



INSTITUTE FOR
CRIMINAL JUSTICE
REFORM



2021 INDONESIA DEATH PENALTY REPORT

**DOUBLE UNCERTAINTY:
CALLING FOR THE ASSURANCE OF COMMUTATIONS IN
THE DEATH PENALTY CASES**

Situation Report on Death Penalty Policies in Indonesia of 2021 “Double Uncertainty: Calling for the Assurance of Commutations in the Death Penalty Cases”

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Foreword

Happy New Year 2022!

ICJR welcome the new chapter in 2022 by publishing an annual report on death penalty cases that have been collected throughout 2021. To the present, ICJR has consistently reported on the development of the situation related to the application of the death penalty every year since 2016 as part of our commitment to advocate the abolition of the death penalty in Indonesia.

The spirit of our determination for the total abolition of the death penalty is reflected in the Draft of Criminal Code (RKUHP) which has been included in the National Legislation Program. The RKUHP stipulates that there will be a middle ground between abolitionists and retentionists in terms of regulating the death penalty in Indonesia, namely through the opportunity for death row convicts to be granted with the commutation or change of sentence from the death penalty to life imprisonment if during the ten-year probation period the death row convicts show a good attitude.

However, in its development, the current situation of death row convicts in the execution waiting list remains unclear. Many of the death row inmates have even been listed in the execution waiting list for more than ten years. This report elaborates the impact of the absence of a moratorium on the death penalty in the Indonesian criminal justice system, resulting in an increasing number of death row convicts.

ICJR issues the situation report on the death penalty policies to remind the Indonesian government of its commitment to consider a moratorium on the death penalty, and ultimately, the abolition of the death penalty in Indonesia, and to provides the developments on the number and situation of death row convicts in Indonesia every year. The commitments that have submitted in cycle 3 of the Universal Periodic Review mechanism from the UN human rights body will be re-examined in 2022. The Government of Indonesia must be able to provide the accountability aspect for its commitments that has been submitted in 2017.

Jakarta, January 27th, 2022

Erasmus A. T. Napitupulu
Executive Director of ICJR

1. Track Record of Statements from Government Officials on the Death Penalty

"These two former ministers (Edhy Prabowo and Juliari Batubara) committed corruption which were later exposed through Corruption Eradication Commission (KPK)'s arrest operation. In my opinion, they deserve to be prosecuted under Article 2 Paragraph 2 of the Corruption Law, which is punishable by death penalty."¹ - **Prof. Dr. Edward Omar Sharif Hiariej, S.H., M.Hum.**, Vice of Minister of Law and Human Rights.

February 16th, 2021

"On one hand, they are not fundamentally ideological, but then again, if you ask me, it is ambiguous for me. If I am being honest, I echo what Singapore did, the punishment for corruptors is not death penalty, but their social existence should be shut down."² - **Agus Rahardjo**, Former Deputy Chairperson of Corruption Eradication Commission (KPK)

February 21st, 2021

"National Commission on Human Rights (Komnas HAM) from the beginning did not agree with the death penalty, because for us, the right to life is an absolute right of a human being, various UN studies have concluded that there is no correlation between the eradication of criminal acts and the death penalty. Although Article 6 paragraph 2 in the International Covenant on Civil and Political Rights (ICCPR) still justifies the application of death penalty, it is only applied to the most serious crimes, i.e., gross violations of human rights, genocide, crimes against humanity, war crimes and aggression, and does not include corruption. The UN Human Rights Council Resolution also encourages the abolition of the death penalty. Currently, there are only a few countries that still apply the death penalty, including our country, Indonesia

"³ – **Ahmad Taufan Damanik**, Head of National Commission on Human Rights (Komnas HAM) period of 2017-2022

March 12th, 2021

¹ Rinaldo, 'HEADLINE: Pemerintah Usul Hukuman Mati Koruptor, Efektif jadi Penggantarjeraan Korupsi?' *Liputan6* (February 19th, 2021) <https://www.liputan6.com/news/read/4486755/headline-pemerintah-usul-hukuman-mati-koruptor-efektif-jadi-penggantarjeraan-korupsi> accessed on December 1st, 2021

² Bangun Santoso, Novian Ardiansyah, 'Bukan Mati, Ini Hukuman Paling Pas untuk Koruptor Menurut Eks Ketua KPK' *Suara* (February 21st, 2021) <https://www.suara.com/news/2021/02/21/111632/bukan-mati-ini-hukuman-paling-pas-untuk-koruptor-menurut-eks-ketua-kpk> accessed on December 1st, 2021

³ 'Komnas HAM: Hukuman Mati Bukan Solusi Pemberantasan Korupsi' (*Komnas HAM*, March 12th, 2021) <https://www.komnasham.go.id/index.php/news/2021/3/12/1709/komnas-ham-hukuman-mati-bukan-solusi-pemberantasan-korupsi.html> accessed on December 1st, 2021

"There is no deterrent effect even with the implementation of death penalty, let alone we abolish death penalty, then there will be no room for deterrence at all."⁴ - **Arsul Sani**, Deputy Chairperson of the People's Consultative Assembly of the Republic of Indonesia (MPR RI)/Member of Commission III of the House of Representatives of the Republic of Indonesia (DPR RI)

October 29th, 2021

"Indonesia should have completely abolished the death penalty. If the government continues to apply the death penalty it should be accompanied by some restrictions. The death penalty cannot be applied except for the most serious crimes, such as premeditated, systematic and widespread murder. Second, there is a guarantee of a fair examination process and trial."⁵ - **Sandra Moniaga**, Commissioner of National Commission on Human Rights (Komnas HAM)

November 3rd, 2021

"The death penalty for corruptors is not the most appropriate option if it is not accompanied by certain conditions. Observing the status of the Jiwasraya and Asabri corruption cases as state-owned enterprises (BUMN) that involved in corruption act, the country is not in a state of economic crisis and military emergency, but the country is in a stable state, so the legal logic is not right."⁶ - **Hasnu**, Deputy Secretary General at the Department of Politic, Law, and Security of Indonesian Moslem Student Movement (PB PMII)

November 9th, 2021

"Considering that corruption cases have yet to show any signs of disappearing and in fact they are increasing in number; thus, it is appropriate for us to carry out various kinds of legal breakthroughs as a form of effort to eradicate corruption,"⁷ - **ST Burhanuddin**, Attorney General of the Republic of Indonesia

November 18th, 2021

⁴ Mohammad Arief Hidayat, 'Firli Bahuri: Insan KPK Sepakat Pelaku Korupsi Harus Dihukum Mati' Viva (November 25th, 2021) <https://www.viva.co.id/berita/nasional/1426340-firli-bahuri-insan-kpk-sepakat-pelaku-korupsi-harus-dihukum-mati> accessed on December 1st, 2021

⁵ 'Komnas HAM RI Soroti Fenomena Hukuman Mati yang Inkonstitusional' (Komnas HAM, November 4th, 2021) <https://www.komnasham.go.id/index.php/news/2021/11/4/1975/komnas-ham-ri-soroti-fenomena-hukuman-mati-yang-inkonstitusional.html> accessed on December 1st, 2021

⁶ Arief Ikhsanudin, 'PB PMII Tak Setuju dengan Wacana Jaksa Agung soal Hukuman Mati ke Koruptor' Detiknews (November 9th, 2021) <https://news.detik.com/berita/d-5804168/pb-pmii-tak-setuju-dengan-wacana-jaksa-agung-soal-hukuman-mati-ke-koruptor> accessed on December 1st, 2021

⁷ Erick Tanjung, 'Ditolak Pegiat HAM, Jaksa Agung Bersikukuh Terapkan Hukuman Mati Koruptor' Suara (November 19th, 2021) <https://www.suara.com/news/2021/11/19/000500/ditolak-pegiat-ham-jaksa-agung-bersikukuh-terapkan-hukuman-mati-koruptor?page=all> accessed on December 1st, 2021

*"Of course, we cannot accept the rejection from the human rights activists. As long as the constitution provides juridical basis and the crime is very detrimental to the nation and state, then there is no reason for us not to apply the death penalty."*⁸ - **ST Burhanuddin**, Attorney General of the Republic of Indonesia

November 18th, 2021

*"Since we are still on gimmick, it shall be proved first and then we will see, if we are still in this situation like now then we can take sides on the issues of the death penalty, maybe in future only certain people which are sentenced to death"*⁹ - **Saut Situmorang**, Former Deputy Chairperson of the Corruption Eradication Commission (KPK)

November 19th, 2021

*"All members of the KPK, all children of the nation, may agree that the perpetrators of corruption should be sentenced to death. However, under Law Number 31/1999, out of 30 forms and types of corruption crimes, only one type of crime, i.e., corruption which can be punished with the death penalty."*¹⁰ - **Firli Bahuri**, Chairman of the Corruption Eradication Commission (KPK)

November 24th, 2021

*"I emphasize that the idea of punishing corruptors with death penalty is a manifestation of indecision on eradicating corruption, why thousands corruption cases have been exposed and thousands of perpetrators of corruption have been prosecuted, but the quality and level of state losses have actually increased."*¹¹ - **ST Burhanuddin**, Attorney General of the Republic of Indonesia

