

# JOINT STAKEHOLDERS' REPORT ON THE 4TH UPR OF INDONESIA ON ISSUES RELATING TO THE DEATH PENALTY



# **Joint Stakeholders' Report on the 4th UPR of Indonesia on Issues Relating to the Death Penalty**

## **I. Introduction**

This stakeholders' report was jointly prepared by LBH Masyarakat, IMPARSIAL, HRWG, LBH Jakarta, YLBHI, Migrant Care, ICJR, ELSAM, Yayasan Satu Keadilan, SETARA Institute, LBH Pers, IKOHI, KontraS, PBHI, and INFID, civil societies that are concerned with the issues relating to the death penalty in Indonesia which are included in the Anti-Death Penalty Coalition/*Koalisi Hapus Hukuman Mati* (HATI). Although Indonesia accepted two 2017 UPR recommendations number 141.52 and 141.60 regarding the moratorium on executions and monitoring of the fulfillment of the right to a fair trial of suspects/defendants for death row inmates, several violations are still found in its practice. This report contains the elucidation of facts on the problems experienced by death row inmates as well as recommendations that must be followed up by the Government of Indonesia. This report is jointly prepared through a number of FGDs and limited discussions with several bodies.

## **II. Increasing number of death sentences in Indonesia and its problems (Recommendation: 141.4, 141.5, 141.51, 141.52, 141.53, 141.54, 141.55)**

The Government of Indonesia has never set a de jure moratorium on executions after the last execution in 2016 until now. In fact, the trend of death penalty sentences is increasing every year. This trend of increasing death sentences has resulted in the escalation of the death row phenomenon and leading to various other problems.

### **A. Death sentence continues to be carried out with lack of transparency**

1. The Government of Indonesia has not published any official record on death penalty cases. It becomes challenging for Non-Government Organizations to collect the death penalty cases record because it could not demonstrate the actual death penalty cases in Indonesia and are limited to the resources of its monitor. To obtain this data, civil society groups such as Imparsial (Indonesian Human Rights Monitor) are only able to collect the imposition of death sentences through media monitoring of electronic and print media. From the results of monitoring, at least 296 new death sentences were found during 2017-2022. Out of these cases, the majority is for drug cases. Similarly, Reprieve also found that from the prevalence of death penalty sentences, the majority of sentences were handed down for narcotics crimes. In 2017, Reprieve recorded 27 of drug cases out of at least 53 cases of death sentences. The number grew higher in 2018 with a minimum of 61 sentences with 52 of drug cases. Death sentences from drug offenses kept increasing in 2019, with 51 of 69 recorded death sentences being drug cases. At least 97 death sentences were recorded in 2020, having a similar trend to the previous years, with drug offenses placing the majority with 82 drug cases. Last year, Reprieve had recorded at least 87 death sentences imposed in Indonesia, with 67 drug cases in 2021;<sup>1</sup>
2. Indonesia has guaranteed transparency in public information in Article 28 F of the Constitution. The Constitutional mandate was technically translated in Law No. 14 of 2008 concerning Transparency in Public Information. Despite the existence of regulation on

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<sup>1</sup> Reprieve's record on the death penalty in Indonesia

transparency in public information, in practice, Indonesia has not fully implemented transparency in public information in the issue of death penalty relating to the provision of death row inmates data on: (i). number of death row inmates; (ii). detention location of death row inmates; (iii). gender of death row inmates; (iv). imprisonment duration of death row inmates; (v). legal actions that have and have not been carried out; (vi). age of death row inmates; (vii). medical and psychological situation of death row inmates; (viii) nationality of death row inmates; (ix). criminal case or article that applies to death row inmates; (x). whether there is any access to legal aid obtained by death row inmates or not. In the transparency in public information, the lack of transparency in death row inmates data which is officially provided by the Government of Indonesia at present negatively impacts the fulfillment of the right of death row inmates in prison.

## **B. Indonesia's approach to overcoming illicit drug trafficking as part of the war on drugs**

3. The growing trend of death sentences for drug convictions is likely due to a harsh approach in tackling drug issues in Indonesia. In 2016, the President declared a drugs emergency and claimed that if the law permitted, he would rather instruct the Head of the National Police Chief of the Republic of Indonesia and the Head of the National Narcotics Agency to shoot drug traffickers dead;<sup>2</sup> "Not supporting the government's program against drugs" is often the reason judges sentenced to death for narcotics defendants. As a result, 215 people became victims of the excessive use of force in the form of shootings with details of 99 people dying (extra-judicial killings) and 116 people being wounded during 2017 which were carried out by the state apparatus. Meanwhile, in 2018 there were 199 people shot with details of 130 people being wounded, 68 people died and 1 person is less-information.<sup>3</sup>
4. Not only in death penalty cases, drug offences are also the majority of the criminal offences. Compared to the prison population data confirmed by the Government, 135,922 prisoners or more than 50%, are drug convicts out of the total inmates of 225,458.<sup>4</sup> This shows a parallel trend of drug convict population in death row prisoners with the data recorded by Reprieve in death penalty cases;
5. The Government of Indonesia considers that enforcing Law No. 35 of 2009 concerning Narcotics will curb drug addiction by imposing harsh penalties on traffickers and drug users. All operations involving the illegal trade of category 1<sup>5</sup> Drugs weighing more than 5 grams are punishable by death. This minimum limit is not clearly defined, making it easy for the public prosecutor to persecute the defendant with death penalty. Carrying 100 kilograms or 5.1 grams of category 1 drugs of the same type, for example, are eligible to

