychotropic drugs and another about narcotics) were adopted. In 2009, the authorities justified the new Law on Narcotics which contains seven criminal charges punishable by death claiming that drug-trafficking was now collectively organised.

OTHER NATIONAL LEGISLATIONS

The death penalty is applicable in several other pieces of legislation as:

- The Military Criminal Code KUHPM
- Emergency Law No. 12/1951 relating to firearms
- 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
- Government Regulation in lieu of Law No. 21/1959 on increasing the Punishment for Crimes against the Economy
- 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
- Law No. 5/1997 on Psychotropic Drugs
- Law No. 26/2000 on Human Rights Courts
- Law No. 20/2001 on Corruption
- Law No. 23/2002 on Child Protection (as amended in 2016)
- Law No. 15/2003 on Combating Criminals Acts of Terrorism (as amended in 2018)
- Law No. 35/2009 on Narcotics

Indonesian legislation approximately includes 50 articles providing for offences that are punishable by death.

LEGISLATIVE PROVISIONS RELATING TO THE DEATH PENALTY

CRIMINAL CODE KUHP

First Book, General Provision

- Article 6** The applicability of Article 5, first paragraph, 2nd-ly is limited such that the capital punishment cannot be imposed upon an act which the capital punishment is not provided for by the law of the country where the act has been committed.
- Article 10** The punishments are:
 a. Basic punishments:
 1st, capital punishment,
 2nd-ly, imprisonment,
 3rd-ly, life imprisonment,
 4th-ly, fine;
 b. Additional punishments:
 1st, deprivation of certain rights,
 2nd-ly, forfeiture of specific property,
 3rd-ly, publication of judicial verdict.
- Article 11** The capital punishment shall be executed by shooting the sentenced person to death (As amended by Article 1 of Act No. 2/Paps/1964).
- Article 12** [...] (3) Temporary imprisonment may be imposed for at most twenty consecutive years in cases where in the discretion of the judge the crime is punishable by capital punishment, life-long and temporary imprisonment, or life-long or temporary imprisonment, and in those cases where by reason of a sentence increase because of conjunction of crimes, recidivism of crime or the provisions under Article 52, and 52a, the term of fifteen years is exceeded. [...]
- Article 38** (1) When deprivation of rights is pronounced, the judge shall determine the terms as follows:
 1st, by a verdict to capital punishment or to a life imprisonment, for life; [...]
- Article 47** (1) If the judge sentences the person found guilty to a punishment, the maximum of the basic punishment to be imposed on the punishable act shall be mitigated by one third.
 (2) If it concerns a crime on which the capital punishment or a crime on which life imprisonment is imposed, a maximum imprisonment of fifteen years shall be imposed. [...]
- Article 53** [...] (3) If capital punishment or life imprisonment is imposed upon a crime, a maximum imprisonment of fifteen years shall be imposed. [...]
- Article 57** (1) The maximum of the basic punishments imposed upon the crime in complicity shall be mitigated by one third.
 (2) If it concerns a crime on which the capital punishment or a crime on which life imprisonment is imposed, a maximum imprisonment of fifteen years shall be imposed.
 (3) The additional punishment for complicity shall be the same as for the crime itself. [...]

- Article 67** In case of a verdict to capital punishment or to life imprisonment no punishments shall be imposed in addition to it, other than deprivation from certain rights, forfeiture of confiscated property and publication of the judicial judgment.
- Article 78** (1) The right to prosecute shall lapse by lapse of time: [...] 4th-ly, in eighteen years for all crimes upon which capital punishment or life imprisonment is imposed.
 (2) In respect of a person who before the commission of the act has not reached the age of eighteen years, each of the terms of lapse of time mentioned above shall be mitigated by one third.
- Article 84** (1) The right to execution of the punishment shall lapse through lapse of time. [...]
 (4) The right to the execution of the capital punishment shall not lapse.