November 25th, 2021

⁸ *Ibid.*

⁹ Julkifli Sinuhaji, 'Eks Wakil Ketua KPK Saut Situmorang Sebut Jokowi Cuma Gimmick soal Hukuman Mati Bagi Koruptor' *PikiranRakyat* (November 20th, 2021) <https://www.pikiran-rakyat.com/nasional/pr-013058149/eks-wakil-ketua-kpk-saut-situmorang-sebut-jokowi-cuma-gimmick-soal-hukuman-mati-bagi-koruptor> accessed on December 1st, 2021

¹⁰ Mohammad Arief Hidayat, *op.cit.*

¹¹ 'Jaksa Agung: Pidana Mati Koruptor Perlu untuk Perlindungan HAM' *Detiknews* (November 25th, 2021) https://news.detik.com/berita/d-5826633/jaksa-agung-pidana-mati-koruptor-perlu-untuk-perlindungan-ham?_ga=2.70271696.1127547563.1638346914-1751832131.1579893258 accessed on December 1st, 2021

*"It is a law breakthrough by imposing death penalty in the prosecution process, I hope, it can also be followed up with judges' breakthroughs in deciding a corruption case,"*¹² - **ST Burhanuddin**, Attorney General of the Republic of Indonesia

November 25th, 2021

*"On the death penalty for corruptors, I personally support it, but of course it must go through a clear mechanism. Not all corruption must be punished with the death penalty. If the case is really serious and the state losses are enormous, then the death penalty option can be considered. So, it needs to be adjusted with the relevant case"*¹³ - **Ahmad Sahroni**, Deputy Chairman of Commission III of the House of Representatives of the Republic of Indonesia (DPR RI)

November 26th, 2021

*"We support the idea and plan of the Attorney General to demand the death penalty for corruptors, especially in corruption cases that have a wide impact and cause a lot of loss to state finances, such as the cases of PT ASABRI and PT Jiwasraya."*¹⁴ – **M. Laili**, Coordinator of Aliansi Masyarakat Peduli Adhyaksa (AMPAD)

November 26th, 2021

*"The important matter is whether the death penalty is effective or not to have a deterrent effect on the perpetrators. Because even though there are legal basis, up until now the relevant article regarding the death penalty has never actually been used,"*¹⁵ - **Ahmad Sahroni**, Deputy Chairman of Commission III of the House of Representatives of the Republic of Indonesia (DPR RI)

November 26th, 2021

"So what about corruption and the death penalty? there is nothing except for purely practical political purposes. Eradicating corruption should not use the death penalty, but ensuring that every process of

¹² Muhammad Hafil, 'Jaksa Agung Harap Hakim Pertimbangkan Hukuman Mati Koruptor' *Republika* (November 25th, 2021) <https://republika.co.id/berita/r347i6430/jaksa-agung-harap-hakim-pertimbangkan-hukuman-mati-koruptor> accessed on December 1st, 2021

¹³ Arie Dwi Satrio, 'Wacana Hukuman Mati Bagi Koruptor Didukung Komisi III DPR' *Okezone* (November 26th, 2021) <https://www.okezone.com/tren/read/2021/11/26/620/2507674/wacana-hukuman-mati-bagi-koruptor-didukung-komisi-iii-dpr> accessed on December 1st, 2021

¹⁴ M Sholahadhin Azhar, '1,6 Juta Orang Disuntik Vaksin hingga Usulan Hukuman Mati Koruptor Didukung' *Medcom* (November 27th, 2021) <https://www.medcom.id/nasional/peristiwa/zNAp4r8K-1-6-juta-orang-disuntik-vaksin-hingga-usulan-hukuman-mati-koruptor-didukung> accessed on December 1st, 2021

¹⁵ 'Wacana Hukuman Mati Koruptor, Crazy Rich Tanjung Priok Bilang...' *Warta Ekonomi* (November 26th, 2021) <https://wartaekonomi.co.id/read376987/wacana-hukuman-mati-koruptor-crazy-rich-tanjung-priok-bilang> accessed on December 1st, 2021

*state governance is carried out in a transparent and accountable manner,”*¹⁶ - **Choirul Anam**, Commissioner for Monitoring and Investigation of National Commission on Human Rights (Komnas HAM)

November 28th, 2021

*“Even though there have been executions of death penalty, drugs (crimes) are still going on. Take a look at the United States, where a lot of people are sentenced to death. In their region, crime rates remain higher than in Europe where the death penalty is not enforced. I admit it's not effective”*¹⁷ –

Yasonna H. Laoly, Minister of Law and Human Rights of the Republic of Indonesia

December 1st, 2021

*“The imposition of the death penalty for the corruption convicts aims to create a deterrent effect as well as a preventive effort for law enforcement in corruption cases”*¹⁸ – **ST Burhanuddin**, Attorney General of the Republic of Indonesia

December 16th, 2021

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

ICJR annually monitors and collects data related to death penalty cases, i.e., every criminal case that is charged with death penalty and/or sentenced to death, either at the first level, appeal, cassation, or case review (*Peninjauan Kembali*). The data is managed in the ICJR internal database, which was last updated as of January 11th, 2022. The sources of the ICJR internal database used in this report are the data collected through the Case Search Information System (SIPP) website of all District Courts in Indonesia, the website of the Supreme Court Decision Directory, data from the Directorate General of Corrections at the Ministry of Law and Human Rights and media reports.

¹⁶ Muhammad Ridwan, ‘Komnas HAM Bilang Penerapan Hukuman Mati Bagi Koruptor Tak Efektif’ *JawaPos* (November 28th, 2021) <https://www.jawapos.com/nasional/28/11/2021/komnas-ham-bilang-penerapan-hukuman-mati-bagi-koruptor-tak-efektif/> accessed on December 1st, 2021

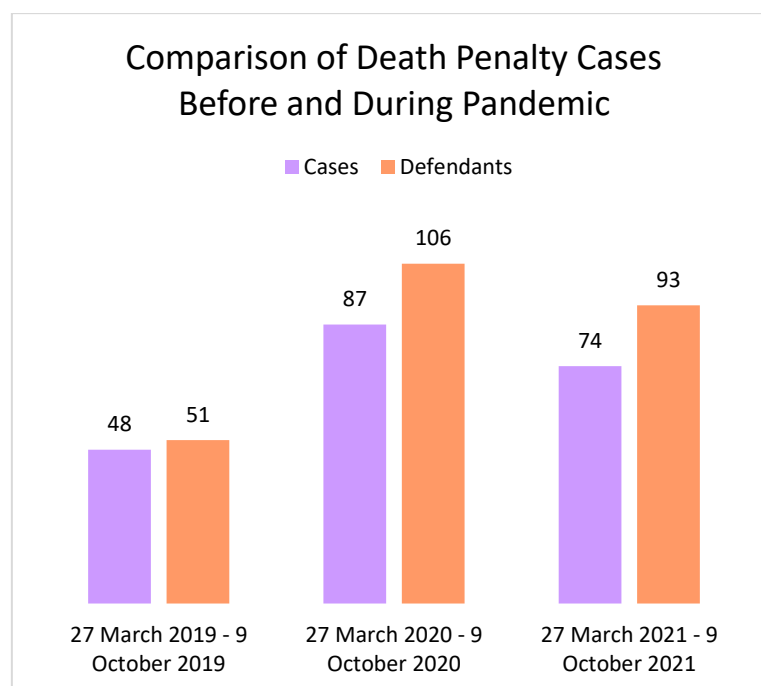
¹⁷ Dian Dewi Purnamasari, Susana Rita Kumalasanti, Nikolaus Harbowo, ‘Jalan Tengah Diterapkannya Hukuman Mati, RKUHP Berikan Harapan Pengampunan’, *Kompas.com* (December 6th, 2021), <https://www.kompas.id/baca/polhuk/2021/12/06/jalan-tengah-diterapkannya-hukuman-mati-rkuhp-berikan-harapan-pengampunan>, accessed on January 22nd, 2022

¹⁸ Muhammad Hafil, ‘Jaksa Agung: Hukuman Mati Cegah Kasus ASABRI Terulang’ *Republika* (December 16th, 2021) <https://republika.co.id/berita/r471gm430/jaksa-agung-hukuman-mati-cegah-kasus-asabri-terulang> accessed on December 1st, 2021

Throughout 2021, ICJR found 146 death penalty cases with 171 defendants. These collected figures show a downward trend from the number of death penalty cases in the first year of the 2020 pandemic, with 173 cases (-15.6%) with 210 defendants (-18.6%).¹⁹

This year report also compared the number of death penalty cases before and during the pandemic. Graph 1 shows a comparison of death penalty cases in the same period per year, i.e., cases recorded at the time the judgment was given by the court in the first level between March 27th to October 9th. Based on the data for such period, although it does not show an increasing trend from 2020, the death penalty cases in 2021 still show a higher number comparing with the recorded cases before the pandemic in 2019. The total court judgments in death penalty cases in the first level proceeding within the period of March 27th, 2021 to October 9th, 2021 were 74 cases with 93 defendants. If it is added to the cases where the judgments were issued at the appeal and cassation levels within the same period, then there is an increase up to 85 cases with 109 defendants.

