

SITUATION REPORT ON DEATH PENALTY
POLICIES IN INDONESIA OF 2023:

Automatic Commutation of the Death Penalty Mandated by the New Criminal Code



**Report on the 2023 Situation of Death Penalty Policy in Indonesia:
Automatic Commutation of the Death Penalty Mandated by the New Criminal Code**

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Foreword

Every year, the ICJR issues a report on the situation of death row in Indonesia. This report is crucial this year because it coincides with forming derivative rules from the new Criminal Code. This regulation derived from the new Criminal Code will change the death penalty situation in Indonesia. The implementing regulation will describe in more detail how the Indonesian government's commitment to criticism and the democratic process has resulted in the term "Indonesian way" in regulating the death penalty as a result of conflicts between groups that are in support of and against the death penalty.

The Indonesian government has repeatedly conveyed this "Indonesian way." In the Human Rights Session organized by the United Nations in Geneva on November 9, 2022, the Indonesian delegation, represented by the Minister of Law and Human Rights, Yasonna Laoly, delivered a presentation on the provisions of the new Criminal Code, which regulates the death penalty as a last resort. In addition, the death penalty can be commuted if the convict behaves well during his/her ten years of probation.

In the debate and discussion in the courtroom of Commission III of the House of Representatives of the Republic of Indonesia related to the Criminal Code, the "Indonesian way" in question was then narrowed down to a new mechanism in which the death penalty will automatically be imposed with probation period; this was following the removal of the word "may" in the provisions of Article 100 of the Criminal Code, which previously gave judges the authority to choose whether to impose the death penalty with or without probation.¹ This is also in line with the explanation of Article 98 of the new Criminal Code, which states that "the death penalty is imposed with a probation period. Within the probation period, the convict is expected to improve him/herself so that the death penalty does not need to be carried out and can be replaced with life imprisonment."

As a further consequence, that will activate the provisions of Article 1 paragraph (2) of the current Criminal Code and Article 3 paragraph (1) of the new Criminal Code; one of the main principles of criminal law is "*in favor reo*," meaning that if the law is changed after the act has been committed, then the suspect is subject to provisions favorable to him.

¹ Dwi Rahmawati, "Pemerintah Sepakat Kata 'Dapat' pada Pasal Pidana Mati di RKUHP Dihapus" [Government Agrees the Word 'May' in the Death Penalty Article in RKUHP Be Removed], <https://news.detik.com/berita/d-6424489/pemerintah-sepakat-kata-dapat-pada-pasal-pidana-mati-di-rkuhp-dihapus>, accessed on 27 April 2024

Thus, based on the principle of criminal law, if a law changes after a criminal act has been committed, either the old or the new law can be applied to the perpetrator, the more mitigating provisions must be chosen. In his book, which was republished in 1995, R. Soesilo further explained that “more mitigating,” including in the context of leniency, refers to parts/elements of criminal events, types of offenses (whether it is a complaint offense), the guilt of the accused, and so on. The death penalty provisions in the new Criminal Code are more mitigating for defendants compared to the old Criminal Code because the death penalty in the new Criminal Code is no longer categorized as a main punishment but a special punishment.

The ICJR report will present death row inmates who are currently waiting for execution, some of whom have been waiting for more than 10 years, longer than the probation period stipulated in the new Criminal Code. The physical, environmental, and psychological conditions they have been living in are also not easy and must be considered in the mechanism of future changes to punishment.

This ICJR death penalty report focuses on the above issues, highlighting that the commitment upheld by the Indonesian government must be manifested in a more detailed mechanism, especially by adhering to the main principle agreed upon by the drafter of the law in the new Criminal Code, which is that the change to the death penalty is inevitably a mandate in the Criminal Code.

Finally, I would also like to thank the parties who contributed to the writing of this report, especially the team of ICJR researchers led by Iftitahsari and Adhigama Andre Budiman, along with Wahyu Aji Ramadhan, Asry Masfufah Alkazahfa, Angger Wahyu Kusuma, and Patricia Dean Maycita Pinasti. We want to thank the Director General of Corrections of the Ministry of Law and Human Rights, the Media, Civil Society Organizations, and those who assisted in processing and providing this data.

For a just and civilized Indonesia, happy reading.

Jakarta, April 2024

Erasmus A. T. Napitupulu

Executive Director of ICJR

Executive Summary

- ICJR annually monitors and collects data on every criminal case prosecuted and/or sentenced with the death penalty in the court of first instance, appeal, cassation, or judicial review. The data is then processed in ICJR's internal database, which was last updated on 20 March 2024;
- The sources of the ICJR's internal database used in this report are data collected from the Case Tracing Information System for all District Courts in Indonesia, the Supreme Court Decision Directory (putusan3.mahkamahagung.go.id) website, data from the Directorate General of Corrections of the Ministry of Law and Human Rights, media reports;
- Throughout 2023, the ICJR found an increase of a total of 218 new criminal cases prosecuted and/or sentenced to death with a total of 242 defendants;
- The number of new death penalty cases collected in the reporting period of 2023 shows an increasing trend of new cases over the past five 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 offenses found were premeditated murder (7%), violent theft resulting in death (1%), sexual assault (1%), premeditated murder and violence against children resulting in death (1%), and child sexual abuse causing more than one victim (1%);
- Even among the death penalty cases in Indonesia in general, there are at least eleven defendants who had previously been charged and/or sentenced to death and then re-prosecuted and/or sentenced to death for the second time or more. In all drug-related crime cases, even if a case has been prosecuted or sentenced to death, the tendency for criminal acts to occur again also 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, bringing a total of death row of 509 people as of October 19, 2023, in Indonesia;
- As in previous years, the number of death row from illegal drug trafficking cases (narcotics/psychotropics) remained in the highest position, with as many as 351 (69%) death rows;
- There were limitations in collecting data 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. The calculation of the waiting period for the execution of each death row prisoner could only be done by referring to the results of data processing of death row obtained in writing 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 death row. Based on the processed data, the total number of death row who have been waiting for their execution for more than ten years as of February 2024 is estimated at 110 people;