Second Book, Crimes

- Article 104** The attempt undertaken with intent to deprive the President or Vice President of his life or his liberty or to render him unfit to govern, shall be punished by capital punishment or life imprisonment or a maximum imprisonment of twenty years.
- Article 111** (1) Any person who colludes with either a foreign power or a king or a community, with the intent to induce them to conduct hostilities or to wage a war against the state, to strengthen them in the intention made up thereto, thereby promising them assistance or assisting them in their preparations, shall be punished by a maximum imprisonment of fifteen years.
 (2) If the hostilities are committed or the war breaks out, either capital punishment or life imprisonment or a maximum imprisonment of twenty years shall be imposed.
- Article 112** Any person who deliberately either reveals or informs or smuggles into the hands of a foreign power, a king or a community, documents, news or information concerning a case of which he knows that secrecy has been ordered by the interest of the state, shall be punished by capital punishment or life imprisonment or a maximum imprisonment of seven years.
- Article 123** Any Indonesian subject who voluntarily enters into military service with a foreign power, knowing that it is in war with Indonesia or in the prospect of a war with Indonesia, in the latter case if the war breaks out, shall be punished by capital punishment or life imprisonment or a maximum imprisonment of fifteen years.
- Article 124** [...] (3) Capital punishment or life imprisonment or a maximum imprisonment of twenty years shall be imposed, if the principal:
 1st, betrays to the enemy, smuggles into the enemy's hands, destructs or damages a stronghold or post, which is reinforced or occupied, a means of communication, a storehouse, a military provision, or a military, naval or army chest or any part thereof, obstructs, prevents or frustrates a plan for inundation or another military plan devised or executed for defense or attack.
 2nd-ly, causes or facilitates a revolt, mutiny or desertion among the armed forces.

Article 127 (1) The person who in time of war commits a fraudulent act in the delivery of materials for use of the navy or the army shall be punished by capital punishment or life imprisonment or a maximum imprisonment of twelve years.
(2) By the same punishment shall be punished any person who being in charge with the supervision of the delivery of goods, intentionally allows the fraudulent act.

Article 140 (1) The attempt on the life or the liberty of a ruling king or another head of a friendly state shall be punished by a maximum imprisonment of fifteen years.
(2) If the attempt on said life results in death or is undertaken with premeditation, a life imprisonment or a maximum imprisonment of twenty years shall be imposed.
(3) If the attempt on said life, undertaken with premeditation, results in death, the capital punishment or life imprisonment or a maximum imprisonment of twenty years shall be imposed.

Article 340 The person who with deliberate intent and with premeditation takes the life of another person, shall, being guilty of murder, be punished by capital punishment or life imprisonment or a maximum imprisonment of twenty years.

Article 365 (1) By a maximum imprisonment of nine years shall be punished theft preceded, accompanied or followed by force or threat of force against persons, committed with intent to prepare or facilitate the theft, or when taken in the act, either to enable for himself or for other accomplices to the crime to escape, or to ensure possession of the thing stolen. [...]
(4) Capital punishment or life imprisonment or a maximum imprisonment of twenty years shall be imposed, if the fact results in a serious physical injury or death, committed by two or more united persons and thereby accompanied by one of the circumstances mentioned under first and thirdly.

Article 368 (1) Any person who, with integer to unlawfully benefit himself or another, by force or threat of force forces someone either to deliver a good that wholly or partially belongs to that person or to a third party or to negotiate a loan or to annul a debt, shall, being guilty of extortion, be punished by a maximum imprisonment of nine years.
(2) The provisions of the second, third and fourth paragraph of Article 365 shall be applicable to this crime.

Article 444 If the acts of violence described in Articles 438-441 result in the death of one of the persons on board the attacked vessel or of one of the assaulted persons, the skipper, commander or captain and those who have participated in the acts of violence shall be punished by capital punishment, life imprisonment or a maximum temporary imprisonment of twenty years.

MILITARY CRIMINAL CODE KUHPM

The Military Criminal Code hasn't been translated into English yet.

On an indicative basis, the following regulations are relating to the death penalty
Art. 6, art. 64, art. 65, art. 67, art. 68, art. 73, art. 74, art. 76, art. 82, art. 89, art. 109, art. 114, art. 133, art. 135, art. 137, art. 138 and art. 142.

EMERGENCY LAW NO. 12/1951 RELATING TO FIREARMS

This legal disposition hasn't been translated into English yet.

