

**TAKING**  
~~**SAVING**~~  
**LIVES DURING**  
**PANDEMIC**

**2020 Indonesian Death Penalty Report**



**INSTITUTE FOR  
CRIMINAL JUSTICE  
REFORM**

## **2020 Indonesian Death Penalty Report: Taking Lives During Pandemic**

### **Authors:**

Adhigama Andre Budiman  
Ajeng Gandini Kamilah  
Genoveva Alicia K. S. Maya  
Iftitahsari  
Maidina Rahmawati

### **Enumerator:**

Girlie Lipsky Aneira br Ginting

### **Editor:**

Erasmus A.T. Napitupulu

### **Cover Design:**

Genoveva Alicia K. S. Maya

### **Translator:**

Randy Taufik

### **Visual Element:**

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### **Published by:**

#### **Institute for Criminal Justice Reform**

Jl. Komplek Departemen Kesehatan Nomor B-4,  
Pasar Minggu, South Jakarta – 12520  
Phone/Fax: 021-27807065

 ICJRid  ICJRID  ICJRID  perkumpulanicjr

### **First Published in Bahasa Indonesia:**

**October 2020**

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## Foreword

The struggle to end the death penalty in Indonesia seems still long and will continue. In a bad situation like today, where the nation is struggling to contain the Covid-19 to save the lives of citizens, unfortunately, the prosecution and imposition of the death penalty, the most violent punishment, is continuing. Even though in the midst of a criminal justice business process that cannot be carried out normally, space for violations of the rights of suspects and defendants is wide open, law enforcement officials and judges continue to prosecute and impose the death penalty massively.

In the period March 2020 to October 2020, during the pandemic, there were at least 87 death penalty cases with 106 defendants, this is an increase compared to the same period from March 2019 to October 2019, with 48 death penalty cases with 51 defendants. Every year, the number of death penalty prosecutions and convictions continues to increase.

Another phenomenon is focused on those who are currently sitting in death row with all their vulnerabilities. Currently there are 355 people on the death row in Indonesia. Sixty-three of them have been waiting in constant fear for over 10 years. There are 4 people in the death row who are very old, almost half of their age has been spent in prison. From the total, 10 of them are women who have experienced multiple gender based violence in their lives, ranging from victims of sexual violence to victims of economic exploitation.

Through the 2020 Indonesian Death Penalty Report, we remind the statements of the Indonesian government in various international forums, emphasizing Indonesia's commitment to consider the imposition of a moratorium on the death penalty. Therefore, it is no exaggeration that we first ask the President of the Republic of Indonesia to issue a policy of commutation for at least 63 people on death row who have been sitting in fear for more than 10 years. And in this pandemic situation, there is no appropriate space to impose death penalty.

Greetings for the struggle to abolish the death penalty in Indonesia!

Enjoy the reading,

Jakarta, 10 October 2020

**Erasmus A. T. Napitupulu**  
**Executive Director of ICJR**

## #Save Merri Utami<sup>1</sup>

Nearly 4 years have passed since the last death penalty executed by the Indonesian government. In July 2016, fourteen convicts prepared to face the firing squad, but at the end of time, 10 convicts were canceled from being executed. One of them was Merri Utami. But the story about Merri is not a tale of luck.

Merri Utami is a woman from Sukoharjo, Central Java. She works as a migrant worker abroad to fulfil the basic needs for her family. Merri had to be the backbone of the family after she separated from her husband who often abused her.

Merri met a man named Jerry who claimed to be a businessman from Canada. Jerry's friendly behaviour towards Merri and his children made Merri trust him. Jerry invited Merri to take a vacation to Nepal and then presented her with a bag. When she returned to Jakarta, Soekarno-Hatta Airport Customs officers stopped Merri. Officers found 1.1 kg of heroin hidden in the frame of her bag. Merri, who was confused, tried to call Jerry, who was returning to Indonesia early. Her phone calls were not answered. Injustice during the trial process, makes Merri received a death sentence.

On 23 July 2016, Merri received a sudden order to prepare herself. Officers transferred her to the Nusakambangan prison cell. For five days, Merri could only pray and ask for spiritual assistance. Merri Utami's lawyer received a notification that Merri would undergo execution. Even though Merri has filed for clemency and was waiting for an answer from President Joko Widodo. Law Number 22 Year 2002 concerning Clemency states that people on death row who have applied for clemency cannot be executed until a decision is received from the President. Right on July 29, 2016, when one by one the death rows were summoned, Merri received news that her execution was suspended. She escaped execution, but she was still living in the shadows of fear.

She is waiting for the President to answer her clemency request with sympathy and deep understanding of her experiences as a victim of exploitation by a narcotics syndicate.

Support Community Legal Aid Institute (LBH Masyarakat) to urge the President to grant Merri's clemency:

<https://www.change.org/p/joko-widodo-grasi-untuk-merry-utami-selamatkan-merry-dari-ketidakadilan>

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<sup>1</sup> This article is summarized from a petition for a petition for Merri Utami's clemency, which was started by LBH Masyarakat as the legal attorney for women sentenced to death in Merri Utami's waiting series: <https://www.change.org/p/joko-widodo-grasi-untuk-merry-utami-selamatkan-merry-dari-ketidakadilan>

## 1. Track Records of Indonesian Officials' Public Statements on Death Penalty

**7 November 2019**

"In the execution of the death penalty, the mental condition of the death row inmates must be considered. A death row inmate who is mentally ill cannot be executed."<sup>2</sup> -

**ST.Burhanuddin, Attorney General RI**

**3 December 2019**

"We support everyone for the speedy death penalty, so that there are not too many trials, not many people waiting in line."<sup>3</sup> - **Brigjen Eko Daniyanto, Directorate of Narcotics Crime, Criminal Section, Police Headquarters**

**9 December 2019**

"The death penalty for corruptors can be applied if there is a strong will from the community."<sup>4</sup> - **Joko Widodo, President of Indonesia**

**9 December 2019**

"Yes, the law already exists, right? We will see the application. There are special requirements that must be applied, so are the requirements fulfilled or not? If one day it fulfilled, just apply it (death penalty)."<sup>5</sup> - **Agus Rahardjo, Chief of Corruption Eradication Commission Period 2015-2019**

**10 December 2019**

"Pak Jokowi, in my opinion, is wrong in saying that the death penalty is based on the will of the community. Because the death penalty for corruptors has been regulated in the Indonesian Corruption Law. Hence it does not have to be what the community wants. First, it is when our economic conditions are in crisis. The second, for example, when our country

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<sup>2</sup> Attorney General Conveys Exposure Related to Death Penalty, <https://www.antaranews.com/berita/1152213/jaksa-agung-sampaikan-paparan-terkait-hukuman-mati> accessed on 8 October 2020

<sup>3</sup> National Police Headquarters Supports the Accelerated Execution of Death Penalty of Drug Convicts, <https://jakarta.tribunnews.com/2019/12/03/mabes-polri-dukung-pelaksanaan-dipercepatnya-eksekusi-mati-bagi-terpidana-narkoba> accessed on 8 October 2020

<sup>4</sup> If the People Want, Jokowi Agree Corruptors Sentenced to Death, <https://nasional.tempo.co/read/1281721/jika-rakyat-berkehendak-jokowi-setuju-koruptor-dihukum-mati> accessed on 3 October 2020

<sup>5</sup> Death Penalty for Corruptors, Is It Possible? <https://www.liputan6.com/news/read/4131030/hukuman-mati-bagi-koruptor-mungkinkah> accessed on 8 October 2020



in serious disaster. Hence if a state administrator, for example, commits corruption under these two conditions, the law says that he or she deserves to be sentenced to death. President does not only rhetoric. Need an introspection regarding the granting of clemency to convicted corruption cases and so on.”<sup>6</sup> - **Nasir Djamil, Member of Commission III of DPR<sup>7</sup> RI**

**10 December 2019**

"The threat of the death penalty for corruptors has been regulated in the law. However, the punishment was never applied.”<sup>8</sup> - **Yasonna H. Laoly, Minister of Law and Human Rights of RI**

**10 December 2019**

"The application of the death penalty is not correlated with a decrease in crime or extraordinary crimes.”<sup>9</sup>– **Ahmad Taufan Damanik, Chief of National Commission of Human Rights**

**11 December 2019**

"Religion also allows (the death penalty) in certain criminal cases which are difficult to solve in other ways. The death penalty is the highest punishment I think it discourages people. The hope is that the implementation of the discourse will deter the corruptors. Because there is no punishment more severe than that (death penalty).”<sup>10</sup> – **Ma’ruf Amin, Vice President of Indonesia**

**12 December 2019**

"We carry out the law (execution of death row inmates), there is no burden whatsoever, we carry out the law, why should it be a burden?”<sup>11</sup> - **ST. Burhanuddin, Attorney General of Indonesia**

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<sup>6</sup> *Ibid.*

<sup>7</sup> DPR: Dewan Perwakilan Rakyat or Indonesian House of Representative

<sup>8</sup> Yasonna: There is already a death law for corruptors but it has never been used, <https://indonews.id/artikel/26083/MenkumHAM-Yasonna-Sudah-Ada-Aturan-Hukum-Mati-Koruptor-tapi-Belum-Pernah-Dipakai/> accessed on 8 October 2020

<sup>9</sup> Does the death penalty deter corruptors?, <https://nasional.kompas.com/read/2019/12/12/16193201/apakah-hukuman-mati-mampu-membuat-jera-koruptor?page=all> accessed on 8 October 2020

<sup>10</sup> Ma’ruf Amin: Death Penalty is Allowed by Religion in Certain Cases, <https://m.liputan6.com/news/read/4131926/maruf-amin-hukuman-mati-dibolehkan-agama-dalam-kasus-tertentu> accessed on 3 October 2020

<sup>11</sup> Attorney General is not burdened with the death penalty for corruptors, <https://mediaindonesia.com/read/detail/276988-jaksa-agung-tidak-terbeban-hukum-mati-koruptor> accessed on 8 October 2020

**15 December 2019**

“(Death Penalty) has no deterrent effect. Although I am not against the death penalty, I ask if it is done and applied selectively. Including if the sentence has been included in the revised Criminal Code. But I want to state that the death penalty can really be done selectively. This means that the death penalty is a political reality. We must not deny that if policy makers or legislators together with the DPR still think that the death penalty is not a means of suppressing corruption. Including a fundamental change, the theory of the death penalty.”<sup>12</sup> -**Supratman Andi Agtas, Head of Legislation Body of DPR RI**

**15 December 2019**

“The death penalty for corruptors is only rhetoric and not in accordance with the norms in Indonesia. He explained that although the death penalty already exists in Article 2 paragraph 2 of Law Number 31 of 1999 concerning Corruption Crime. But the human factor must exist.”<sup>13</sup> - **Saut Situmorang, Vice Chairman of Corruption Eradication Commission Period 2015-2019**