- Under the provisions of the New Criminal Code, the death penalty is given with a conditional sentence of 10 years, and there will be an assessment process to determine the granting of commutation or change of sentence against prisoners from death penalty to life imprisonment. The assessment mechanism will be applied not only to death row sentenced after the New Criminal Code comes into force but also to current death row who have been awaiting execution for more than ten years.
- Two categories of death row will undergo an assessment process to get a change of sentence, namely, death row before the New Criminal Code. After the New Criminal Code, the assessment mechanism for the two categories of death row 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 death row;
- To that end, the ICJR recommends to various government stakeholders:
 - **Recommendations for the Government of Indonesia (executive):**
 - The Attorney General shall place a moratorium on prosecutions of the death penalty, reflecting on legal politics leading to criminal abolition
 - The government should not carry out executions because the politics of death penalty law have changed after the 2023 Criminal Code, and all death row will be subject to assessment for changing their sentences
 - The government should issue regulations on the assessment mechanism for death row, including rules for death row who were already in prison before the passing of the new Criminal Code
 - The government should accelerate the assessment process and regulate the mechanism for changing the death penalty, following the UPR commitment, for at least 110 people who have been on death row for more than 10 years
 - **Recommendations for the Government and House of Representatives:**
 - To always refer to international human rights standards in drafting laws on the procedures for carrying out the death penalty
 - In the process of discussing the revision of the Narcotics Law to no longer introduce the death penalty

- In the process of discussing the revision of the Criminal Procedure Code, need to regulate stricter procedural law provisions for people who are charged, prosecuted, and sentenced to death
- **Recommendations for the Supreme Court:**
 - The Supreme Court needs to place a moratorium on the death penalty by prioritizing other types of criminal punishment in examining criminal cases
 - The Supreme Court should pay attention to the disparity in death penalty sentences, especially for drug-related crime cases
- **Recommendations for the National Prevention Mechanism against Torture (NHRI, National Commission on Violence Against Women, Ombudsman, Indonesian Child Protection Commission, Witness and Victim Protection Agency:**
 - They should activate monitoring mechanisms at places of detention to assess the conditions of death row inmates, especially in the context of preventing torture on death row
 - They need to urge the Government of Indonesia to issue a policy of commuting the death penalty, especially for convicts who have been in delayed execution for more than 10 years
 - They need to urge the Government of Indonesia and parliament to commit to the abolition of the death penalty in the legislative process, especially the revision of the Narcotics Law

1. Track Record of Government Statements on Death Penalty

“In general, for death row whose cases have permanent legal force (‘inkrah’ in Indonesian context) before the beginning of January 2026 (the effectiveness of the National Criminal Code) but have not been executed, the provisions of article 3 of the National Criminal Code (lex favor reo) apply, which state that in the event of changes in laws and regulations after the act has occurred, new regulations will be applied, unless the old regulations are ‘beneficial’ to the perpetrators. ... Although the 10-year conditional sentence for death row inmates only comes into effect on January 2, 2026, in the Penal Code, anything for convicts, suspects, and defendants must benefit from the new rule. There should be a postponement.” – Eddy O. S. Hiariej (Former Vice Minister of Law and Human Rights of the Republic of Indonesia)²

“The imposition of the death penalty will always be problematic. For me, the heaviest punishment is life imprisonment. This is not a popular opinion, but we must consider it. The modern concept of punishment is no longer lex talionis/vengeance but corrective, rehabilitative, and restorative. The death penalty makes it difficult to produce valuable lessons other than the sense of “satisfaction of retribution.” The concept now moves towards correction for the perpetrator by making victim repent. Improve (rehabilitate) the condition of the perpetrator, victim, and community and restore the condition of the victim/family. People continue to be always encouraged to think that punishment is retribution, with the slogan of ‘life for life,’ ‘eyes for eyes.’ The principle of justice being spoken out is always retributive justice, which is justice for retribution instead of improvement. Justice with the concept of retributive lex talionis will create a punitive society fond of punishing, not a society that always thinks what lessons are learned from punishment and from crimes that occur, what must be done to make improvements and restore the situation..” – Taufik Basari (Member of III Commission of the House of Representatives of the Republic of Indonesia)³

“If the death penalty verdict is political, I try to say a little bit as well. From a political point of view, yes, state officials are political.” – Habiburokhan (Member of III Commission of the House of Representatives of the Republic of Indonesia)⁴

“This arrangement is either a compromise or a way out between retentionists and abolists. This means that the death penalty is an exception crime. The judge must give serious and careful consideration before imposing the death penalty, as stipulated in the Criminal Code. ... The current Criminal Code can be the answer to the death penalty policy that suits all interests, namely the