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<sup>2</sup> Joko Widodo's statement: "Hit them, fight them, and if the provisions of the law allowed, shoot them. Ladies and Gentlemen, remember as many as 5.1 million of Indonesia's young generation die due to drug abuse. However, the provisions of the law do not allow it. Otherwise, I will instruct the Indonesian National Police Chief (Kapolri) and Head of National Narcotics Agency (BNN) to shoot drug dealers at sight," as quoted from the Cabinet Secretariat of the Republic of Indonesia at <<https://setkab.go.id/en/president-jokowi-declares-war-on-drugs/>>.

<sup>3</sup> Data from LBH Masyarakat monitoring during 2017 and 2018.

<sup>4</sup> Data accessed on 14 March 2022 from "Sistem Database Pemasyarakatan" published Directorate General of Correctional Center Ministry of Law and Human Rights <http://sdppublik.ditjenpas.go.id/>

<sup>5</sup> according to Permenkes No. 50 Tahun 2018, category I Drugs : raw opium, coca plant, coca leaf, raw cocaine, heroine, methamphetamine, and cannabis

be sentenced to death regardless of the defendant's role in the crime. As a result, poor people who are forced to become couriers or trafficking victims who are used as couriers, can be sentenced to death. However, Article 18 of Law Number 21 of 2007 concerning Elimination of Human Trafficking Crimes states that victims that perform criminal acts under the pressure of human trafficker may not be convicted.

**C. The growing number of death row prisoners worsen the fulfillment of the rights of death row inmates in prison.**

6. The growing number of death row prisoners worsened by strict approach policy against drugs carries plenty of problems. First, in the trial process, the bare minimum of the rights of fair trial are often not met in the capital cases. Then, the death row prisoners became the subject of a prolonged period of waiting for the execution whilst causing a situation called the death row phenomenon. Juan E Mendez, Special Rapporteur on Torture, defines the death row phenomenon as a combination of circumstances that produce severe mental trauma and physical suffering in prisoners serving death row sentences. The conditions include prolonged waiting periods for uncertain outcomes, solitary confinement, poor prison conditions, and lack of educational and recreational activities;<sup>6</sup>
7. Most death row prisoners face poor overall prison conditions, lack of supporting welfare facilities and inadequate nutrition due to overcrowding. Most of the prisons in Indonesia are highly overcrowded. Indonesia's entire prison capacity is 132,107 prisoners. The total number of convicts in Indonesia was 225,458 as of March 2022, which is 177 percent over the capacity. Tangerang Prison (known in Indonesia as LAPAS Tangerang) is one of the most overcrowded prisons in Indonesia, with over 2000 inmates, more than 300 percent of its 600-inmate capacity. In September 2021, a fire at Lapas Tangerang took the lives of 49 inmates and wounded more than 70 others.<sup>7</sup> The overcrowded conditions contributed to a lack of facilities to support prisoners' welfare and rights. Moreover, it had hindered the evacuation process and as a result cost lives, putting unsolicited punishment on the prisoners at LAPAS Tangerang.

Based on the information above, we call upon the UPR Working Group and the UN Human Rights Council to urge the Government of Indonesia to:

1. Sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
2. Create an official decision to set a de jure moratorium on executions by ordering the Attorney General not to seek the death penalty in the prosecution for all types of crimes and not to carry out executions;
3. Provide data related to death penalty cases by the prosecutor, the court and the directorate general of corrections regularly, both requested and unrequested;
4. Cease the "war on drugs" narration which contributes to the high number of death penalty in drug cases and put forward an evidence-based policy and fulfill the human rights standard included in the discussion on revision of law on narcotics;

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<sup>6</sup> Méndez, Juan E. "The Death Penalty and the Absolute Prohibition of Torture and Cruel, Inhuman, and Degrading Treatment or Punishment." Human Rights Brief 20, no. 1 (2012): 2-6.