**18 December 2019**

"The discourse on the application of the death penalty to convicts in corruption cases violates human rights. The discourse on the application of the death penalty for criminals must be reviewed first. There is already a law that regulates the death penalty for criminals. He also advised the government to follow the existing laws, rather than impose the death penalty for corruptors.”<sup>14</sup> -**Puan Maharani, Chairman of DPR RI**

**19 December 2019**

"The death penalty for corruptors has no relevance to eradicating corruption. At least, based on data from countries that regulate the death penalty, it got a low corruption perception index (CPI). The application of the death penalty for corruptors will in fact make it difficult for Indonesia to cooperate with other countries to eradicating corruption.”<sup>15</sup> - **Laode M Syarif, Vice Chairman of Corruption Eradication Commission Period 2015-2019**

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<sup>12</sup> Those Who Refuse the Death Penalty for Corruptors, <https://www.liputan6.com/news/read/4136531/mereka-yang-menolak-hukuman-mati-bagi-koruptor> accessed on 8 October 2020

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> KPK Ensures Death Penalty for Corruptors Does Not Increase CPI, <https://www.jawapos.com/nasional/19/12/2019/kpk-pastikan-hukuman-mati-bagi-koruptor-tak-naikkan-ipk/> accessed on 5 October 2020

**30 December 2019**

“More than 200 death row inmates have not been executed by the end of 2019. This sentence has not been executed even though the sentence has been accepted. The verdict cannot be executed immediately for the type of death penalty because here there is a law on clemency, the clemency law says that the clemency petition delays execution. On that basis, many executions have not been carried out. It is like endless, which is why most have not been executed (the death penalty). Because legal rights have not been completed due to such legislation, but we are still doing an inventory and we will finish the death penalty”<sup>16</sup>

- **Ali Mukartono, Junior Attorney General for General Crimes**

**29 March 2020**

“The death penalty for corruptors on the Coronavirus Disease 2019 (COVID-19) handling budget will not be effectively applied if only through verbal threats.”<sup>17</sup> - **Novel Baswedan, Senior KPK Investigators**

**8 May 2020**

“Government officials both in the central and regional governments who are mandated to manage these funds must be careful and not abuse their authority so that their use is right on target. If not, there is a threat of criminal punishment / death penalty if the funds are misused in a disaster situation, as is currently the case, with the status of a public health emergency and a national disaster due to the Covid-19 pandemic.”<sup>18</sup> **Ferdiansyah, Member**

**of Commission X DPR RI**

**15 June 2020**

“I remind officials, both central and regional, to not abuse the use of disaster budgets, especially during the Covid-19 pandemic. If there are parties proven to have misused the disaster budget, they can be punished by death penalty.”<sup>19</sup> - **Mahfud MD, Coordinating Minister of Indonesia**

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<sup>16</sup> The Attorney General said about the 200 death convicts not yet executed at the end of 2019, <https://nasional.tempo.co/read/1289275/kata-keagung-soal-200-terpidana-mati-belum-dieksekusi-di-akhir-2019/full&view=ok> accessed on 5 October 2020

<sup>17</sup> Novel Baswedan Mentioned the Threat of the Death Penalty for Corruptors of the Covid-19 Fund Will Not Be Effective <https://www.tribunnews.com/nasional/2020/03/30/novel-baswedan-sebut-ancaman-hukuman-mati-untuk-koruptor-dana-covid-19-tidak-akan-efektif>

<sup>18</sup> Ferdiansyah: The threat of death penalty if you misuse Covid-19 funds in the midst of a disaster, <http://mysharing.co/ferdiansyah-ancamannya-hukuman-mati-jika-menyalahgunakan-dana-covid-19-di-tengah-bencana/> accessed on 5 October 2020

<sup>19</sup> More ferocious than Jokowi, this Minister Threatens Corruption Actors of Covid-19 Funds Sentenced to Death! <https://www.wartaekonomi.co.id/read290088/lebih-garang-dari-jokowi-menteri-ini-ancam-pelaku-korupsi-dana-covid-19-dihukum-mati> accessed on 5 October 2020

15 June 2020

"The corruption that was carried out also caused losses to the state or state finances. Especially if corruption is carried out in a situation of the Covid-19 disaster, then that is a serious crime and the threat of punishment will be the death penalty."<sup>20</sup> - **Firli Bahuri, Chairman of Corruption Eradication Commission Period 2019-2024**

2 Juli 2020

"In 2020, approximately 100 have been sentenced to death penalty due to drugs throughout Indonesia. Hopefully, it can be quickly executed."<sup>21</sup> - **Idham Azis, Chief of Police of Indonesia**

30 September 2020

"The death penalty is not a solution to stop criminal practices. Any amount of punishment will only be nonsense if not accompanied by preventive measures. Including the death penalty."<sup>22</sup> - **Rahayu Saraswati, South Tangerang Deputy Mayor Candidate**

Based on the statements of state officials above, both those who show agreement or disagreement with the discourse on the death penalty in the last one year, most are still aimed to corruption and narcotics cases. Especially in 2020, along with the non-natural disasters of the Covid-19 pandemic that hit global and national levels, the discourse on the death penalty for corruptors during the pandemic has become a fairly intensive discussion, both in the form of seminars and discussions at the level of state officials and by the Indonesian people on various canals.

Meanwhile, both the government and DPR members who disagree with the death penalty for corruptors use the excuse because it is against human rights, but this is not the case with narcotics cases. Unfortunately, the strengthening of the discourse on the death penalty for criminals during the pandemic has led to many public responses that agree with the death penalty. This has implications for DPR members who agree for the sake of electoral effect.<sup>23</sup>

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<sup>20</sup> Corruption in the Middle of a Pandemic, Chairman of the KPK: Death Penalty Threats!  
<https://lombokpost.jawapos.com/nasional/16/06/2020/korupsi-di-tengah-pandemi-ketua-kpk-ancamannya-hukuman-mati/> accessed on 3 October 2020

<sup>21</sup> The National Police Chief Called 100 Convicts Sentenced to Death in 2020  
<https://www.liputan6.com/news/read/4294302/kapolri-sebut-sudah-100-terpidana-narkoba-divonis-mati-sepanjang-2020> accessed on 5 October 2020

<sup>22</sup> Meeting with Anti-Narcotics Activists, Prabowo's Nephew Rejects the Death Penalty,  
<https://www.cnnindonesia.com/nasional/20200930183025-32-552869/jumpa-pegiat-antinarkoba-ponakan-prabowo-tolak-hukuman-mati> accessed on 8 October 2020

<sup>23</sup> PDIP and Gerindra faction members admit that it is difficult to remove the death penalty,  
<https://tirto.id/anggota-fraksi-pdip-dan-gerindra-akui-sulit-hapus-hukuman-mati-dlFs> accessed on 8 October 2020

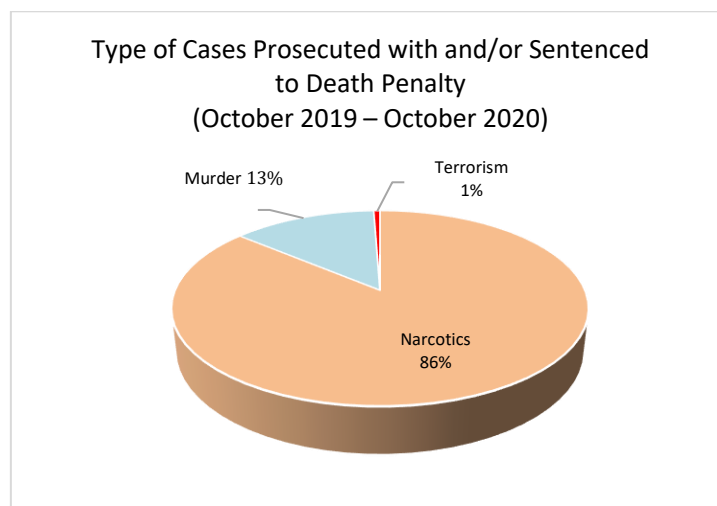
## 2. Portrait of the Death Penalty: Trend of Death Penalty Cases in Prosecution and Court Sentencing

ICJR specifically monitors and collects data related to death penalty cases. What is meant by "case" in this report is any criminal case which is prosecuted and/or sentenced to death penalty. The data is documented in the ICJR internal database which was last updated on 9 October 2020. The source of the ICJR internal database is data listed in the Case Tracking Information System (SIPP) in all District Courts in Indonesia, Supreme Court Decision Directory website, data from the Directorate General of Corrections, Ministry of Law and Human Rights (as of 8 September 2020), and reporting by journalistic media.

The number of death penalty cases monitored by the ICJR from October 2019 to October 2020 was 173 cases with a total of 210 defendants. This figure has increased significantly when compared to last year's figures from October 2018 to October 2019, where 126 cases were found with a total of 135 defendants.<sup>24</sup>

In general, the trend in the types of death penalty cases in the period October 2019 to October 2020 is still the same as in recent years which were dominated by narcotics cases. Details of the types of cases are as follows: narcotics cases were 149 cases (86%), premeditated murder cases were 23 cases (13%), and terrorism cases were 1 case (1%).

*Chart 2.1 Type of Cases Prosecuted with and/or Sentenced to Death Penalty (October 2019 – October 2020)*



Source: ICJR's internal database updated on 9 October 2020

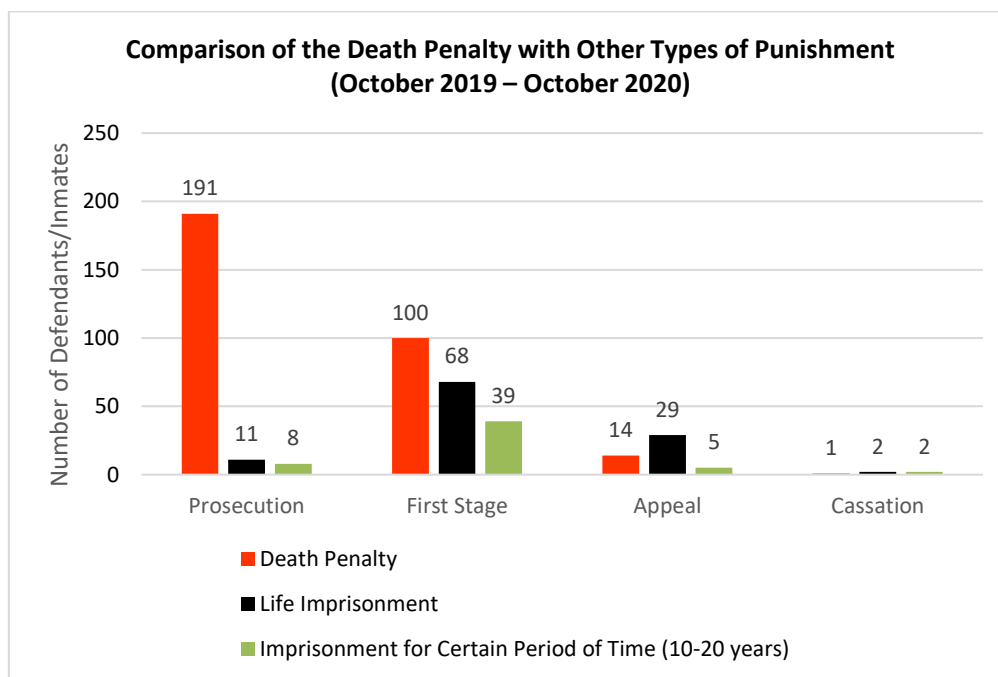
Based on the ICJR internal database, there were 191 defendants who were charged with the death penalty and 100 defendants who were sentenced to death by a judge at the first level court during the period October 2019 to October 2020 (see Chart 2.2). Then there were 14

<sup>24</sup> Erasmus A. T. Napitupulu, *et. al.*, 2019, Report on Situation of the Death Penalty Policy in Indonesia 2019: "Playing Games with Destiny", Revision Edition, Jakarta, Institute for Criminal Justice Reform, hal. 15. (Access: <http://icjr.or.id/wp-content/uploads/2019/10/Laporan-Hukuman-Mati-2019-Mempermainkan-Takdir.pdf>)

defendants who were sentenced to death at the appeal level even though previously the judge at the first level had not sentenced him to death. There were even two cases of which the public prosecutor had not previously charged the death penalty, namely on behalf of the defendant **M. Jefri Pratama, S.H. Alias Jefri** and **M. Reza Fahlevi** in the murder case at the Medan District Court.