² Agus Setyadi, “Pemerintah dan DPR Akan Godok UU Khusus Hukuman Mati” [Government and Parliament to Draft Special Law on Death Penalty], Detik.com (28 February 2023), <https://www.detik.com/sumut/hukum-dan-kriminal/d-6593307/pemerintah-dan-dpr-akan-godok-uu-khusus-hukuman-mati>, accessed on 22 April 2024; Susana Rinta Kumalasanti, “Wamenkumham: Ada Aturan Baru soal Pidana Mati, Eksekusi Harus Ditunda” [Deputy Minister of Law and Human Rights: New Rules on Death Penalty, Executions Should Be Postponed], Kompas.com (28 February 2023), <https://www.kompas.id/baca/polhuk/2023/02/28/wamenkumham-ada-aturan-baru-soal-pidana-mati-eksekusi-harus-ditunda>, accessed on 22 April 2024.

³ The statement was uploaded on X's social media account on August 10, 2023, <https://twitter.com/taufikbasari/status/1689538266645856257?t=BVCEBNBft6WRbgakRA40bg&s=19>, accessed on 23 January 2024.

⁴ Ria Rizki Nirmala Sari and Rakha Arianto, “Anggota DPR Akui Hukuman Mati di KUHP Baru Punya Muatan Politis: Sudah Memihak” [Member of Parliament Admits Death Penalty in New Criminal Code Has Political Content: Already Partial], Suara.com (2 March 2023), <https://www.suara.com/news/2023/03/02/150712/anggota-dpr-akui-hukuman-mati-di-kuhp-baru-punya-muatan-politis-sudah-memihak>, accessed on 23 January 2024.

*conditional or probationary death penalty.” – I Wayan Sudirta (Member of III Commission of the House of Representatives of the Republic of Indonesia)*⁵

*“The abolition of the death penalty has become a global trend. But the government and policymakers in Indonesia seem to be bucking the global tide.” – Atnike Nova Sigiro (Chairwoman of Komnas HAM)*⁶

*“The death penalty not only deprives them of their right to life, but also has lasting repercussions on the families left behind, and so far, the impact felt by families of death row inmates, both before and after executions are carried out, and this almost never gets room to be revealed.” – Mariana Amiruddin (Vice Chairwoman of Komnas Perempuan)*⁷

*“Komnas HAM considers that the use of the death penalty in punishment should be removed from the legal system in Indonesia. ... The right to life is a right that cannot be diminished under any circumstances.” – Hari Kurniawan (Commissioner of NHRI of Indonesia)*⁸

*“The findings show that the death penalty against women makes use of women's vulnerability in various crimes, such as narcotics and murder cases. Women on death row are targeted by drug syndicates, are trafficking victims, are victims of prolonged domestic violence, and are framed in murder cases. This is not a consideration during the legal process in the death penalty sentence.” – Satyawanti Mashudi (Commissioner of Komnas Perempuan)*⁹

*“ Because the law lays out the maximum death penalty, I think the judge’s considerations that led to the behavior and actions of the cleric towards his 13 students, I don't think there is anything excessive there. And it is not an initiation from the judge, but it is indeed regulated by Law Number 17 of 2016 provisions. So there is nothing unusual there.” – Arist Merdeka Sirait (Chairman of Indonesian Child Protection Commission)*¹⁰

⁵ DPR RI, “Soal Hukuman Mati, I Wayan Sudirta: Memuliakan HAM, Penerapannya Selektif” [On the Death Penalty, I Wayan Sudirta: Glorifying Human Rights, Its Application is Selective], DPR RI’s website (2 March 2023), <https://www.dpr.go.id/berita/detail/id/43501/t/javascript>, accessed on 23 January 2024; Dwi Bowo Raharjo, “Sebut Hukuman Mati di KUHP Baru Dibikin Berbelit, Anggota DPR: Secara Terselubung Sudah Moratorium Kok” [Calling the Death Penalty in the New Criminal Code Made Convoluted, Members of Parliament: Covertly Already Moratorium], Suara.com (2 March 2023), <https://www.suara.com/news/2023/03/02/162039/sebut-hukuman-mati-di-kuhp-baru-dibikin-berbelit-anggota-dpr-secara-terselubung-sudah-moratorium-kok>, accessed on 22 April 2024.

⁶ Ady Thea DA, “KUHP Baru Dianggap Tahap Menuju Penghapusan Hukuman Mati” [New Criminal Code Considered a Stage Towards Abolishing the Death Penalty], Hukumonline.com (13 April 2023), <https://www.hukumonline.com/berita/a/kuhp-baru-dianggap-tahap-menuju-penghapusan-hukuman-mati-1t6437a77f82cac/>, accessed on 23 January 2024

⁷ Anita Permata Dewi, “Komnas: Hukuman mati sebabkan dampak berkepanjangan keluarga terpidana” [Komnas: Death penalty causes prolonged impact on families of convicts], Antara (9 October 2023), <https://www.antaraneews.com/berita/3764460/komnas-hukuman-mati-sebabkan-dampak-berkepanjangan-keluarga-terpidana>, accessed on 23 January 2024

