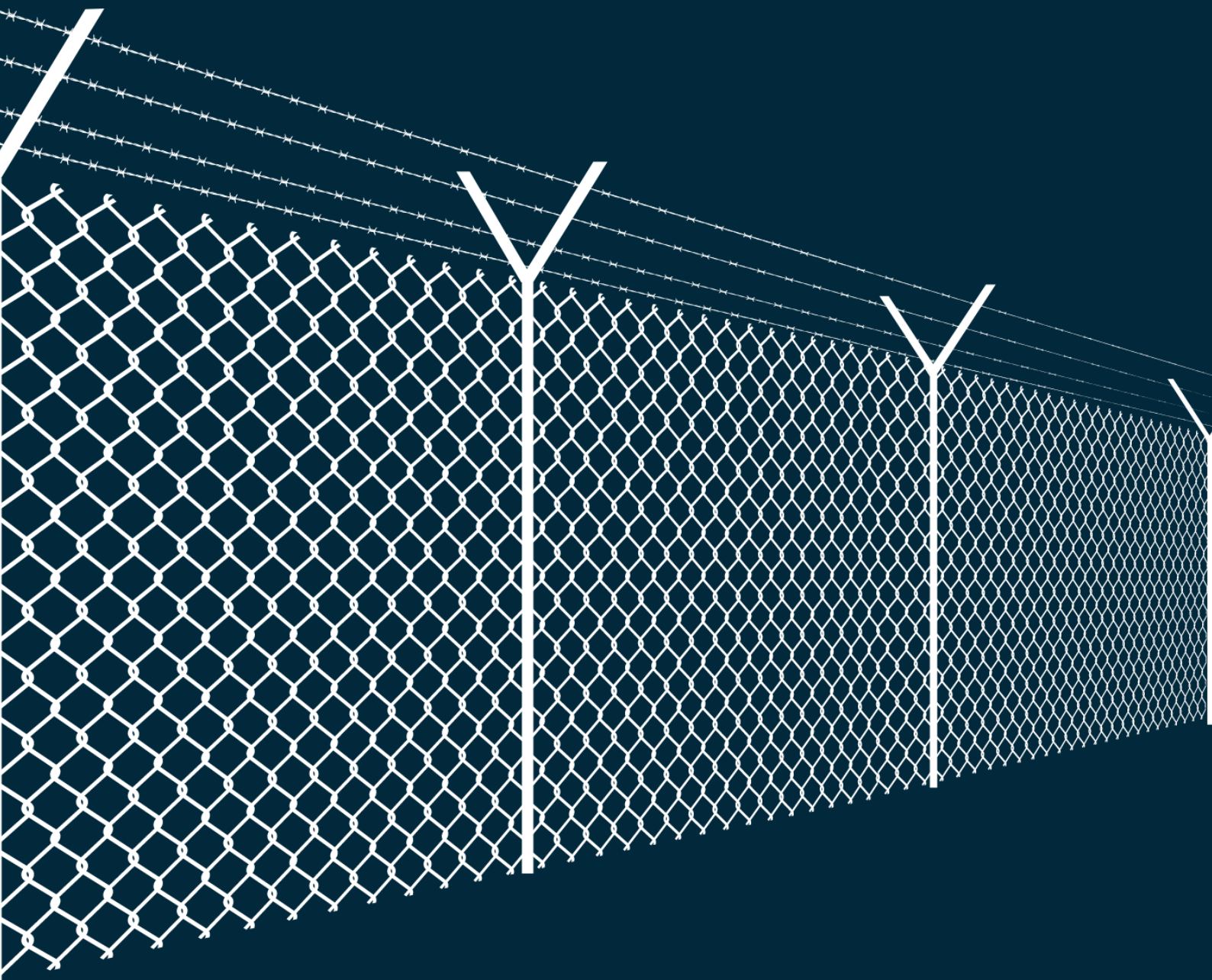


2022 REPORT  
ON DEATH PENALTY IN INDONESIA:

---

# NO ONE IS PROTECTED



## **2022 Report on Death Penalty in Indonesia: No One is Protected**

### **Authors:**

Adhigama Andre Budiman

Genoveva A. K. S. Maya

Girlie L. A. Ginting

Iftitahsari

Johanna G. S. D. Poerba

Maidina Rahmawati

### **Enumerators:**

Elisabeth Garnis

Eudia Viona Fransiska

Fachrial Rizki Syahputra

Farhan Ghazi Eldian

Riyanto

Wahyu Aji Ramadhan

### **Cover Design:**

Elisabeth Garnis

### **Visual Element:**

Dervish 47 by Canva

### **Copyright License:**



*This work is licensed under a Creative Commons Attribution 4.0 International License*

### **Published by:**

**Institute for Criminal Justice Reform**

Jl. Komplek Departemen Kesehatan Nomor B-4, Pasar Minggu, Jakarta Selatan – 12520

Phone/Fax: 021-27807065



ICJRid



ICJRID



ICJRID



perkumpulanicjr

### **First published on:**

June 2023

## Table of Content

Table of Content.....	2
Foreword.....	4
Executive Summary .....	5
1. Track Record of State Actors' Statements on Death Penalty.....	8
2. Portrait of Death Penalty Implementation: Trend of the Increased Number of Death Penalty Charges and Sentences.....	9
3. The Issue of Delay in Execution of Death Sentence in Indonesia.....	19
4. Death Penalty Policy in the New Criminal Code .....	24
5. The Development of Populist Narratives on the Use of Death Penalty .....	28
6. UPR: Report on Death Penalty Policy in Indonesia .....	32
7. Recommendation .....	33
Authors' Profile.....	34
ICJR Profile .....	35

## **List of Graphs**

Graph 1. Trend of the Increased Number of Death Penalty Charges and/or Sentences in Indonesia over the Years .....	9
Graph 2. Comparison of the Number of Death Penalty Charges and/or Sentences Before and During the Pandemic .....	10
Graph 3. Nationality of Defendants Charged with and/or Sentenced to Death Throughout 2022 .....	11
Graph 4. Gender of Defendants Charged with and/or Sentenced to Death Throughout 2022 .....	11
Graph 5. Number of Decision Documents Collected for Cases Charged with and/or Sentenced to Death Throughout 2022.....	12
Graph 6. Types of Cases Charged with and/or Sentenced to Death Throughout 2022 .....	13
Graph 7. Comparison of the Number of Charges and Sentences of Death Penalty with Other Types of Criminal Sanctions per Level of Examination Throughout 2022.....	14
Graph 8. Distribution of Death Penalty Charges and Sentences Throughout 2022 .....	17
Graph 9. Judges' Attitude Towards Death Penalty Throughout 2022 .....	18
Graph 10. Format of Hearings for the Reading of Case Verdicts Charged with and/or Sentenced to Death Throughout 2022.....	19
Graph 11. Comparison of the Number of People on Death Row in 2017-2022 .....	19
Graph 12. Distribution of People on Death Row by Type of Crime as of August 31, 2022 .....	20
Graph 13. Distribution of People on Death Row by Place of Detention as of August 31, 2022 .....	21
Graph 14. Distribution of People on Death Row by Age as of August 31, 2022.....	22
Graph 15. Distribution of People on Death Row by Gender as of August 31, 2022 .....	23
Graph 16. Distribution of People on Death Row by Nationality as of August 31, 2022 .....	23

## **Foreword**

The trajectory of the death penalty in 2022 is characterized by two patterns. First, like in previous years, death penalty is used as a populist narrative, as if countries implementing death penalty have succeeded in dealing with crimes. In 2022, this narrative surfaced in the handling of sexual violence cases. The death penalty, as the most masculine punishment, is used as a catchphrase, keeping us distracted from the root causes of sexual violence which is the ignored patriarchal culture that endorses completely unsafe spaces for vulnerable people. It has blurred the focus of handling crimes by highlighting punishment, rather than eliminating the root causes, let alone strengthening the rights of victims and their families. The other crime, which is the narcotics offense, remains the same and is the wide cases that use the death penalty, without a clear purpose on what it is intended to protect. There is also a narrative on the use of death penalty for corruption, which similarly distracts us from the root causes and does not protect anyone.

The second pattern is a shift, albeit “slightly”, in the politics of the law of the death penalty in Indonesia. With the enactment of the New Criminal Code on December 6, 2022, the Government and Parliament through Article 67, Article 98, and Article 100 introduced new arrangements on the death penalty. The death penalty is no longer a main punishment but a special/alternative punishment, meaning that it must always be used as an alternative sanction together with other types of punishments and followed by a 10-year delay of execution, which is referred to as the probation period. This new provision will also apply to people who are already on death row, in accordance with the legal principle contained in both the Old Criminal Code currently in force and the New Criminal Code, which will only take effect in January 2026. The legal principle defines that where there is a change in the law after the act has been committed, the provision that is most favorable to the defendant shall be applied.

Those two patterns, indeed, contrast each other, but what we have to promote is the second pattern, which is the changing of politics of law of the death penalty. This is a baby step that must be glorified by urging the government to voice that there will be no more prosecutions of death penalty because, after all, the government will focus on the commutation of the death penalty for all people on death row.

Jakarta, April 2023

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

## Executive Summary

- The ICJR annually monitors and collects data on every criminal case prosecuted and/or sentenced to death at the stage of first instance, appeal, cassation, or judicial review. The data is then accumulated in ICJR's internal database, which was last updated on 24 March 2023;
- The sources of the ICJR's internal database used in this report are data collected from the Case Tracing Information System (*Sistem Informasi Penelusuran Perkara/SIPP*) from all District Courts in Indonesia, the website of the Supreme Court Decision Directory ([putusan3.mahkamahagung.go.id](https://putusan3.mahkamahagung.go.id)), data from the Directorate General of Corrections of the Ministry of Law and Human Rights, and media report by journalists;
- For 2022, the ICJR found 132 new criminal cases prosecuted and/or sentenced to death with a total of 145 defendants;
- The 2022 figure shows a recurring rise after decreased trend from the period of 2020 to 2021. The number of new cases in 2022 is higher than the number of additional new cases reported from the period of 2019;
- The new cases prosecuted and/or sentenced to death in 2022 is still dominated by drug-related offenses. The details are as follows:
  - 123 cases of Narcotics (93%),
  - 3 cases of Premeditated Murder (2%),
  - 2 cases of Premeditated Murder and Violence against Children Resulting in Death (1%),
  - 1 case of Premeditated Murder, Violence against Children Resulting in Death, and Child Rape (1%),
  - 1 case of Child Rape Causing More than One Victim,
  - 1 case of Child Rape Causing Serious Injury and Causing More than One Victim, and
  - 1 case of Corruption (1%);
- The application of death penalty cases remains to be shadowed by the narrative of populism: as if reducing crimes will only be effective by imposing the death penalty, even though the death penalty is in fact not effective for dealing with sexual violence, corruption, or drug-related offenses;
- In fact, in the application of death penalty cases in Indonesia in general, there are at least 10 defendants who have previously been charged and/or sentenced to death and then they were again prosecuted and/or sentenced to death for the second time. Those defendants are all involved in drug cases. Even if a case has been prosecuted or sentenced to death, there is a tendency for the criminal acts to reoccur, and this raises a critical question about the deterrence effect of the death penalty;