Graph 1. Comparison of Death Penalty Cases Before and During the Pandemic



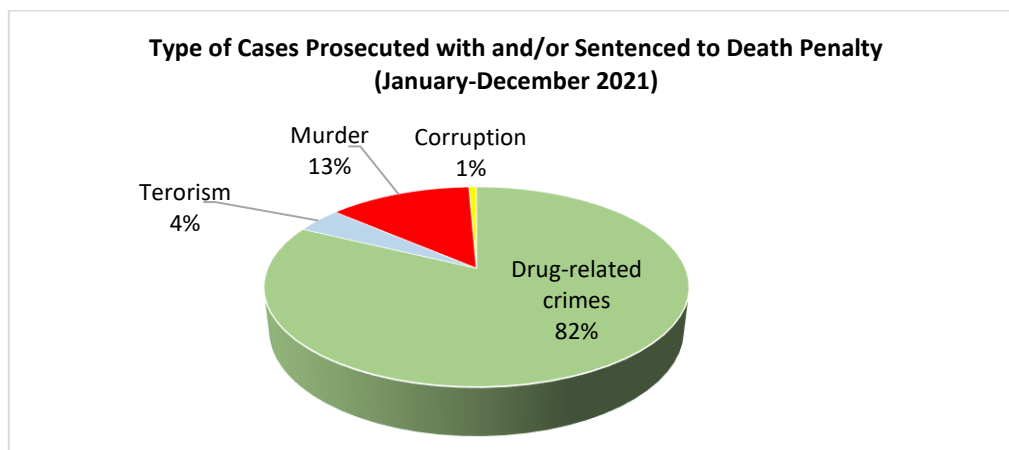
Source: ICJR internal database updated on January 11th, 2022

In general, the trend of death penalty cases is still dominated by narcotics-related crimes, the same as in previous years. The details of the cases are as follows: 120 narcotics cases (82%), 6 terrorism cases

¹⁹ Adhigama Andre Budiman, *et. al.*, 2020, *2020 Indonesian Death Penalty Report: Taking Lives During Pandemic*, Jakarta, Institute for Criminal Justice Reform, page 13. (Document can be accessed through: <https://icjr.or.id/wp-content/uploads/2020/12/Death-Penalty-Report-ICJR-2020.pdf>)

(4%), 1 corruption case (1%), and 19 crimes against persons (13%). The crimes against persons consist of 13 cases of premeditated murder, 1 case of premeditated murder and theft, 2 cases of child rape resulting in death, 2 cases of premeditated murder and child rape, 1 case of premeditated murder and violence against children resulting in death. Meanwhile, ICJR found 1 corruption case for a defendant namely Heru Hidayat who was charged with death penalty. This was the first death penalty case given for a corruption case recorded in the ICJR internal database.

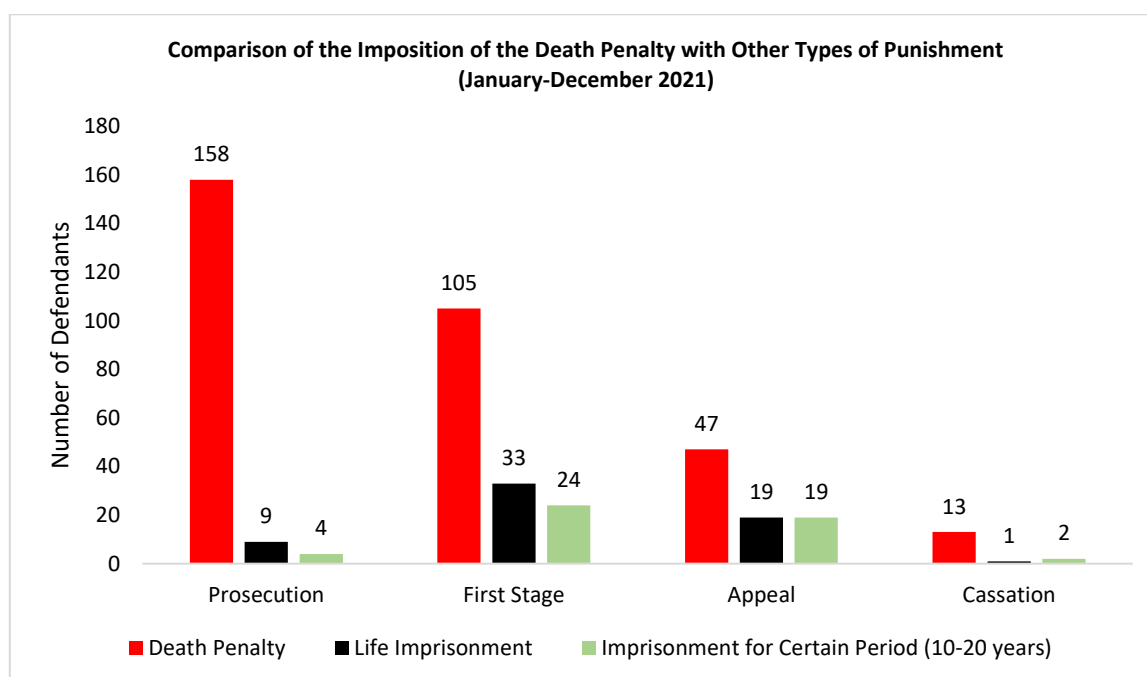
Graph 2. Type of Cases Prosecuted with and/or Sentenced to Death Penalty Throughout 2021



Source: ICJR internal database updated on January 11th, 2022

Based on ICJR internal database, there are 158 defendants who were sentenced to death which 105 defendants who were sentenced to death in the judgment of the first stage proceeding. In addition, there are 47 defendants and 13 defendants who were sentenced to death, at the appeal level and at the cassation level respectively. Death penalty sentences were granted at both levels where the judges either confirmed the court's decision at the previous level, rejected a cassation request, or changed the previous sentences that was other than death penalty.

Graph 3. Comparison of the Imposition of the Death Penalty with Other Types of Punishment Throughout 2021