<sup>7</sup> A. Llewellyn; "Why Are Indonesian Prisons So Dangerous"; Aljazeera; 30 October 2021 accessed 10 March 2022 <<https://www.aljazeera.com/news/2021/10/30/why-are-indonesian-prisons-so-dangerous>>

5. Carry out mass commutations on death row inmates serving a prison sentence of more than 10 (ten) years;
6. Carry out a review on the draft revision of the Criminal Code relating to the modification of the death penalty which is carried out automatically to the death row inmates serving 10 years of imprisonment;
7. Provide trainings for judges and public prosecutors on matters related to human rights to prevent, or at least minimize, the implementation of death penalty and avoid death sentences to be accepted more than once;
8. Review the sentencing policy in Indonesia not to only be focusing on imprisonment but also seeking for other alternative punishments in accordance with the principles and standards of human rights and restorative justice;
9. Eliminate the provisions on death penalty in the revision of Law on Narcotics because it is not in accordance with the ICCPR and international legal instruments related to narcotics.

**III. Law No. 12 of 1995 concerning Corrections is discriminative toward death row inmates who are in waiting period in prison. (Recommendation: 141.49)**

8. Law No. 12 of 1995 concerning Corrections becomes one of the reasons for the unfulfillment of the right of death row inmates in prison. The scope of the definition of prisoners in Corrections Law is only limited to those who are sentenced to deprivation of liberty, meaning that prison's function is only aimed at those who are sentenced to a temporary or life imprisonment. Yet, in fact, death row inmates are also housed in the prisons. Due to the fact that they are not included in the category of prisoners, death row inmates who are in waiting period for execution in prison are not involved in the programs and certain activities organized by the prison.
9. As a consequence of a different legal status, there is a discrimination between prisoners and death row inmates in the prison. This problem becomes more complex since death row inmates in the prison are under the responsibility of Prosecutors. Death row inmates do not receive similar treatment in terms of guidance activities. Guidance activities that are supposed to be a form of health services are not directed to death row inmates. This condition results in depression among some death row inmates.<sup>8</sup>
10. The identification of psychological problems faced by the prison population which includes death row inmates is influenced by the lack of both psychological examination and curative program when a psychological disorder is observed. Evidence and scientific-based preventive and promotive efforts to prevent the occurrence of any psychological disorder or worsen the existing psychological disorder are also not found in the regulation.

Based on the information above, we call upon the UPR Working Group and the UN Human Rights Council to urge the Government of Indonesia to:

1. Prepare regulation on the right of inmates which includes and may be accessed by death row inmates;

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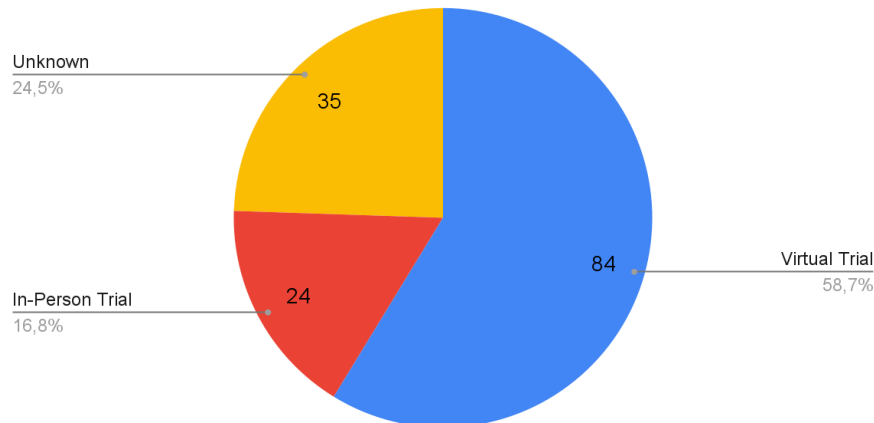
<sup>8</sup> Sitanggang, D., Fakhriah, E. L., & Suseno, S. (2018). "Perlakuan Terhadap Terpidana Mati di Lembaga Pemasyarakatan Dalam Perspektif Hak asasi manusia". *Jurnal Media Hukum*, 25(1). <https://doi.org/10.18196/jmh.2018.0106.102-110>

2. Provide and open psychological and medical services for death row inmates and carry out assessment of death row inmates for the preparation of mass commutation policy and for the advocacy purpose of death row cases.

**IV. Virtual trials against defendants who are threatened with the death penalty as a response to the Covid-19 pandemic are vulnerable to the violation of fair trial. (Recommendation 141.60)**

11. During the COVID-19 pandemic, the imposition of the death penalty is still being carried out. According to monitoring by Imparsial from March 2020–February 2022 there were at least 143 new death sentences. Like before, narcotics cases still make up the majority of death sentences with 117 cases, followed by murder with 20 cases, as well as terrorism with 6 cases. The death sentence was handed down in various provinces and court levels. Aceh is the province that imposed the most death sentences, followed by North Sumatra, Riau and South Sumatra. The death penalty during the pandemic were imposed mostly through virtual trials. Of the 143 verdicts imposed during the pandemic, 84 sentences were imposed in virtual trials, 24 sentences were imposed in in-person trials, and 35 verdicts are unknown whether they were imposed in virtual or in-person trials. Virtual trials certainly provided more room for unfair trial, such as the poor quality of legal aid that was able to be provided, limited way to present information, technical problems with the internet and devices used in court, defenses that are not optimal, among many problems.