In addition, there was a defendant named **Sugeng Santoso** who was sentenced to death by the Supreme Court judge at the cassation level for murder. Even in the SIPP (Information system) of PN Malang, it was written that the Supreme Court judge who sentenced the sentence on August 27, 2020 was the sole judge Dr. H. Andi Abu Ayyub Saleh, S.H., M.H. Whereas previously, neither the public prosecutor nor the judge at the Malang District Court and the Surabaya High Court in this case did not prosecute or impose the death penalty. The Supreme Court's stance which increases the sentence has received a lot of criticism considering that the scope of the Supreme Court's authority as the *judex juris* is to examine the application of law, while the authority to determine the severity of sentences falls within the scope of the *judex factie* which examines the facts of the trial at the first level and the appeal level.

Chart 2.2 Comparison of the Death Penalty with Other Types of Punishment (October 2019 – October 2020)

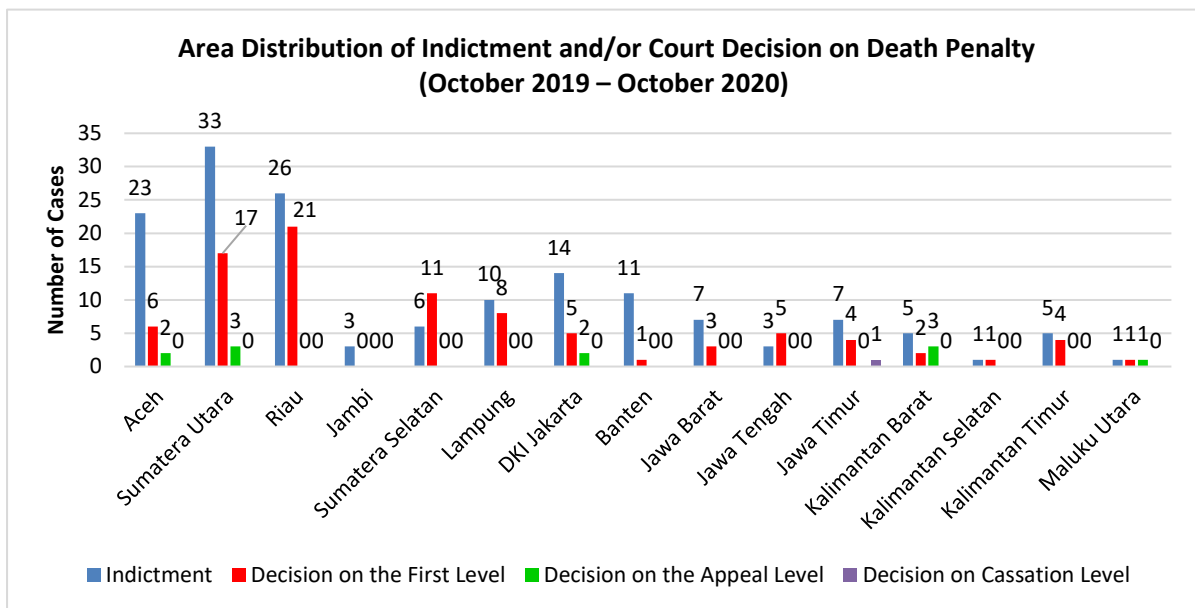


Source: ICJR's internal database updated on 9 October 2020

If you look at the comparative trend of the imposition of death penalty with other types of punishment divided into the stages above, it can be concluded that in the period October 2019 to October 2020, the death penalty prosecution rate was much higher than the death penalty sentencing. At the first level of examination, for example, the ratio of prosecution and sentences of death was almost 1: 2. Comparison of the imposition of the death penalty with

other types of punishment can also be observed by looking at the tendency of judges at the appeal and cassation level when changing / amending the sentences of the previous level. At the appeal level, the rate of conversion from death penalty to life imprisonment (for 29 defendants) was twice as high as the rate from conversion sentence to death penalty (for 14 defendants). Then at the cassation level, the rate of change from sentence to life imprisonment is the same as the rate of change from sentence to imprisonment for certain time-period namely for each of the two defendants. During this period, only one defendant was found to have changed his sentence to death at the cassation level, namely on behalf of the defendant **Sugeng Santoso** as previously mentioned.

Chart 2.3 Area Distribution of Indictment and/or Court Decision on Death Penalty (October 2019 – October 2020)



Source: ICJR's internal database updated on 9 October 2020

The chart above depicts the number of prosecution and sentence for death penalty cases from October 2019 to October 2020. Sumatra Island has the highest death penalty cases compared to other regions with a total of 101 charges, 63 first degree decisions and 5 appeals. The three provinces that generally show the highest death penalty cases are in the Island of Sumatra, namely:

1. Aceh (23 prosecutions, 6 decisions at first level, and 2 decisions on appeal),
2. North Sumatra (33 prosecutions, 17 decisions at first level, and 3 decisions on appeal),
3. Riau (26 prosecutions and 21 first level decisions).

In other provinces in the Island of Sumatra, death penalty cases were also found with the prosecution and death penalty rates quite high, namely 6 prosecutions and 11 first level decisions in South Sumatra as well as 10 prosecutions and 8 first level decisions in Lampung. Meanwhile, in Jambi, there were only 3 cases of prosecution for the death penalty and no cases of the imposition of the death penalty.

Furthermore, on the Island of Java, cases that were prosecuted and / or sentenced with the death penalty were found in the provinces of DKI Jakarta, Banten, West Java, Central Java, and East Java with a total of 42 prosecutions, 18 first level decisions, 2 decisions on appeal, and 1 decision at the cassation level. Then the lowest number of prosecutions and sentences is on the Island of Borneo were found in South Kalimantan, with 1 prosecution case and 1 case imposing the death penalty in the first level. Meanwhile, in East Kalimantan, there were 5 prosecutions and 4 sentences of death penalty in the first level and in West Kalimantan there were 5 prosecutions, 2 first level decisions, and 3 appeals to the death penalty. The last area where death penalty cases were found was in Maluku where there were only 1 case each for prosecution, the imposition of the death penalty at the first level, and the imposition of the death penalty at the appellate level.

### **2.1. Prosecution and the Imposition of the Death Penalty During Pandemic**<sup>25</sup>

The Supreme Court on March 27, 2020 through the Director General of the General Courts Agency has issued an announcement that during the emergency period of the Covid-19 outbreak, criminal proceedings can be conducted remotely or by teleconference. Then on April 13, 2020, the Supreme Court, Attorney General's Office, and the Director General of Corrections of the Ministry of Law and Human Rights ratified the Memorandum of Understanding (MoU) Number: 402 / DJU / HM.01.1 / 4/2020; Number: KEP-17 / E / Ejp / 04/2020; Number: PAS-08.HH.05.05 Year 2020 concerning the Implementation of Trials by Teleconference, which in essence only regulates the distribution of authority and responsibility when conducting court remote hearings.

The issuance of the announcement in writing or the MoU was not followed by the issuance of technical regulations which detail the procedures for the implementation of a comprehensive remote trial for each actor in a criminal trial, from the general prosecutor, the panel of judges, to the guarantee of a fair trial for the defendant and the defendant's attorney.

On September 25, 2020, the Supreme Court issued Supreme Court Regulation No. 4 of 2020 concerning the Administration and Trial of Criminal Cases in Court electronically. The contents of this regulation are more focused on the administrative aspects, while some substantial aspects actually leave some space for violation of the right to a fair trial, for example in the provisions of Article 11 paragraph (3) regarding the procedures for examining witnesses/experts, location for witness/expert examination are allowed only at: (a) public prosecutor's office in their jurisdiction, (b) the court where the witness/expert is located, if the witness/expert is inside and outside the jurisdiction of the court hearing the case, and (c) the embassy/consulate general of the Republic of Indonesia with the approval/recommendation of the Minister of Foreign Affairs in the event that the

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<sup>25</sup> This description was adopted in some parts from the ICJR release published on July 5, 2020 with some additional data and narrative (access: <https://icjr.or.id/penuntutan-dan-penjatuhan-hukuman-mati-saat-masa-pandemi-adalah-hal-yang-mengerikan/>)



witness/expert is abroad or in another place determined by the panel of judges. In this regulation, the value of respect for the principle of a fair trial is not sufficiently illustrated, the place for examination of witnesses / experts is allowed at the public prosecutor's office, while the place of examination at the place of the defendant's attorney or the place where the defendant situated is not regulated, even though the defendant's right to present witnesses/experts needs to be guaranteed. Presenting witnesses/experts is also the defendant's right to defend himself in accordance with Article 65 of the Criminal Procedure Code.