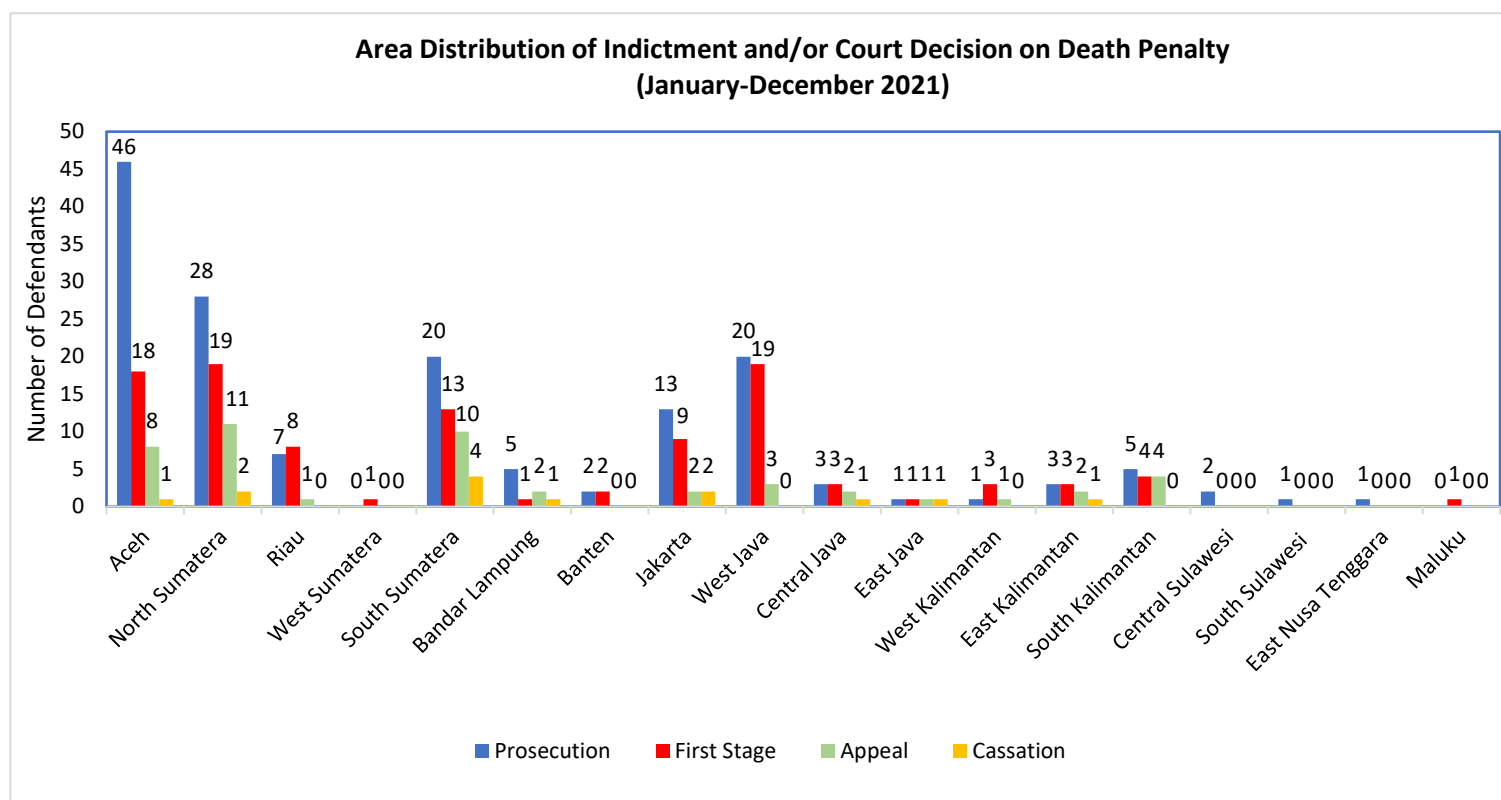


Source: ICJR internal database updated on January 11th, 2022

In 2021, there was an interesting death penalty case where the judge at the first level decided to acquit the defendant who was previously charged with the death penalty by the public prosecutor in a narcotics case, registered as Rajali Usman case with the case number 164/Pid.Sus/2021/PN Idi. The judges at the Idi District Court in their decision stated that the defendant, Rajali Usman, had no intention of committing a unlawful act related to the illicit trafficking of narcotics and only played a role in finding a vehicle for the main perpetrator without knowing the its purpose which later turned out to be used to transport narcotics.²⁰ The case is still not legally binding because the prosecutor is currently pursuing an appeal. However, this shows that the case of the death penalty in the practice of criminal justice in Indonesia is so ironic that the death penalty can be so easily imposed and is not built within the framework of "beyond reasonable doubt". As such, it has the potential to result in a great disparity between prosecution for the death penalty and not guilty verdict.

²⁰ Idi District Court Decision Number 164/Pid.Sus/2021/PN Idi, page. 31.

Graph 4. Area Distribution of Indictment and/or Court Decision on Death Penalty



Source: ICJR internal database updated on January 11th, 2022

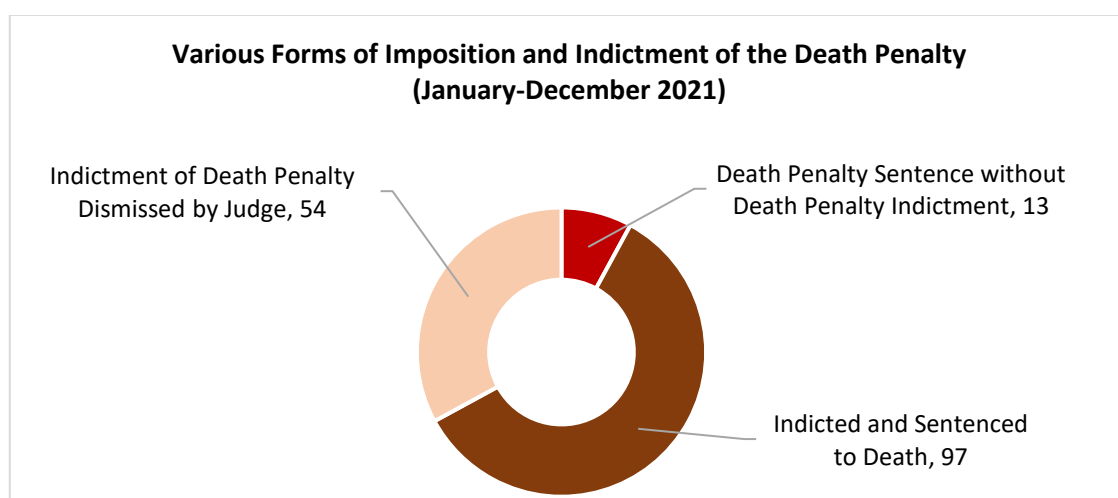
In national scale, death penalty cases are found in 18 regions out of 33 provinces. Most of cases of death penalty are identified in Sumatera Island region, particularly Aceh and North Sumatera with the highest death penalty indictments. Aceh Province has a total number of death penalty indictments against 46 defendants, which is 60% higher compared to North Sumatera with 28 defendants as the province with the second highest number of death penalty indictments. As such, Aceh and North Sumatra have the highest number of death penalty judgments granted by the judges either through judgments at the first stage, appeal, and cassation level in total of 27 and 32 defendants respectively. Furthermore, a quite high number of death penalty indictments and death sentence are also identified in South Sumatera Province, with a total of 20 defendants being prosecuted and a total of 27 court judgments.

While on Java Island region, death penalty cases were identified in 5 provinces, i.e., Banten, Jakarta, West Java, Central Java, and East Java. The provinces of Jakarta and West Java recorded the highest number of indictments of the death penalty, which charged against 13 and 20 defendants respectively.

The two highest numbers of court judgment on death penalty in Java Island were also identified in both regions in total of 13 and 22 defendants, respectively.

In other areas, such as in Kalimantan Island, death penalty cases are identified only in 3 provinces, i.e., West Kalimantan, East Kalimantan, and South Kalimantan with a total of indictments and court judgement of at most 5 defendants. Meanwhile, death penalty cases in eastern Indonesia were only identified in South Sulawesi, Central Sulawesi, East Nusa Tenggara, and Maluku, where the indictments and court judgments only charged to around 1-2 defendants.

Graph 5. Various Forms of Imposition and Indictment of the Death Penalty Throughout 2021



Source: ICJR internal database updated on January 11th, 2022

Throughout 2021, there were 54 defendants who were indicted with the death penalty but were not granted by the judge at the first instance, appeal, or cassation. The opposite phenomenon was also found, in which 13 defendants were sentenced to death by the judge without previously being charged with the death penalty by the prosecutor. However, the most common trend is in cases where the death penalty demands were granted by the judge, against as many as 97 defendants. While the remaining 7 defendants out of a total of 171 defendants are still in the prosecution process as of the latest data updated on January 11th, 2022.

On the other hand, there are at least 10 district courts listed below in which death penalty cases have been found for the first time in 2021 based on ICJR internal database:

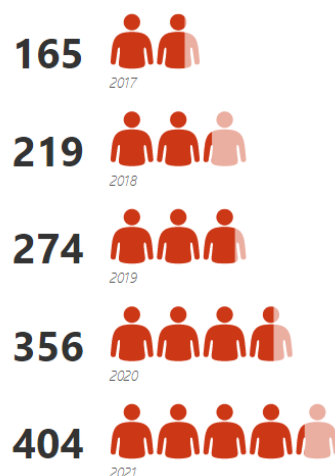
1. Jantho District Court
2. Tenggara District Court

3. Langsa District Court
4. Pangkalan Balai District Court
5. Pelalawan District Court
6. Saumlaki District Court
7. Singkawang District Court
8. Rembang District Court
9. Central Jakarta Special District Court for Corruption Cases
10. Oelamasi District Court

3. The Problem of People on Death Row in Indonesia

In 2021, Indonesia has an increase of 49 people on death row from the previous year. Based on ICJR's periodic monitoring, in 2020 there were 355 people on death row waiting for execution. Meanwhile, in 2021, according to data from the Directorate General of Corrections per 29 November 2021, there are 404 people on death row, so there was an increase of 13%.

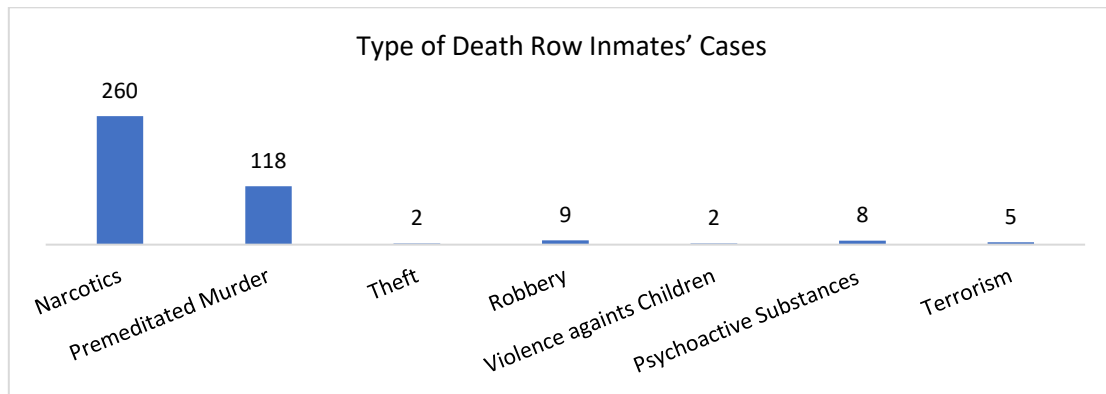
Graph 6. Comparison of the Numbers of People on Death Row from 2017 to 2021



Source: Data from the Directorate General of Corrections prepared by ICJR

Based on the type of crime, the trend of imposing the death penalty for narcotics-related crimes still hold the first rank in comparison with other forms of crime. Based on data from the Directorate General of Corrections in 2021, 260 people on death row (66%) were involved in Narcotics and Psychotropic cases, and 118 people (29%) were involved in murder cases. These two types of crimes dominate the background of people on death row who are currently waiting for execution compared to other type crimes, such as theft, robbery, crimes against child protection, and terrorism.