**Trial Mechanism for Death Penalty Cases During the Covid-19 Pandemic**



12. In the current pandemic situation, the Supreme Court implements virtual trials as regulated in Regulation of the Supreme Court of the Republic of Indonesia No. 4 of 2020 concerning Administration and Virtual Trial of Criminal Cases in Court. In fact, the practice of virtual trial is vulnerable to technical issues so providing evidence and defense efforts in the trial would be nonoptimal. As a consequence, many of the rights of defendants are increasingly deprived in spite of the guarantee in the Convention on Civil and Political Rights;
13. At the end of 2021, LBH Masyarakat documented 146 prison inmates in three detention centers in Jakarta, who have undergone a criminal trial process for January 2020–September 2021 period. The documentation found the existence of problems relating to violations of the fair trial, among others:



**a. Access and Quality of Legal Aid**

14. Of the 146 inmates, 91.1% of inmates have undergone virtual trials. During the virtual trials, several violations of the fair trial principle were found. A total of 58.4% of inmates underwent the trial process without being accompanied by a lawyer. Furthermore, 24% were accompanied by a lawyer appointed by the judge without any meeting or communication between the inmate and the lawyer. So, the fulfillment of the right to legal aid is limited to a mere formality. As a result, there are 82.4% of inmates whose rights to proper legal aid are not fulfilled. This practice shows a violation of Article 28 D paragraph 1 of the Constitution, Article 14 paragraph 3 of the Convention on Civil and Political Rights, as well as Article 54 of the Criminal Procedure Code.

**b. Right to provide information freely**

15. Concerning the right to provide information freely, 42.5% of inmates were unable to respond to the testimony provided by the witness for several reasons, such as: (a) the voice of the witness was unclear; (b) the judge did not give any opportunity; (c) the inmates were directed to respond in the defense; and (d) did not dare to respond to the testimony of the witness (arrestor) because they were being tried in the same room. 71.2% of inmates underwent virtual trials under the supervision of police officers. Thus, the situation made it impossible for the defendant to be free in providing information. This condition clearly violates Article 52 of the Criminal Procedure Code;

**c. Virtual trial's technical issues**

16. Subsequently, as many as 41.1% of inmates have undergone virtual trials with inappropriate devices and networks, often unable to understand and follow the ongoing criminal trial process. In fact, 45.9% of inmates in their capacity as witnesses were examined online. This hampers the effort to cross-examine witnesses with incriminating statements. However, Article 2 paragraphs 3 and 4 of the Regulation of the Supreme Court No. 4 of 2020 states that in the organization of a virtual trial, the trial participants should be clearly seen on the monitor and have an audible voice, and the clerk ensures that the trial participants are connected with the judge before the virtual trial is carried out;

**d. Non Optimal defense**

17. When the unfair trial occurs, there are inmates who do not receive an adequate opportunity for a defense. A total of 4.8% of inmates were tried only 2 (two) times from the indictment process to the verdict. Subsequently, 41.1% of inmates were not given the right to defend themselves optimally. This practice clearly violates Article 14 paragraph 3 letter (b) of the Convention on Civil and Political Rights.
18. The example of virtual trial implementation which is still far from applying the fair trial principle is the vulnerability of the Indonesian criminal justice system. Thus, in the case of the death penalty, the violation of fair trial generates a fundamental problem causing potential mistakes in the imposition of the death penalty unavoidable;<sup>9</sup>
19. Violation of the fair trial against defendants who were threatened with the death penalty occurred in the case of Victor Yudha Aritonang who was examined by the District Court of Medan with a death sentence.<sup>10</sup> Victor did not receive the right to quality legal aid during

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<sup>9</sup> Press Release by LBH Masyarakat, LBH Jakarta, PBHI Nasional. <https://lbhmasyarakat.org/memperingati-hari-kehakiman-nasional/>

<sup>10</sup> Verdict Medan District Court Number: 3589/PID.SUS/2020/PN.MDN

the examination process. It is known that the defendant did not receive quality legal aid from the investigation stage until the defense trial stage was to be held;