On an indicative basis, the following regulation is relating to the death penalty
Art. 1.

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

This legal disposition hasn't been translated into English yet.

On an indicative basis, the following regulation is relating to the death penalty
Art. 2.

GOVERNMENT REGULATION IN LIEU OF LAW NO. 21/1959 ON INCREASING THE PUNISHMENT FOR CRIMES AGAINST THE ECONOMY

This legal disposition hasn't been translated into English yet.

On an indicative basis, the following regulation is relating to the death penalty
Art. 1.

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

Article 479k (2)(1) Life imprisonment of a maximum imprisonment of twenty years, shall be imposed if the act mentioned in Article 479i and Article 479j:
a. is committed by two or more persons jointly;
b. is a continuation of a conspiracy;
c. is committed with premeditation;
d. causes serious physical injury to a person;
e. causes damage to said aircraft, such that its navigation may be endangered;
f. is committed with intent to deprive a person of his liberty or to maintain the deprivation of liberty of a person.
(2) If said act causes the death of a person or the destruction of said aircraft, the punishment shall be death punishment or life imprisonment or a maximum imprisonment of twenty years.

Article 479o (2)(1) Life imprisonment or a maximum imprisonment of twenty years, shall be imposed if the act mentioned in Article 479l, Article 479m, and Article 479 n:
a. is committed by two or more persons jointly;
b. is a continuation of a conspiracy;
c. is committed with premeditation; d. causes serious physical injury to a person.

(2) If said act causes the death of a person or the destruction of said aircraft, the punishment shall be death punishment or life imprisonment or a maximum imprisonment of twenty years.

LAW NO. 5/1997 ON PSYCHOTROPIC DRUGS

Article 59 (1) Anybody who:

- uses psychotropic substance category I other than for the purpose specified in Article 4 section (2), or
- produces and or uses in production process of psychotropic substance category I as referred to Article 6, or
- traffics psychotropic category I without compliance with the provisions stipulated in Article 12 section (3),
- imports psychotropic substance category I, other than for scientific purpose, or
- illegally possesses, keeps, and or brings psychotropic substance category I shall be punished with an imprisonment for not less than four years and not more than 15 years and a fine of not less than IDR 150,000,000.(one hundred fifty million Rupiahs) and not more than IDR 750,000,000: (seven hundred fifty million rupiahs).

(2) If the criminal act as referred to in section (1) committed as an organized crime, shall be subject to a capital punishment or life imprisonment, or 20 year imprisonment, plus fine of IDR 750,000,000. (seven hundred fifty million rupiahs).

LAW NO. 26/2000 ON HUMAN RIGHTS COURTS

Article 36 Any person who perpetrates actions as referred to in Article 8, letter a, b, c, d or e, shall be sentenced to death or life in prison or to a maximum of 25 (twenty-five) years in prison and no less than a minimum of 10 (ten) years in prison. Cf. article 8 about the crime of genocide.

Article 37 Any person who perpetrates actions as referred to in Article 9 letter a, b, d, e, or j shall be sentenced to death or life in prison or to a maximum of 25 (twenty-five) years in prison and no less than a minimum of 10 (ten) years in prison. Cf. article 9 about crimes against humanity.

Article 41 For attempting, plotting, or assisting the perpetration of a violation as referred to in Article 8 or Article 9, the sentences set forth in Article 36, Article 37, Article 38, Article 39, and Article 40 shall apply.

Article 42 (1) A military commander or person acting as military commander shall be held responsible for any criminal action within the judicial scope of a Human Rights Court perpetrated by troops under his or her effective command and control, and for any such criminal action by troops under his or her effective command and control arising from improper control of these troops, namely:

- a military commander or aforementioned person acknowledges, or under the prevailing circumstances ought to acknowledge that these troops are perpetrating or have recently perpetrated a gross violation of human rights; and

- a military commander or aforementioned person fails to act in a proper manner as required by the scope of his or her authority by preventing or terminating such action or delivering the perpetrators of this action to the authorised official for inquiry, investigation, and prosecution.