- Regarding the total number of people on death row, by August 2022 there has been an increase of 24 people (6%) on death row in Indonesia, with a total of 428 people on death row currently in Indonesia;
- As in previous years, people on death row from drug trafficking cases (narcotics/psychotropics) still occupy the highest position with as many as 255 (60%) people on death row;
- There are limitations in the collection of data on people on death row obtained by ICJR from the Director General of Corrections of the Indonesian Ministry of Law and Human Rights in the 2022 reporting period. Consequently, in calculating the period of death row for each people we can only refer and process the data from the Director General of Corrections of the Indonesian Ministry of Law and Human Rights as of October 9, 2019, and September 8, 2020, that include more detailed information of each people on death row. Based on the processed data, the total number of people who have been on death row for more than 10 years as of March 2023 is estimated to reach 101 people;
- The year 2022 also marks the renewal of the law regarding the death penalty in Indonesia with the enactment of Law No. 1 of 2023, which was passed on December 6, 2022, and formally promulgated on January 2, 2023, namely the New Criminal Code. The Criminal Code introduces the death penalty as an alternative and special punishment that must always be used with other type of criminal punishment and followed by a probation period of 10 years. This means that during this period, there must be no execution of the death penalty and there is an opportunity for commutation of sentence by the end of the probation period;
- The commitment to the commutation of the death penalty sentence can also be found in a recommendation supported by the Government of Indonesia, in the Fourth Cycle Universal Periodic Review of Indonesia at the UN Human Rights Council. The Government of Indonesia supports the implementation of a commutation mechanism or changes of sentence for people who have been sentenced to death, in strengthening the mechanism of clemency from the president;
- After the adoption of the new Criminal Code, in preparation for the implementation, the government must immediately formulate a regulation for the commutation mechanism;
- To that end, the ICJR recommends the following to various government stakeholders:
  - **Recommendations for the Government:**
    - Urging the Attorney General to stop prosecuting the death penalty, reflecting on the politics of law that is going towards the abolition of death penalty
    - Not ordering executions because the politics of law on the death penalty have changed, and all of the people on death row will be subject to assessment for commutation

- Accelerating the assessment process on people on death row following UPR commitments for at least the 101 people who have been delayed execution for more than 10 years
- **Recommendations for the Government and Parliament:**
  - No longer introducing the death penalty in the process of discussing the revision to the Narcotics Law
  - Regulating stricter procedural law provisions for people prosecuted and sentenced to death in the revision of the Criminal Procedure Code
- **Recommendations for the Supreme Court:**
  - Assigning a moratorium on the death penalty by prioritizing other types of criminal punishment in handling criminal cases
- **Recommendations for state institutions under the National Prevention Mechanism Against Torture (NHRI, National Commission on Violence against Women, Ombudsman, Child Protection Agency, Victim and Witness Protection Agency):**
  - Activating monitoring mechanisms at detention places to oversee the conditions of people on death row, especially in the context of preventing torture
  - Urging the government to issue a policy on the commutation of the death penalty
  - Urging the government and parliament to commit to the abolition of the death penalty in the legislative process, especially in the revision of the Narcotics Law



## 1. Track Record of State Actors' Statements on Death Penalty

*"I told my colleagues that it is time for the death penalty to be dismissed,"* – **Dr. H. Arsul Sani, S.H., M.Si., Pr.M. (Member of Commission III of the House of Representatives, Vice Chairman of the People's Consultative Assembly of the Republic of Indonesia)**<sup>1</sup>

*"Meaningful developments for human rights, related to the death penalty, so with the enactment of the New Criminal Code, the death penalty is always imposed alternatively with probation. By being an alternative sentence, the judge cannot directly sentence the defendant to death."* – **Prof. Dr. Eddy O. S. Hiariej, S.H., M.Hum. (Deputy Minister of Law and Human Rights of the Republic of Indonesia)**<sup>2</sup>

*"So this is a middle way, and we still regulate the death penalty but in its implementation it is given a probation of 10 years."* – **Dr. Dhahana Putra, Bc.IP., S.H., M.Si. (Acting Director General of Laws and Regulations of the Ministry of Law and Human Rights of the Republic of Indonesia)**<sup>3</sup>

*"The death penalty provision in the New Criminal Code is not the same as in the old law. The death penalty that will be applied has a 'suspended sentence', a delay execution of 10 years. If in 10 years (the defendant) is considered well behaved, the sentence will be changed to a life imprisonment or 20 years imprisonment. So there is a deadline of 10 years."* – **Dr. Yenti Garnarsih, S.H., M.H. (Members of the Drafting Team for the Draft of Criminal Code or RKUHP)**<sup>4</sup>

*"This is a testament to the seriousness and commitment to the eradication of sexual crimes, especially when children are the victims. The death penalty is recognized in the legal system in Indonesia through the Child Protection Law, which was strengthened by President Jokowi with Government Regulation in Lieu of Law, which became Law No. 17/2016 concerning the Second Amendment to the Child Protection Law. Moreover, based on the principles of law and human rights in Indonesia, there is Article 28 J paragraph (2) of the 1945 Constitution which states that the implementation of human rights in Indonesia must be subject to restrictions made by law, such as the Child Protection Law."* – **Dr. H. M. Hidparagrah Nur Wahid (Vice Chairman of the People's Consultative Assembly of the Republic of Indonesia)**<sup>5</sup>

*"The provision of the death penalty to perpetrators of sexual violence, such as Herry Wirawan, is made possible by Law Number 17 of 2016. The decision of the Public Prosecutor to charge Herry Wirawan with the death penalty has a strong basis because the prison sentence is considered insufficient, considering the seriousness of the crime."* – **Nahar, S.H., M.Si. (Deputy for Special Child Protection of the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia)**<sup>6</sup>

---

<sup>1</sup> Eko, 'Death Penalty Should Not Be Imposed Carelessly' *Berita DPR*

<<https://www.dpr.go.id/berita/detail/id/38992/t/javascript>> accessed on 14 March 2023

<sup>2</sup> Ardito Ramadhan, 'RKUHP Regulates Death Penalty as Alternative to Probation' *Kompas* (Jakarta, 29 November 2022)

<<https://nasional.kompas.com/read/2022/11/29/12370851/rkuhp-atur-hukuman-mati-sebagai-alternatif-dengan-percobaan>> accessed on 14 March 2023

<sup>3</sup> Aryo Putranto Saptohutomo, 'Death Penalty with Probation in New Criminal Code Called Middle Way' *Kompas* (Jakarta, 18 December 2022) <<https://nasional.kompas.com/read/2022/12/18/22242901/pidana-mati-dengan-masa-percobaan-di-kuhp-baru-disebut-jadi-jalan-tengah>> accessed on 14 March 2023

<sup>4</sup> Reza Gunadha, Bagaskara Isdiansyah, 'Much Criticized, Drafting Team Explains Why New Criminal Code Still Has Death Penalty Article' *Suara* (24 December 2022) <<https://www.suara.com/news/2022/12/24/185922/banyak-dikritik-tim-perumus-jelaskan-alasan-kuhp-baru-masih-ada-pasal-hukuman-mati>> accessed on 14 March 2023

<sup>5</sup> 'HNW: Death Penalty for Female Rapists is Constitutional' *Publikasi MBR* (Jakarta, 14 January 2022)

<<https://www.mpr.go.id/berita/HNW:-Hukuman-Mati-Bagi--Pemeriksa-Santriwati-Adalah--Konstitusional>> accessed on 14 March 2023

<sup>6</sup> Anita Permata Dewi, 'KPPPA: Death Penalty for Perpetrators of Sexual Violence Allowed by Law' *Antara* (Jakarta, 14 January 2022) <<https://jabar.antaranews.com/berita/350521/kpppa-hukuman-mati-bagi-pelaku-kekerasan-seksual-diperbolehkan-uu?page=all>> accessed on 14 March 2023

## 2. Portrait of Death Penalty Implementation: Trend of the Increased Number of Death Penalty Charges and Sentences

ICJR annually monitors and collects data on every criminal case prosecuted and/or sentenced to death at the stage of first instance, appeal, cassation, or judicial review (*peninjauan kembali/PK*). The data then have been collected in ICJR's internal database, which was last updated on March 24, 2023. The sources of the ICJR's internal database used in this report are data collected from the website of Case Tracking Information System (*Sistem Informasi Penelusuran Perkara/SIPP*) from all District Courts in Indonesia, the website of the Directory of Supreme Court Decisions ([putusan3.mahkamahagung.go.id](https://putusan3.mahkamahagung.go.id)), data from the Directorate General of Corrections of the Ministry of Law and Human Rights, and media articles by journalists.

**Throughout 2022, ICJR found a total of 132 new criminal cases prosecuted and/or sentenced to death with a total of 145 defendants.** This figure shows a recurring rise after decreased trend from the period of 2020 to 2021, as shown in Graph 1 below. However, the number of new cases is still higher than the data on the addition of new cases reported from 2019.<sup>7</sup>

The figure shows the overall number of new criminal cases where death penalty charges were put on the defendants and/or when judges impose death sentence in the judgements of the first instance, appeal, cassation, or judicial review between January 1 and December 31, 2022. Thus, the numbers mentioned above refer to the addition of new cases as of the year 2022.

Graph 1. Trend of the Increased Number of Death Penalty Charges and/or Sentences in Indonesia over the Years



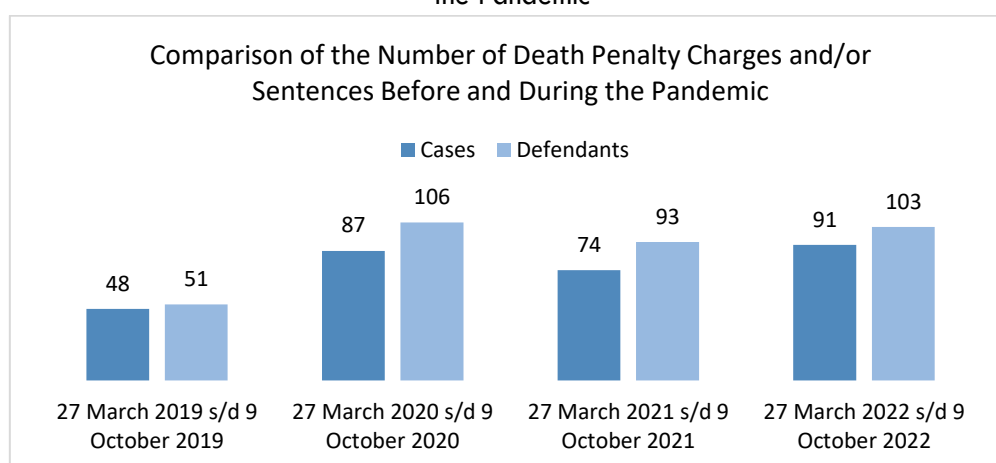
Source: ICJR's Annual Report on the Situation of Death Penalty Policy in Indonesia for the period of 2019-2022

<sup>7</sup> Read the ICJR's Annual Report on the Death Penalty Policy Situation in Indonesia for the period of 2019-2021, which can be accessed via the following link: <https://icjr.or.id/mempermainkan-takdir-laporan-situasi-kebijakan-hukuman-mati-di-indonesia-2019/> ; <https://icjr.or.id/laporan-situasi-kebijakan-hukuman-mati-di-indonesia-2020-mencabut-nyawa-di-masa-pandemi/> ; <https://icjr.or.id/laporan-situasi-kebijakan-pidana-mati-di-indonesia-2021-ketidakpastian-berlapis-menanti-jaminan-komutasi-pidana-mati-sekarang/>

Meanwhile, the total accumulation of criminal cases prosecuted and/or sentenced to death that have been collected in the ICJR's internal database as of March 24, 2023, is 1.105 cases with a total of 1.242 defendants. The cases were found from those registered between 1969 and 2022. Out of the total 1,242 defendants, **there are at least 520 defendants who ended up on death row based on the latest court verdict that was collected or stated under the SIPP website and based on the processed data from the Directorate General of Corrections received by ICJR in 2019.**<sup>8</sup>

This year's report also compares the number of additional cases before and during the pandemic, considering that 2022 marks the third year of the pandemic. The following graph shows a comparison of the addition of cases prosecuted and/or sentenced to death in the same period per year, namely between March 27 and October 9. However, a trend that is different from the general trend of additional cases annually above can be seen as the number of additional cases in 2022 shows the highest number of additions during the three years of the pandemic.