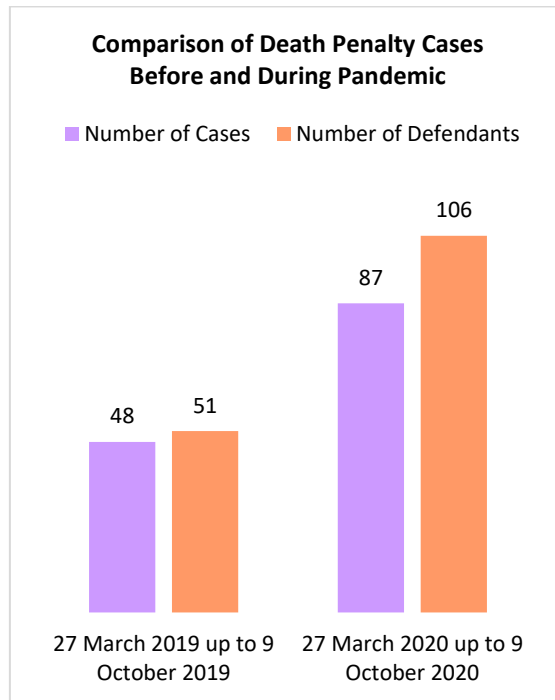
The potential for violation of the principles of fair trial is also reflected in the regulation on access to evidence, Article 14 concerning examination of evidence stipulates that the existence of evidence examined remains at the public prosecutor's office. The public prosecutor only shows the evidence to the panel of judges, or it can be videotaped and sent to court. There is absolutely no regulation regarding the obligation for such evidence to be accessed by the defendant's attorney even though it is still located at the public prosecutor's office. This regulation also does not require the public prosecutor to clearly show evidence to the defendant or the defendant's attorney, this clearly indicates the lack of respect for the defendant's right to defend himself, one of which is with adequate access to evidence. What also needs attention is the absence of specific provisions regarding guarantees of a fair trial in online trials for defendants under the threat of the death penalty. At the global level, the guarantee of fair trial principles for death penalty defendants has a high standard, the defendant can only be sentenced to death penalty, beyond a reasonable doubt for the judge to decide the death penalty.

At this point, in the midst of a pandemic situation that requires trials to be carried out online, there are many concerns about the violation of the right to a fair trial, including it is also important to consider the death penalty defendant to be avoided from severe punishment when the judicial conditions cannot fully guarantee the principle of a fair trial.

The pandemic situation or epidemic emergency itself will clearly have implications, for example the lack of availability of legal advisory assistance, interpreters, and fulfilment of the defendant's right to directly examine evidence at trial presented by the public prosecutor. The quality of case examination may not be optimal so that it is possible that there will be opportunities for errors or omissions in case examination. This will clearly have fatal consequences, especially if it happens to people who are sentenced to death.

Based on the Death Penalty Database which is managed internally by the ICJR, during the pandemic emergency period from 27 March 2020 up to 9 October 2020, where trials were generally held via video conference, there were at least 87 death penalty cases with a total of 106 defendants. When compared to the previous year during the same period (27 March 2019 up to 9 October 2019), there were 48 death penalty cases with a total of 51 defendants.

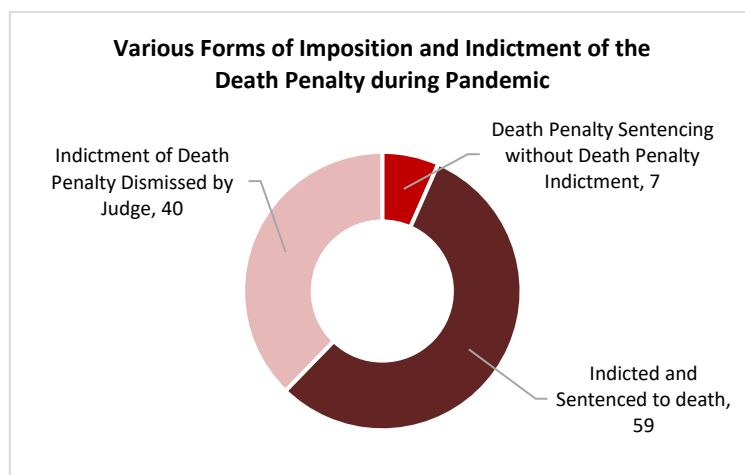
Chart 2.4 Comparison of Death Penalty Cases Before and During Pandemic



Source: ICJR's internal database updated on 9 October 2020

Seventy-eight of the 87 death penalty cases were narcotics cases and only 9 of them were premeditated murder cases. The total of 106 defendants consisted of 99 people who were sentenced to death and 7 people who were not previously charged with the death penalty but were sentenced to death by the judge when undergoing examination at the first level or on appeal. Meanwhile, from a total of 99 people who had been sentenced to death, there were 59 of whom the demands for the death penalty were granted by the judge. It should be noted, the decision is still not legally binding, so it is possible to change the sentence in the legal process of appeal and cassation.

Chart 2.5 Various Forms of Imposition and Indictment of the Death Penalty During Pandemic



Source: ICJR's internal database updated on 9 October 2020

Then, from a total of 106 defendants, it was found that there were 6 female defendants with details of the cases as follows:

1. **Emi Sulastriani Als. Sulis Binti Basri Alm** (narcotics case in Nunukan District Court, demanded the death penalty and sentenced to life imprisonment at the first level trial and appeal, the status of the final decision is not legally binding)
2. **Ayi Sumiati Alias Ayu Sumiati Alias Neng Ayu Binti Maman** (narcotics case in Mempawah District Court, prosecuted and sentenced to death at the first level trial then changed the sentence to life imprisonment at the appellate level trial, the status of the final decision is not legally binding)
3. **Murziyanti Binti Zainal Abidin Alm. Als Mak** (narcotics case in Idi District Court, prosecuted and sentenced to death at the first level trial and on appeal, the status of the final decision is not legally binding)
4. **Fitriani Binti Usman Ismail Alias Fit** (narcotics case in Idi District Court, was sentenced to death and was sentenced to 20 years in prison at the first level trial and on appeal, the status of the final decision is not legally binding).
5. **Aulia Kesuma Alias Aulia Binti Tianto Natanael** (murder case in the South Jakarta District Court, prosecuted and sentenced to death at the first level trial and on appeal, the status of the final decision is not legally binding)
6. **Zuraida Hanum** (murder case in Medan District Court, was sentenced to life imprisonment then sentenced to death at the first legal trial and on appeal, the status of the final decision is not legally binding)

In addition, during this pandemic there were even at least 10 district courts of which, based on the ICJR Death Penalty Database, it is known that this is the first time that a death penalty case has been recorded, namely:

1. Lahat District Court
2. Bangkinang District Court
3. Pematang Siantar District Court
4. Tasikmalaya District Court
5. Meureudu District Court
6. Idi District Court
7. Pelaihari District Court
8. Nunukan District Court
9. Padang Sidempuan District Court
10. Gunung Sugih District Court

The cases in Lahat District Court, Idi District Court, Pelaihari District Court, Gunung Sugih District Court, and Bangkinang District Court are death penalty sentencing cases, while the cases in Pematang Siantar District Court, Tasikmalaya District Court, Meureudu District Court, Padang Sidempuan and Nunukan District Court are death penalty prosecution cases.

It should be borne in mind that even in normal situations, violations of fair trial rights or a set of rights to ensure that the trial runs fairly in many cases where the previous death penalty is still found. Based on ICJR's research in 2019 entitled " *Menyelisik Keadilan yang Rentan: Hukuman Mati dan Penerapan Fair Trial di Indonesia*", the availability of legal advisors and translators is still an issue and the quality of their assistance is still far from effective.<sup>26</sup> Then the right to examine evidence, especially incriminating witnesses, was also not maximally given in some cases.<sup>27</sup>

During this pandemic, there were even death penalty cases where it was strongly suspected that there were violations of the principle of fair trial, especially in relation to the right to file a defence after the charges against the accused were read out. The ICJR found at least several cases in the Bengkalis District Court and Gunung Sugih District Court where the time interval for reading the prosecutions and decisions was very short, even on the same day.

In the case on behalf of the defendant **Sario Bin Adi Suwarno** with case register Number 314/Pid.Sus/2020/PN Bls and the defendant **Father Sihombing Als Paprisai Bin Jaser Sihombing** with case register Number 315/Pid.Sus/2020/PN Bls, it can be confirmed via SIPP (court's information system) website<sup>28</sup> Bengkalis District Court, which showed the date of the reading both of the charges and the verdict in one day, namely on August 31, 2020. Then in the case on behalf of the defendant **Hidayatulloh Als Dayat Als Mamang Bin Solihin** with case register Number 311/Pid.Sus/2020/PN Gns can also be confirmed via the SIPP PN Gunung Sugih website which includes information that the charge was read on 23 September 2020 and the verdict was made on 24 September 2020. Interestingly, the three cases have in common, namely drug-related cases, which in some ICJR studies found the most violations of the fair trial principle, in the judicial process, mainly influenced by the narrative of war on drugs.

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<sup>26</sup> Zainal Abidin, *et al.*, *Menyelisik Keadilan yang Rentan: Hukuman Mati dan Penerapan Fair Trial di Indonesia*, Institute for Criminal Justice Reform, Jakarta, 2019, hal. 146-158. (Access: <http://icjr.or.id/data/wp-content/uploads/2019/01/Menyelisik-Keadilan-Yang-Rentan.pdf>)

<sup>27</sup> *Ibid.*, hal. 162-164.

<sup>28</sup> *Sistem Informasi Penelusuran Perkara/SIPP* (Court's Information System)

### **3. Death Row Phenomenon in Indonesia**

#### **3.1. Data on the People on Death Row in Indonesia**

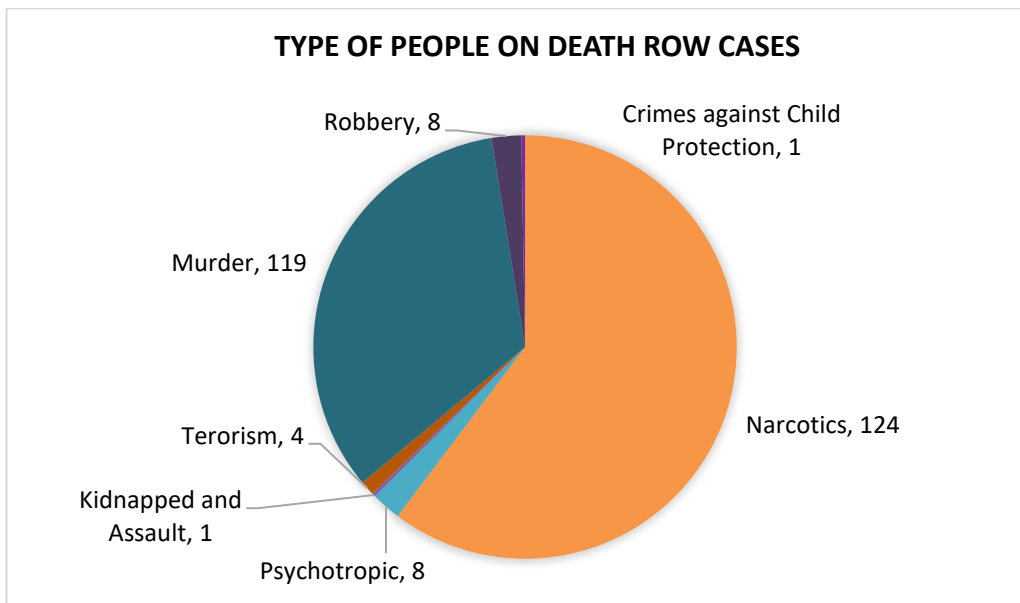
In this report, ICJR managed to allocate data series on people on death row of 355 people. Initial data received by ICJR is based on the data provided by the Directorate General of Corrections (Ditjen PAS) of the Ministry of Law and Human Rights of the Republic of Indonesia as of 8 September 2020, the current number of people on death row is 356 people. ICJR then re-examined the data of each death row and found as many as 12 people included in the data had their sentences changed based on the final court decision so that they should no longer be in the death execution row. In addition, there are at least 11 people on death row who have not been included in the 2020 Data on the Death Row from the Ditjen PAS after ICJR has reconciled it with the 2019 Data on the Death Row from the Ditjen PAS (as of 9 October 2019) and with the database of death sentences that are managed internally by the ICJR. Accordingly, the total number of people on death row as of October 2020 based on the recapitulation of the 2020 Data on the Death Row Inmates from the Ditjen PAS conducted by ICJR is 355 people.