(2) Both police and civil leaders are held responsible for gross violations of human rights perpetrated by subordinates under their effective command and control resulting from a failure on the part of the leader to properly and effectively control his or her subordinates, namely:

- the aforementioned leader is aware of or deliberately ignores information that clearly indicates his or her subordinates are perpetrating, or have recently perpetrated a gross violation of human rights; and
- the aforementioned leader fails to act in a proper manner as required by the scope of his or her authority by preventing or terminating such action or delivering the perpetrators of this action to the authorised official for inquiry, investigation, and prosecution.

(3) Actions as referred to in clause (1) and clause (2) shall be liable to the same penal provisions set forth in Article 36, Article 37, Article 38, Article 39, and Article 40.

LAW NO. 20/2001 ON CORRUPTION

This legal disposition hasn't been translated into English yet.

On an indicative basis, the following regulation is relating to the death penalty
Art. 2.

LAW NO. 23/2002 ON CHILD PROTECTION (AS AMENDED IN 2016)

Article 89 (1) Everyone who deliberately places, lets of, involves, orders to involve a child in the abuse, production, or distribution of drugs and/or psychotropic is subject to death penalty or life-imprisonment or 20 (twenty) years of imprisonment and minimum penalty of 5 (five) years of imprisonment and maximum fine of Rp. 500.000.000 (five hundred millions rupiah). [...]

LAW NO. 15/2003 ON COMBATING CRIMINALS ACTS OF TERRORISM (AS AMENDED IN 2018)

This legal disposition hasn't been translated into English yet.

On an indicative basis, the following regulations is relating to the death penalty
Art. 6, art. 8, art. 9, art. 10, art. 14, art. 15 and art. 16.

LAW NO. 35/2009 ON NARCOTICS

Article 74 (1) The abuse and illicit traffic cases of Narcotics and Narcotics Precursor including the project being prioritized than another program to be submitted to the court for immediate settlement.

(2) For examination process on the crime of Narcotics and Narcotics Precursor in appeal court, cassation level, review and death sentence execution, and clemency, its performance should be accelerated pursuant to regulations and legislations.

THE DEATH PENALTY IN LAW AND IN PRACTICE INDONESIA

Article 113 [...] (2) In case of the action to produce, import, export, or distribute Narcotics Group I as referred to in paragraph (1) thereto in form of the plant which the weight exceeding 1 (one) kilogram or exceeding 5 (five) trees or not in form of plant which the weight exceeding 5 (five) grams, the perpetrator shall be sentenced to death, or imprisonment for life, or imprisonment minimum 5 (five) years and maximum 20 (twenty) years and penalty maximum as referred to in paragraph (1) thereto plus 1/3 (one-third).

Article 114 [...] (2) In case of the action to offer to be sold, sell, purchase, being intermediary within transaction, exchange, deliver or receive Narcotics Group I as referred to in paragraph (1) thereto which in form of the plant the weight exceeding 1 (one) kilogram or exceeding 5 (five) trees or not in form of plant the weight exceeding 5 (five) grams, the perpetrator shall be sentenced to death, or imprisonment for life, or imprisonment minimum 6 (six) years and maximum 20 (twenty) years and penalty maximum as referred to in paragraph (1) thereto plus 1/3 (one-third).

Article 116 [...] (2) In case of the use of narcotics against another person or giving Narcotics Group I to be used by another person as referred to in paragraph (1) thereto shall cause another person died or permanently handicapped, the perpetrator shall be sentenced to death, imprisonment for life, or imprisonment minimum 5 (five) years and maximum 20 (twenty) years and penalty maximum as referred to in paragraph (1) thereto plus 1/3 (one-third).

Article 118 [...] (2) In case of the action to produce, import, export, or distribute Narcotics Group II as referred to in paragraph (1) thereto which the weight exceeding 5 (five) grams, the perpetrator shall be sentenced to death, imprisonment for life, or imprisonment minimum 5 (five) years and maximum 20 (twenty) years and penalty maximum as referred to in paragraph (1) thereto plus 1/3 (one-third).