⁸ M. Rosseno Aji, “Soal Vonis terhadap Ferdy Sambo, Komnas HAM: Hukuman Mati Seharusnya Dihapus” [On the Verdict against Ferdy Sambo, Komnas HAM: Death Penalty Should Be Abolished], Tempo.co (13 February 2023), <https://nasional.tempo.co/read/1690980/soal-vonis-terhadap-ferdy-sambo-komnas-ham-hukuman-mati-seharusnya-dihapus>, accessed on 23 January 2024

⁹ Komnas Perempuan, “Siaran Pers Komnas Perempuan tentang Hari Peringatan Anti Hukuman Mati Internasional 2023 ‘Perempuan Terpidana Mati dan Pentingnya Menghapuskan Hukuman Mati dalam upaya Menentang Praktik-Praktik Penyiksaan’” [Komnas Perempuan’s Press Release on International Anti-Death Penalty Memorial Day 2023 ‘Women on Death Row and the Importance of Abolishing the Death Penalty in an Effort to Resist Torture Practices’], Laman Komnas Perempuan (10 October 2023), <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-tentang-hari-peringatan-anti-hukuman-mati-internasional-2023>, accessed on 23 January 2024

¹⁰ Fathiyah Wardah, “MA Perkuat Putusan, Pemerksa 13 Santri Tetap Dihukum Mati” [Supreme Court Strengthens Verdict, Rapist of 13 Students Still Sentenced to Death], Voaindonesia (4 January 2023), <https://www.voaindonesia.com/a/ma-perkuat-putusan-pemerksa-13-santri-tetap-dihukum-mati/6904049.html>, accessed on 23 January 2024

"I'm telling you: As long as our law enforcement system is not perfect, do not sentence anyone to the death penalty. Because when we make mistakes, we can't correct them." – **Anies Baswedan (Presidential Candidate of the Republic of Indonesia for the 2024-2029 period, Governor of Jakarta for the 2017-2022 period)**¹¹

Track Record of State Statements on the Death Penalty at International Forums

In the 4th Cycle of the Universal Periodic Review session, the government, represented by the Minister of Law and Human Rights, Yasonna H. Laoly, stated why Indonesia should retain the death penalty.¹²

"Drug trafficking remains an increasing challenge in my country to protect our future generations. Globally, 284 million people aged 15-64 use drugs, with younger people using drugs compared to previous generations. Drug production and trafficking continued to record growth. For perspective, in 2021, almost more than 4.8 million Indonesians became victims of illegal drugs. Acts of terrorism have claimed the lives of many innocent people in Indonesia. In addition, most victims and families of terrorist attacks have experienced trauma or the impact of such unfortunate tragedies. Putting ourselves in the shoes of victims leaves us with no choice but to keep imposing the death penalty on the most serious crimes in society following our national laws. The government has consistently implemented the necessary safeguards based on international standards. The death penalty is used as a last resort and is carried out for a series of rigorous and lengthy legal proceedings. We also continue to facilitate the filing of legal remedies to commute the death penalty to a life sentence."

This review of Indonesia was then followed by recommendations from countries in this human rights mechanism. In an international forum where all countries were given one vote to submit recommendations related to human rights issues, Indonesia received as many as 21 recommendations related to the death penalty.¹³ Of the 21 recommendations, only one recommendation is supported by Indonesia, namely the recommendation from Spain, which contains:

"(140.89) Implement a sentence commutation mechanism for those sentenced to death, in addition to the clemency mechanism by the President (Spain);"

¹¹ Brigitta Belia Permata Sari, "Anies Kritik Hukuman Mati Koruptor, Dorong Pengesahan UU Perampasan Aset" [Anies Criticizes Corrupt Death Penalty, Encourages Passage of Asset Forfeiture Law], Detiknews (3 Desember 2023), <https://news.detik.com/pemilu/d-7069201/anies-kritik-hukuman-mati-koruptor-dorong-pengesahan-uu-perampasan-aset>, accessed on 23 January 2024

¹² UN Web TV, Indonesia Review - 41st Session of Universal Periodic Review (09 November 2022) <<https://webtv.un.org/en/asset/k11/k11phszt11>>

¹³ UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Indonesia', 52nd Session (27 February-31 March 2023) A/HRC/52/8/Add.1

Then, one recommendation was partially noted in part from the country of Chile:

“(140.1) Continue efforts towards ratification of the International Convention for the Protection of All Persons from Enforced Disappearance and consider ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Chile);”

Indonesia's remaining 19 recommendations mostly called for ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, which substantially encourages countries to abolish the death penalty (de jure).

In supporting/recording/noting some of the above recommendations, the Indonesian government stated¹⁴

“The death penalty continues to be part of Indonesia's positive law and is seen as an attribute of its sovereignty, where the ICCPR and various international legal instruments protect its implementation. However, based on Law No. 1/2023 on the new Criminal Code, the death penalty should only be imposed as an alternative punishment with a great opportunity for a change of sentence.”

2. Portrait of Death Penalty Practice: Increasing Trend in Number of Death Penalty Prosecutions and Sentences

Data Collection Methods

The ICJR annually monitors and collects data on criminal cases prosecuted and/or sentenced to death in courts of first instance, appeal, cassation, or judicial review (PK). The data is then collected in ICJR's internal database, last updated as of March 20, 2024. The sources of the ICJR's internal database used in this report are data collected from the Case Tracing Information System (SIPP) of all District Courts in Indonesia, the website of the Directory of Supreme Court Decisions (putusan3.mahkamahagung.go.id), data from the Directorate General of Corrections of the Ministry of Law and Human Rights, and media reports.