Graph 2. Comparison of the Number of Death Penalty Charges and/or Sentences Before and During the Pandemic



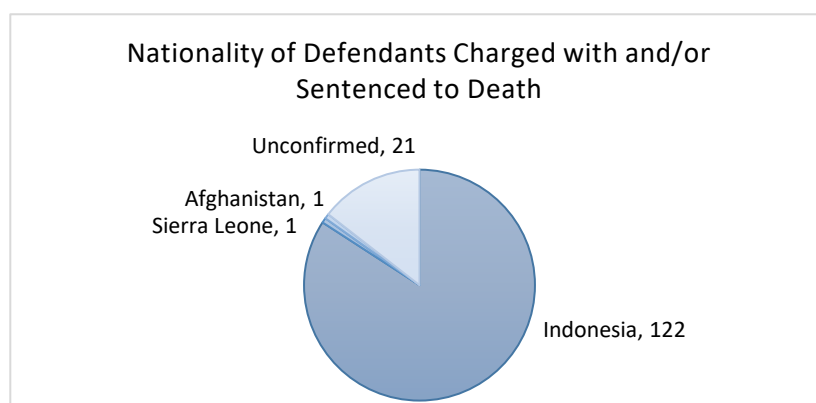
Source: ICJR's internal database updated on 24 March 2023

The number of additional criminal cases with death penalty charges and/or sentences between March 27, 2022, and October 9, 2022, reached 91 cases with 103 defendants. This figure shows the total number of cases with death penalty prosecution and convictions in the first instance, appeal, cassation, and judicial review during that period.

<sup>8</sup> However, there are limitations in terms of ensuring the current situation of each defendants in real time, such as whether the person turns out to have died in prison, escaped, and so on. Likewise, it is hard to ensure whether there is a change of the death sentence particularly through judicial review or clemency from President, cause sometimes such news may not be covered/published by media or journalists. For this reason, ICJR recommends referring to the official data of people on death row from the Director General of Corrections requested by the ICJR annually, which will be described in the next subchapter of this report.

Of the total 145 defendants charged with and/or sentenced to death throughout 2022, it was found that 122 of them were Indonesian citizens. Meanwhile, 2 people are known to be foreigners from Afghanistan and Sierra Leone. This data have been confirmed in the case decision document of the defendants, as obtained from the Supreme Court Decision Directory website. The remaining 21 defendants cannot yet be confirmed because the decision documents of the cases are not available on the Supreme Court Decision Directory website.

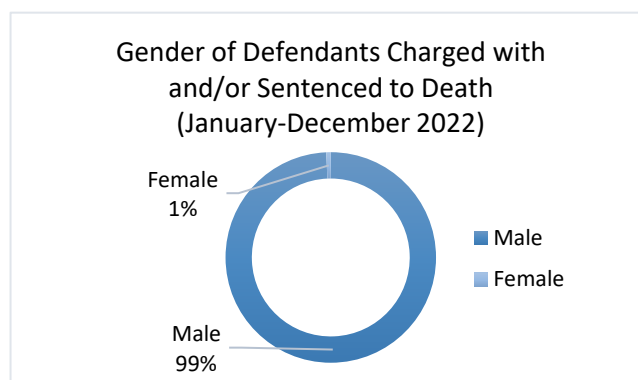
Graph 3. Nationality of Defendants Charged with and/or Sentenced to Death Throughout 2022



Source: ICJR's internal database updated on 24 March 2023

In addition, all of the 145 defendants who have just been charged with and/or sentenced to death as of 2022 can be identified by gender distribution. Although the case decisions for some of the defendants as mentioned above are not available, all data on the defendants' cases can be accessed on the SIPP website of the District Court that heard the case. The defendants' case data on the SIPP website uses a naming composition that can distinguish women and men from the embedding of "Bin" (for men) and "Binti" (for women). Based on the search, there was only 1 female defendant, while the remaining 144 defendants were men.

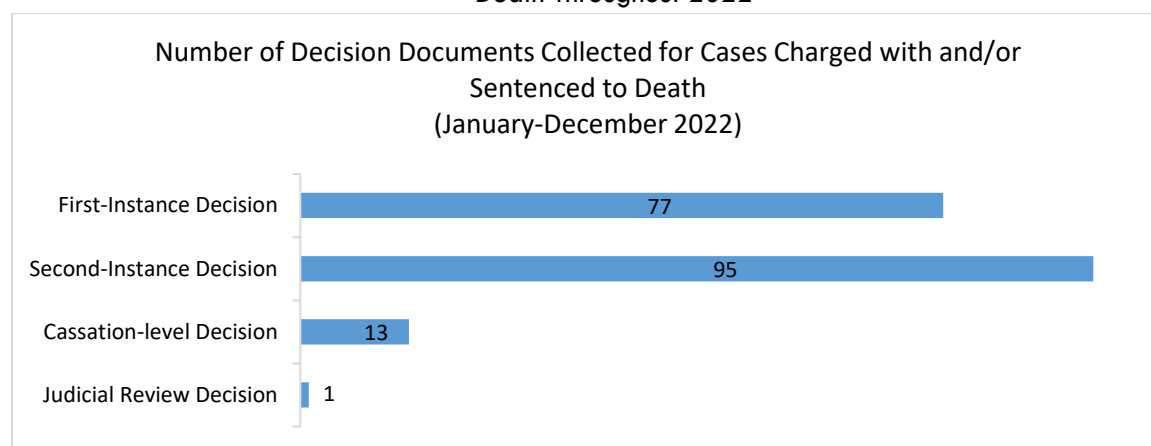
Graph 4. Gender of Defendants Charged with and/or Sentenced to Death Throughout 2022



Source: ICJR's internal database updated on 24 March 2023

From the search results, the ICJR has successfully reported an addition of 189 judgment documents ranging from the first instance, appeal, and cassation, to judicial review containing death charges and/or sentences throughout 2022. The following is the composition of the number of decision documents: 77 documents of first-instance decisions, 95 documents of second-instance decisions, 13 cases of cassation-level decisions, and finally 1 case document of judicial review decision.

Graph 5. Number of Decision Documents Collected for Cases Charged with and/or Sentenced to Death Throughout 2022



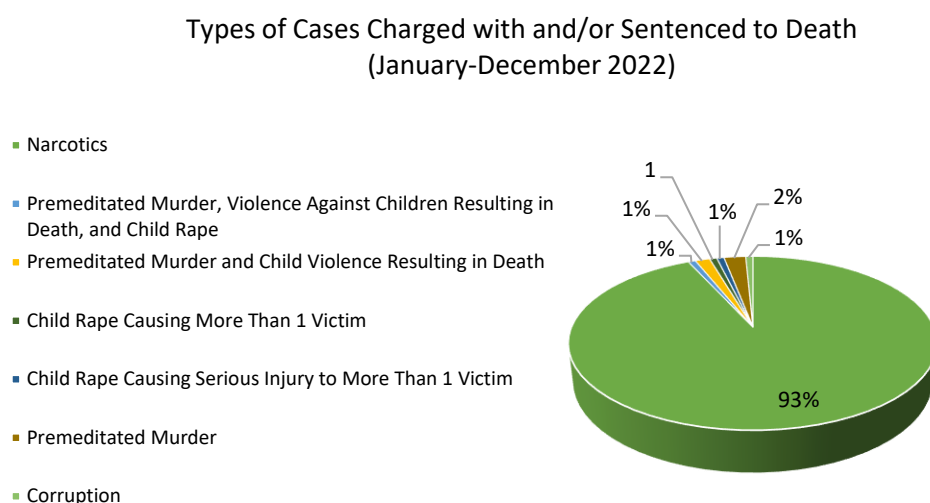
Source: ICJR's internal database updated on 24 March 2023

Assessing from those findings, as many as 18 first-instance court decision documents were not yet available when the second-instance decision documents had been published on the Supreme Court Directory portal. Meanwhile, only 8 cases out of a total of 132 cases whose complete court decision can be obtained, ranging from the first to the last level (cassation or judicial review).

In general, the trend of additional cases prosecuted with and/or sentenced to death in 2022 is dominated by narcotics crimes. The details of the cases are as follows:

- 123 Narcotics cases (93%),
- 3 cases of Premeditated Murder (2%),
- 2 cases of Premeditated Murder and Child Violence Resulting in Death (1%),
- 1 case of Premeditated Murder, Violence Against Children Resulting in Death, and Child Rape (1%),
- 1 case of Child Rape Causing more than 1 Victim,
- 1 case of Child Rape Causing Serious Injury to more than 1 Victim,
- 1 Corruption case (1%).

Graph 6. Types of Cases Charged with and/or Sentenced to Death Throughout 2022

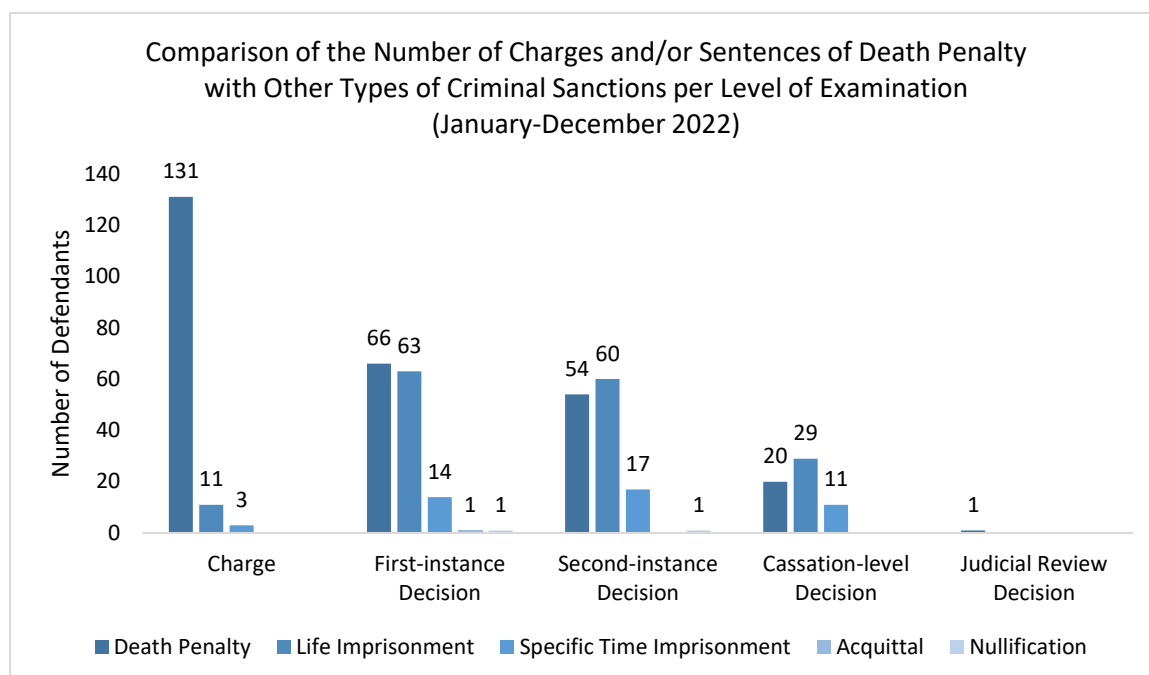


Source: ICJR's internal database updated on 24 March 2023

In this year's reporting, there were findings regarding two criminal cases with victims that did not result in the death of the victims, but the defendant was prosecuted with and/or sentenced to death. The two cases include the case of Child Rape Causing more than 1 Victim with the defendant: Herry Wirawan alias Heri Bin Dede, who was charged with the death penalty and sentenced to death at the appeal and cassation levels, and the case of Child Rape Causing Serious Injury to more than 1 Victim on behalf of the late defendant Hendi Als Abah Heni Bin Nunung, who was sentenced to death at the second-instance level. In fact, in the case of the late defendant Hendi Als Abah Heni Bin Nunung, the public prosecutor only charged the defendant with a prison sentence of 15 years, and the court of first instance decided according to the charge.

In relation to the comparison between prosecution and decision, based on ICJR's data, 131 defendants were prosecuted for death penalty and 66 defendants were sentenced to death in the decisions of the first instance, as illustrated in the graph below. In addition, 54 defendants were sentenced to death in the court of second instance, and 20 defendants were sentenced to death in the court of cassation. Death sentences at both levels were given in contexts ranging from upholding the judgment of the previous court level, rejecting cassation applications, to changing sentences from those other than death penalty sentences. This was also found in a judicial review case decision in 2022, which rejected an application from the defendant so that the death penalty sentence given at the previous court level remained valid.

