

EXECUTIVE SUMMARY

Recalling the Executed:

Analysis on Court Decisions and Practices of Death Penalty Executions in Indonesia

- In Indonesia's imposition of the death penalty, problems are still found, especially violations of fair trial rights, including torture during the judicial process and execution.
- Based on data collected by ICJR, a total of 45 people sentenced to death have been executed from the 1998 Reformation to the present, the majority of cases are drug-related cases. During the regime of President Joko Widodo (Jokowi), there have been 3 waves of death penalty executions, with a total of 18 people during 2015-2016. Since 1998, 28 people have been executed.
- From a total number of 45 people who have been executed since 1998, the analysis in this report was conducted on 27 executed people due to the restricted access on the documents of court decisions.
- Here are the demographics of the sample data of 27 people who have been executed in this report:
 - Gender: 2 females and 25 males
 - Citizenship: Indonesian citizen (14 persons), Nigerian (5 persons), Malawian (1 person), Australian (2 persons), Dutch (1 person), Indian (1 person), Vietnamese (1 person), Senegalese (1 person), and Brazilian (1 person)
 - Occupation: Merchant (7 people), Private employer (example: workshop staff, shop assistant) (5 people), Farmer (4 people), Unemployed (4 people), Self-employed (example: craftsman, clothing business) (3 people), Labor (2 people), Teacher/Islamic religious figure (ustadz) (1 person), and Student (1 person)
 - Ages: between 21-30 years (9 people), between 31-45 years (15 people), between 45-60 years (2 people), and > 60 years (1 person)
 - Educational background: elementary school (4 people), high school (7 people), university (3 people), while the remaining 13 people have no information on educational background specified under court decisions.
 - Type of crimes: 3 cases of terrorism, 7 cases of murder, and 16 cases of narcotics
 - The area of the court conducting the trial (in the first instance): Banten (8 people), Bali (5 people), DKI Jakarta (3 people), South Sulawesi (3

people), Central Sulawesi (3 people), Central Java (2 people), North Sumatra (1 person), Jambi (1 person), and East Java (1 person)

- The range of years the case was heard (in the first instance): before 1998 (4 persons); between 1998-2004 (17 people); and between 2005-2012 (6 persons)
- The majority of people sentenced to death wait more than 10 years from their first date of detention. There were 12 people executed after waiting between 10 and 20 years. Another 12 people were executed after waiting between 5 and 10 years. The remaining 3 people have been awaiting execution for less than 5 years.
- The fastest execution was committed within 1 year from the first time since detained, while the longest waiting period was 16.5 years from the first time he /she was detained.
- Not all people who had been executed in this research sample apply for clemency, 4 people chose to refuse to apply for clemency. 3 people were still executed even though they had applied for clemency and had not yet received a decision regarding their clemency petition from the president.
- Based on information from court decisions in the first instance/appeal/cassation/judicial review, agency reports, and media coverage, the analysis in this report focuses on the following two issues:
 - a) Fulfillment of fair trial rights of the executed during the judicial process, including the findings of torture and other legal aspects and judges' consideration.
 - b) The factual conditions of the executed comprising the economic and social background that causes them to commit criminal offense, execution that entails procedural issues, execution that should not be carried out against certain categories of people (for example, having a mental health disorder due to death row phenomenon).
- Findings of alleged violation of the rights of fair trial in the trial proceedings of persons who have been executed, among other things are:
 1. Findings of alleged violations of the right to legal assistance were found in at least 8 cases. The fulfillment of the right to legal assistance that had not been effective mostly occurred at the stage before trial, especially investigations since the first arrest. However, legal assistance was also found to be ineffective during the legal process. In fact, the fulfillment of the right to legal assistance greatly determines the fulfillment of other rights such as filing a defense, filing a legal remedy, clemency, etc. Persons facing the death penalty need the role of a legal counsel to be able to effectively access these rights.
 2. At least 4 people allegedly had their right to access interpreters infringed. These access limitations occur particularly at the initial stage of the judicial

process, in investigation. The finding of alleged violations of rights against translators arises when persons facing the death penalty who are foreign citizens are not given access to translators at all or they are granted access to translators but in a language that is not their mother tongue as required by international human rights standards.