Graph 7. Type of Death Row Inmates' Cases



Source: Data from the Directorate General of Corrections received by ICJR in writing on November 29th, 2021

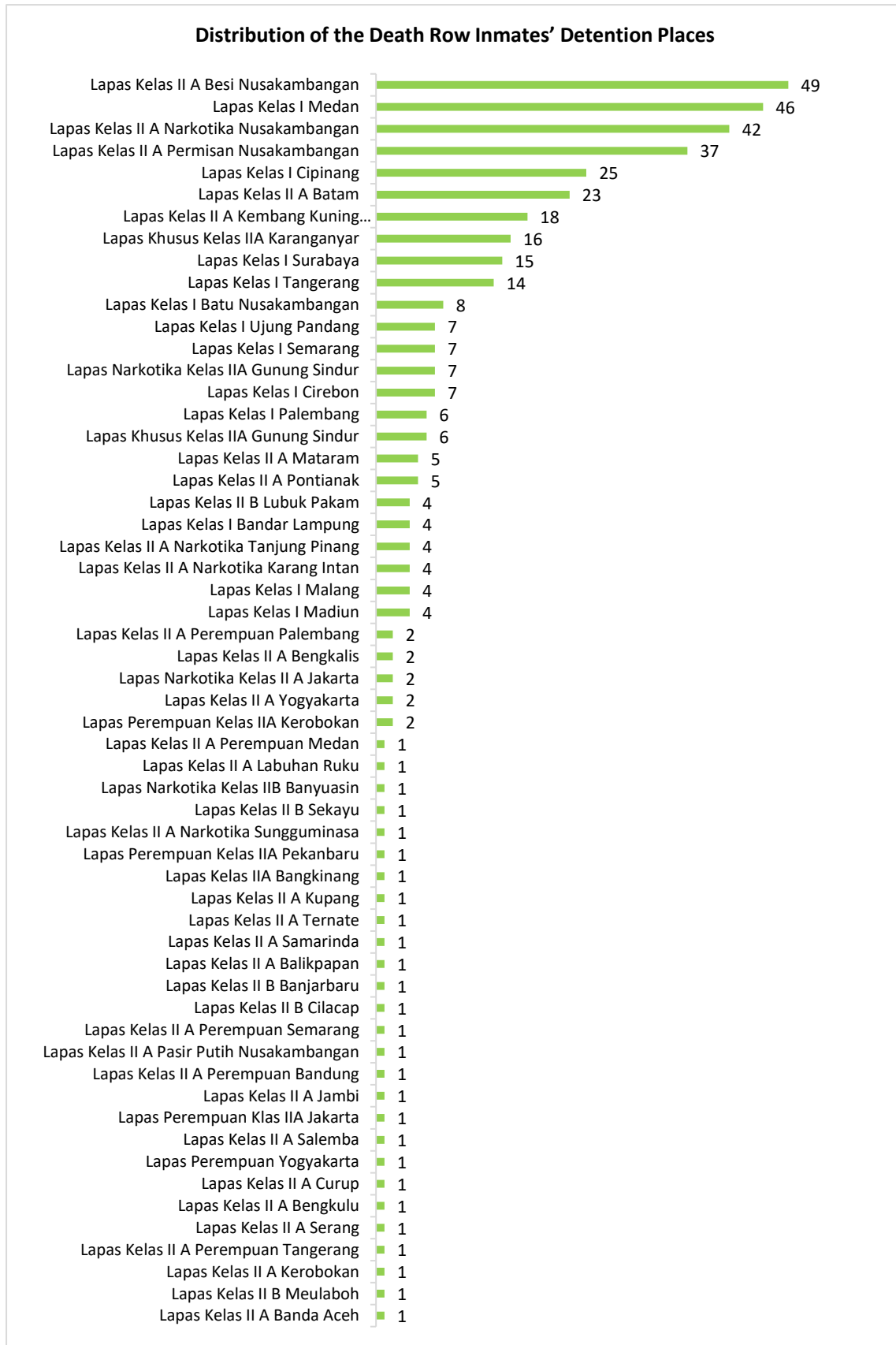
The head of the Aceh High Prosecutor's Office issued a statement that throughout 2021 there were 68 cases that were indicted with death penalty,²¹ which 64 out of 68 were drug-related cases. Therefore, the trend of imposing the death penalty in narcotics cases has been still relatively and continuously high²² since the declaration of war against drugs glorified by the President Joko Widodo in 2015.

Indonesia does not have a specific detention facility for people on death row before being executed, so they are basically being sent to the regular *Lembaga Pemasyarakatan – Lapas* (Correctional Institutions where inmates serve their imprisonment sentence) and therefore they also have been participating in the rehabilitation program and activities during their period of stay. The Class II A Besi Nusakambangan Correctional Institution has the highest number of death row inmates in Indonesia, 49 people on death row (12% of the total people on death row), followed by the Medan Class I Correctional Institution with 46 people (11%) and Nusakambangan Narcotics Class II A Correctional Institution with 42 people (10%).

²¹ Nashih Nashrullah, '68 Terdakwa Dituntut Hukuman Mati di Aceh pada 2021' *Republika* (January 4th, 2022) <https://republika.co.id/berita/r56uyh320/68-terdakwa-dituntut-hukuman-mati-di-aceh-pada-2021> accessed on January 7th, 2022

²² Zainal Abidin, et.Al., 2019, *Menyelisik Keadilan yang Rentan: Hukuman Mati dan Penerapan Fair Trial di Indonesia*, Institute for Criminal Justice Reform, Jakarta, page 118.

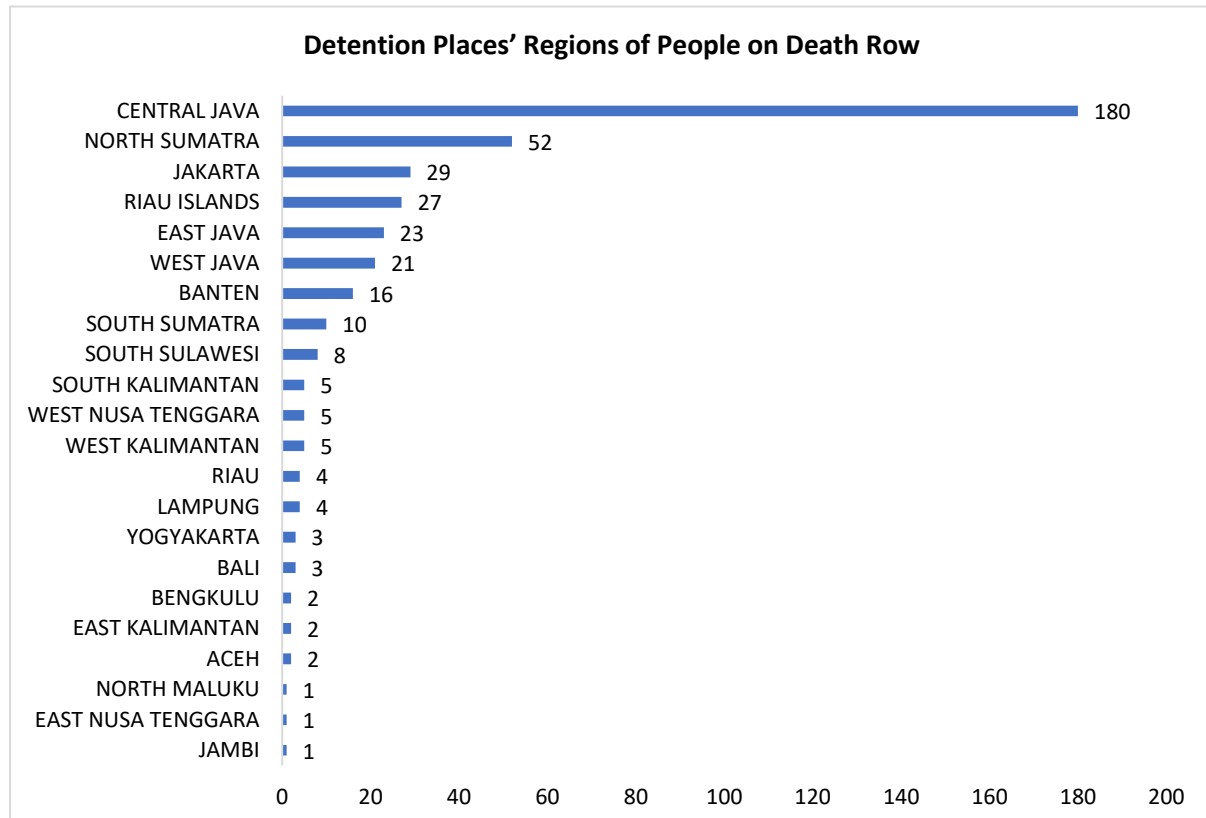
Graph 8. Distribution of the Death Row Inmates' Detention Places