The investigation on the status of death row was carried out based on court decisions whose information is listed on the SIPP District Court website and the Directory of Supreme Court Decisions from 28 September 2020 to 1 October 2020. Based on this investigation, of the 12 death convicts, some of them received a change of verdict from the panel of judges. in the appeal and/or cassation legal process which invalidated their death sentence and some of them are still in the process of appeal. Then with regard to the 11 death convicts who should have been included in the 2020 Data on the Death Row from the Ditjen PAS, there are 7 people who based on a court decision having legal force have been sentenced to death.<sup>29</sup>

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<sup>29</sup> It should be noted that the addition of 11 convicts must be interpreted with caution due to the possibility of limited information obtained by the ICJR Researcher, such as the granting of clemency or the convict passed away or escaped but was not reported in the media, or any constraints related to information. case status in the SIPP website which is not updated in real time and the decision documents in the Supreme Court Decision Directory are not yet available.

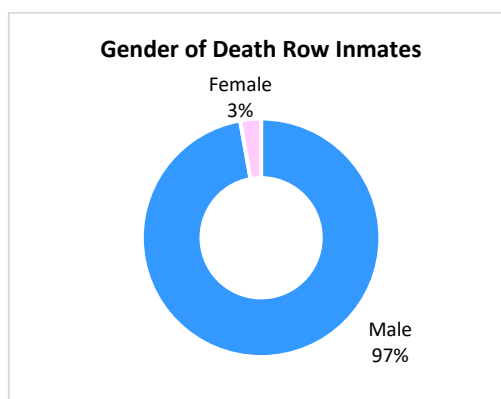
Chart 3.1 Type of Death Row Inmates' Cases



Source: Prepared by ICJR from data provided by Directorate General of Corrections (Ditjen PAS) updated 8 September 2020

From a total of 355 death row convicts whose data is processed by ICJR based on the 2020 Data on the Death Row from the Ditjen PAS, the majority are known to be death row for narcotics cases, namely 214 people. The next largest composition, namely the murder cases as many as 119 people. Meanwhile, the rest were 8 people sentenced to death both in psychotropic cases and robbery cases, 4 cases of terrorism, and case of kidnapping and assault as well as case of crimes against child protection which is 1 case for each.

Chart 3.2 Gender of the People on Death Row



Source: Prepared by ICJR from data provided by Directorate General of Corrections (Ditjen PAS) updated 8 September 2020

The gender composition of death convicts was 345 men (97%) and 10 women (3%). The ten women death row inmates consisted of narcotics and murder cases with the following composition: (1) Beraati Laia (murder case); (2) Dita Desmala Sari Binti Suheri (murder case); (3) Tika Herli Binti Mustaridi (murder case); (4) Sari Murni Asih Binti Samuri Bin Samuri (murder case); (5) Putu Anita Sukra Dewi Binti Made Santika (murder case); (6) Jet Lie Chandra Binti Martin Chandra (narcotics case); (7) Rosita Said Als Oci (narcotics case); (8) Mary Jane

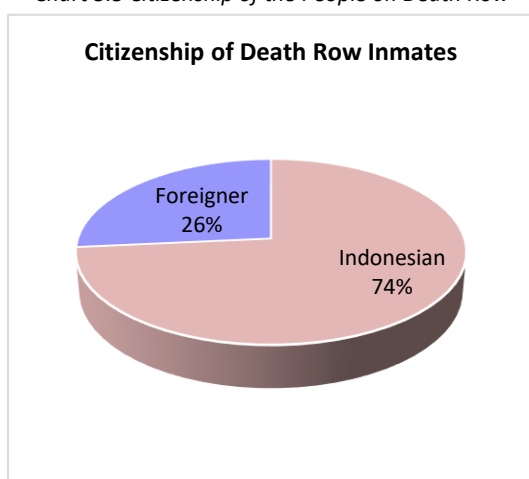
Fiesta Veloso Binti Rizal Veloso (narcotics case); (8) Merry Utami Binti Siswandi (narcotics case); (9) Lindsay June Sandiford (narcotics case).

Meanwhile, regarding the citizenship of the people on death row, out of a total of 355 people, 75% were Indonesian (WNI), namely 261 people and the remaining 25% were foreign nationals (WNA), namely 94 people. The countries of origin of foreigners sentenced to death are scattered in 15 countries which can be seen in the following table. The number of countries on which under death row came from the highest number were from Taiwan (25 people), Malaysia (20 people), China (17 people), Nigeria (10 people), and Hong Kong (8 people). Meanwhile, the remaining 10 countries only have one or two foreigners on death row.

Table 3.1 Country of Origin of the Foreign People on Death Row

| Country        | Number of Foreign Death Row Inmates |
|----------------|-------------------------------------|
| Malaysia       | 20                                  |
| Philippines    | 1                                   |
| Singapore      | 2                                   |
| China          | 17                                  |
| Hong Kong      | 8                                   |
| Taiwan         | 25                                  |
| Pakistan       | 1                                   |
| India          | 1                                   |
| Iran           | 2                                   |
| Netherlands    | 1                                   |
| France         | 1                                   |
| United Kingdom | 2                                   |
| United States  | 1                                   |
| Nigeria        | 10                                  |
| Zimbabwe       | 2                                   |

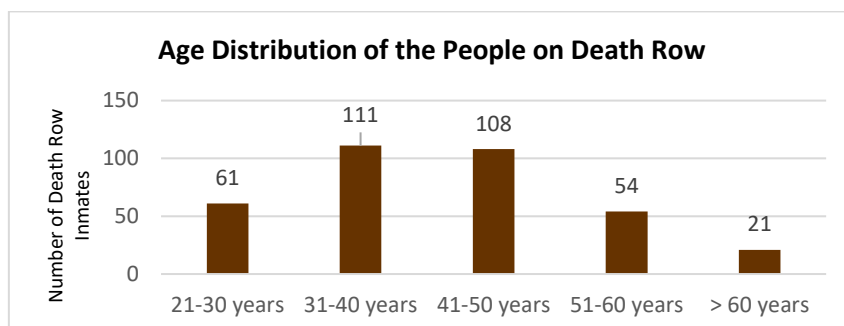
Chart 3.3 Citizenship of the People on Death Row



Source: Prepared by ICJR from data provided by Directorate General of Corrections (Ditjen PAS) updated 8 September 2020

The age distribution of those sentenced to death ranged from the youngest which is 21 years old and the oldest is 83 years old. The number of people sentenced to death at a young and productive age or the workforce between 21 years and 40 years is almost half of the composition, namely a total of 172 people out of a total of 355 people. Then the second largest composition of death row inmates, namely in the range of 41 years to 50 years, as many as 108 people. Meanwhile, those aged 51 to 60 years reached 54 people. The group of elderly over 60 years was also found as many as 21 people.

Chart 3.4 Age Distribution of the People on Death Row

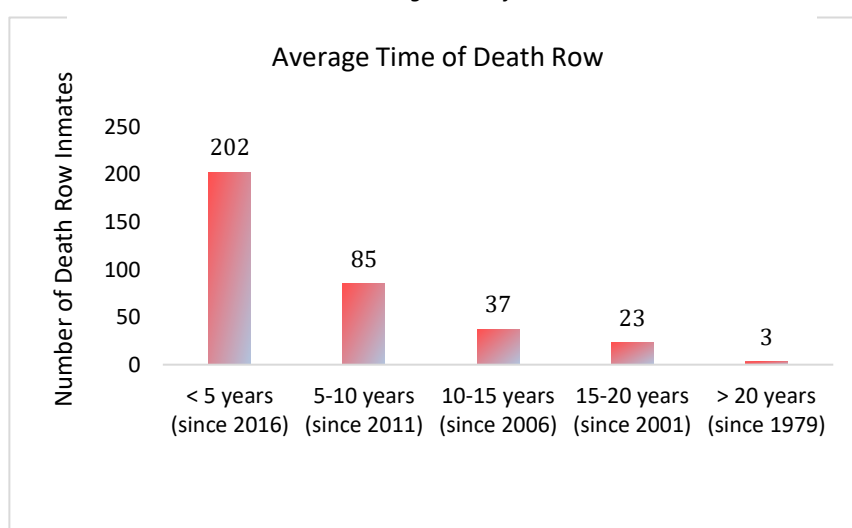


Source: Prepared by ICJR from data provided by Directorate General of Corrections (Ditjen PAS) updated 8 September 2020

Data on the Death Row from the Ditjen PAS as of 8 September 2020 does not include the date of the death row's final decision so to find out the length of waiting time for execution for each people on death row, ICJR processed the data from 28 September 2020 to 1 October 2020 with various sources including 2019 Data on the Death Row from the Ditjen PAS and ICJR's internal database. From the results of the data processing, the total number of people on death row that can be calculated for the waiting period for their execution is 350 people.

From a total of 350 death row inmates, it is known that the number of death row who are in a waiting period for execution for more than 10 years, namely a total of 63 people. In fact, there are three people sentenced to death, including those who are in the longest waiting period for execution, which is for more than 20 years. The three people have been on the waiting row since 1983, 1997 and 1998. Meanwhile, current majority of them, namely 202 people, are in a waiting period for execution for less than five years.

Chart 3.5 Average Time of Death Row



Source: Prepared by ICJR from data provided by Directorate General of Corrections (Ditjen PAS) updated 8 September 2020



## 3.2. Vulnerable Groups of People on Death Row

### 3.2.1. Women on Death Row

In Indonesia, as previously explained, there are at least 10 women on death row in Indonesia, different from men where the distribution of crimes sentenced to death varies. Women sentenced to death in Indonesia are convicted of the death penalty for only 2 criminal acts, namely narcotics crime and murder. The pattern of women in death row is different from that of men.