Article 119 [...] (2) In case of the action to offer to be sold, sell, purchase, receive, being intermediary within transaction, exchange, or deliver Narcotics Group II as referred to in paragraph (1) thereto which the weight exceeding 5 (five) grams, the perpetrator shall be sentenced to death, imprisonment for life, or imprisonment minimum 5 (five) years and maximum 20 (twenty) years and penalty maximum as referred to in paragraph (1) thereto plus 1/3 (one-third).

Article 121 [...] (2) In case of the use of narcotics against another person or giving Narcotics Group II to be used by another person as referred to in paragraph (1) thereto shall cause another person died or permanently handicapped, the perpetrator shall be sentenced to death, imprisonment for life, or imprisonment minimum 5 (five) years and maximum 20 (twenty) years and penalty maximum as referred to in paragraph (1) thereto plus 1/3 (one-third).

Article 132 (1) Any attempt for or evil conspiracy to commit criminal conduct of Narcotics and Narcotics Precursor as referred to in Articles 111,112,113,114,115,116,117,118, 119,120,121,122,123, 124,125,126, and 129, the perpetrator shall be charged under the same imprisonment punishment pursuant to clauses as referred to the said articles.

(2) In case of the conduct as referred to in Articles 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, and 129 thereto committed in any

organized manner, its imprisonment punishment and maximum penalty shall be added to 1/3 (one-third).

(3) Any criminal addition as referred to paragraph (2) thereto shall not be applicable for criminal conduct sentenced to death, imprisonment for life, or imprisonment for 20 (twenty) years.

Article 133 (1) Any person which instruct, provide or promise something, give a chance, suggest, facilitate, threat with force, threat with violence, deceit, or persuade any child who is not in age of consent to commit the crime as referred to in Articles 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, and 129 shall be sentenced to death or imprisonment for life, or imprisonment minimum 5 (five) years and maximum 20 (twenty) years and penalty minimum Rp. 2,000,000,000.00 (two billion rupiah) and maximum Rp. 20,000,000,000.00 (twenty billion rupiah). [...]

Article 144 (1) Any person in which during 3 (three) years period shall commit the repetitive crime as referred to in Articles 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127 paragraph (1), 128 paragraph (1), and 129, his/her maximum penalty shall be added to 1/3 (one-third).

(2) Charge with addition 1/3 (one-third) as referred to in paragraph (1) thereto shall not be applicable for the criminal sentenced to death, charged under imprisonment for life, or imprisonment for 20 (twenty) years.