Graph 7. Comparison of the Number of Charges and/or Sentences of Death Penalty with Other Types of Criminal Sanctions per Level of Examination Throughout 2022



Source: ICJR's internal database updated on 24 March 2023

In the reporting period of 2022, there were also cases that had previously been charged with or sentenced to specific time imprisonment but were then changed to death sentences. The range of the specific time imprisonment varies, from 15 years to 20 years in prison.

Nullification was found in two cases, namely a corruption case on behalf of the defendant Benny Tjokrosaputro and a narcotics case on behalf of the defendant Okonkwo Nonso Kingleys. Nullification in the case of the defendant Benny Tjokrosaputro was given through a court decision of first instance after the case was charged with the death penalty. The case is currently in the process of legal proceedings, and the defendant has also been sentenced in other cases. Meanwhile, nullification in the case of the defendant Okonkwo Nonso Kingleys was given by the court in second instance after the defendant was charged with and sentenced to death in the first instance, and the case is currently in the process of legal remedies. The defendant Okonkwo Nonso Kingleys has been on death row since the previous case in 2004 was legally enforced.

Based on the ICJR's internal database, out of the entire implementation of the death penalty, there are at least 10 defendants who have previously been charged with and/or sentenced to death and then re-charged with and/or sentenced to death for the second time. In the reporting period of 2022, death charges/sentences were found for the second time on a total of 3 defendants. For one defendant, the first case occurred in 2004 and for the other two defendants, their first case occurred in 2017.

Meanwhile, based on all data, it was found that the oldest case of prosecution and/or death penalty conviction occurred in 2000.

The above finding is justified by the fact that the defendants committed a criminal offense while serving a crime (if the final sentence is not the death penalty) or waiting for their execution. The three defendants who were charged with and/or sentenced to death for the second time in 2022 are death row inmates.

Interestingly, as many as 10 defendants were all involved in narcotics cases, both in the first case and the second case. This again proves that a harsh punitive approach by applying the death penalty, is indeed completely unreliable to control the problem of illicit drug trafficking that continues to occur.

Here are the details of the cases of the 10 defendants based on the ICJR's internal database:

<b>Defendants</b>	<b>Final Verdict and Year of First Case Register</b>	<b>Final Verdict and Year of Second Case Register</b>
Okonkwo Nonso Kingsley	Death Sentence (2004)	<i>Null</i> (2022)
Ramli Bin Arbi	Life imprisonment (2015)	Death Sentence (2019)
Ayau	Death Sentence (2016)	<i>Null</i> (2017)
Satria Aji Andika Bin Ismail Effendi	Death Sentence (2017)	Death Sentence (2021)
Ridho Yudiantara Bin Zulkahfi Manaf	Death Sentence (2017)	Death Sentence (2021)
Tugiman Alias Toge Bin Kong Aci (Alm)	Death Sentence (2016)	Death Sentence (2017)
Meirika Franola Alias Ola Alias Tania	Life imprisonment (2000)	Death Sentence (2014)
Apriadi Als. Ujang Bin Hanafi	Life imprisonment (2020)	Death Sentence (2021)
Petrus Hanter Alias Anter	Life imprisonment (2018)	Death Sentence (2020)
Hendrik Cendra Als Aluk Bin Hartoto Tjendra	20 years of imprisonment (2017)	Life imprisonment (2019)

In another part, in 2022 there was another case in which the judges acquitted the defendant who was previously charged with the death penalty, namely in a narcotics case of the defendant Muhamad Sulton Bin H. Royan with the case number 13/Pid.Sus/2022/PN Tjk. The panel of judges at the Tanjung Karang District Court stated that the public prosecutor could not present evidence showing the defendant's involvement in the crime in question.<sup>9</sup> This shows a huge potential violation of the right to fair trial even in the application of the death penalty as the highest punishment.

---

<sup>9</sup> Tanjung Karang District Court Decision No. 13/Pid.Sus/2022/PN Tjk, p. 45.



**Findings of Alleged Violations of the Criminal Procedure Code and Fair Trial Rights**  
**"Acquittal Due to Insufficient Evidence Annulled by Supreme Court Justice into Death Sentence"**

At the trial of the defendant Muhamad Sulton Bin H. Royan, there had previously been an investigator summoned as witness to question the reason for the evidence in question, i.e. the evidence of conversations on the cellphone confiscated from the defendant, which was not included as exhibit and then answered by the investigator-witness on the pretext that the evidence was taken from the cloning of the defendant's cellphone, which was confidential. However, the panel of judges of the first instance concluded that neither the public prosecution nor the investigator-witness could present evidence despite being allowed to stand trial, so it was reasonable to acquit the accused of the charges.

However, against the verdict, the public prosecutor then resorted to bring the case to cassation, in which the defendant was later sentenced to death by the Supreme Court. The Supreme Court held that the panel of judges of the first instance in trying the accused was not following the law of evidence. The evidentiary process needs to be based on the Police Examination Report (BAP) of the investigation of the two cases of crown witnesses even though in the trial, both retracted the testimony. Because it was withdrawn without reason, it needs to be used as a evidence about the existence of a criminal act.<sup>10</sup>

From the procedural law aspect, there are indications of violations of fair trial rights, such as the defendant stating that he was not assisted by lawyer in the examination process at the investigation level and the arrest warrant was not shown against the defendant,<sup>11</sup> and the claims that the investigation BAP was made under duress were also found in the case of two crown witnesses, namely Muhammad Nanang Zakaria Als Banteng Bin M Yasin and the late M Razif Hafiz Bin Hafidz.<sup>12</sup>

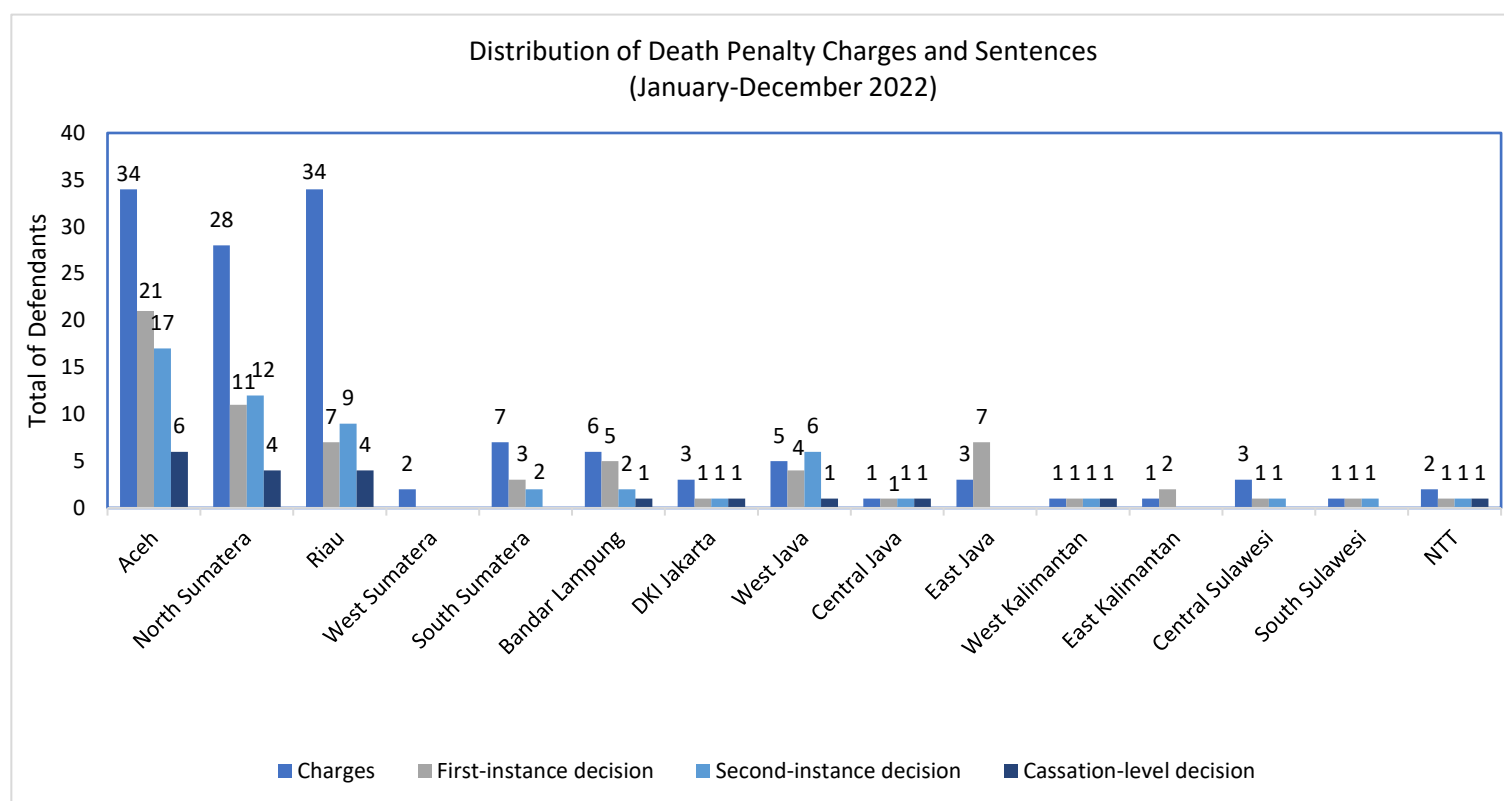
---

<sup>10</sup> Supreme Court Decision No. 5832 K/Pid.Sus/2022, p. 5-6.

<sup>11</sup> Tanjung Karang District Court Decision No. 13/Pid.Sus/2022/PN Tjk, p. 29-30.

<sup>12</sup> Tanjung Karang District Court Decision No. 3/Pid.Sus/2022/PN Tjk, p. 33-36; No. 4/Pid.Sus/2022/PN Tjk, p. 34.

Graph 8. Distribution of Death Penalty Charges and/or Sentences Throughout 2022



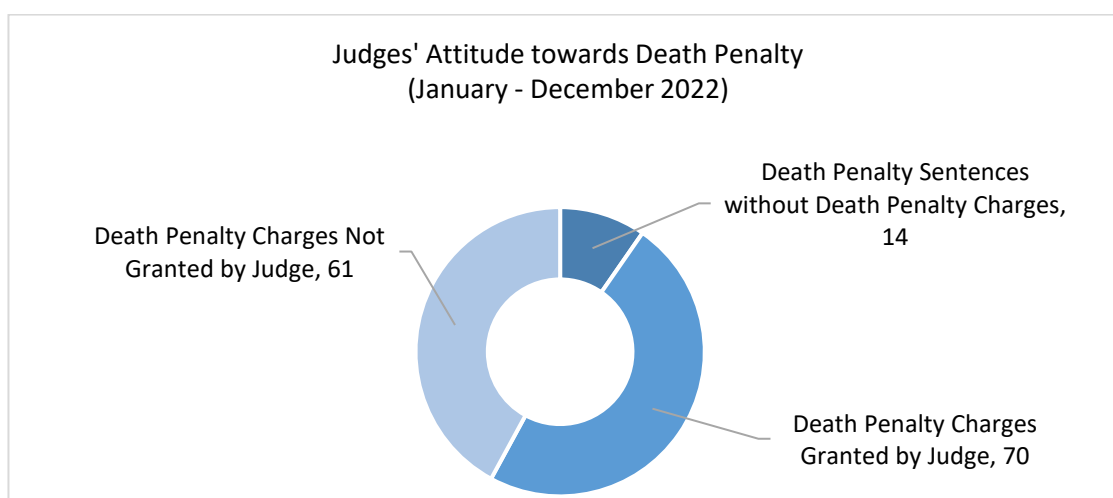
Source: ICJR's internal database updated on 24 March 2023

Nationally, the addition of cases charged with and/or sentenced to death in 2022 was found in 15 regions out of a total of 38 provinces. The island of Sumatra recorded the most new cases, with the highest addition of death penalty charges, namely in Aceh, North Sumatra, and Riau. Aceh Province, the same as Riau Province, has the highest number of additional death penalty charges in total against 34 defendants, respectively, followed by North Sumatra with 28 defendants. Similarly, with the increase in the number of death sentences by judges, especially in the court of first instance and second instance, the highest number was found in Aceh Province, namely against 21 defendants in the first instance and 17 defendants in the second instance. Moreover, the highest number of additional death sentences at the cassation level was found in Aceh Province against 6 defendants, followed by North Sumatra Province and Riau Province, each against 4 defendants.