3. Violations of the right to defend, among others, to examine aggravating evidence/witnesses or to present mitigating evidence/witnesses occurred in the judicial process of at least 5 people. In the examination process especially in the first instance, they do not have the opportunity to examine key witnesses who can prove their guilt because for example they had not been caught (under list of most wanted man - DPO). In addition, mitigating witnesses are also very rarely brought in judicial proceedings.
4. Violations of fair trial rights, particularly the principle of non-self-incrimination were found in the cases of 3 people. They were defendants in the same criminal case but are prosecuted separately (splitting case). With this mechanism, they were brought as witnesses in turn in each trial and required to give incriminating testimony because they were brought by public prosecutors having an interest in proving their criminal acts.
5. Restrictions on the right to apply to higher courts were found in 1 case where a second judicial review application was denied even before it was examined substantially. In current Indonesian judicial practice, judicial review is legally limited to only once application.
6. In at least 2 cases in this study sample, there was an undue delay during judicial process for years. Such delays occurred both in the judicial context when filing appeal and outside the formal judicial process, for example when applying for clemency.
7. In at least 6 cases, the right to an independent, impartial, and competent tribunal still cannot be optimally guaranteed. For example, it is difficult to say that there had been an independent judicial process where a panel of judges who tried cases under conditions of high pressure directly from the public attending trial and demanding defendants to be sentenced to death. In another context, an impartial judicial process as well as the principle of *equality of arms* was also not reflected in the action of the panel of judges who did not conduct further examination of facts or evidence for the interest of the accused (defense), thus questioning whether the trial had been carried out impartially.
8. There are at least 4 cases where the fulfillment of the right to apply for clemency is problematic. The forms of problems are when the execution is carried out when the petition to ask for clemency is still under president's consideration or when the execution was carried out too sudden, leaving no sufficient time to prepare for submitting the clemency petition.

9. In at least 2 cases, rights violations were found related to providing adequate information about criminal allegations and judicial proceedings. This fundamental right must be fulfilled by law enforcement as stipulated in the Criminal Procedure Code and international human rights standards, which mandate to be provided since the time of arrest.
 10. At least 6 people who have been executed were suspected of being tortured during the judicial process, particularly at the investigation stage. The forms of torture experienced range from physical violence and psychological pressure to give incriminating statements or to plead guilty.
 11. In 5 cases, formal violations of the provisions of the Criminal Code were found which prohibit additional criminal sanctions after being sentenced to death. In some cases, even these errors were not corrected by higher courts until execution.
 12. In at least 5 cases, the panel of judges did not consider mitigating factors of the defendant during the judicial process. In the Criminal Code Procedure, judges are required to consider this matter and if mitigating factors are found, the defendant shall not be sentenced to death.
 13. In 2 cases there was a problem regarding the compliance for a standard of conviction by the judge whether it had met the level of beyond reasonable doubt. This is due to flaws in the construction of cases when the judge imposes the death penalty, ranging from the absence of key witnesses at the trial to allegations of torture in pursuing a guilty plea.
 14. The retroactive application of criminal articles was also found in three terrorism cases. The law regulating terrorism act punishable with the death penalty applied retroactively in all three cases.
 15. Other legal aspects related to accuracy in the preparation of indictment were found in 1 case. In the public prosecution's indictment, there is no description of the role of the accused and the inclusion of criminal articles regarding criminal accomplice.
- Vulnerable conditions were found before a criminal act/at the time of a criminal act/criminal process that includes economic vulnerability and psychological vulnerability,
 - Vulnerable situations also occurred due to death row for instance death row phenomenon, death row phenomenon resulting in people being executed as an elderly, the impacts of death row phenomenon on family members of the executed people, decreased quality of mental health, and other positive event experience by the executed (personal changes/growth)
 - The report found inhumane execution procedures including neglect of ongoing clemency petition, neglect of other ongoing legal proceedings, unclear clemency consideration process right before execution, abrupt notice of execution and

repeated delays, executions without family or escorts, and suffers from pain experienced during the execution process.

- International human rights standards state that executions may only be carried out against court judgement produced through judicial process that meets the standards for the fulfillment of fair trial rights as stipulated in Article 14 of the ICCPR. With the findings of many alleged violations of fair trial rights above in the judicial process of people who have been executed, the executions that have been carried out most likely lead to a form of arbitrariness and indicate a violation of the right to life. Strengthening the rights of people facing the death penalty in the future needs to be priority to prevent the implementation of the death penalty that violates the right to life.
- The report recommends the following key points:
 1. The government needs to evaluate the cases of those who have been executed to provide remedies following findings of violations of their rights both in judicial proceedings and executions.
 2. The government needs to immediately initiate revision to the Criminal Procedure Code (KUHAP) to ensure the regulation of fair trial rights with a higher standard of protection for people facing the death penalty.
 3. The government needs to ensure that there are technical implementation arrangements regarding the granting of death penalty commutation in the new Criminal Code that can guarantee a strict, transparent, and accountable assessment process after people on death row have served 10 years of probation, also ensuring that the guarantee of direct commutation assessment applies to the current people on death row who have been waiting execution. As of March 2023, there have been approximately 101 people who have been on death row for more than 10 years.
 4. Prosecutors and judges shall conduct a moratorium on both prosecution and imposition of the death penalty until a commutation mechanism is in place to prevent an increase in the number of people on death row who are vulnerable to experience death row phenomenon.
 5. Academics and civil society must continue to strive for providing other scientific evidence through research emphasizing that there is no longer a place for the death penalty in the world, including in Indonesia.