THE INTERNATIONAL LEGAL FRAMEWORK

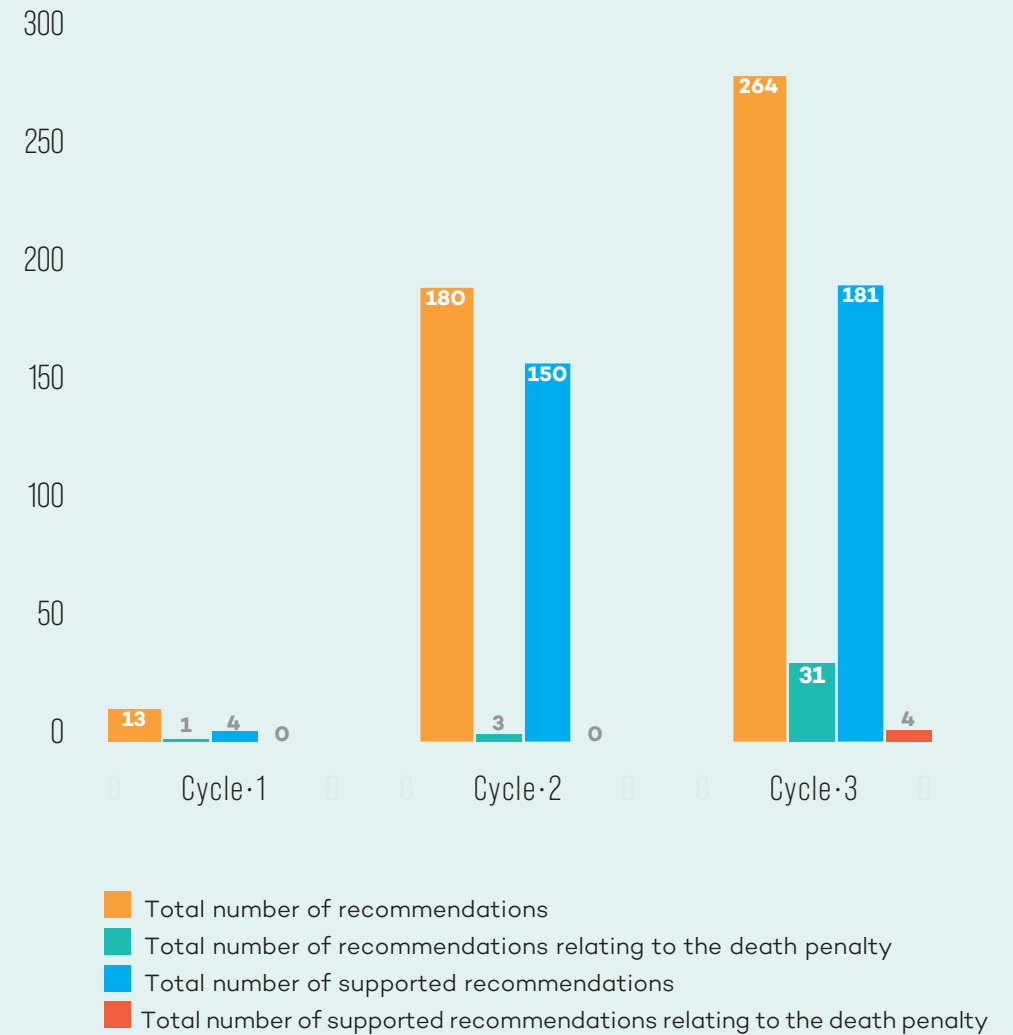
THE MAIN INTERNATIONAL INSTRUMENTS AIMING AT ABOLISHING THE DEATH PENALTY

TREATY	RATIFICATION OR ACCESSION DATE
International Covenant on Civil and Political Rights, 1966	23 February 2006 (accession)
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, 1989	X
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 1984	28 October 1998 (ratification)
Optional Protocol to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 2002	X
Convention on the Rights of the Child, 1989	5 September 1990 (ratification)

VOTE ON THE UNITED NATIONS GENERAL ASSEMBLY RESOLUTION CALLING FOR A UNIVERSAL MORATORIUM ON THE USE OF THE DEATH PENALTY