In comparison, on Java Island, additional cases were found in 4 provinces, namely the Greater Jakarta, West Java, Central Java, and East Java. West Java Province recorded the highest increase in the number of death penalty charges on the island of Java, namely against 5 defendants. Meanwhile, the highest increase in the number of death sentences by the judges on the island of Java can be seen from the first-instance decisions found in East Java province, with a total of 7 defendants.

In other regions, such as on the island of Kalimantan, the addition of cases is spread only across 2 provinces, namely West Kalimantan and East Kalimantan, with the total addition of death charges and sentences against only 1-2 defendants. Meanwhile, the findings of new cases in eastern Indonesia were found merely in South Sulawesi, Central Sulawesi, and NTT, with a range of 1-3 defendants.

Graph 9. Judges' Attitude Towards Death Penalty Throughout 2022



Source: ICJR's internal database updated on 24 March 2023

Throughout 2022, there were 61 defendants charged with the death penalty but were not granted by judges either in the first instance, second instance, or cassation. The opposite phenomenon was also found; as many as 14 defendants were sentenced to death by judges without having previously been charged with the death penalty by the public prosecutor. However, the most common trend in the findings of new cases in 2022 cases in which death penalty charges were granted by judges, namely against as many as 70 defendants.

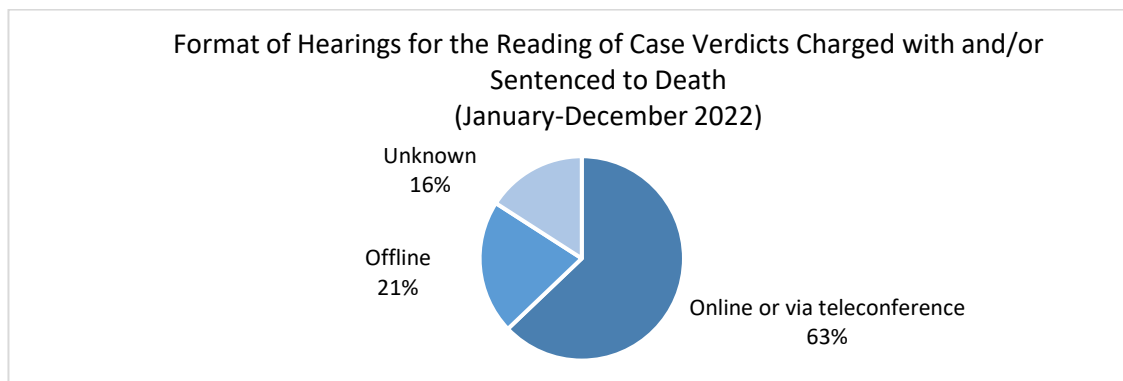
On the other hand, there are at least 5 district courts known to have recorded death sentences for the first time in 2022 based on the ICJR's internal database, as follows:

1. Donggala District Court
2. Kediri District Court
3. Kepanjen District Court
4. Kupang District Court
5. Sintang District Court

Furthermore, based on the information contained in the court of first-instance decisions and information on media reports, in most of the cases charged with and/or sentenced to death in 2022 (63%), the verdict hearing was carried out online or via teleconference as shown in the graph below. Meanwhile,

only 21% of cases whose trial was heard offline or attended directly by the defendant in the courtroom. As for the remaining 16% of cases, it is unknown whether the verdict reading hearing was carried out online or offline because the court decision documents are not yet available and information about it is not clearly stated in media reports either.

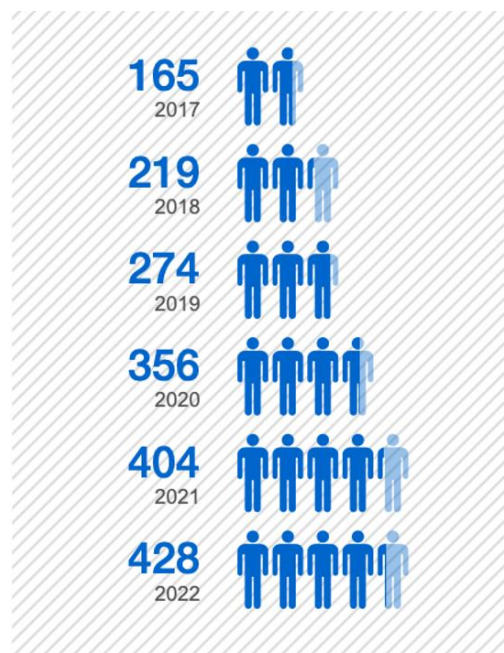
Graph 10. Format of Hearings for the Reading of Case Verdicts Charged with and/or Sentenced to Death Throughout 2022



Source: ICJR's internal database updated on 24 March 2023

### 3. The Issue of Delay in Execution of Death Sentence in Indonesia

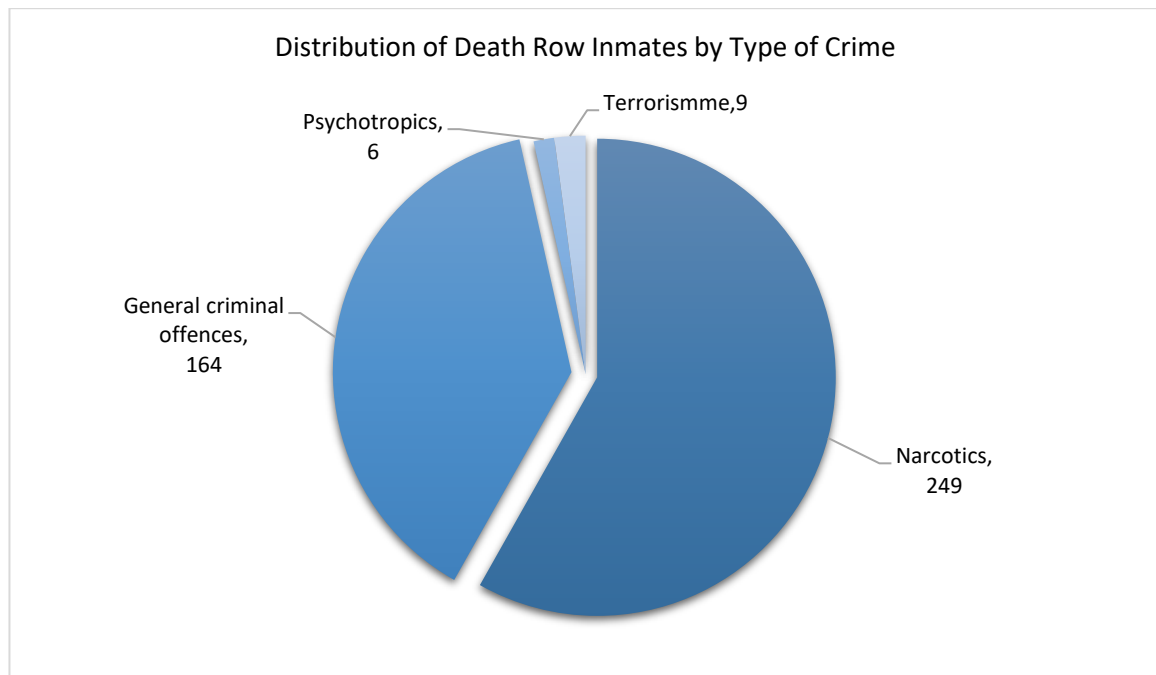
Graph 11. Comparison of the Number of People on Death Row in 2017-2022



Source: Data from the Directorate General of Corrections of the Ministry of Law and Human Rights as of August 31, 2022, received in writing by ICJR

From the beginning of 2021 to August 2022, there was an addition of 24 people (6%) on death row in Indonesia. This 6% addition can be said to have relatively decreased compared to the ratio in the previous years. The highest addition of 33% occurred in the 2017-2018 period, followed by an increase of 30% in the 2019-2020 period, 25% in the 2018-2019 period, and 13% in the 2020-2021 period. The total number of people on death row in Indonesia currently reaches 428 people.

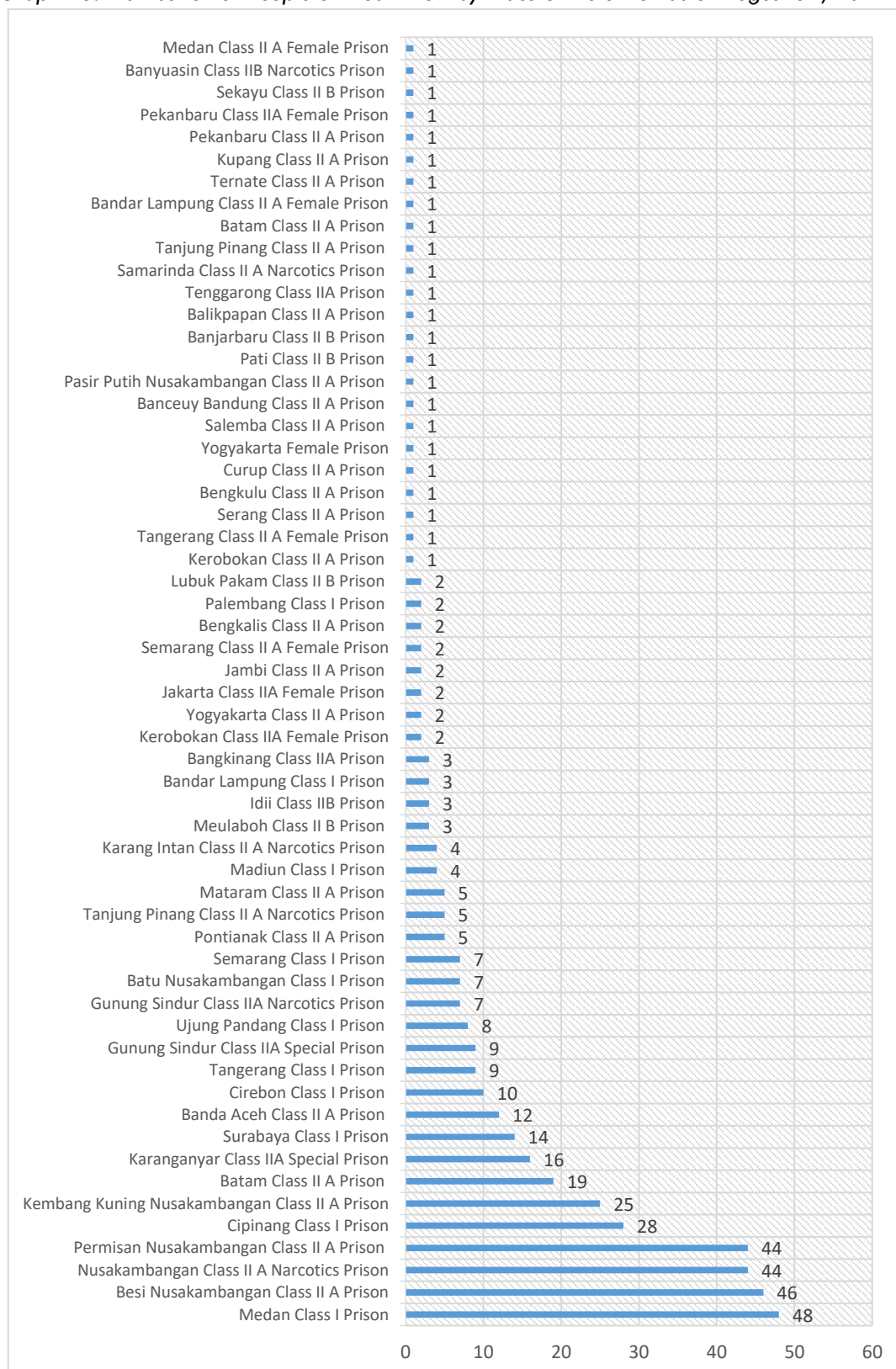
*Graph 12. Distribution of People on Death Row by Type of Crime as of August 31, 2022*



Source: Data from the Directorate General of Corrections of the Ministry of Law and Human Rights as of August 31, 2022, received in writing by ICJR

As in previous years, people on death row from illegal drug trafficking cases (narcotics/psychotropics) still occupy the highest position, with as many as 255 (60%) people on death row. These were followed by 164 (38%) people on death row from general criminal cases (murder/premeditated murder/child rape resulting in death/ etc.) and 9 (2%) people death row from terrorism crimes.