20. After that, the case of Okonkwo Nonso Kingsley, a Nigerian citizen and a death row inmate since 2004<sup>11</sup>, in the most recent drug case in 2021 which was examined by the District Court of Meulaboh. The prosecutor sought a death penalty for Kingsley and the panel of judges sentenced Kingsley to death.<sup>12</sup> In the Kingsley case, we consider that the imposition of the death penalty is inappropriate because of the violations of fair trial;
21. *First*, Kingsley had difficulty in getting access to a consular post. Such difficulty eventually violates the right to access to an interpreter. This greatly affected Kingsley's ability to understand the legal process he was facing and he was unable to provide information freely. *Second*, the violation of the right to legal aid. During the investigation process until the trial, Kingsley struggled to communicate with his legal counsel. This is because Kingsley was being detained in Jakarta, while his lawyer and the trial took place in Meulaboh, Aceh. *After that*, his legal counsel at the first level also did not show any effort to communicate and meet him, making it difficult to prepare a quality defense. With multiple violations in the process, in January 2022, the panel of judges sentenced Kingsley to death for a second time;
22. Imposition of two death sentences as faced by Kingsley was also experienced by Budiono who received two death sentences for a drug case, the first one from the District Court of Mempawah and the second one from the District Court of Sanggau.<sup>13</sup> Two death sentences is a violation based on the Indonesian Criminal Code as stipulated in Article 67 of the Criminal Code which states that *"if a person is imposed with death sentence or life imprisonment, in addition, no other punishment may be imposed except for the revocation of certain rights, confiscation of goods that have been confiscated previously, and announcement of the judge's decision."*;

Based on the information above, we call upon the UPR Working Group and the UN Human Rights Council to urge the Government of Indonesia to:

1. Cease the prosecution and execution during the Covid-19 pandemic because legal proceedings that occur during the Covid-19 pandemic does not guarantee that the principles of fair trial are carried out properly;
2. Establishing a system of supervision and guarantee of a fair trial for cases that have a potential of the death penalty, including by increasing access to legal aid and providing quality legal aid, especially for defendants who are threatened with the death penalty, including the provision of interpreter and consular assistance;
3. Encourage the implementation of virtual trials to be carried out based on the consent of the defendant (without coercion) and ensure that the virtual trial process runs fairly, without any pressure, and guarantees the rights of suspects/defendants;
4. Open access to direct and virtual visits for legal representatives, diplomatic representatives, interpreters, clergy, family at every level of examination or detention place of death row inmates;

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<sup>11</sup> Verdict Medan District Court Number: 244/Pid.B/2004/PN.MDN

<sup>12</sup> Verdict Meulaboh District Court Number: 103/Pid.Sus/2021/PN.MBO

<sup>13</sup> Imparsial's monitoring on death penalty cases



**V. The death penalty targets vulnerable groups and is still fraught with torture practices (Recommendation 141.6, 141.7)**

23. The death penalty is often only imposed on vulnerable groups. Unfortunately, there is no concrete definition of vulnerable groups in Indonesia. In practice, this condition of voidness is not always bad, as it can even have positive implications in terms of categorization. Moreover, looking at vulnerability variables that constantly develop over time, factors that determine vulnerability are dynamic in nature. Therefore, the classification of vulnerability that may be identified as variables includes physical vulnerability, social vulnerability, economic vulnerability, and environmental vulnerability.<sup>14</sup> Of the several variables of vulnerability, those who are entangled in criminal cases with the threat of the death penalty often experience a layered and complex vulnerability; for example women, children, people with disabilities, the elderly, and the poor. One of the death row inmates from this virtual trial is a 75-year-old grandfather. Isnardi, who worked daily as someone else's cow herder and hired to be a drug courier. Isnardi's death sentence was issued at the District Court of Binjai, strengthened at the High Court of Medan, and had his cassation rejected by the Supreme Court.<sup>15</sup>

**A. Layered vulnerability**

24. In the case of Merri Utami, she was a female death row inmate for narcotics who was imprisoned from 2001 until now.<sup>16</sup> The layered vulnerability is clearly illustrated therein. *First*, within the scope of the family environment, Merri Utami experienced a long history of violence from her husband. *Second*, Merri Utami faced poverty that forced her to work as a migrant worker by leaving her 2 (two) toddlers. *Third*, Merri Utami has currently served a double sentence of the death penalty and imprisonment of more than 20 (twenty) years. As a death row inmate who undergoes a long prison sentence, it is automatically included in the death row phenomenon before execution. This issue of death row phenomenon has implications for the physical and mental health conditions of death row inmates.<sup>17</sup> Moreover, in 2016, Merri Utami had a series of executions-although the execution of Merri Utami was postponed-which still causes feelings of trauma or psychological problems until now;
25. When the lack of transparency of death row inmates data occurs, the vulnerability experienced by Merri Utami is also largely experienced by other death row inmates. Based on data compiled by Imparsial, the number of death row inmates who have been imprisoned for more than 20 years as of March 2021 is as many as 18 death row inmates. These death row inmates do not receive a proper program in facing psychological pressure or other problems such as health, physical and mental development from the government during the detention period;
26. Within the legal framework, in regard with the fact of the case experienced by Merri Utami, the Government of Indonesia has violated Article 12 of the Criminal Code which in principle states the length of criminal punishment must not exceed 20 (twenty) years of imprisonment. Despite that, the length of imprisonment does not remove the execution.