UNIVERSAL PERIODIC REVIEWS

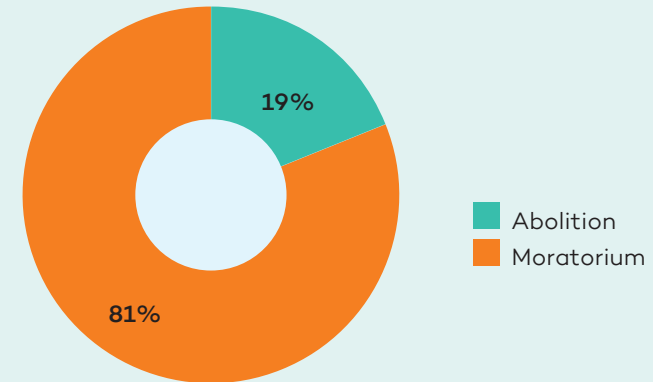


RECOMMENDATIONS RELATING TO THE DEATH PENALTY ISSUED TO INDONESIA IN 2017

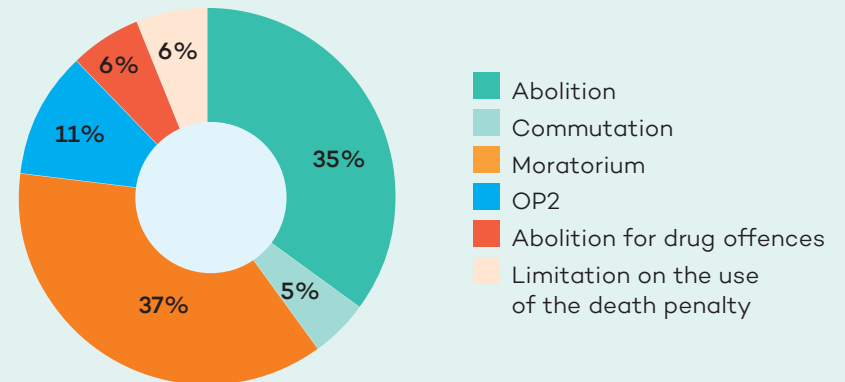
N°	RECOMMENDATIONS	Number	Supported	Noted
141.4	Ratify the OP2 aiming at the abolition of the death penalty (Republic of Moldova, Hungary)	2	2	2
141.5	Continue the process of ratification of the OP2 and establish as a first step a moratorium on execution (Romania)	1	1	1
141.46	Abolish the death penalty (Angola, Portugal)	2	2	2
141.47	Abolish the drug penalty for drug trafficking offences (Spain, Liechtenstein)	2	2	2
141.48	Abolish the death penalty and consider commuting all death sentences for drug offences (Chili)	1	1	1
141.49	Enhance safeguards on the use of death penalty: adequate legal representation, non-application to those with mental-illness, revising the Criminal Code to accord with international human rights and reinstating a moratorium on the use of the death penalty (Australia)	1	1	1
141.50	Pending abolition, establish an independent and impartial body to conduct a review of all cases of persons sentenced to death, with view to commuting the death sentences or at least ensuring fair trials (Belgium)	1	1	1
141.51	Abolish the death penalty, establish a moratorium on executions and ratify the OP2 (Slovakia)	1	1	1
141.52	<ul style="list-style-type: none"> Consider establishing a moratorium on executions Consider establishing a de jure moratorium on capital punishment and commute the existing death sentences Consider reverting to the moratorium on executions and take steps towards the abolition (Austria, Italy, Namibia) 	3	3	
141.53	Re-establish a moratorium on executions with a view to abolishing death penalty (Montenegro, Slovenia, Brazil, Mexico, Sweden)	5	5	5
141.54	Establish a moratorium on executions with a view to abolishing death penalty (Norway, UK, Switzerland, Panama, France, Argentina, Belgium, Iceland, Germany, Spain)	10	10	10
141.55	Put in place a moratorium on executions with a view to ratify the OP2 aiming to abolish the death penalty (Ireland)	1	1	1
141.60	Ensure the respect of the right to a fair trial including the right to appeal for persons sentenced to death (Republic of Moldova)	1	1	
TOTAL		31	4	27