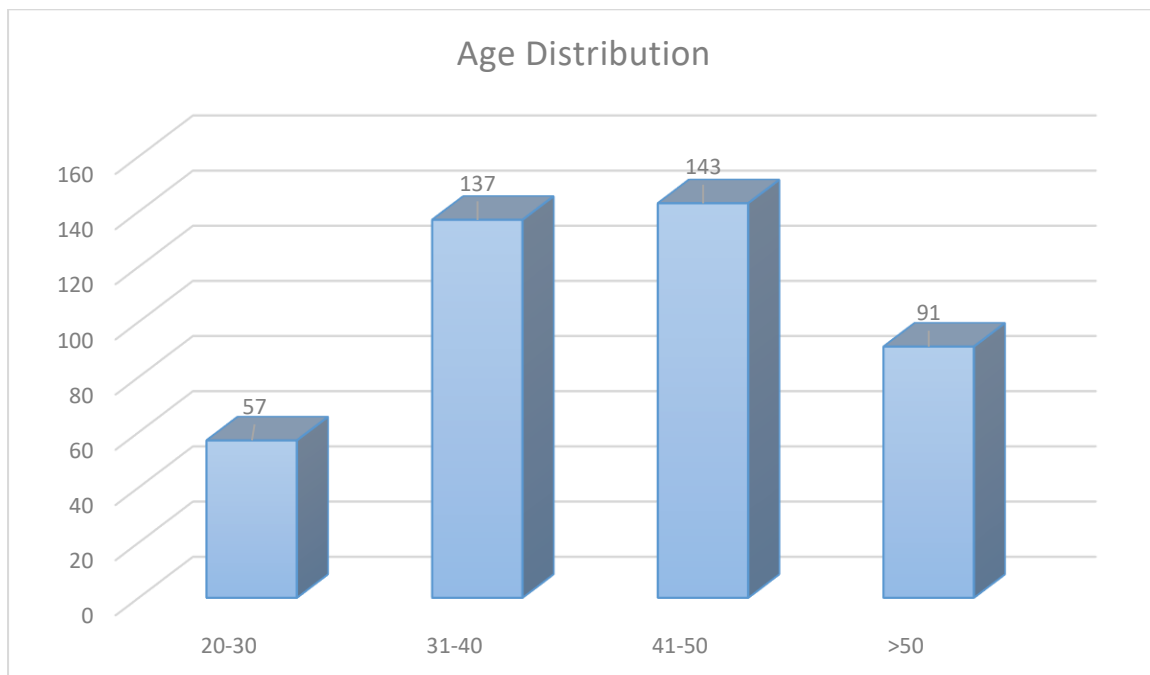
**Graph 13. Distribution of People on Death Row by Place of Detention as of August 31, 2022**



Source: Data from the Directorate General of Corrections of the Ministry of Law and Human Rights as of August 31, 2022, received in writing by ICJR

Looking at Graph 13, the distribution of death row is mostly concentrated in Medan Class I Prison (48 people on death row), followed by Besi Nusakambangan Class II A Prison (46 people on death row), Nusakambangan Class II Narcotics Prison (44 people on death row), and Permisan Nusakambangan Class II A Prison (44 people on death row). There are 24 prisons also that facilitates of at least 1 death row inmates.

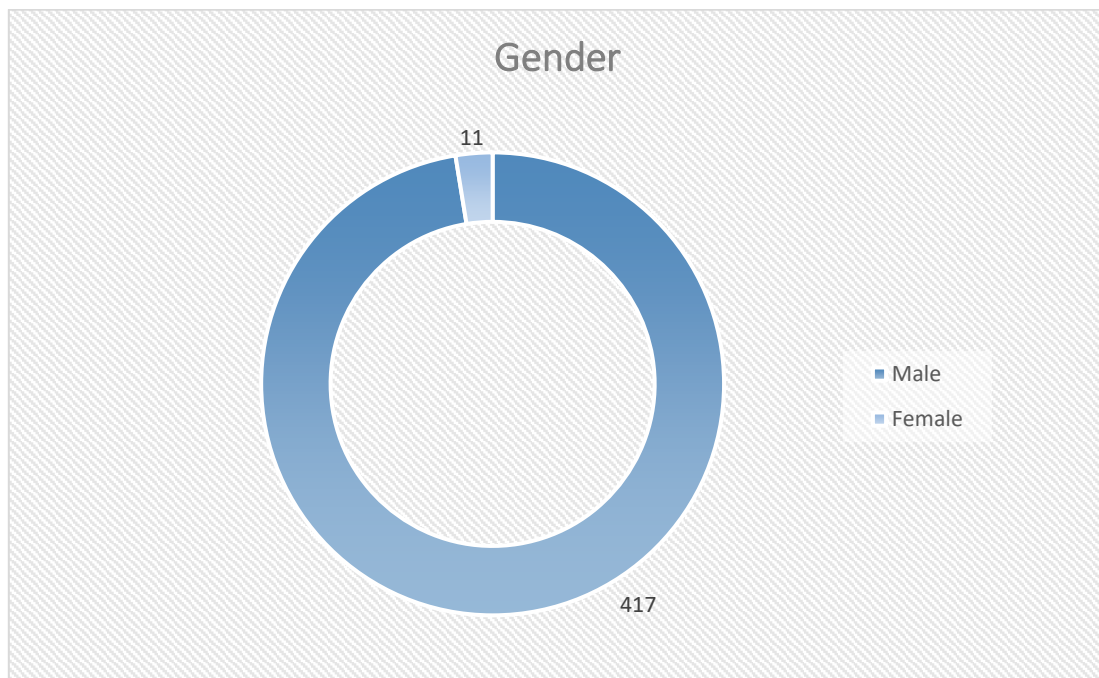
*Graph 14. Distribution of People on Death Row by Age as of August 31, 2022*



Source: Data from the Directorate General of Corrections of the Ministry of Law and Human Rights as of August 31, 2022, received in writing by ICJR

Assessing from the age distribution of people on death row, 13% are still at the age of 20-30 years, 32% are at the age of 31-40 years, 33% are at the age of 41-50 years, and 21% are over 50 years old.

Graph 15. Distribution of People on Death Row by Gender as of August 31, 2022

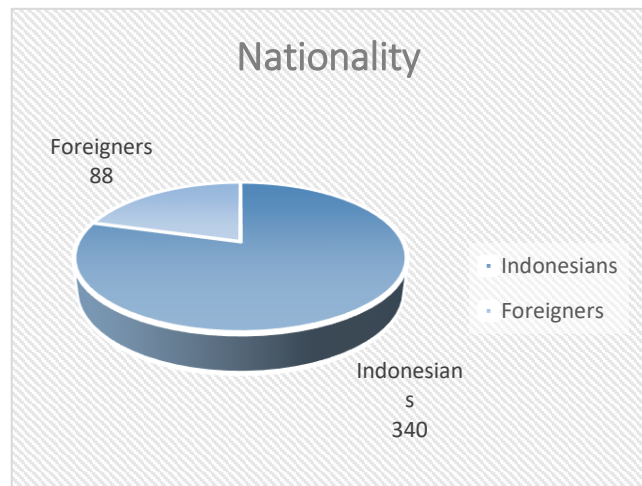


Source: Data from the Directorate General of Corrections of the Ministry of Law and Human Rights as of August 31, 2022, received in writing by ICJR

In terms of gender, there are 417 (97%) male and 11 (3%) female on death row.

Graph 16. Distribution of People on Death Row by Nationality as of August 31, 2022

Country	Number of People on Death Row
The Netherlands	1
China	15
The Philippines	1
Hong Kong	8
India	1
Indonesia	340
Iran	4
United Kingdom	1
Malaysia	22
Nigeria	10
Pakistan	2
Taiwan	22
Zimbabwe	1
<b>Total</b>	<b>428</b>



Source: Data from the Directorate General of Corrections of the Ministry of Law and Human Rights as of August 31, 2022, received in writing by ICJR



Of the total 428 people on death row, there are 88 people (21%) who are identified as foreign nationals, and the remaining 340 people (79%) are Indonesian citizens. Malaysian and Taiwanese citizens occupy the highest number of foreigners on death row, respectively 22 individuals. Nationals of China, Nigeria, and Hong Kong are also found in considerable numbers, with around 8-15 people on death row.

Just like the previous year, there were limitations in collecting data on people on death row from the Director General of Corrections of the Indonesian Ministry of Law and Human Rights in the 2022 reporting period. Calculating the waiting period for the execution of each death row inmate could only be done by referring to the results of data processing of people on death row obtained by ICJR from the Director General of Corrections of the Indonesian Ministry of Law and Human Rights per October 9, 2019, and September 8, 2020, which include details of the names of people on death row. Based on the processed data, the total number of people on death row who have been awaiting their execution for more than 10 years as of March 2023 is estimated to be 101 people.

#### **4. Death Penalty Policy in the New Criminal Code**

After discussing the application of death penalty in prosecutions and verdicts, this section will discuss the update on policy reform on the death penalty. The year 2022 marks the renewal of the law regarding death penalty in Indonesia, with the birth of Law No. 1 of 2023 which was promulgated on 2 January 2023 and passed on 6 December 2022. The death penalty is one of the crucial issues in the discussion of this New Criminal Code.<sup>13</sup>

The death penalty provision in the New Criminal Code is one of the provisions that has undergone fundamental changes compared to the Old Criminal Code because it introduces death penalty as an alternative punishment<sup>14</sup> and is accompanied by a delayed execution mechanism through probation period.<sup>15</sup> The introduction of these concepts and mechanisms was referred to by the New Criminal Code Drafting Team as 'The Indonesian Way', which is a middle ground between abolitionist and retentionist.

Looking back at the discussion on the death penalty in the Criminal Code, since the discussion of the New Criminal Code was carried out publicly by the Government and the House of Representatives in 2015, the provision regarding the "waiting period" or postponement period or probation period of execution of the death penalty has been phrased since the 2015 draft. In the 2015 and 2019 drafts of the Criminal Code Bill, this waiting period can only be imposed if several conditions are met. That is, the death penalty with a waiting period serves as an option for the judges so the judges "may" impose it or not; in other words, it is not imposed automatically. In the discussion process, the conditions for imposing the death

---

<sup>13</sup> See the document "Crucial Issues in the Criminal Code Bill" prepared by the Ministry of Law and Human Rights, download at <https://icjr.or.id/wp-content/uploads/2022/05/Isu-Krusial-RUU-KUHP-25-Mei-2022.pdf>

<sup>14</sup> See Article 67 of the New Criminal Code

<sup>15</sup> See Article 100 of the New Criminal Code

penalty with this waiting period brought a lot of criticism from civil society, who considered that these written conditions were not conditions for imposing the death penalty with a waiting period but conditions for not imposing the death penalty at all. However, in the end, in the draft of November 9, 2022, there were only 2 (two) points that must be considered by the judges, namely the defendant's remorse and hope for improvement; or the role of the accused in the criminal act,<sup>16</sup> but at that time the imposition used the word “may”, making it subject to the judges' decision.