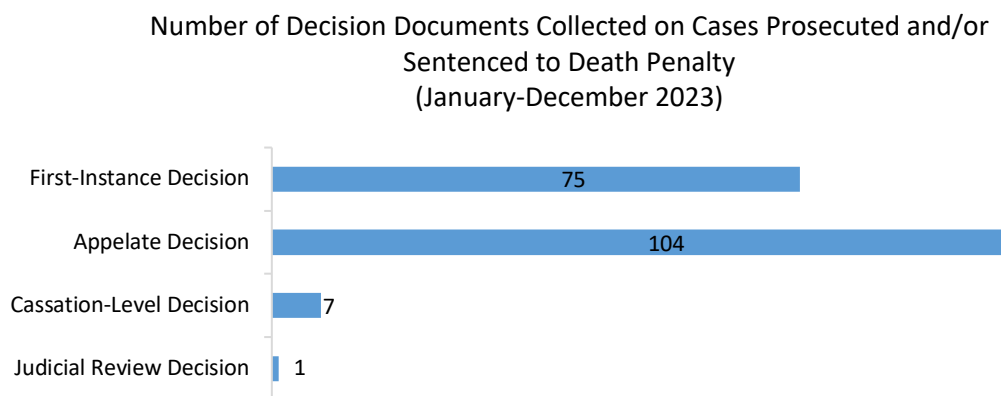
The total accumulation of criminal cases prosecuted and/or sentenced to death that have been collected in the ICJR's internal database as of March 20, 2024, is 1326 cases with a total of 1486 defendants. The cases include those that were registered from 1969 to 2023. Of the total 1487

¹⁴ Indonesia's Report to Periodic Universal Review Working Group A/HRC/52/8/Add.1

defendants, at least 617 defendants ended up on death row based on the last court verdict that was successfully traced and based on processed data from the Directorate General of Corrections received by ICJR in 2019.¹⁵

From the search results, the ICJR has also succeeded in reporting the addition of 187 decision documents, ranging from the first instance, appeal, and cassation to judicial review, containing charges and/or death sentences throughout 2023. The following is the composition of the number of decision documents: 75 first-instance court decision documents, 104 appellate court decision documents, seven cassation-level court decision documents, and one judicial review decision document.

Graph 1. Number of Decision Documents Collected on Cases Prosecuted and/or Sentenced to Death Penalty Throughout 2023



Source: ICJR's internal database updated as of 20 March 2024

The findings reveal that as many as 68 first-instance decision documents are not yet available when the appellate decision documents have been published on the Supreme Court Decision Directory website. Then, there were only 2 cases out of a total of 218 cases whose complete decision documents were available, ranging from the first to the last level (cassation). One reason is that many cases are in the process of cassation. Meanwhile, the decision documents on as many as 72 cases out of a total of 218 cases could not be obtained at all levels of examination.

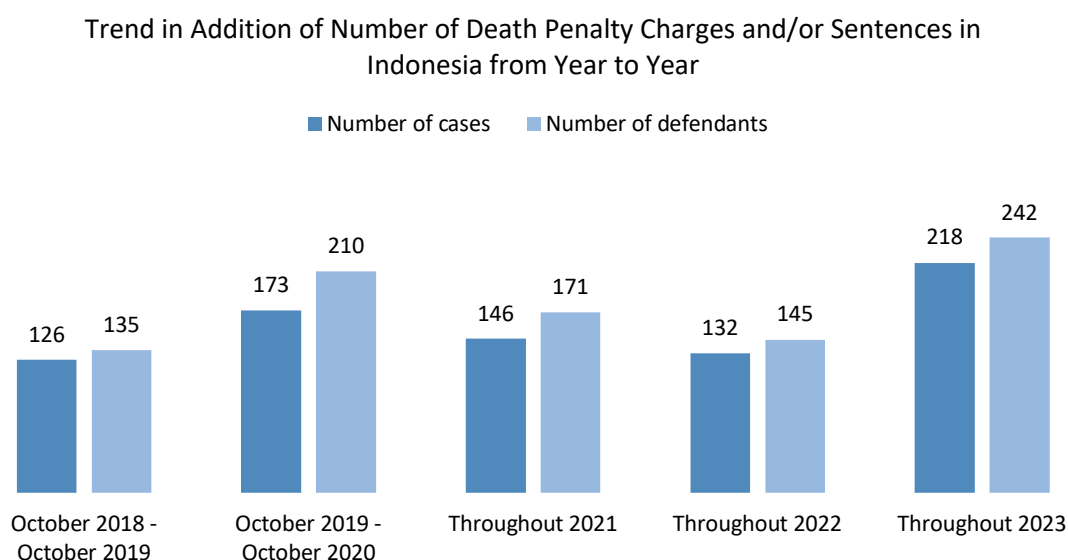
¹⁵ However, there were limitations in ascertaining the current condition of the defendants whose information cannot be accessed in real time by the public, such as if the person concerned turns out to have died or escaped, as well as to ensure if there is a change to the death sentence, such as through judicial review or the granting of clemency, that escapes publication. For this reason, the ICJR still recommends referring to the official death row inmate data from the Director General of Corrections requested by the ICJR per year, which will be described in the next subchapter of this report.