Source: Data from the Directorate General of Corrections received by ICJR in writing on November 29th, 2021

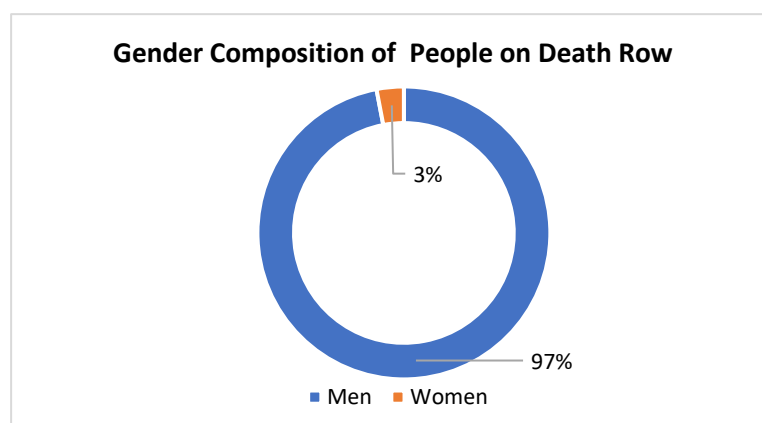
Looking into the regional offices of the Ministry of Law and Human Rights, the majority people on death row (180 people) are found in the Central Java Regional Office, the largest composition which 71% larger than other regions.

Graph 9. Detention Places' Regions of People on Death Row



Source: Data from the Directorate General of Corrections received by ICJR in writing on November 29th, 2021

Graph 10. Gender Composition of the People on Death Row

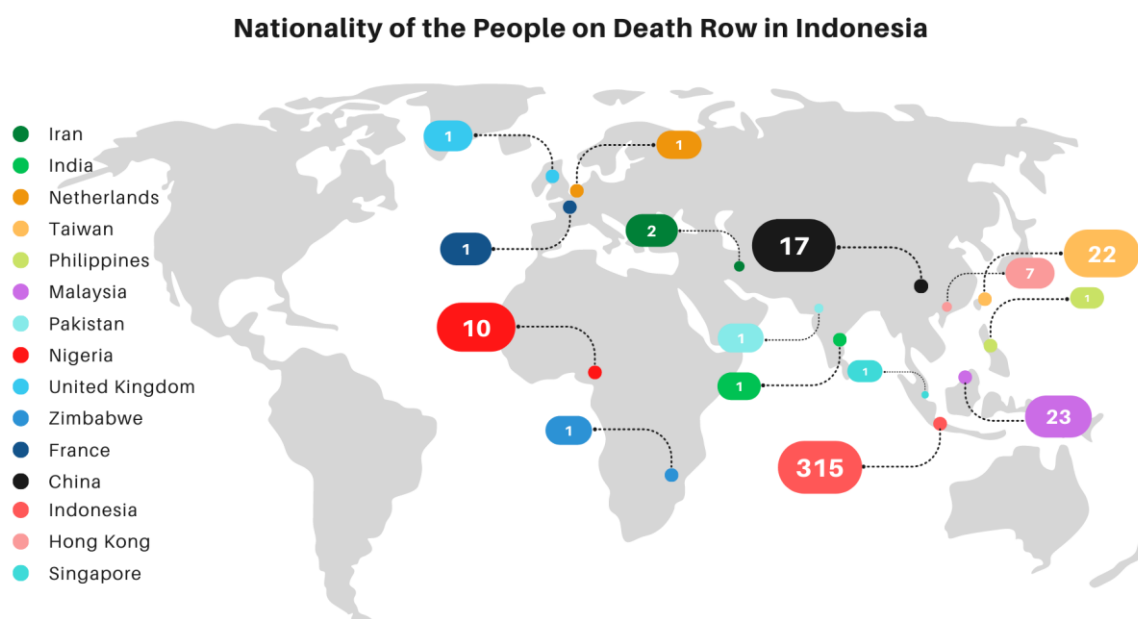


Source: Data from the Directorate General of Corrections received by ICJR in writing on November 29th, 2021

There are 12 female death row inmates currently waiting for execution, an increase of 3% (2 people) from the number of female death row inmates in 2020. Whereas, the number of their male counterpart increased by 11% from 2020, the current total is 392 people.

Based on their nationality background, the majority people on death row are Indonesian, 315 people in total. Meanwhile, foreign nationals are dominated by Malaysian (23 people), followed by Taiwanese (22 people), and Chinese (17 people). Other foreigners from Asia are also identified originally from Hong Kong (7 people), the Philippines (1 person), India (1 person), Iran (2 people), Pakistan (1 person), and Singapore (1 person). There are also foreign nationals from Africa, including Zimbabwe (1 person) and Nigeria, which have a quite high number in total of 10 people. The remaining 3 foreigners came from European countries, namely the Netherlands, France, and England.

Figure 1. Nationality of the People on Death Row in Indonesia



Source: Data from the Directorate General of Corrections received by ICJR in writing on November 29th, 2021

Notes on the Process of Data Collection of People on Death Row

During the process of collecting data on people on death row, we face difficulties in accessing data/information which we officially requested to the Directorate General of Corrections (Ditjen PAS) of the Ministry of Law and Human Rights of the Republic of Indonesia. The 2021 data of people on death row, based on the writing information received by ICJR on November 29th, 2021, only contained limited data/information, i.e., the total number and the composition of people on death row based on some categories such as place of detention and the region, gender, type of case, and nationality.

This is quite different from previous years, whereas our data/information requests related to the number of people on death row had been responded positively and therefore provided in a great detail for research purposes. The data provided in previous years were made meticulously with such detailed information for each death row inmate starting from their name, age, gender, nationality, place of detention, type of case, commencement date of detention, as well as the date and the number of the latest court decisions for case tracking purposes.

The Ditjen PAS initially stated that the requested data could not be provided due to data privacy restriction. On responding this, ICJR has even sent a revised letter to request the data/information addressed directly to the Minister of Law and Human Rights of the Republic of Indonesia, Yasonna H. Laoly, stating a clear disclaimer that the data/information provided will not be disclosed to the public and will be used only for research purposes i.e. writing annual report (just like how we have been managed the data from previous years). However, the Ditjen PAS only agreed to send us the data of total number of people on death row based on several categories as mentioned above.

Due to the limited data that can be analyzed by ICJR, for the purpose of writing this 2021 period report, it is quite difficult for us to review the data on death row inmates that we have obtained from the official data of the Ditjen PAS by virtue of comparative data from ICJR internal database. This step is important to ensure the accuracy of the data, such as in the 2020 report period where ICJR found several people listed on death row in fact have no longer became death row inmates and vice versa, after comparing it with the data recorded in ICJR internal database collected from court decisions and other reliable sources. In addition, without any detailed information from the official data, it is also difficult for us to present the accurate details on the duration of people waiting on death row.

Given the difficulties encountered in the process of data collection explained above, the updated data on the duration of people waiting on death row can only be done with reference to the results of data processing in preparing the 2020 reporting period. Total number of people who have been on death row for more than 10 years as of October 2020 amounted to 63 people, but from that number, it was later discovered that 1 person has passed away namely Gareth Dane Cashmore, bringing the total to 62 people. Meanwhile, an additional 17 people marked their 10-year-period of detention on January 2022 while waiting for execution, so that, at the time writing this report, the total number of people on death row for more than 10 years is approximately 79 people.

4. Calling for the Assurance of Commutations in the Death Penalty Cases through the Draft of Penal Code (RKUHP) and the Current Commutation Scheme

According to the data we have presented, currently there are around 79 people on death row who have been waiting for execution for more than 10 years. In various discussions of RKUHP, the drafting team of RKUHP have committed to provide a middle way in regulating the death penalty in Indonesia. This statement was echoed by the government until the end of 2021.

"In RKUHP, the death penalty is no longer included as the main criminal punishment, but an alternative punishment. We have 10 years to evaluate so that the length of the sentence can be changed," said Yasonna, Minister of Law and Human Rights.²³

According to the Minister of Law and Human Rights, people on death row will be guaranteed to have evaluation on their sentence. According to him, people on death row have the right to take part in an assessment carried out by a special team formed by the Government. The elements that will be considered include the impact on the victim, the cruelty of the perpetrator, and so on.²⁴ Under this scheme, the mechanism for commuting the death penalty should be a special right entitled to people on death row and must be given as part of the rights of those who have been sentenced to death.

However, it turns out that such rights are not necessarily guaranteed an automatic application to every death row inmate, which is different from the initial Government's commitment. This can be seen in the formulation of Article 98 and Article 100 of RKUHP (September 2019 version). This formulation is different from the formulation that was originally recommended by the Government, that the guarantee for the commutation of death penalty should be given automatically to all people on death row when execution has not yet been carried out in 10 years of their waiting period.