The discussion about the word “may” raised a concern in the final round of the discussion of the New Criminal Code, which occurred on 24 November 2022 because the word “may” in Article 100 is considered to open the room for judges to choose to impose death penalty with a waiting period or death penalty without a waiting period. Several members of the House of Representatives in the last discussion of the New Criminal Code with the Government also questioned the word “may” in Article 100. Representatives of the PPP faction considered the word “may” to be contrary to the spirit of Article 67 that the death penalty is no longer a principal punishment but an alternative punishment that has special characteristics.<sup>17</sup> In addition, representatives of the Democratic Party, PKB, and National Democrats raised the same concern and asked for the removal of the word. Finally, it was during the discussion on 24 November 2022 that the government agreed to remove the word “may”.<sup>18</sup>

The removal of the word “may” completely changes the concept of the regulation of death penalty in Indonesia, where finally death penalty becomes an “alternative” punishment in accordance with the ideals of the Criminal Code Drafting Team that the death penalty must always be imposed with a waiting period; it can only be executed after 10 years of a probationary period and only if the convict does not show commendable attitudes and deeds and there is hope of improvement.

The following table lays out the development of death penalty regulation from the formulation of the Criminal Code draft to the passing and promulgation of the Criminal Code.

<b>Draft on 5 June 2015</b>	<b>Draft on 15 September 2019</b>	<b>Draft on 9 November 2022</b>	<b>Law Number 1 of 2023</b>
Article 91 (1) <b>The execution of death penalty can be postponed</b> with a probationary period of 10 (ten) years, if: <b>a. the reaction of society to</b>	Article 100 (1) <b>The judge may</b> impose the death penalty with a probationary period of 10 (ten) years if: <b>a. the convict</b> shows remorse	Article 100  (1) <b>The judge may impose the death penalty</b> with a probationary period of 10	Article 100  a. <b>The judge imposes the death penalty</b> with a probationary period of 10

<sup>16</sup> Article 100 of the Criminal Code Bill Version November 9, 2022

<sup>17</sup> Presented by Arsul Sani, PPP faction

<sup>18</sup> Dwi Rahmawati, 'Government Agrees the Word 'May' in Death Penalty Article in RKUHP Removed' *Detik News* (Jakarta, 22 November 2022) <<https://news.detik.com/berita/d-6424489/pemerintah-sepakat-kata-dapat-pada-pasal-pidana-mati-di-rkuhp-dihapus>> accessed on 1 April 2023

<p><b>the convict is not extreme;</b></p> <p>b. the convict shows remorse and there is hope for improvement;</p> <p>c. <b>the participation of the convict in a criminal offense is not very significant;</b> and</p> <p>d. there are mitigating reasons.</p>	<p>and there is hope for improvement;</p> <p>b. <b>the role of the accused in the Criminal Act is not very important;</b> or</p> <p>c. there are mitigating reasons.</p>	<p>(ten) years by considering:</p> <p>a. the defendant's sense of remorse and hope for improvement; or</p> <p>b. the role of the accused in the Criminal Act.</p>	<p>(ten) years by considering:</p> <p>a. the defendant's sense of remorse and hope for improvement; or</p> <p>b. the role of the accused in the Criminal Act.</p>
---	--	---	---

In addition to the general regulation on the death penalty, the provisions for criminal acts punishable by death are also different in the New Criminal Code; in the Old Criminal Code, there are 10 arrangements regarding death penalty, whereas in the New Criminal Code, 12 types of acts are regulated about death penalty, and there is **one** new type of crime that is punishable by death through the New Criminal Code, namely Treason to surrender part or all of the territory of the Republic of Indonesia to foreign powers. Meanwhile, other provisions are genocide, crimes against humanity, terrorism, and narcotics as a consequence of the provisions of the Special Criminal Acts Chapter in the New Criminal Code.

Types of Crimes	Criminal Code	New Criminal Code
Treason with the aim of killing, robbing the freedom of, or depriving the President or Vice President	Article 104	Article 191
Treason with the aim of surrender part/all of Indonesia's territory to a foreign power or secession	-	Article 192
Agreement to cause hostilities that result in a war against the state	Article 111 paragraph (2)	-
Treason for the benefit of the Enemy, surrendering a fortified or occupied place or guard, a means of transportation, a war provision, or a war treasury to the enemy's power	Article 124 paragraph (3)	Article 212 paragraph (3)
Causing or facilitating riots, rebellions, or desertions among soldiers.	Article 124 paragraph (3)	Article 212 paragraph (3)

Treason aimed at the head of a friendly state resulted in death	Article 140 paragraph (2) and (3)	-
Theft resulting in serious injury or death and committed by 2 or more people	Article 365 paragraph (4)	Article 479 paragraph (4)
The maritime crime causing death	Article 444	-
Premeditated murder	Article 340	Article 459
Aviation crimes that: a. are performed by two or more persons together; b. are done in furtherance of evil conspiracies; c. are carried out in advance planning; d. cause damage to the aircraft so that it can endanger its flight; e. result in serious injury to a person; f. are done with an intent to deprive or continue to deprive a person of his freedom.	Article 479k	-
Violence against persons on board an In-Flight Aircraft that endangers the safety of the flight	If a. performed by two or more persons together; b. in furtherance of an evil agreement; c. carried out in advance planning; d. causing serious injury to a person  Article 479o paragraph (2)	Article 588 paragraph (2)
placing or causing any tool or material to be placed in any way on board an Aircraft in Flight Service that may damage the Aircraft	If a. performed by two or more persons together; b. in furtherance of an evil consensus; c. carried out in advance planning; d. causing serious injury to a person  Article 479o paragraph (2)	Article 588 paragraph (2)
Genocide	-	Article 598
Criminal acts against humanity	-	Article 599
Violence or Threats of Violence that create an atmosphere of terror or widespread fear among people/terrorism	-	Article 600

producing, exporting, importing, or distributing Class I and II Narcotics without any right	-	Article 610 paragraph (2) letters a and b
---	---	---

## 5. The Development of Populist Narratives on the Use of Death Penalty

Reflecting on the 2022 death penalty application data and the track record of public figures' statements regarding the 2022 death penalty, the populist narrative of the use of death penalty continues. This time in 2022, one widely circulated narrative was that the death penalty seems to be a solution to the frequent occurrence of sexual violence. In 2022, corruption was also found to be a relatively new application of the death penalty. The second most echoed but the meaningless narrative is the implementation of death penalty in drug cases. All of these are distractions for law enforcement and crime handling, for the following reasons:

- **A Critical Note on the Application of Death Penalty to Sexual Violence**

In the context of sexual violence, perpetrators of crimes against children are allowed to be sentenced to death as stated in Article 81 paragraph (5) of Law No. 17 of 2016. In this provision, it is explained that the death penalty is imposed if it causes more than 1 (one) victim and results in serious injury, mental disorders, infectious diseases, impaired or loss of reproductive function, and/or death of the victim. This regulation is the only provision that applies death penalty for acts related to sexual violence in Indonesia.<sup>19</sup>

Other than Indonesia, Louisiana, U.S. is another place that regulated death penalty provisions in cases of sexual violence against children in 1995.<sup>20</sup> However, in 2008, the United States Supreme Court reviewed the case.<sup>21</sup> In the process, organizations, such as The National Association of Social Workers and The Louisiana Foundation Against Sexual Assault, pushed that courts should abolish the death penalty for perpetrators of child sexual abuse because it did more harm than good to child victims.<sup>22,23</sup>

The death penalty for child sexual abuse cases can backfire on children. Death penalty for perpetrators of sexual violence against children will make child victims afraid to report sexual violence they experience because most sexual violence acts are committed by family members or the closest relatives of the family. The death penalty will also increase the incentive for violent perpetrators to kill their

<sup>19</sup> Genoveva Alicia, 'Death Penalty is Not the Solution to Sexual Violence' *Republik Merdeka* (12 April 2022) <<https://publika.rmol.id/read/2022/04/12/530100/hukuman-mati-bukan-solusi-kekerasan-seksual>> accessed on 1 April 2023

<sup>20</sup> Corey Call, 'Death Penalty for Sex Offenders' (2019) 1-2 in *The Encyclopedia of Women and Crime* <<https://scihub.se/https://doi.org/10.1002/9781118929803.ewac0087>> accessed on 4 April 2023

<sup>21</sup> Daniel Nasaw, 'US supreme court rules against death penalty in child rape cases' *The Guardian* (Washington, 25 Juni 2008) <<https://www.theguardian.com/world/2008/jun/25/usa1>> accessed on 4 April 2023

<sup>22</sup> *Kennedy v. Louisiana* (No. 05-KA-1981) on 22 May 2007

<sup>23</sup> Linda Greenhouse, 'Justices to Decide if Rape of a Child Merits Death' *The New York Times* (Washington, 5 January 2008) <[https://www.nytimes.com/2008/01/05/washington/05scotus.html?\\_r=1&hp&oref=slogin](https://www.nytimes.com/2008/01/05/washington/05scotus.html?_r=1&hp&oref=slogin)> accessed on 25 March 2023

victims. In addition, the permissibility of death penalty against perpetrators of sexual violence will increase the number of appeals or prolong the legal process undertaken, which will force child victims to recall the incident of sexual violence repeatedly, and this has an impact on the process of healing child trauma (revictimization). This is the background for several groups of organizations, victims, and advocates to encourage the courts to abolish death penalty for perpetrators of sexual violence against children.

Thus, the United States Supreme Court, in the ruling, said that the law allowing death penalty in cases of sexual violence against children violates the United States Constitution the prohibition of cruel and unusual punishment.<sup>24</sup> In its ruling, the United States Supreme Court also ensured that the sexual assault prosecution process centers on the needs of victims and is child-friendly in its approach.

Countries in South Asia, such as India, Bangladesh, and Pakistan, have also established death penalty for perpetrators of sexual violence. However, it did not have an impact on reducing cases of sexual violence in those countries.<sup>25</sup> An article written by Geeta Pandey<sup>26</sup> states that the death penalty for rape does not make India a safer place for women. Based on the Indian government's data, thousands of rapes occur every year, and the number continues to increase year after year, and such incidents of sexual violence continue to make headlines in India. Experts say that the only permanent solution to this problem is to dismantle the grip of patriarchal thinking, a mindset that considers women to belong to men.<sup>27</sup>

In Indonesia, death penalty has been handed down to perpetrators of sexual violence.<sup>28</sup> However, the death penalty imposed on perpetrators of sexual violence does not have an impact on the number of sexual violence cases in Indonesia, which is reported in the Annual Record of the Indonesian National Commission for Women (*Komnas Perempuan*) in 2016, which shows an increased number of sexual violence.<sup>29</sup> The death penalty is applied precisely when the state fails to be present for the victims. This is a form of "gimmick" given to compensate for the state's failure to be present and protect the victims, as it should. As a consequence of this, the state then tries to "prove itself" to appear to side with the victims by imposing the death penalty. This, of course, is not what is expected to happen in Indonesia.

---

<sup>24</sup> Clerk Of Supreme Court Of Louisiana, 'News Release Louisiana v. Kennedy' (No. 05-KA-1981) <<https://files.deathpenaltyinfo.org/legacy/files/pdf/Louisianasc.pdf>>

<sup>25</sup> Genoveva Alicia, 'Death Penalty is Not the Solution to Sexual Violence' *Op.Cit.*

<sup>26</sup> Geeta Pandey, 'Delhi Nirbhaya rape death penalty: What do hangings mean for India's women?' *BBC* (Delhi, 20 March 2020) <<https://www.bbc.com/news/world-asia-india-50812776>> accessed on 24 March 2023

<sup>27</sup> *Ibid.*

<sup>28</sup> 'Yuyun's accused rapist and murderer sentenced to death' *BBC Indonesia* (29 September 2016)

<[https://www.bbc.com/indonesia/berita\\_indonesia/2016/09/160929\\_indonesia\\_yuyun\\_vonis\\_terdakwa](https://www.bbc.com/indonesia/berita_indonesia/2016/09/160929_indonesia_yuyun_vonis_terdakwa)> accessed on 20 March 2023

<sup>29</sup> Genoveva Alicia, 'Death Penalty is Not the Solution to Sexual Violence' *Op.Cit.*

The state should be present at all times by paying attention to the root causes of sexual violence, not just at certain times just to “entice” victims and citizens with the populist narrative of the death penalty.<sup>30</sup>

- **A Critical Note on the Application of Death Penalty to Corruption Case**

In Law Number 31 of 1999 concerning the Eradication of Corruption Article 2 paragraph (2), it is explained that if corruption is committed under certain circumstances, the death penalty can be imposed. The background of the death penalty is motivated by the hope of a deterrent effect and a decrease in the number of corruption crimes. Nevertheless, to date, there is no credible evidence that the death penalty can prevent corruption.