Findings for the 2023 Period

Throughout 2023, the ICJR found a total of 218 new criminal cases prosecuted and/or sentenced to death, with a total of 242 defendants. This figure shows the trend in adding cases that have continued to increase over the last five years, as seen in Graph 2.¹⁶

The figure represents the number of new cases discovered when death penalty charges were read out or when death sentences were decided in the first instance, appeal, cassation, or judicial review between January 1 and December 31, 2023. Thus, the number mentioned above refers to the addition of new cases as of the year 2023.

Graph 2. Trend in Addition of Number of Death Penalty Charges and/or Sentences in Indonesia from Year to Year



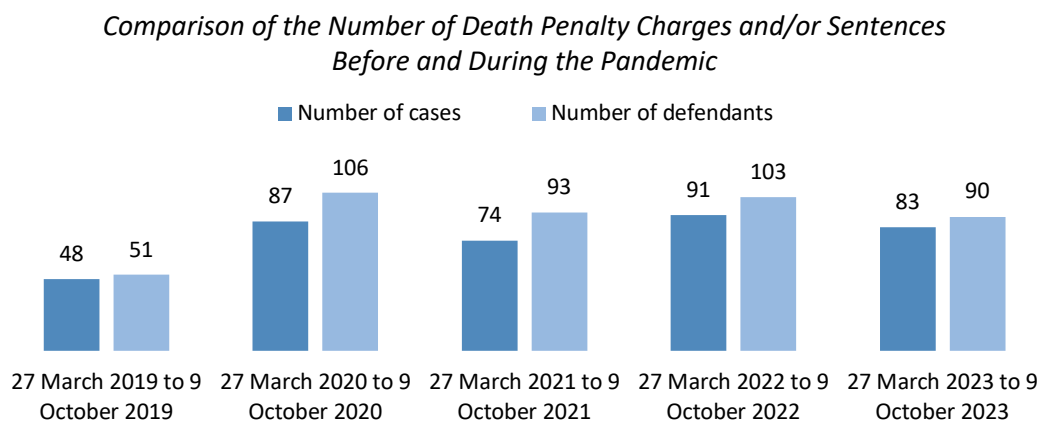
Source: ICJR's Annual Report on the Situation of Death Penalty Policy in Indonesia for the period of 2019-2023

¹⁶ Read the ICJR's Annual Report on the Death Penalty Policy Situation in Indonesia for the period of 2019-2022, which can be accessed via the following links: <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/> ; <https://icjr.or.id/laporan-situasi-kebijakan-pidana-mati-di-indonesia-2022-tak-ada-yang-terlindungi/>

Death Penalty Comparison Before, During, and After the Pandemic

As of June 21, 2023, the pandemic status had finally been officially lifted by the government. This year's report compares again the number of additional cases before, during, and after 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, an exceptional trend is found in the 2022 period, with the highest number of additional cases during the three years of the pandemic period (2020-2022).

Graph 3. Comparison of the Number of Death Penalty Charges and/or Sentences Before and During the Pandemic



Source: ICJR's internal database updated as of 20 March 2024

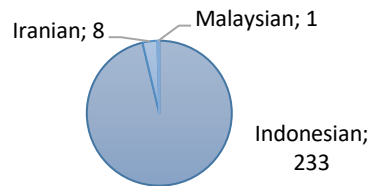
The number of additional criminal cases with charges and/or death sentences decided between March 27, 2023 to October 9, 2023 is 83 cases with 90 defendants. This shows a downward trend compared to the figure during the pandemic, but this figure is still higher than that of before the pandemic (2019).

Nationality of Defendants Charged and/or Sentenced to Death

Of the total 242 defendants charged and/or sentenced to death throughout 2023, it was found that 233 of them were Indonesian citizens, while nine people are known to be foreigners, namely eight Iranian citizens and one Malaysian citizen. The data can be confirmed by the case decision document of the defendants concerned, which can be obtained from the Supreme Court Decision Directory website.

Graph 4. Nationality of Defendants Charged and/or Sentenced to Death Penalty Throughout 2023

Nationality of Defendants Charged and/or Sentenced to Death Penalty



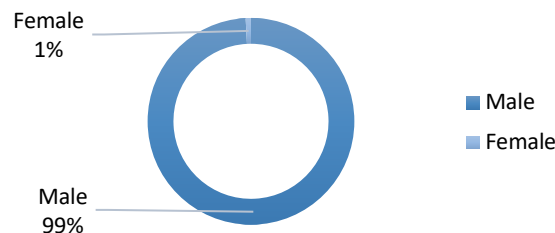
Source: ICJR’s internal database updated as of 20 March 2024

Gender of Defendants Charged and/or Sentenced to Death

In addition, all 242 defendants who have just been charged and/or sentenced to death as of 2023 can be identified by their gender distribution. Although the case decision documents for some of the defendants mentioned above are unavailable, 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 from men due to the embedding of “Bin” (for men) and “Binti” (for women). Thus, this search found that from a total of 242 defendants who were prosecuted and/or sentenced to death throughout 2023, 99% were male (240 people), and the remaining 1% were female defendants (two people).