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<sup>14</sup><https://pshk.or.id/publikasi/laporan-studi-pengembangan-strategi-advokasi-antidiskriminasi-bagi-kelompok-rentan-di-indonesia/>

<sup>15</sup><https://news.detik.com/berita/d-5656822/ma-hukum-mati-kakek-75-tahun-dari-sumut-yang-jadi-kurir-narkoba>

<sup>16</sup> Verdict Tangerang District Court Number: 140/PID.B/2002/PN.TNG

<sup>17</sup> Adhigama Andre Budiman, Maidina Rahmawati "Fenomena Deret Tunggu Terpidana Mati di Indonesia" Institute for Criminal Justice Reform (ICJR), Oktober 2020, hal. 9.

However, the Constitution Article 28D paragraph 1 states that "*every person is entitled to the recognition, guarantee, protection and certainty of fair legal certainty and equal treatment before the law*", and there is also Law No. 7 of 1984 concerning Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women.

**B. Relationship between death row inmates and their children**

27. In the perspective of the relationship of children and parents who are sentenced to death, it is counterproductive to the obligation to provide protection for children from parents who are sentenced to death. It is because, psychologically, children feel the impact of the death penalty from the loss of the role of Mother/Father. Children do not have any problem with the law. So, in the context of the relationship between Merri Utami's two children who were toddlers at that time, it was clearly a violation of Law No. 4 of 1979 concerning Child Welfare;

**C. Unprotected migrant workers**

28. In the context of Indonesian migrant workers abroad who are far from their family and state monitoring, they are highly vulnerable to death sentences and executions due to lack of protection. As of October 2021, there are 205 Indonesian citizens, including migrant workers<sup>18</sup> who face the death penalty with a majority of drug cases. From the aspect of diplomacy, the guarantee of migrant workers protection is difficult for the Government of Indonesia, because domestically Indonesia still applies the death penalty;

**D. The death penalty still threatens children and is full of torture**

29. The practice of the death penalty in Indonesia also still threatens children even though the legislation in Indonesia has prohibited the imposition of the death penalty on children, pregnant women, and people with mental disabilities. This was experienced by Yusman Telaumbanua in 2014, and a similar thing happened recently to Mispo Gwijangge (MG). MG is suspected of being involved in the murder of PT. Istaka Karya workers while building bridges in Kali Yigi and Aurak, Yigi District, Nduga Regency, Papua on 2 December 2018. Then, the public prosecutor charged MG with multiple articles with the threat of the death penalty. He was charged with Article 340 juncto Article 55 Paragraph 1, Article 338 juncto Article 55 Paragraph 1, Article 351 Paragraph 3 juncto Article 55 Paragraph 1, Article 328 juncto Article 55 Paragraph 1 and Article 333 Paragraph 1 juncto Article 55 Paragraph 1 of the Criminal Code.<sup>19</sup>
30. Although MG was acquitted of all lawsuits at the end, MG has first undergone the examination process in the police as an adult and not as a child who faces the law. MG was released by the District Court of Central Jakarta on 8 April 2020 after undergoing legal proceedings and was detained for 333 days. MG is also strongly suspected of being tortured during the examination and investigation process by the police. MG was tortured in the form of buttstroke as witnessed by his family members. In addition, MG also experienced various tortures in the police station such as being soaked in a pool overnight. As a result of the torture, MG died on 5 January 2021 due to spinal disorders and acute respiratory disease syndrom.<sup>20</sup>

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<sup>18</sup> <https://bontangpost.id/205-wni-terancam-hukuman-mati-di-negara-orang/>

<sup>19</sup> <https://metro.tempo.co/read/1303604/terdakwa-penembak-karyawan-pt-istaka-karya-diduga-di-bawah-umur/full&view=ok>

<sup>20</sup> Statement from the Papuan Advocacy Team who is MG's legal assistant in an interview on 21 March 2022.

Based on the information above, we call upon the UPR Working Group and the UN Human Rights Council to urge the Government of Indonesia to:

1. Ensure that the death penalty is not applied to vulnerable groups, especially to children, people with mental health disorders, pregnant women, and others who are prohibited under the provisions of international law;
2. Create a case handling by law enforcement officials, especially the National Police and Narcotics Agency (BNN) which not only pursue the quantity of case handling but also in accordance with the principles of fair trial and respect for human rights;
3. Change the punishment for death row inmates who serve more than 20 (twenty) years in prison through the clemency scheme while still complying with the period of submission of clemency decisions and opening consideration of clemency decisions submitted by death row inmates/legal representative/family/ diplomatic representative;
4. Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment, and establish a national preventive mechanism against torture.