²³ Dian Dewi Purnamasari, Susana Rita Kumalasanti, Nikolaus Harbowo, 'Jalan Tengah Diterapkannya Hukuman Mati, RKUHP Berikan Harapan Pengampunan' (December 6th, 2021), accessed on January 12th, 2022

²⁴ *Ibid.*

Tabel 1. Comparison of the Arrangements on Death Penalty Commutation in Some Versions of RKUHP

RKUHP – 2019 version	RKUHP – February 2015 version (Initial Government Recommendations as Agreed by the RKUHP Working Committee) ²⁵
<p>Article 98</p> <p>The death penalty is imposed as an alternative sentence as the last resort to prevent criminal acts from being committed and protect the community.</p> <p>Article 100</p> <p>(1) A judge may impose a death penalty with a probationary period of 10 (ten) years if:</p> <ul style="list-style-type: none"> a. the defendant shows remorse and chances for improvement; b. the defendant's role in committing crime is not essential; or c. mitigating factors are found. <p>(2) The death penalty with a probationary period as referred to in paragraph (1) must be included in the court decision.</p> <p>(3) The probationary period of 10 (ten) years shall be commenced within 1 (one) day after the court decision is legally binding.</p> <p>(4) If the inmate during the probationary period as referred to in paragraph (1) shows commendable attitudes and actions, the death sentence can be changed to life</p>	<p>Article 99</p> <p>The death penalty should be imposed as an alternative sentence as a last resort to protect the community.</p> <p>Article 91</p> <p>(1) The execution of the death sentence may be postponed with a probationary period of 10 (ten) years, if:</p> <ul style="list-style-type: none"> a. the public's reaction to the inmate is not too enormous; b. inmate shows remorse and chances for improvement; c. the inmate's role as the accomplice in committing crime is not too essential; and d. mitigating factors are found. <p>(2) If the convict during the probationary period as referred to in paragraph (1) shows commendable attitudes and actions, the death penalty can be changed to life imprisonment or imprisonment for a maximum of 20 (twenty) years by a decision of the Minister who administers government affairs in the field of law and human rights.</p>

²⁵ RKUHP version: Directorate General on Law and Regulation (DJPP) of the Ministry of Law and Human Rights, February 25th, 2015, document can be accessed through <http://reformasikuhp.org/r-kuhp/>

<p>imprisonment by virtue of a Presidential Decree after obtaining consideration from the Supreme Court.</p> <p>(5) If the inmate during probationary period as referred to in paragraph (1) does not show commendable attitudes and actions and there is no hope for improvement, the death sentence can be carried out in accordance with the Attorney General's order.</p>	<p>(5) If the inmate during probationary period as referred to in paragraph (1) does not show commendable attitudes and actions and there is no hope for improvement, the death sentence can be carried out in accordance with the Attorney General's order.</p>
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The Minister of Law and Human Rights on the basis of his simulation on RKUHP's arrangement on death penalty commutation argued that if RKUHP has been passed by legislator, people on death row who had served 10 year waiting period in prison now also have the right to have their sentence commuted. He emphasized that as of the date of RKUHP came into effect, people on death row who have met the conditions could exercise their rights automatically.²⁶

Unfortunately, the above scenario was not reflected in the formulation of the latest version of RKUHP (September 2019 version). The opportunity to obtain a 10-year probationary period with a guarantee to commute the death sentence which depends on court decision will only open new transactional loopholes. The criteria for being entitled to the probationary period which include: the defendant shows remorse and hopes for improvement; the defendant's role in committing crime is not too essential; or mitigating factors are found, should be the conditions that must be considered before the judge imposes the death penalty. Such conditions should be considered to avoid the death penalty, not the other way around. Within the framework of international law, it is mandatory for the judge to consider the perpetrator's condition, his/her role in committing crime, and the mitigating factors before imposing death penalty.²⁷

Amid the continuation of the imposition of the death penalty, the number of people on death row will certainly continue to rise. Although on the other side, the execution of the death penalty cannot be

²⁶ Dian Dewi Purnamasari, Susana Rita Kumalasanti, Nikolaus Harbowo, 'Jalan Tengah Diterapkannya Hukuman Mati, RKUHP Berikan Harapan Pengampunan' (December 6th, 2021), <https://www.kompas.id/baca/polhuk/2021/12/06/jalan-tengah-diterapkannya-hukuman-mati-rkuhp-berikan-harapan-pengampunan>, accessed on January 12th, 2022

²⁷ United Nations High Commissioner for Human Rights on Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (A/HRC/36/26, 22 August 2017), Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur, (E/CN.4/1997/60, 24 December 1996), para 81.

carried out due to Indonesia's commitment in the universal periodic review (UPR) in May 2017 where the government has stated to receive 2 recommendations related with the death penalty, namely: to consider **a moratorium on the execution of the death penalty**, and to ensure the right to a fair trial and the right to file a case review for people facing the death penalty.²⁸ Therefore, the solution for the current continuous increase of the number of people on death row is not by conducting execution rather adopting a mechanism for commuting the death penalty.

Up until now there is no clear mechanism on the possibility of the application of commutation of the death penalty based on the success of rehabilitation. Consequently, people on death row basically have been undergoing two forms of punishment, i.e., imprisonment and the death penalty, which has been classified as a form of violation of the right to free from torture, cruel, inhumane, and degrading treatment.²⁹

The mechanism for commutation of punishment actually already exists under Indonesian legal system in the form of remission. However, a remission can only be given to inmates serving imprisonment/deprived of liberty, including life imprisonment as regulated in Presidential Decree No. 174 of 1999 on Remission. Through this scheme, life imprisonment can even be commuted into a 15-year-imprisonment. The application of remission for people on death row therefore could be an opportunity for Indonesia to prevent and stop the practices of torture, cruel, inhumane, degrading treatment that occur in death row phenomenon.

5. Bill of Narcotics Law Revision Fails to Address the Problem of Imposing Death Penalty on Drug-related Crimes

In the 2020 Death Penalty Report, ICJR has emphasized that there is no legitimate basis for the imposition of the death penalty on the narcotics-related crimes:³⁰

²⁸ ICJR, 'ICJR Tunggu Bukti Komitmen Pemerintah Soal Indonesian Way Pidana Mati' (July 27th, 2018) <https://icjr.or.id/icjr-tunggu-bukti-komitmen-pemerintah-soal-indonesian-way-pidana-mati/>, accessed on January 12th, 2022

²⁹ One of the integral factors that play a major role in the occurrence of death row phenomenon is the long waiting period for those sentenced to death. Some of these court decisions cited by Mendez (Attorney General v. Susan Kigula (2009), Pratt and Morgan v. Jamaica, Henfield v. Bahamas (1997)) ruled that the long waiting period itself is a form of death row phenomenon and a violation of the right to free from torture, cruel, inhumane, and degrading treatment. However, the UN Human Rights Committee stated that the long waiting period is not sufficient to determine that the death row phenomenon does exist, because in some cases even though the duration of waiting period has reached 10 years, a violation of Article 7 ICCPR may not be found. (Adhigama Andre Budiman dan Maidina Rahmawati., 2020, *Fenomena Deret Tunggu Terpidana Mati di Indonesia*, Jakarta, Institute for Criminal Justice Reform, page. 38. Document can be accessed through: https://icjr.or.id/wp-content/uploads/2020/11/ICJR_Fenomena-Deret-Tunggu-Terpilana-Mati-di-Indonesia.pdf)

³⁰ Adhigama Andre Budiman, et. al., 2020, *Indonesia Death Penalty Report 2020: Taking Lives During Pandemic*, Jakarta, Institute for Criminal Justice Reform, page. 34-35. (Document can be accessed through: <https://icjr.or.id/indonesia-death-penalty-report-2020-taking-lives-during-pandemic/>)

- Article 6 paragraph (2) of the International Covenant on Civil and Political Rights (ICCPR) which has been ratified by Indonesia, stipulates that the death penalty can only be applied to the most serious crimes.
- The latest General Comment No. 36 of Article 6 of the ICCPR formulated by the Human Rights Committee in 2018 stated that the definition of “most serious crimes” should be interpreted strictly, only for crimes with extreme consequences, including murder with intent. Crimes that do not directly result in or are committed with deadly intent, **such as narcotics**, even though they are serious in nature, can never be used as a basis for imposing the death penalty.
- 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 **criticize the attempts of countries introducing the death penalty for narcotics crimes.**
- The spokesperson for the United Nations Office on Drugs and Crime (UNODC) in June 2019 stated that **the 3 international conventions on the control of narcotics** which are the main reference for the national drug policies in every country, including Indonesia, **cannot be used as justification for imposing death penalty in drug-related crimes.**

However, until now, the death penalty cases in Indonesia is mostly derived from the implementation of drug policies. In December 2021, the Minister of Law and Human Rights, expressed his views regarding the ineffectiveness of the death penalty in Indonesia, he mentioned the notorious implementation of drug policies as example.