EVOLUTION OF TOPICS OF RECOMMENDATIONS RELATING TO THE DEATH PENALTY ISSUED TO INDONESIA BETWEEN 2012 AND 2017

UPR 2012



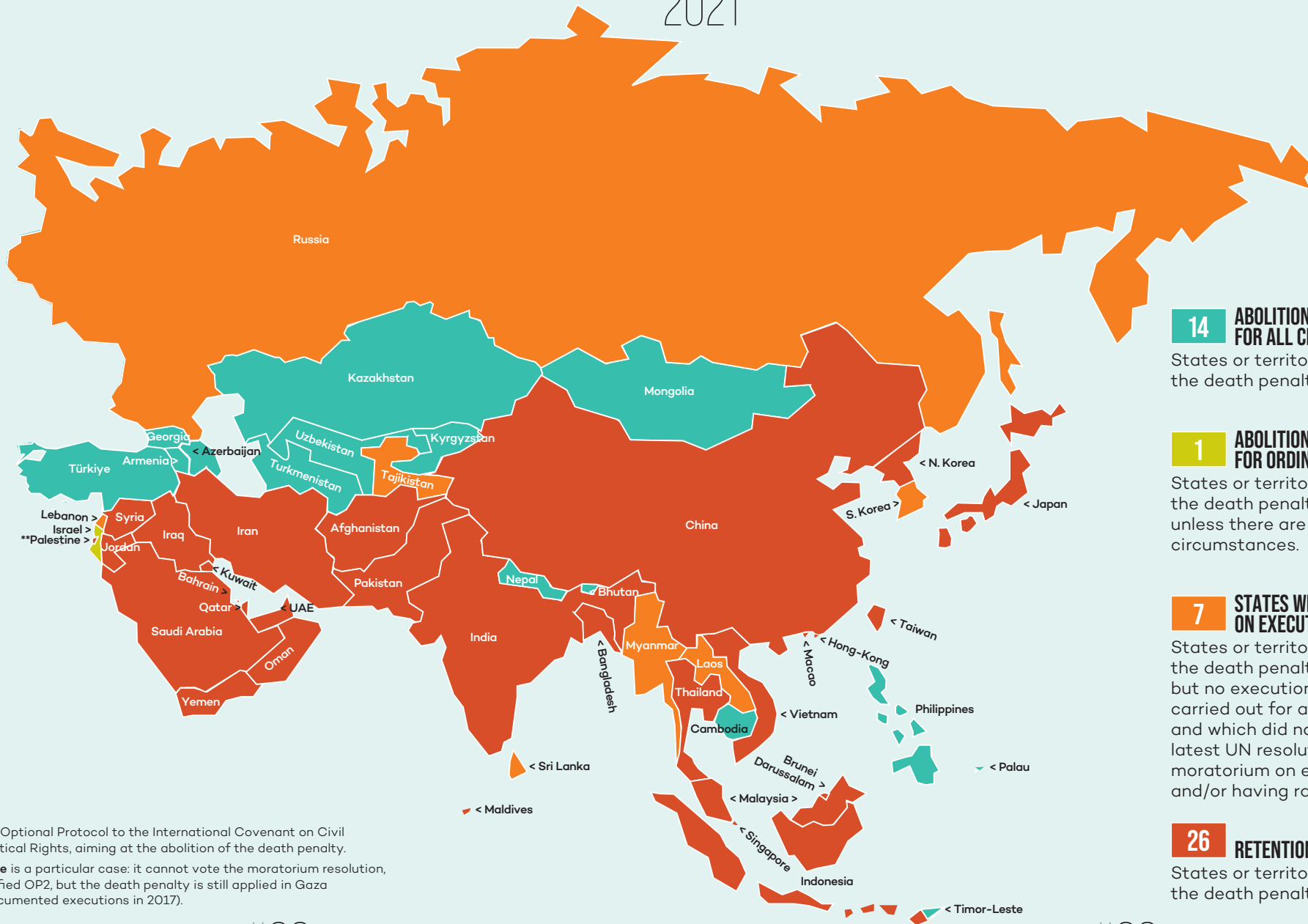
UPR 2017



There is much more variety in the subjects being addressed in the recommendations relating to the death penalty in 2017 than in 2012. During both second and third cycles, emphasis was made on traditional issues: states mostly recommended Indonesia to abolish the death penalty and to establish a moratorium.

THE DEATH PENALTY IN ASIA

2021



14 ABOLITIONIST STATES FOR ALL CRIMES

States or territories where the death penalty is abolished.

1 ABOLITIONIST STATE FOR ORDINARY CRIMES

States or territories where the death penalty is abolished unless there are exceptional circumstances.

7 STATES WITH A MORATORIUM ON EXECUTIONS

States or territories where the death penalty is implemented but no executions have been carried out for at least 10 years and which did not oppose the latest UN resolution for a universal moratorium on executions and/or having ratified OP2*.

26 RETENTIONIST STATES


States or territories where the death penalty is implemented.


* Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.
 ** Palestine is a particular case: it cannot vote the moratorium resolution, has ratified OP2, but the death penalty is still applied in Gaza (last documented executions in 2017).


For more information,
see our fact-finding mission
on death row in Indonesia:

 www.ecpm.org

 ecpm@ecpm.org

 [AssoECPM](https://www.facebook.com/AssoECPM)

 [@AssoECPM](https://twitter.com/AssoECPM)

 [@ecpm_asso](https://www.instagram.com/ecpm_asso)

**ABOLITION
NOW**

Co-funded by
the European Union



This publication was produced with the financial support of the European Union, the AFD and Fondation de France. Its contents are the sole responsibility of the author and do not necessarily reflect the views of the donors.

October 2022