**VI. The policy of granting clemency to death row inmates is selective and does not have clear guidelines to the detriment of the rights of death row inmates. (Recommendation: 141.50)**

31. The protection of the right to life in the clemency arrangement as stipulated in Law No. 5 of 2010 concerning Amendment to Law No. 22 of 2002 on Clemency does not have clear parameters. The Clemency Law does not provide guidelines or standards to the President and the Supreme Court in deciding the petition for Clemency. This problem is shown in the protracted process of granting clemency to Pakistani death row inmate, Zulfiqar Ali. Zulfiqar Ali had to wait for the recommendation process from the Supreme Court that had passed the deadline set in the law, which is for more than 30 days. Zulfiqar Ali died in 2018<sup>21</sup> due to not being able to carry out adequate treatment before his clemency petition was granted by President Joko Widodo. The Supreme Court has violated the provisions in the Law on Clemency in the case of Zulfikar Ali, while the President has also ignored the petition for clemency in the name of humanity filed by Zulfikar Ali.
32. In many cases of clemency petitions, the Supreme Court's recommendation appears to only repeat the sound of previous decisions of legal proceedings. The absence of differences in consideration of the Supreme Court's recommendation for clemency and previous legal decisions makes the urgency of the Supreme Court recommendation in clemency, especially the death penalty, questionable. Law No. 5 of 2010 on Clemency does not have clear standards, resulting in problematic granting of clemency in death penalty cases in Indonesia. As a result, there is a disparity in the decision given by the President regarding the petition for clemency which also has an impact on the protection of the right to life.

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<sup>21</sup> <https://tirto.id/terpidana-mati-kasus-narkoba-asal-pakistan-zulfiqar-ali-meninggal-cLv8>

33. The government actually has a policy scheme for the commutation of the death penalty through the petition for clemency granted by the President. However, after taking office as the 7th President on 20 October 2014, in December 2014, President Jokowi said he rejected 64 petitions for clemency for death row inmates in drug cases.<sup>22</sup> President Jokowi's reluctance to grant the clemency of death row inmates is intended for the purpose of gathering political power that is almost clean of criticism rather than considering the aspects of injustice experienced by death row inmates. Whereas in the consideration of letter (b) of Law No. 5 of 2010 concerning Amendment to Law No. 22 of 2002 concerning Clemency, it is stated that, in principle, the decision of clemency is an instrument to obtain a pardon or terminate victims of injustice and human rights violations in the criminal justice legal process that has been passed;
34. From a different perspective, the President's compliance to issue a decree on the petition for clemency submitted by death row inmates is in fact not in accordance with the provisions of Law No. 22 of 2002 concerning Clemency in connection with the period of granting or rejecting a clemency petition in 3 (three) months. In particular, the President's non-compliance was experienced by Merri Utami who has applied for clemency since 2016. Merri Utami has never received a copy of the decree on clemency.<sup>23</sup>

Based on the information above, we call upon the UPR Working Group and the UN Human Rights Council to urge the Government of Indonesia to:

1. Revise Law No. 5 of 2010 concerning Amendment to Law No. 22 of 2002 on Clemency to provide clear guidelines and measuring instruments to the Supreme Court and the President in the consideration for granting clemency, especially to death row inmates in Indonesia.
2. Establish an independent and impartial team to evaluate legal decisions against all death sentence cases for the purpose of petition for clemency as a mass commutation program for death penalty cases in Indonesia.

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<sup>22</sup><https://nasional.kontan.co.id/news/grasi-64-terpidana-mati-kasus-narkoba-ditolak>

<sup>23</sup><https://www.cnnindonesia.com/nasional/20211101202756-20-715222/anak-terpidana-mati-merri-utami-datangi-ksp-tagih-grasi-dari-jokowi>

## ANNEX 1

### Profile of the Submitting Organizations

**Community Legal Aid Institute (LBH Masyarakat)** is a not-for-profit legal aid organization that provides free legal services for the poor and victims of human rights abuses; undertakes legal empowerment for marginalized groups; and advocates for legal reform and human rights protection through strategic litigation, public campaigns, and research and analysis.

**IMPARSIAL, the Indonesian Human Rights Monitor**, a non-governmental organization founded in 2002 with the aim of advocating in the field of human rights, including conducting studies and research, increasing capacity and knowledge about human rights, as well as campaigning on human rights issues, both at the local, national and international levels, among which the focus is on issues of protecting human rights defenders, anti-death penalty, freedom of religion or belief, freedom of association and assembly, freedom of expression, peace and conflict resolution in Papua, and the reform of the security sector.