In a previous study, the ICJR concluded that there are 3 important aspects of the tendency for women to be caught in the death penalty in narcotics cases in Indonesia and all three cases involved a variety of violations of the right to a fair trial.<sup>30</sup> This is also in line with the findings of Harm Reduction International in 2019 which found the same pattern against women in the vortex of death penalty, especially in narcotics crimes, women tend to be single parents and come from low socio-economic backgrounds.<sup>31</sup>, committed a criminal act under duress. A similar note is also made in the Cornell University report that migrant domestic workers are 'easy targets' for drug trafficking syndicates because they often come from low socioeconomic backgrounds and have poor access to education, often lured by narcotics syndicates, not rarely is involved in a romantic relationship which is a scam.<sup>32</sup>

In 2016, National Commission on Women also issued a report related to women migrant workers sentenced to death who experienced multiple gender-based violence, ranging from poverty, having to migrate abroad to support their dependents, obtaining improper working conditions, and poor access to justice at the time of trial. Based on National Commission on Women's observations, the background of criminal acts committed by women includes criminal acts of narcotics, murder and abortion with a specific gender pattern, namely committing criminal acts because of self-defence against sexual violence, self-defence from physical, psychological, economic violence, committing acts of violence, criminal for being a victim of trafficking in persons and narcotics syndicates or committing a criminal act because of hearing a whisper to have an abortion based on hallucinations.<sup>33</sup>

Unfortunately, the gender aspect is rarely a consideration in adjudicating women's cases, as reported by the Cornell Centre on the Death Penalty Worldwide, that women as defendants receive severe punishment when there is no acknowledgment of how gender and patriarchy aspects influence women to commit crimes. The judicial process in women's cases tends to

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<sup>30</sup> Maidina Rahmawati, *Analyzing Fair Trial Aspect of Death Penalty for Drug Cases in Indonesia Policy and Implementation: Special Cases on Women*, 2019, page. 8-12

<sup>31</sup>[https://www.hri.global/files/2019/12/16/HRI\\_Oxford\\_BriefingPaper\\_March2019\\_ImpactOnWomen\\_2\\_DecemberEdit\\_web.pdf](https://www.hri.global/files/2019/12/16/HRI_Oxford_BriefingPaper_March2019_ImpactOnWomen_2_DecemberEdit_web.pdf)

<sup>32</sup> *Ibid.*

<sup>33</sup> Komnas Perempuan, 2016, *Kematian Berulang; Perjuangan Perempuan Pekerja Migran Terpidana Mati Dan Keluarganya Merebut Hak Hidup*, page. 29-34

ignore other actors who influence women to commit criminal acts.<sup>34</sup> In the Indonesian context, this report also states that in general, the criminal justice system in Indonesia fails to consider gender based violence and other mitigating factors to effectively determine the degree of guilt, coercion or other issues of intent.<sup>35</sup>

The vulnerability of women on death penalty has also received attention from the United Nations which can be seen through the event *75th session of the UN General Assembly Virtual High-Level Side Event "Death penalty and gender dimension – Exploring disadvantage and systemic barriers affecting death sentences"* in September 2020. The High Commissioner for Human Rights calls for the abolition of the death penalty in all conditions. Discussions on the death penalty often ignore the specific obstacles and disadvantages faced by women specifically. Women are brought to trial not only in relation to the crimes they commit, but also on trial because they are considered to have violated their traditional gender roles. Most women are sentenced to death for crimes that do not meet the standards of the most serious crimes that are allowed to impose the death penalty, this is also the case in the Indonesian context, where the majority of women sentenced to death in Indonesia come from narcotics crimes, which do not meet the classification of the most serious crimes. According to the Human Rights Committee, considering gender patterns or gender aspects in death penalty is important to study the discriminatory aspects of the application of death penalty.

The UN Human Rights Committee also emphasized the findings that people sitting in the death row are people who are poor, economically vulnerable, come from ethnic minorities, people with psychosocial problems or intellectual disabilities, foreign nationals, indigenous people or other marginalized groups. The imposition of the death penalty involves discrimination, so its use must be stopped.<sup>36</sup>

While awaiting the death penalty execution, according to National Commission on Women's report, women sentenced to death make suicide attempts, always experience nightmares, often experience torture, and experience illness which is also due to a mental health condition. Women as mothers are far from contact with their families.<sup>37</sup>

### **3.2.2. Elderly Population on Death Row**

The age distribution of those sentenced to death ranged from the youngest is 21 years old and the oldest is 83 years old. The number of people sentenced to death at a young and productive age or the workforce between 21 years and 40 years is almost half of the

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<sup>34</sup> Cornell Center on the Death Penalty Worldwide, 2018, *Judged for More Than Her Crime A Global Overview of Women Facing the Death Penalty*, page. 8

<sup>35</sup> *Ibid.*, page. 26-27

<sup>36</sup> Komite HAM PBB, *75th session of the UN General Assembly Virtual High-Level Side Event "Death penalty and gender dimension – Exploring disadvantage and systemic barriers affecting death sentences"*: Keynote by Michelle Bachelet, UN High Commissioner for Human Rights. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26292&LangID=E>

<sup>37</sup> Komnas Perempuan, *op.cit.* page. 35-37

composition, namely a total of 172 people out of a total of 355 people. Then the second largest composition of death row inmates, namely in the range of 41 years to 50 years, as many as 108 people. Meanwhile, those aged 51 to 60 years reached 54 people. The group of elderly over 60 years was also found as many as 21 people.

The 21 people who belong to the elderly group should not undergo death row period if the safeguards for the person facing the death penalty are respected, either in the amnesty mechanism or the death penalty commutation. In the UN Economic and Social Council Resolution 1986/94, this UN agency encourages countries to provide a compulsory remedy mechanism with the provision of clemency, and also provides an age limit for a person to be sentenced to death or executed.<sup>38</sup>

This also shows the impact that occurs from the absence of a commutation mechanism for people on death row. A person who is convicted of productive age may be detained in a death row, and still wait until he reaches elderly age. In the data from the Ditjen PAS as per 8 September 2020 processed by ICJR, there are 3 people sentenced to death who have been silent in a waiting period of more than 20 years, with 1 person sentenced to death who has been sentenced to death since 1979. In midst of his vulnerable condition, it is not difficult for the state to consider commuting their sentences.

### **3.2.3 Recommendation on Commutation of the Death Penalty for People on Death Row**

Based on the processed data from the Directorate General of Pas per 8 September 2020 and the ICJR Database on the Death Penalty, there are currently 355 people on death row who are currently sitting in a row waiting for execution. Of the 355 people there are 63 people on death row who have been waiting for more than 10 years.

Although Indonesia implemented a de facto moratorium on executions, the death penalty rate was still high in the prosecution and judges' verdicts. This has left problems in the Indonesian criminal justice system where up to now 355 of these people have been sentenced to silence in fear. Those who are sentenced to death who have received support and directly experienced double punishment must stay in detention with great fear. This is exacerbated by the absence of a communication mechanism or a change in punishment for death convicts outside the very subjective presidential clemency mechanism. In that condition, the number of death row inmates will continue to increased and bad conditions will continue to haunt the death row inmates.

In Indonesia, there are several places of detention for death row inmates in numbers of prisons. Blending death row prisoners with other prison members in prison eventually forced

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<sup>38</sup> UN Economic and Social Body, Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty 1989/64

death row inmates to participate in coaching programs that were aimed at socializing prisoners in prison. With that, death convicts also experience shortages of services in prisons.

In the findings of several Civil Society Organizations and academics, it can be seen that bad situations in places of detention experienced by convicts, consisting of:<sup>39</sup> places of detention with poor brightness, excessive use of restraint devices, overcrowding prison conditions, discrimination and bullying, disproportionate abuse, lack of nutrition in food, absence of periodic medical examinations including to a psychologist,<sup>40</sup> limited visiting times, and limited access to books and reading materials.

These situations, combined with the lengthy death row period, can result in a deterioration in the physical and mental health conditions of the people on death row and have the potential to meet the definition of torture if the death row phenomenon<sup>41</sup> can be found.

Death row convicts deserve to be given the opportunity to improve themselves, so far the correction process has been carried out and it was found that many of the death row inmates had experienced positive changes in behaviour.<sup>42</sup> For example, it can be seen how in receiving the Guidance program in prisons, people on death row also produce products and works to be commercialized which can be an indicator of an assessment of the success of a correction process. For example, Merry Jane Veloso and Myuran Sukumaran were sentenced to death. During her waiting period, Merry Jane Veloso managed to sell batik works that were sold by government officials in Indonesia.<sup>43</sup> Myuran Sukumaran in his death row, skillfully uses his imagination for the paintings, which are now on display in Sydney.<sup>44</sup>

On the basis of the concept of a correctional facility with its correction process that has been very painstakingly carried out by correctional officers, the guarantee of a change in sentence

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<sup>39</sup> Carole Berrih, *Tidak Manusiawi: Kondisi Lembaga Pemasyarakatan Bagi Terpidana Mati di Indonesia* (KontraS & ECPM, 2019) page. 92.

<sup>40</sup> Amir Hasan Ramli dan Wiwik Utami, 'Urgensi Penyusunan Model Bimbingan Kesehatan Mental (Mental Hygiene) Selama Menunggu Eksekusi Mati' (2012) *De Jure: Jurnal Hukum dan Syar'iah* Vol. 4, No. 1 <<http://ejournal.uin-malang.ac.id/index.php/syariah/article/view/2157>> diakses 09 Oktober 2020.

<sup>41</sup> Death row phenomenon is the situation experienced by death row inmates due to a combination of too long waiting series in poor detention conditions which can result in the mental and physical health conditions of the death convict. See: Adhigama A. Budiman, Maidina Rahmawati, *Fenomena Deret Tunggu Terpidana Mati di Indonesia*, (ICJR 2020) page. 19.

<sup>42</sup> This question was stated by the Head of the Research and Development Agency (Balitbang) of the Indonesian Ministry of Law and Human Rights at the Webinar on the Launching of the 2020 Death Penalty Report: Phenomenon of the Waiting Series for Death Convicts in Indonesia, 8 October 2020, <https://www.youtube.com/watch?v=zm87WSLimnc>.

<sup>43</sup> Switzy Sabandar, 'Mary Jane Sibuk Penuhi Pesanan Batik' *Liputan6* (Yogyakarta, 13 September 2016) <<https://www.liputan6.com/regional/read/2600300/mary-jane-sibuk-penuhi-pesanan-batik>> diakses 09 Oktober 2020

<sup>44</sup> Ani Nursalikhah, 'Lukisan Terpidana Mati Sukumaran Dipamerkan di Sydney' *Republika* (Sydney, 10 Juni 2017) <<https://www.republika.co.id/berita/internasional/abc-australia-network/17/01/10/ojkcc1366-lukisan-terpidana-mati-sukumaran-dipamerkan-di-sydney>> diakses 09 Oktober 2020

or commutation for death row inmates can be a way out so that the people on death row do not serve two sentences, unlimited imprisonment and execution itself.