Minister of Law and Human Rights, Yasonna H. Laoly when met at his office, Wednesday (1/12/2021), said that the death penalty is the main criminal punishment that being imposed to deal with serious crimes, including narcotics. Yasonna admitted that although the executions of death row inmates have been carried out in three rounds during the era of President Joko Widodo's administration, the occupancy rates in prisons continues to increase which mainly dominated by narcotics-related crime.³¹

Through his statement below, the Minister of Law and Human Rights has agreed that the implementation of criminal punishment has failed to achieve its goal on reducing the crime rates on narcotics-related crime. On the same occasion, the Minister of Law and Human Rights even stated his efforts to review the policies governing the death penalty, including the Narcotics Law.

³¹ Dian Dewi Purnamasari, Susana Rita Kumalasanti, Nikolaus Harbowo, 'Jalan Tengah Diterapkannya Hukuman Mati, RKUHP Berikan Harapan Pengampunan' (December 6th, 2021), <https://www.kompas.id/baca/polhuk/2021/12/06/jalan-tengah-diterapkannya-hukuman-mati-rkuhp-berikan-harapan-pengampunan>, accessed on January 12th, 2022.

“Therefore, the middle way taken by the government is to propose a revision of the Penal Code, Corrections Law, and the Narcotics Law. The expected impact of those regulatory changes is the provide a mechanism to give clemency for people on death row when identifying some improvement or positive development in light of their attitude and behavior. One of the aspects that will be measured includes the rehabilitation program in correctional facility that is considered successful.”³²

With this spirit, it can be seen that there is a commitment from the Minister of Law and Human Rights to make changes to the regulation on the death penalty, including drug policies as regulated under Law No. 35/2009 on Narcotics.

As of 14 January 2022, the President of the Republic of Indonesia sent a letter to the House of Representative (DPR) regarding the second amendment of Law on Narcotics (Law No. 35/2009) to be discussed in the deliberation session as a top priority to get approval. In such letter, the President assigned the Minister of Law and Human Rights, the Minister of Health, and the Minister of Administrative and Bureaucratic Reform to represent the government in discussing the amendment of the Narcotics Law.

Upon the issuance of the above presidential letter, a document on the harmonization results of the academic papers of the Bill of Law on Narcotics revision was circulated. However, in such academic paper, there is no discussion regarding the implementation of the death penalty. The discussion of the death penalty is raised in the background chapter in the Academic Paper; however, it does not reflect the actual practices and only shows the National Narcotics Agency (BNN)’s serious efforts in stopping the smuggling and illicit trafficking of narcotics through imposing the most severe criminal sanctions to the perpetrators, including the death penalty. The data cited in the academic paper is actually based on the data in December 2015 which mentioned that 55 defendants involved in narcotics-related crimes have been sentenced to death, and 14 people sentenced to death for narcotics-related cases are waiting for the execution.³³ Such data is far from addressing the core issue of having people on death row for narcotics-related crimes, considering that the academic paper is issued in 2022.

Whereas, in the bill of Narcotics Law revision, the materials subjected to the amendments are:

- Article 4 related to the objectives of the Narcotics Law

³² *Ibid.*

³³ Kementerian Hukum Dan Hak Asasi Manusia RI Badan Pembinaan Hukum Nasional, 2022, *Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang tentang Perubahan Kedua atas Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika*, page 2-3.

- Article 52A, Article 52B, and Article 52C on New Psychoactive Substances
- Article 54-59 on Rehabilitation for the Abusers, Victims, and Addicts
- Articles 60-61 on the guidance of all activities related to Narcotics, Narcotics Precursors, and New Psychoactive Substances
- Article 70, 80-81 on the duties and authorities of National Narcotics Agency (BNN)
- Article 91, 101 on the Confiscated Narcotics Precursor Narcotics, New Psychoactive Substances
- Article 103 on the authority of judges in considering the abuse of narcotics
- Article 110 on awards
- Article 127 on criminalization of abusers
- Article 128, 134 on criminalization of parents or legal guardians of Abusers, Victims, and/or Addicts
- Article 148A on criminalization of the use of New Psychoactive Substances
- Article 150A rehabilitation at correctional facilities (prison)
- Article 151A on the criminalization of the use of new psychoactive substances without legal permission from the Minister of Health
- Article 151B on transitional provisions

Reviewing the substantive aspects of the revision, there is no improvement in the formulation of criminal provisions in the Narcotics Law which contains the death penalty as regulated in 7 criminal provisions and 4 types of criminal acts, namely Article 113 paragraph (2), Article 118 paragraph (2), Article 114 paragraph (2), Article 119 paragraph (2), Article 116 paragraph (2), Article 121 paragraph (2), Article 133 paragraph (1).³⁴

6. Recommendation

In relation to the 2021 death penalty policy in Indonesia, ICJR propose some recommendations for Government and the House of Representative (DPR) as follows.

Recommendation for Government:

1. Urge the Attorney General to halt any death penalty indictment, especially during the emergency situation of the Covid-19 pandemic

³⁴ Maidina Rahmawati, 2019, *Analyzing Fair Trial Aspect of Death Penalty for Drug Cases in Indonesia Policy and Implementation: Special Cases on Women*, Jakarta, Institute for Criminal Justice Reform, page. 3-4

2. Evaluate the implementation of the death penalty in Indonesia, followed by a moratorium of the death penalty
3. Not to order execution at anytime, due to the possibility of implementation on a new commutation mechanism under the Draft of Penal Code (RKUHP), ensuring government's commitment to moderate the death penalty
4. Adopt a mechanism of commutation of sentences for people on death row by referring to the current remission scheme for inmates serving life imprisonment
5. Decide commutation of sentence for about 79 people on death row who have been waiting for execution for more than 10 years

Recommendations for Government and DPR:

1. Ensure that there are inclusive discussions in formulating the Draft of Penal Code (RKUHP), including during the formulation of death penalty provisions. This is to ensure that there will be a middle way for the death penalty arrangements in the RKUHP.
2. Ensure that the revision of the Narcotics Law must include revoking the death penalty provisions in drug policies

Recommendation for the Supreme Court:

1. Conduct a moratorium on the imposition of the death penalty by prioritizing other types of punishment in handling criminal cases

Recommendations for Government Institutions including the National Anti-Torture Prevention Mechanism (National Commission on Human Rights, National Commission on Violence against Women, Ombudsman of the Republic of Indonesia, the Commission for Indonesian Children Protection, and Witness and Victim Protection Agency):

1. Conduct monitoring in detention places to observe the conditions of people on death row, especially in the context of preventing torture in death row
2. Urge the Government to adopt policies on commutation of the death penalty
3. Urge the Government and the House of Representatives (DPR) to maintain their commitment to revoke the imposition of death penalty during legislative process, especially in the Draft of Penal Code (RKUHP) and the revision of Narcotics Law.

Authors' Profile

Adhigama Andre Budiman, currently working as a researcher at the Institute for Criminal Justice Reform (ICJR). He completed his Master's program at Justus-Liebig University. Active in advocating the issue of death penalty, children's rights, and criminal acts of human trafficking.

Iftitahsari, obtained law degree from Gadjah Mada University, then completed her master's in Crime and Criminal Justice at Leiden University, the Netherlands in 2017. Currently working as a researcher at ICJR focusing on the issues of fair trial rights, abolition of death penalty, criminal justice reform to be more accountable and transparent justice system, as well as evidence-based drug policy reform.

Maidina Rahmawati graduated from the Faculty of Law, University of Indonesia in 2016, she is a certified advocate and mediator. She received several fellowships on gender issues and drug policy reform, including in 2017 from Centre for Criminology University of Hong Kong on Human Rights and Narcotics Policy in Asean and East Asia, and in 2019 from the CEU School of Public Policy Budapest, Hungary on the Aspects of Gender in Narcotics-related Policies Reform. In 2017-2020, she conducted research on Data Management of Human Trafficking in ASEAN, in cooperation with the WSD Handa Centre for Human Rights and International Justice, Stanford Global Studies Division, Stanford University.

ICJR's Profile

The 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 in the current transition period is reforming the law and criminal justice system to be more democratic. In the past, criminal law and criminal justice were used more as a means of supporting authoritarian power, apart from being used for social engineering purposes. It is the time for the orientation and utilization of criminal law as a tool of power to be changed to support for the operation of a democratic political system and respecting the human rights. These are the challenges in restructuring the criminal law and criminal justice in the current transition period.

To answer these challenges, a planned and systematic effort is needed to answer these new challenges. A grand design to reform the criminal justice system and the law in general should be initiated. The criminal justice system, as it is known, occupies a very strategic place within the framework of building the Rule of Law, and respecting human rights. Democracy can only function properly if there is an institutionalization of the concept of the Rule of Law. The reform of the criminal justice system designated towards the protection of human rights is thus a “condition sine quo non” for the process of institutionalizing democratization in the current transition period.

The steps in transforming the law and criminal justice system to become more effective are indeed still on-going but our effort needs wider support from various stakeholders. The Institute for Criminal Justice Reform (ICJR) seeks to take the initiative to support these measures by providing support in the context of respecting the Rule of Law and at the same time creating culture on respecting human rights in the criminal justice system. This is the reason for ICJR's existence.

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