China is a country that allows the death penalty for corruptors and has carried out executions of thousands of people. However, Yaxiang Liu and Grace Faerber wrote that the death penalty is done more to divert public anger over corruption from the country's political system and direct it to individual cases of extreme corruption. The government's imposition of the death penalty on corruption cases offers a “political victory” at the expense of reforming and improving China's criminal legal system.<sup>31</sup> The death penalty carried out in China is also a tactic to maintain political stability and consolidate the authority and legitimacy of the regime. Based on the 2019 Corruption Perception Index (CPI) search, China, which until now still punishes corruption perpetrators with the death penalty, remains in 65<sup>th</sup> place with a total score of 45, which is not quite good.<sup>32</sup>

Referring to countries with a fairly high CPI in 2022, there are at least 3 countries, namely Denmark, New Zealand, and Finland, all three of which do not use the death penalty as a punishment to corruption. Denmark, for example, abolished the death penalty in 1930. New Zealand also abolished the death penalty 1961. Finland, along with Denmark and New Zealand, abolished the death penalty entirely in 1972. One of the countries that is located close to Indonesia and is ranked 5<sup>th</sup> in CPI 2022 with a score of 83 is Singapore, which does not recognize death penalty for corruption crimes in its Prevention of Corruption Act.

Country	CPI Rank	Death Penalty for Corruption in National Law
Denmark	1	None
New Zealand	2	None
Finland	2	None

---

<sup>30</sup> ‘Death Penalty for Sexual Violence is Not a Solution for Victims’ *ICJR* (4 April 2022) <<https://icjr.or.id/hukuman-mati-dalam-kekerasan-seksual-bukan-solusi-bagi-korban/>> accessed on 20 March 2023

<sup>31</sup> <https://www.standardmedia.co.ke/author/frankline-sunday> Frankline Sunday, ‘Death Penalty no silver bullet for ending corruption’ *The Standard* <<https://www.standardmedia.co.ke/fact-check/article/2001447930/death-penalty-no-silver-bullet-for-ending-corruption>> accessed on 12 March 2023

<sup>32</sup> ‘Corruption Perception Index’ <<https://www.transparency.org/en/cpi/2022>>

Singapore	5	None
Sweden	5	None
Switzerland	7	None
Norway	4	None
The Netherlands	8	None
Germany	9	None
Luxembourg	10	None
China	65	Present
Indonesia	110	Present
Vietnam	77	Present
Laos	126	Present
Iran	147	Present
Iraq	157	Present

Although empirical data showing the relationship between the death penalty and corruption rates is not comprehensive, it can be seen that the presence of death penalty does not necessarily reduce corruption rates in a country.<sup>33</sup>

- **A Critical Comment on the Application of Death Penalty to Narcotics Crimes**

The right to life, which is a human right that cannot be reduced under any circumstances, is firmly regulated in the Constitution of the Republic of Indonesia through Article 28A and Article 28I paragraph 1. By these arrangements, the ICCPR also calls for the right to life to be inherent in every individual and protected. However, Article 6 paragraph (2) of the ICCPR makes it clear that the death penalty can only be applied to the most serious crimes. Furthermore, commentary No. 36 on Article 16 of the ICCPR by the Human Rights Committee in 2018 states that the phrase “most serious crimes” should be read strictly, relating only to crimes with extreme consequences, including intent-based killings.<sup>34</sup> Crimes that do not directly cause death or are committed with no intent to take someone’s life, such as narcotics, although serious in nature, are never used as grounds for the death penalty.

Clearly, the UN Human Rights Committee stated that drug crimes cannot be used as a justification for the death penalty.<sup>35</sup> This was echoed again in the Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General in August 2019, which criticized countries' efforts to introduce the death penalty for drug crimes.<sup>36</sup>

---

<sup>33</sup> Budiman *et.al.*, *Death Penalty Policy Situation Report in Indonesia 2020: Taking Lives During a Pandemic*, ICJR (2020)

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> Human Rights Council, Capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, Forty-second session 9–27 September 2019



Until now, death penalty in Indonesia has been applied the most to narcotics cases. Graph 6 shows that the trend of increasing cases charged with and/or sentenced to death in 2022 is dominated by narcotics crimes, with as many as 120 narcotics cases (93%). However, drug crimes remain the most common crime in the criminal justice system in Indonesia; as of September 2020, there were 138,377 people in detention centers and prisons who were convicts of drug crimes, and even 103,458 people were drug users.

Within the framework of practice in other countries, in 2021 there were several policy developments in countries with low applications of the death penalty, such as Thailand, Sri Lanka, Palestine, and Pakistan, that moved towards abolishing the use of death penalty for drug cases. Especially in Pakistan, its parliament is considering a proposal by the Ministry of Justice that would abolish the death penalty for possession of narcotics above a certain amount and replace it with life imprisonment. If Pakistan adopts the proposal, it would become the first country to abolish the death penalty after more than 15 years. Unfortunately, Indonesia has not considered this, even in the draft revision of the Narcotics Law from the government sent to the Parliament in 2021.

## **6. UPR: Report on Death Penalty Policy in Indonesia**

The year 2022 also marks the Universal Periodic Review (UPR) of Indonesia's Fourth Cycle at the UN Human Rights Council, which was conducted in November 2022. In this process, there are 21 recommendations<sup>37</sup> from the UN member states on the death penalty, and three of them called for the commutation of death penalty. The recommendation from the UK calls for Indonesia to proceed with the total abolition of death penalty to commutation for people on death row.<sup>38</sup> Portugal recommended Indonesia provide commutation for all people on death row and at the same time publish an annual data report on people on death row.<sup>39</sup> Spain then gave the same recommendation, which is commutation for people on death row beyond clemency/amnesty from the President.

The recommendations regarding death penalty are centered on the following aspects: a moratorium on the use of crime to lead to the abolition of death penalty entirely, the implementation of death penalty under international human rights restrictions, the implementation of the conversion or commutation of death penalty into other punishments for people who have been on death row and waiting for their execution, and the provision of annual data on the implementation of death penalty. Of all the 21 recommendations given by these countries, only 1 recommendation related to the death penalty was

---

<sup>37</sup> UNGA, 'Report of the Working Group on the Universal Periodic Review: Indonesia' HRC 52<sup>nd</sup> Session UN Doc A/HRC/52/8 (2023)

<sup>38</sup> UNGA, 'Report of the Working Group on the Universal Periodic Review: Indonesia' HRC 52<sup>nd</sup> Session UN Doc A/HRC/52/8 (2023), recommendation 140.87

<sup>39</sup> UNGA, 'Report of the Working Group on the Universal Periodic Review: Indonesia' HRC 52<sup>nd</sup> Session UN Doc A/HRC/52/8 (2023), recommendation

supported by the Indonesian government, namely recommendation 140.89 from Spain to implement a commutation mechanism for those sentenced to death, in addition to the clemency mechanism by the President.

***140.89 Implement a sentence commutation mechanism for those sentenced to death, in addition to the clemency mechanism by the President***

This is a recommendation regarding the implementation of a commutation mechanism or the change in sentences for people who have been sentenced to death to strengthen the clemency mechanism from the president.

## **7. Recommendation**

Regarding the 2022 death penalty policy and its implementation in Indonesia, ICJR recommends several points, each of which is addressed to a particular stakeholder.

### **Recommendations for the Government:**

1. Urging the Attorney General to stop prosecution with death penalty, reflecting on the legal politics that leads to criminal abolition
2. Not ordering executions because the politics of death penalty law have changed, and all people on death row will be subject to assessment for sentence changes
3. Accelerating the assessment process and deciding on the commutation of death penalty following UPR commitments for at least 101 people who have been on death row for more than 10 years

### **Recommendations for the Government and Parliament:**

1. No longer introducing the death penalty in the process of discussing the revision to the Narcotics Law
2. Regulating stricter procedural law provisions for people indicted, charged, and sentenced to death in the process of discussing the revision to the Criminal Procedure Code

### **Recommendations for the Supreme Court:**

1. Placing a moratorium on the death penalty by prioritizing other types of punishments in examining criminal cases

### **Recommendations for state institutions under the National Prevention Mechanism Against Torture (NHRI, National Commission on Violence against Women, Ombudsman, Child Protection Agency, Victim and Witness Protection Agency):**

1. Activating monitoring mechanisms at places of detention to see the conditions of people on death row, especially in the context of preventing torture on the death row
2. Urging the government to issue a policy on the amendment/commutation of the death penalty
3. Urging the government and parliament to commit to the abolition of the death penalty in the legislative process, especially the revision of the Narcotics Law.

### Authors' Profile

**Adhigama Andre Budiman**, currently working as a researcher at the Institute for Criminal Justice Reform (ICJR) since 2016. He completed his Masters program from Justus-Liebig Universität in Germany and is active in advocating death penalty issues and international human rights law.

**Genoveva Alicia K. S. Maya**, completed a master's degree in Human Rights Law in 2021 from the London School of Economics and Political Science (LSE) and obtained a law degree from the Faculty of Law, Gadjah Mada University (UGM) Yogyakarta. Since 2018, she has been active as a researcher at ICJR who conducts studies and is involved in advocating on issues of women's and children's rights in the criminal justice system, freedom of expression and opinion, as well as issues of imprisonment.

**Girli L. A. Ginting**, is a graduate of the University of North Sumatra. Currently working as a researcher at the Institute for Criminal Justice Reform (ICJR) who focuses on issues of drug policy reform, death penalty and gender issues.

**Ifitahsari**, graduated with a law degree from Gadjah Mada University, then completed a master's degree in Crime and Criminal Justice at Leiden University, the Netherlands in 2017. She currently works as a researcher at ICJR and focuses on issues of implementing fair trial rights, reforming an accountable and democratic criminal justice system, advocating death penalty policies, and reforming evidence-based narcotics policies.

**Johanna G. S. D. Poerba**, completed her law degree at the Indonesian Jentera School of Law in 2020. Currently actively working as a researcher at the Institute for Criminal Justice Reform (ICJR) in the of freedom of opinion and expression as well as the implementation of the Criminal Code.

**Maidina Rahmawati**, is a 2016 graduate of the Faculty of Law, University of Indonesia, a certified advocate and mediator. She received a number of fellowships related to gender issues and drug policy reform: in 2017 from 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 Aspects Gender in Narcotics Policy Reform. In 2017-2020, she was a researcher in a study on Trafficking in Persons Data Management in ASEAN, together with the WSD Handa Center for Human Rights and International Justice, Stanford Global Studies Division, Stanford University.

## ICJR Profile

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

One of the most crucial issues that is experienced by Indonesia during this transition period is reforming the legal system and criminal justice system into a more democratic direction. In the past, criminal law and criminal justice system were used as a tool to support the governing authoritarian power, in addition to being used as social engineering tools. Now is the time for the orientation and instrumentation of criminal law as a tool power to be shifted as a tool to support the work of democratic political system and respecting human rights. This is the challenge in the path to restoring criminal law and the criminal justice system during the transition period.

To answer the abovementioned challenge, it is necessary to make planned and systematic measures to resolve such a situation. A grand design for criminal justice system reform and legal reform must be initiated. The criminal justice system has been known to be placed in the strategic place for the framework to build the Rule of Law and respect towards human rights. Democracy can only function well with the concept that Rule of Law is institutionalized. Criminal justice system reform that is human rights-oriented is a “conditio sine qua non” with the process of democratization institutionalization during the transition period.

The measures in conducting legal transformation and criminal justice system to be more effective are currently ongoing right now. However, the measures must generate wider support. The Institute for Criminal Justice Reform is taking the initiative to support those measures, providing support in the context of building respect towards the Rule of Law and at the same time building human rights culture within the criminal justice system. This is the reason for ICJR's existence.

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

**Phone/Fax** : 02127807065

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