#### 4. Indonesians Facing Death Penalty Abroad: Draconian Drug Policies Making Impacts

Data regarding the number of people on death row for Indonesian citizens abroad is difficult to obtain. The latest development, ICJR wrote to the Ministry of Foreign Affairs to send a letter requesting data related to the distribution of Indonesian citizens facing the death penalty abroad. Based on ICJR's correspondence with the Ministry of Foreign Affairs, data was obtained from 2011 to September 2020, there were 496 Indonesian citizens who had been freed from the death penalty, there were 5 people on death row who had undergone execution. Meanwhile, the other 184 Indonesian citizens are each under sentence of death abroad.<sup>45</sup>

Majority of Indonesian citizens under death penalty thereat are in Malaysia, with total 155 Indonesians. Followed by 9 people in Saudi Arabia, 11 people in People's Republic of China, United Arab Emirates (UAE) have 4 Indonesians, 2 Indonesians in Laos, 1 Indonesian in Singapore, 1 Indonesian Myanmar, 1 Indonesian in Vietnam. The distribution of majority of criminal offenses for narcotics cases reached 115 Indonesian citizens who were sentenced to death, while murder case has 64 Indonesians on death row and the rest is unknown. Similar with domestic trends, majority of death row inmates originate from narcotics offenses.

Previously it was known that in November 2019, the Director of Protection for Indonesian Citizens and Legal Entities at the Ministry of Foreign Affairs of the Republic of Indonesia stated that there were 304 Indonesian citizens who the Ministry of Foreign Affairs could exempt from the death penalty,<sup>46</sup> This statement is presented as a form of achievement to protect Indonesian citizens. Furthermore, in July 2020 it was also stated by the Indonesian Ambassador to Saudi Arabia, during 2015-2019 or the first period of Joko Widodo's administration, there were 253 Indonesian citizens who were released from the death penalty.<sup>47</sup> This statement was also given with the spirit of describing the success of saving Indonesian citizens. Hence, the spirit of fighting for humanity to prevent citizens death penalty has been reflected in the spirit of the Indonesian government. It is also known that the majority of Indonesian citizens sentenced to death abroad are caught in narcotics criminal acts, the same as domestic conditions, so respect for fighting for the avoidance of death penalty for Indonesian citizens should also be applied to citizens who are in the country, including those caught in the Narcotics Law which is known to contain problematic formulations.

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<sup>45</sup> E-mail correspondence between ICJR and the Directorate of Protection of Indonesian Citizens, Ministry of Foreign Affairs on 7 October 2020

<sup>46</sup> Berlianto, *Selama 2014-2019, Kemlu Bebaskan 304 WNI dari Hukuman Mati*  
<https://international.sindonews.com/berita/1459756/40/selama-2014-2019-kemlu-bebaskan-304-wni-dari-hukuman-mati>

<sup>47</sup> Statement of the Indonesian Ambassador to Saudi Arabia, Agus Maftuh Abegebriel in "*Eti Binti Toyib, Kisah Pembebasan TKI & Bom Waktu Hukuman Mati*", <https://tirto.id/eti-binti-toyib-kisah-pembebasan-tki-bom-waktu-hukuman-mati-fNYH>

## 5. Death Penalty in the National and Global Policy Discourse

### 5.1. Groundless Discourse on the Death Penalty for Corruption

Commemorating the 2019 International Anti-Corruption Day, the President of the Republic of Indonesia, Joko Widodo stated that if the people want the death penalty for corruptors, the Government can initiate a revision to include this provision in the Draft of Criminal Code (RKUHP) and the Corruption Eradication Law. This statement was later agreed by the Minister of Law and Human Rights, Yasonna Laoly.<sup>48</sup> Not only President Joko Widodo and the Minister of Law and Human Rights and the Coordinating Minister for Political, Legal and Security Affairs (Menkopolhukam) also expressed their open support for the discourse on the death penalty for corruptors.<sup>49</sup> Menkopolhukam also encouraged the inclusion of provisions for the death penalty for corruptors in the Draft of Criminal Code which is still being discussed by the DPR and the Government.<sup>50</sup>

The discourse on the imposition of death penalty for criminals does not stop there. At the start of the Covid-19 pandemic period, the Chairman of the Corruption Eradication Commission (KPK), Firli Bahuri, stated that the KPK would demand the death penalty for corruption offenders in the Covid-19 pandemic handling budget.<sup>51</sup> The death penalty charges against the perpetrators of corruption will later be based on the provisions of Article 2 paragraph (2) of the Corruption Eradication Law, which opens opportunities for the imposition of the death penalty in the event that the corruption is committed in certain circumstances.

The combination of the death penalty against corruptors by law enforcers and the government is of course motivated by the hope of reducing the number of corruption crimes. The deterrence effect that this type of crime is believed to have is believed to be able to help reduce the number of corruptions, which at least in Indonesia has not shown a decline. However, it is clearly questionable whether the death penalty is appropriate to reduce the number of corruptions.

In a research conducted by Jiangnan Zhu in 2012, it was shown that the death penalty imposed on corruptors in China only reduced the frequency of corruption investigations compared to the frequency of corruption. Apart from the very serious threat of corruption in China, the level of corruption does not show a significant decline. Although petty corruption may show a decrease, more and more cases involving “big” players, officials with power, or a

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<sup>48</sup> <https://www.thejakartapost.com/news/2019/12/09/death-for-graft-convicts-possible-if-public-wants-it-jokowi.html>

<sup>49</sup> <https://nasional.tempo.co/read/1282173/Mahfud-md-setuju-koruptor-dihukum-mati>

<sup>50</sup> <https://tirto.id/Mahfud-md-ingin-hukuman-mati-untuk-koruptor-dimasukkan-ke-rkuhp-enkj>

<sup>51</sup> <https://www.cnnindonesia.com/nasional/20200729144658-12-530230/ketua-kpk-ancam-hukum-mati-pelaku-korupsi-dana-covid-19>

group of officials are increasingly being found.<sup>52</sup> Based on the investigation of the 2019 Corruption Perception Index, China, which is still threatening the death penalty for corruptors, is still in the 80th rank with a total score of 41.<sup>53</sup>

If we trace the countries with high CPI 2019, we can see that at least three countries with the highest CPI, Denmark, New Zealand, and Finland, do not contain death penalty as a criminal threat against corruption. Denmark, for example, has abolished death penalty since 1930. New Zealand has also abolished death penalty since 1961. Meanwhile, Finland, along with Denmark and New Zealand, has also abolished death penalty completely in 1972. One of the closest countries is Indonesia and is ranked 4th CPI 2019 with a score of 85, Singapore, also does not recognize the death penalty in its Prevention of Corruption Act.

Although empirical data that shows the relationship between death penalty and corruption figures are not comprehensively available, at least it can be seen that the presence of the death penalty does not automatically reduce the number of corruptions in a country. Even in China, where the death penalty is clearly not just written, there has not been a significant reduction in high-level corruption, which is detrimental to the state. Without the death penalty threatened and imposed, a country can still achieve its anti-corruption ideals maximally, such as in Denmark, New Zealand, Finland, and Singapore.

*Table 5.2 Comparison of Countries, CPI Ranking, and Existence of the Death Penalty for Corruption*

| Country     | Rank CPI | Death Penalty for Corruption in National Law |
|-------------|----------|--|
| Denmark     | 1        | No   |
| New Zealand | 1        | No   |
| Finland     | 3        | No   |
| Singapore   | 4        | No   |
| Sweden      | 4        | No   |
| Switzerland | 4        | No   |
| Norway      | 7        | No   |
| Netherlands | 8        | No   |

<sup>52</sup> Jiangnan Zhu, "Do Severe Penalties Deter Corruption? A Game-Theoretic Analysis of the Chinese Case.", *China Review*, vol. 12, no. 2, 2012, pp. 1–32. JSTOR, [www.jstor.org/stable/23462215](http://www.jstor.org/stable/23462215). accessed on 4 October 2020.

<sup>53</sup> [https://www.transparency.org/files/content/pages/2019\\_CPI\\_Report\\_EN.pdf](https://www.transparency.org/files/content/pages/2019_CPI_Report_EN.pdf)



|                   |            |            |
|-------------------|------------|------------|
| <b>German</b>     | <b>9</b>   | <b>No</b>  |
| <b>Luxembourg</b> | <b>9</b>   | <b>No</b>  |
| <b>China</b>      | <b>80</b>  | <b>Yes</b> |
| <b>Indonesia</b>  | <b>85</b>  | <b>Yes</b> |
| <b>Vietnam</b>    | <b>96</b>  | <b>Yes</b> |
| <b>Laos</b>       | <b>130</b> | <b>Yes</b> |
| <b>Iran</b>       | <b>146</b> | <b>Yes</b> |
| <b>Iraq</b>       | <b>162</b> | <b>Yes</b> |

## **5.2. An “Indonesian Way” of Death Penalty under the Bill of Criminal Code: It Must Be Continuously Supervised**

The debate over the death penalty in Indonesia has prompted a compromise to be made regarding the provisions of the death penalty in the RKUHP, which are currently on hold between the DPR and the Government. The compromise offered in the final draft of the Criminal Code<sup>54</sup> referred to by the Formulating Team as "The Indonesian Way" which introduces the death penalty no longer as a principal crime but as a special punishment for certain crimes stipulated in the Law.<sup>55</sup>

The RKUHP also introduces the imposition of the death penalty with a probationary period of 10 (ten) years, which opens up space for commutation or changes in the type of punishment from death penalty to life imprisonment.<sup>56</sup> Not only that, commutation is also possible if a person has been denied clemency but is not executed for up to 10 (ten) years. With the current conditions, of course the provisions in the RKUHP at least provide a solution to the death row phenomenon in Indonesia.

Unfortunately, although the provision of probation was introduced in the imposition of death penalty, the guarantee of probation was not automatically given to all death convicts. The RKUHP states that a probation period can only be given to those who are expressly stated by the judge in the verdict, to obtain a probation period.<sup>57</sup> This waiting period can only be imposed on those who, according to the judge, meet certain criteria: showing regret and hope for improvement, an insignificant role in a criminal act, and there are reasons to mitigate it.

<sup>54</sup> This paper is prepared based on the draft RKUHP September 2019.

<sup>55</sup> Article 64 letter c RKUHP *draft* September 2019.

<sup>56</sup> Article 100 RKUHP *draft* September 2019.

<sup>57</sup> Article 100 paragraph (2) RKUHP

These three criteria should be the reason for the judge not to impose a death sentence, instead of imposing a death sentence on condition of probation. Once again, in accordance with the principle of death penalty safeguards, the death penalty can only be imposed without any room for doubt by the judge.

In the list of RKUHP issues that will be discussed by the Government and the House of Representative after the cancellation of the September 2019 ratification, the death penalty is not a topic of discussion. On another occasion, the drafter of the RKUHP agreed that there was a change in the formulation regarding the guarantee for probation to become the authority of the judge, but the drafter of the RKUHP stated that he would hear input related to the improvement of the formulation on this communication guarantee.<sup>58</sup>

### **5.3. No Justification for Imposing the Death Penalty under Indonesian Drug Policy**

In accordance with Article 6 paragraph (2) of the Covenant on Civil and Political Rights which has been ratified by Indonesia, it is explained that death penalty can only be applied to the most serious crimes. In General Comment No. 36 of Article 6 of the ICCPR most recently by the Human Rights Committee in 2018 states that the meaning of the term “most serious crimes” must be read strictly, relating only to crimes with extreme consequences, including murder based on intent. Crimes that do not directly produce or are committed with deadly intent, such as narcotics, even though they are serious crimes, are never used as the basis for the imposition of death penalty.

