

## Executive Summary

### The 2023 Situation Report on The Death Penalty Policy in Indonesia

#### “Automatic Commutation of the Death Penalty Mandated by the New Criminal Code”

- ICJR annually monitors and collects data on every criminal case prosecuted and/or convicted with the death penalty either in the court of first instance, appeal, cassation, or judicial review (PK). The data is then collected in ICJR’s internal database, which was last updated as of 20 March 2024;
- The sources of the ICJR’s internal database used in this report are data collected from the Case Tracing Information System (SIPP) website from all district courts in Indonesia, the Supreme Court Decision Directory website ([putusan3.mahkamahagung.go.id](https://putusan3.mahkamahagung.go.id)), official data from the Directorate General of Corrections of the Ministry of Law and Human Rights, and media coverage;
- Throughout 2023, ICJR found an increase of 218 new criminal cases prosecuted and/or sentenced to death consisting of 242 defendants in total;
- The number of new death penalty cases collected in the reporting period of 2023 shows an increasing trend of new cases over the past 5 years.
- The rising trend of new cases prosecuted and/or sentenced to death in 2023 is still dominated by drug-related crimes (89%). Other types of crimes were premeditated murder (7%), violent theft resulting in death (1%), sexual assault (1%), premeditated murder and violence against children resulting in death (1%), and rape of children causing more than 1 victims (1%);
- Even among the death penalty cases in Indonesia in general, there are at least 11 defendants who had previously been charged and/or sentenced to death and then re-prosecuted and/or re-sentenced to death for the second time or more. All of them were involved in drug-related cases. The finding confirms that even if a case has been prosecuted or sentenced to death, the tendency of reoffending particularly in drug-related crimes still continues.
- Regarding the total number of people on death row, until October 2023, there was an increase of 81 people (19%) who were on death row, bringing a total of 509 people on death row as of October 19, 2023 in Indonesia;
- As in previous years, the number of people on death row from illegal drug trafficking cases (narcotics/psychotropics) remained in the highest position (69%) with as many as 351 people;
- There were limitations in the collection of data on death row prisoners, obtained by ICJR from the Director General of Corrections of the Indonesian Ministry of Law and Human Rights in the 2023 reporting period. The calculation of the waiting period for the execution of each people on death

row could only be done by referring to the results of data processing obtained in written per October 9, 2019 and September 8, 2020 from the Director General of PAS of the Indonesian Ministry of Law and Human Rights, 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 waiting for their execution for more than 10 years as of February 2024 is estimated 110 people;

- Under the provisions of the New Criminal Code, the death penalty is given with a probation period of 10 years, and there will be an assessment process to determine the granting of commutation or change of sentence from death penalty to life imprisonment. The assessment mechanism will be applied not only to the people sentenced to death after the New Criminal Code comes into force but also to the current people on death row who have been awaiting execution for more than 10 years.
- Since there will be two categories of people on death row who will undergo an assessment process to be considered commutation, namely people sentenced to death before the New Criminal Code and after the New Criminal Code, the assessment mechanism for those two categories of people also needs to be distinguished. This difference in assessment mechanisms is very relevant because of the different levels of vulnerability and psychological conditions experienced by each category of those people on death row;
- According to the paragraphs mentioned above, ICJR proposes recommendations to various stakeholders:
  - **Recommendations for the government:**
    - Attorney General should take a moratorium on the prosecutions of death penalty, reflecting on the current legal politics of the death penalty which starts leading to de facto abolition of the death penalty
    - Death penalty must not be executed because the legal politics of death penalty have changed following the enactment of the New Criminal Code in 2023, as all people on death row will be subject to assessment for commutation of sentence
    - The government shall issue implementing regulations on the mechanism of commutation of death penalty (also the assessment mechanisms), including that of applicable for the people on death row before the enactment of the New Criminal Code
    - The government must accelerate the assessment process and regulate the mechanism for commutation of the death penalty, in accordance with UPR

commitments, at least for the 110 people who have been waiting on death row for more than 10 years

- **Recommendations for the Government and Parliament:**
  - Always refer to international human rights standards in drafting laws on procedures for the execution of the death penalty
  - No longer introduce the death penalty in the process of discussing the revision of the Narcotics Law
  - Regulate stricter procedural law provisions for people who are charged, prosecuted, and sentenced to death during the process of discussing the revision on the Code of Criminal Procedure
- **Recommendations to the Supreme Court:**
  - Place a moratorium on rendering the death penalty by prioritizing other types of criminal sanctions in examining criminal cases
  - Pay attention to the disparity in death penalty sentences, especially for drug-related cases
- **Recommendations for State Institutions under in the National Prevention Mechanism Against Torture (National Human Rights Commission, National Commission on Violence Against Women, Ombudsman, Victim and Witness Protection Agency, and the Indonesian Child Protection Commission):**
  - Conduct monitoring mechanisms at detention places to oversee the condition of people on death row, especially in the context of preventing torture caused by death row phenomenon
  - Urge the government to issue an implementing regulation on the automatic commutation of the death penalty as regulated under the New Criminal Code, including for people who have been waiting on death row for more than 10 years
  - Urge the government and parliament to commit to the abolition of the death penalty in the legislative process, especially during the process of revising of the Narcotics Law