Graph 5. Gender of Defendants Charged and/or Sentenced to Death Penalty Throughout 2023

Gender of Defendants Charged and/or Sentenced to Death Penalty (January-December 2023)



Source: ICJR’s internal database updated as of 20 March 2024

Types of Criminal Acts

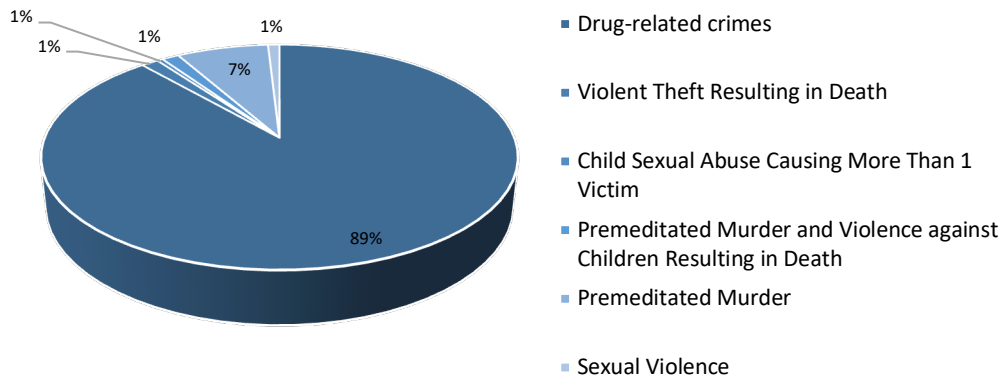
In general, the trend of new cases prosecuted and/or sentenced to death in 2023 is still dominated by drug-related crimes (89%). Other types of crimes found were premeditated murder (7%), violent theft resulting in death (1%), sexual violence (1%), premeditated murder and violence against children

resulting in death (1%), and rape of children causing more than 1 victim (1%). The details of the case are as follows:

- 193 Drug-related cases;
- 1 case of Premeditated Murder and Premeditated Abuse;
- 1 case of Premeditated Murder and Domestic Violence;
- 3 cases of Violent Theft Resulting in Death;
- 1 case of Child Sexual Abuse Causing More Than 1 Victim;
- 3 cases of Premeditated Murder and Violence against Children Resulting in Death;
- 13 cases of Premeditated Murder;
- 1 case of Premeditated Murder Causing Multiple Victims and Multiple Fraud, and Money Forgery;
- 1 case of Sexual Violence; and
- 1 case of Sexual Violence Causing More Than 1 Victim.

Graph 6. Types of Cases Prosecuted and/or Sentenced to Death Throughout 2023

Types of Cases Prosecuted and/or Sentenced to Death Throughout 2023



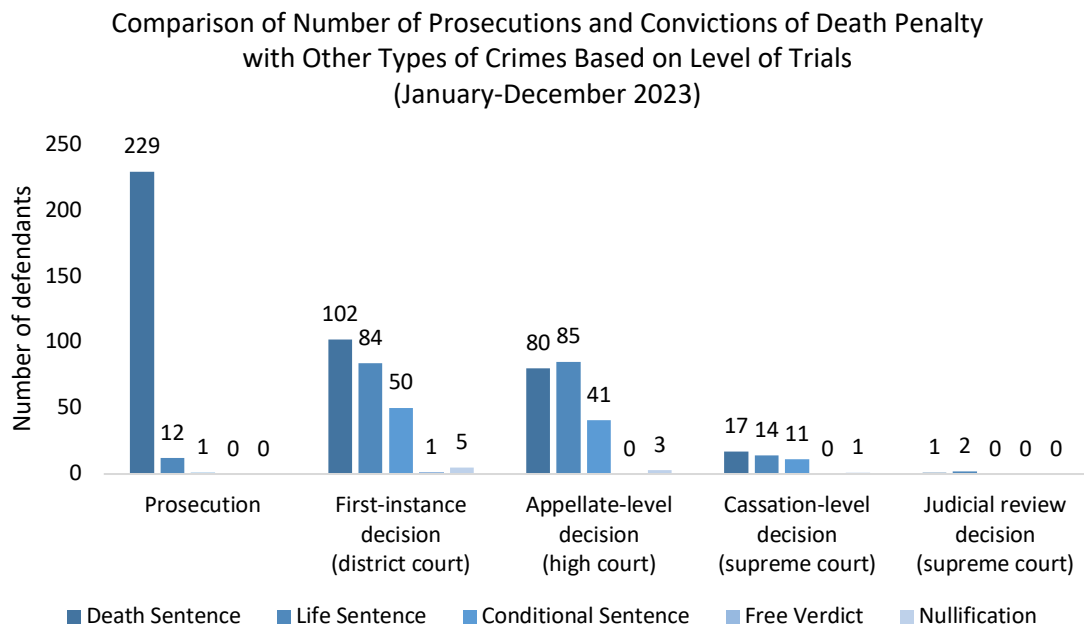
Source: ICJR’s internal database updated as of 20 March 2024

Comparison between Prosecutions and Convictions

In terms of comparison between prosecutions and convictions, based on ICJR’s data, there were 229 defendants prosecuted with death sentences, 102 of whom were sentenced to death at the first-instance level. Moreover, 80 defendants were sentenced to death at the appellate level, and 17 were sentenced to death at the cassation level. Death sentences on both levels are decided in contexts, ranging from upholding the decision of the court of first instance (58 defendants at the appellate

level), rejecting cassation applications (15 defendants), to changing sentences from the previous non-death penalty sentences (22 defendants at the appellate level and two defendants at the cassation level). This was also found in a judicial review case decided in 2023, with the rejection of an application from the defendant so that the death sentence given at the previous court level remained valid.