**Human Rights Working Group (HRWG)** is a network of more than 48 non-governmental organizations working on promoting human rights in Indonesia. It was established in 2000 by NGOs sharing similar interests and seeking a platform to coordinate and lead international advocacy efforts. HRWG's main objective is to promote government accountability on constitutional obligations and international standards to respect, promote, protect, and fulfill human rights at home by maximizing available human rights mechanisms at different levels.

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

**Migrant CARE** is a non-governmental organization that works for the defense and empowerment of migrant workers, provides legal assistance and conducts policy advocacy at the local, national and international levels. Actively campaigning for the abolition of the death penalty, especially for migrant workers.

**Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia - Indonesian Legal Aid and Human Rights Association (PBHI)** are an association based organization and legal aid organization which encouraged the state obligations to respect, protect, and fulfill human rights both civil and political rights as well as economic, social and cultural rights. We worked by promoting universal values of human rights, providing legal assistance to the victims of violations, and educating people regarding human rights values.

**Indonesia Legal Aid Institute (YLBHI)** was established on 26 October 1970 as an initiative of Dr. Adnan Buyung Nasution, S.H.. After the establishment of Jakarta Legal Aid Institute, YLBHI now has 17 other legal aid institute offices in different 17 provinces in Indonesia. YLBHI with all of the 17 legal aid institute offices is a legal aid organization focused on Human Rights enforcement, fighting for the rights of the poor and the marginalized, also victims of human rights violations. Assisting victims in courts, conducting critical education, and doing research are the recent main activities of YLBHI.

**The Jakarta Legal Aid Institute (LBH-J)** is a non-government public institution (NGO) that provides free legal aid services to the poor, the blind and the oppressed who fight for justice for violations of law and human rights. Established in 1970, which consistently provides structural legal assistance to the community to realize the rule of law and the promotion of human rights in Indonesia. LBH Jakarta is part of the Indonesian Legal Aid Foundation.

**LBH Pers** is a civil society organization that was established in 2003, and consistently advocates for press freedom and expression in Indonesia, in particular providing legal assistance to journalists, activists, civil society, student press, and media workers.

**ELSAM**, The Institute for Policy Research and Advocacy, is a human rights organization, based in Jakarta, established in August 1993. To actively participate in the efforts to develop, promote and protect civil and political rights and other human rights, as mandated by the 1945 Constitution and Universal Declaration of Human Rights (UDHR), has become ELSAM's driving objective. At the outset, ELSAM's spiritual commitment was to develop a democratic political order in Indonesia by empowering civil societies through advocacy and promotion of human rights.

**Yayasan Satu Keadilan, (One Justice Foundation)**, abbreviated as "YSK", was formed on February 14, 2014 in Bogor City, West Java. The SATU KEADILAN Foundation was formed to pay attention to violent practices and other human rights violations. Furthermore, the ONE KEADILAN Foundation is also fighting for the establishment of democracy and human rights. A struggle aimed at growing democracy and justice based on the integrity of the people's sovereignty that is free from fear and oppression, equality before the law, various forms of violence, violations of human rights and discrimination, including those based on gender, religion/belief, color, orientation. sex and race.

**SETARA Institute** is an organization founded for the vision and ideal that everyone should be treated equally by respecting diversity, promoting tolerance and solidarity, and upholding human dignity. The objectives of the organization are to promote pluralism, humanitarianism, democracy and human rights, to study and advocate pluralism, human-centered public policy, democracy and human rights, to foster dialogues on conflict resolution, and to undertake public education activities.



**IKOHI (Indonesian Association of Families of the Disappeared)** is an organization founded by the families of victims of the 1997/1998 enforced disappearances. In its development, IKOHI is not only a forum for victims and families of victims of the 1997/1998 enforced disappearances, but also a forum for families of victims of enforced disappearances from various incidents of serious human rights violations that occurred in Indonesia from the 1965 to 1998 cases. The focus of IKOHI's work is to encourage victims' recovery in terms of psychosocial strengthening, economic empowerment, and advocacy of state accountability policies to encourage fair case resolution for victims and their families.

**KontraS, Komisi untuk Orang Hilang dan Tindak Kekerasan**, is a national human rights non-governmental organization based in Jakarta, Indonesia and was established in 1998. Its main activities are geared towards support for the victims of human rights violations. It seeks to improve respect and protection for human rights within Indonesia through advocacy, investigations, campaigns, and lobbying activities.

**INFID** is a non-profit, independent organization that is not affiliated with a particular political belief, and is deeply concerned over development issues facing Indonesia. In terms of its organization as a whole, INFID is fully embracing universal values that promote pluralism, non-discrimination, human rights, democracy, solidarity and equality, gender justice, sustainable environment and local wisdom. At present, INFID focuses its work on three programs namely: 1) Reducing Inequality, 2) Sustainable Development Goals, 3) Human Rights and Democracy. Under human rights and democracy programs, there are three subprograms: a) Business and human rights, b) Human rights city, c) Preventing violent-extremism (PVE).