In the Human Rights Committee document, ICCPR participating countries are obliged to review their criminal laws to ensure that the death penalty is not applied to crimes that do not qualify as the most serious crimes.<sup>59</sup> Not only the legality aspect of the crime, death penalty also cannot be applied to crimes whose criminal formulation is not clear, or is vaguely defined which results in subjectivity or discretion-based considerations.<sup>60</sup>

It is clearly stated in the General Comment of the UN Human Rights Committee that narcotics crimes can never be used as justification for the use of death penalty. This was also stated in the Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General in August 2019 which criticized the efforts of countries to introduce the death penalty for narcotics crimes.<sup>61</sup> The same thing was stated by a spokesperson for the United Nations Office on Drugs and Crime

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<sup>58</sup> This statement was conveyed by a member of the RKUHP’s Committee, Arsul Sani during a Webinar on the Launching of the 2020 Death Penalty Report: Phenomenon of the Waiting Series for Death Convicts in Indonesia, 8 October 2020, <https://www.youtube.com/watch?v=zm87WSLimnc>

<sup>59</sup> General comment No. 36, paraChart 35-37, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf)

<sup>60</sup> General comment No. 36, paraChart 38, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf)

<sup>61</sup> Human Rights Council, *Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*, Forty-second session 9–27 September 2019

(UNODC) who in June 2019 stated that 3 international conventions on the control of narcotics which are the embryo of the narcotics control system in every country - including Indonesia, cannot be used. justification for the use of the death penalty for narcotics-related crimes. The UNODC spokesperson also stated that the application of the death penalty also hindered international cooperation to eradicate the trafficking of narcotics, given the fact that many countries do not allow information exchange and extradition with countries that impose death penalty for narcotics crimes. UNODC stated that the use of death penalty is not the right solution to provide protection for many people. UNODC urges States parties to narcotics control conventions to comply with their commitments to promote a balanced human rights-based approach to drug control.<sup>62</sup>

During 2019-2020, several countries conducted a review of the death penalty for narcotics crimes. The government of Saudi Arabia, which is known as a country that actively carries out the execution of the death penalty in August 2020, is considering ending the use of the death penalty for narcotics-related crimes. The government of Saudi Arabia is in the process of revising the death penalty for narcotics crimes and hopes the decision to abolish the death penalty for narcotics crimes will be produced in the near future and is in the process of being discussed within the government.<sup>63</sup> The Malaysian government through its prime minister's statement in February 2020 also stated that it would amend the mandatory death penalty provisions for narcotics crimes on the grounds that the death penalty was too cruel and had no impact on narcotics control,<sup>64</sup> abolition will also be carried out not only for narcotics policies, but in mandatory death penalty provisions<sup>65</sup>.

It should be noted that Indonesia is a participant country in both the ICCPR and 3 conventions on controlling narcotics. In its obligation to undergo ICCPR, Indonesia must constantly review its death penalty policy. The death penalty cannot be applied to crimes which are not regulated as crimes committed with the intention of killing or resulting in direct consequences for death, nor can they be regulated for crimes with unclear formulations. The international convention on narcotics which underlies the narcotics policy in Indonesia has stated that there is no justification for the death penalty. In the framework of narcotics policy through Law no. 35/2009 is also problematic in formulation, the element of intention is not regulated and clarity of norms is also problematic, there is no other way, Indonesia must abolish death penalty for crimes related to narcotics.

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<sup>62</sup> <https://www.unodc.org/unodc/en/press/releases/2019/June/statement-attributable-to-the-unodc-spokesperson-on-the-use-of-the-death-penalty.html>

<sup>63</sup> [https://www.washingtonpost.com/world/middle\\_east/saudi-arabia-executions-mbs/2020/08/26/b6488bb4-e314-11ea-82d8-5e55d47e90ca\\_story.html](https://www.washingtonpost.com/world/middle_east/saudi-arabia-executions-mbs/2020/08/26/b6488bb4-e314-11ea-82d8-5e55d47e90ca_story.html)

<sup>64</sup> <https://www.nst.com.my/news/nation/2020/02/566757/government-review-drug-laws-says-pm>

<sup>65</sup> [https://www.washingtonpost.com/world/asia\\_pacific/a-country-with-a-growing-death-row-reconsiders-its-future-with-capital-punishment/2019/12/30/6037ecd0-0c26-11ea-8054-289aef6e38a3\\_story.html](https://www.washingtonpost.com/world/asia_pacific/a-country-with-a-growing-death-row-reconsiders-its-future-with-capital-punishment/2019/12/30/6037ecd0-0c26-11ea-8054-289aef6e38a3_story.html)

## **6. Recommendation**

Regarding the situation of the 2020 death penalty policy in Indonesia, the ICJR recommends several points which are targeted to particular stakeholders as follows: the Government, Government and DPR, Supreme Court and state institutions that are members of the national anti-torture prevention mechanism.

### **Recommendation for Government:**

1. Urge the Attorney General to stop prosecution of the death penalty, especially during the emergency Covid-19 pandemic, because there is room for potential violations of the right to a fair trial in a pandemic situation that requires online trials;
2. To evaluate the application of the death penalty in Indonesia which is then followed by a moratorium on the prosecution of the death penalty;
3. Not ordering the execution of death, because there is a possibility of implementing a new mechanism under the Draft Criminal Code (RKUHP), thus ensuring a commitment from the government to moderate the death penalty; and
4. Decided to change sentences or commutations for at least 63 people sentenced to death who have been on death row for more than ten years;

### **Recommendation for Government and House of Representatives (DPR):**

1. The DPR urges the Government to issue a commutation policy or a change in sentences for people on death row, at least for the 63 people on death row who have been sitting on the row for more than ten years;
2. The DPR and the Government ensure that there is room for an inclusive RKUHP discussion including discussion of the formulation of the death penalty, to ensure that the middle ground for death penalty is formulated in the RKUHP; and
3. Reopening the discussion of the Draft Criminal Procedure Code (RKUHAP) to overcome the problem of regulatory weakness that opens opportunities for violations of the principles of criminal law and criminal procedure law, especially in cases which are punishable by death.

### **Recommendation for Supreme Court:**

1. The Supreme Court has implemented a moratorium on the imposition of death penalty by prioritizing other types of punishment in examining criminal cases,

because there is room for potential violations of the right to a fair trial in a pandemic situation that requires online trial; and

2. To revoke SEMA 7/2014 which has an impact on the limited constitutional rights of people on death row to apply for a judicial case review (PK/ *peninjauan kembali*). As well as asking the Supreme Court to evaluate SEMA 1/2012 which has limited access to people on death row to apply for PK. In line with the request for a moratorium on the prosecution of the death penalty, we ask the Supreme Court to also implement a moratorium on the imposition of death penalty.

**State Institutions under the National Anti-Torture Prevention Mechanism (National Commission on Human Rights, National Commission on Women, Indonesian Child Protection Commission, Ombudsman RI and Witness and Victims Protection Agency)**

1. Activating a monitoring mechanism in places of detention to see the conditions of the people on death row, especially in the context of preventing torture; and
2. Activating the monitoring mechanism in places of detention for people on death row, particularly the availability of adequate health facilities during the pandemic period.

## Authors Profile

**Erasmus A.T. Napitupulu**, currently works as a researcher at the ICJR. He is active in advocating several regulations and national legal issues, including the Draft of Criminal Procedure Code and the Draft of Criminal Code. Previously, he conducted research with ICJR on the issue of narcotics in juvenile court decisions (2013) and the application of narcotics policies for users in the Supreme Court decision (2013).

**Adhigama Andre Budiman**, currently works as a researcher at the Institute for Criminal Justice Reform (ICJR). Completed his Master's program from Justus-Liebig University. He is active in advocating the issue of death sentence, children's rights, and human trafficking.

**Ajeng Gandini Kamilah**, a graduate from the Faculty of Law, Universitas Padjajaran (Bandung) who currently works as a part-time researcher at the Institute for Criminal Justice Reform (ICJR). She is actively involved in advocating various criminal justice policies in Indonesia, starting from the Draft of Criminal Code, the Draft of Criminal Procedure Code, and the Draft of Law on Elimination of Sexual Violence.

**Genoveva Alicia K. S. Maya**, a graduate from the Faculty of Law, Universitas Gadjah Mada, had worked as a volunteer at the Rifka Annisa Women Crisis Center Yogyakarta, and currently working at ICJR as a researcher.

**Iftitahsari**, pursued a law degree from Universitas Gadjah Mada, then completed her master's degree in Crime and Criminal Justice at Leiden University, The Netherlands, currently working as a researcher at ICJR.

**Maidina Rahmawati**, graduated from the Faculty of Law, Universitas Indonesia in 2016 who is currently working as a researcher at the Institute for Criminal Justice Reform (ICJR). Since May 2016 she has been active in advocating several regulations related to sexual violence and fair criminal justice for women.

## ICJR Profile

Institute for Criminal Justice Reform, abbreviated as ICJR, is an independent research institution that focuses on criminal law reform, criminal justice system reform, and general legal reform in Indonesia.

One of the crucial problems facing Indonesia during the current transition period is reforming the law and its criminal justice system toward more democratic direction. In the past, criminal law and criminal justice were more used as a means of supporting authoritarian power, beside used as social engineering purposes. Now is the time for the orientation and instrumentation of criminal law from a tool of authoritarian move towards a pillar for the operation of a democratic political system that respects human rights. These are the challenges faced in the context of restructuring criminal law and criminal justice in the current transitional period.

To answer those challenges, a planned and systematic effort is needed to answer these new challenges. A grand design for reform of the criminal justice system and law in general must be initiated. The criminal justice system as it is known have a very strategic place in the framework of building the Rule of Law and respect for human rights. Because democracy can only function properly if there is institutionalization of the concept of the Rule of Law. Reform of the criminal justice system which is oriented towards protecting human rights is a “*conditio sine quo non*” with the process of institutionalizing democratization in the current transitional period.

Steps in transforming the law and criminal justice system to make it more effective are currently underway. But this effort needs to have wider support. The Institute for Criminal Justice Reform (ICJR) is trying to take the initiative to support these steps. Providing support in the context of building respect for the Rule of Law and simultaneously building a culture of human rights in the criminal justice system. This is the reason for the ICJR's presence.

**Secretariat:** Jl. Komplek Departemen Kesehatan Nomor B-4, Pasar Minggu, South Jakarta – 12520

**Phone/Fax:** 02127807065

**Email:** [infoicjr@icjr.or.id](mailto:infoicjr@icjr.or.id)



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