Graph 7. Comparison of Number of Prosecutions and Convictions of Death Penalty with Other Threats of Criminal Penalty Based on Level of Trials Throughout 2023



Source: ICJR’s internal database updated as of 20 March 2024

In the reporting period 2023, some cases were previously prosecuted or sentenced to imprisonment but were then changed to death sentences. The range of imprisonment varies from fifteen years to twenty years. Nullification sentences were also found against five defendants, all of whom were from drug-related crime cases. This is because the defendants committed a criminal offense while serving a sentence (if the final sentence is not the death penalty) or waiting for execution.

Based on the ICJR’s internal database as of March 20, 2024, there are at least eleven defendants who have previously been charged and/or sentenced to death and then recharged and/or sentenced to death for the second time or more. Interestingly, as many as eleven defendants were all involved in narcotics cases, either in the first, second, or third case. This again proves that the harsh and punitive approach of applying the death penalty is indeed completely unreliable in controlling the problem of drug trafficking that continues to occur even in prison.

Here are the details of the cases of each of the eleven defendants based on the ICJR's internal database, which was updated as of March 20, 2024:

No	Defendant	Types of Criminal Acts	Final Verdict and Year of First Case Register	Final Verdict and Year of Second Case Register	Final Verdict and Year of Third Case Register
1	Okonkwo Nonso Kingsley	Drug-related crimes	Death Sentence (2004)	Nullified (2022)	
2	Ramli Bin Arbi	Drug-related crimes	Life Sentence (2015)	Death Sentence (2019)	
3	Ayau	Drug-related crimes	Death Sentence (2016)	Nullified (2017)	
4	Satria Aji Andika Bin Ismail Effendi	Drug-related crimes	Death Sentence (2017)	Death Sentence (2021)	Nullified (2023)
5	Ridho Yudiantara Bin Zulkahfi Manaf	Drug-related crimes	Death Sentence (2017)	Death Sentence (2021)	Nullified (2023)
6	Tugiman a.k.a Toge Bin Kong Aci (Late)	Drug-related crimes	Death Sentence (2016)	Death Sentence (2017)	
7	Meirika Franola a.k.a Ola a.k.a Tania	Drug-related crimes	Life Sentence (2000)	Death Sentence (2014)	
8	Apriadi Als. Ujang Bin Hanafi	Drug-related crimes	Life Sentence (2020)	Death Sentence (2021)	
9	Petrus Hanter a.k.a Anter	Drug-related crimes	Life Sentence (2018)	Death Sentence (2020)	
10	Hendrik Cendra Als Aluk Bin Hartoto Tjendra	Drug-related crimes	Imprisonment 20 Years (2017)	Life Sentence (2019)	
11	Erwin Budi Lesmana a.k.a Kentung Bin (Late) Maman Sudirman	Drug-related crimes	Death Sentence (2021)	Nullified (2023)	

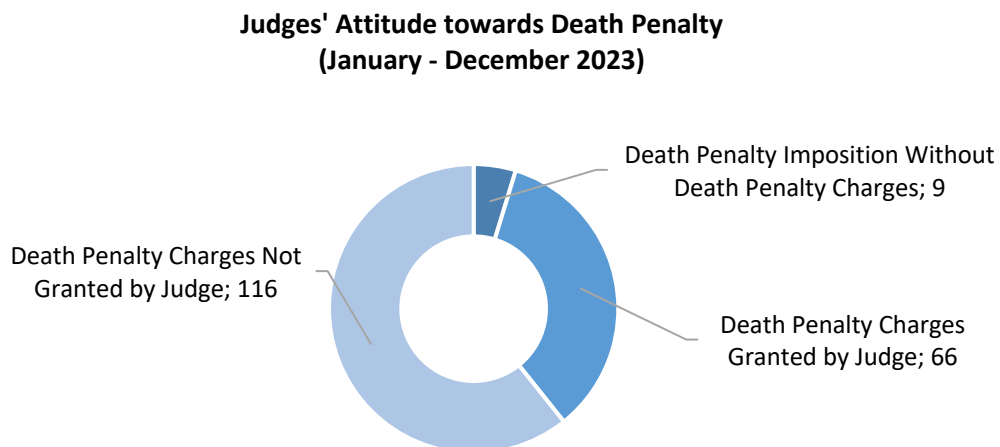
In the reporting period of 2023, two cases were even found to be prosecuted and/or sentenced to death for the third time, namely on Ridho Yudiantara Bin Zulkahfi Manaf a.k.a Edo and Satria Aji Andika Bin Ismail Efendi a.k.a Aji. Both committed a repeat of the same crime, namely drug-related crimes. The defendant, Satria Aji Andika Bin Ismail Efendi, a.k.a Aji, was sentenced to death for the third time in 2023, having previously been sentenced to death in 2017 and 2021. Similarly, the defendant Ridho Yudiantara Bin Zulkahfi Manaf, a.k.a Edo, was sentenced to death for the third time in 2023, having previously been sentenced to death in 2017 and 2021. Both defendants were involved in the same

case and were tried at the Tanjung Karang District Court (2017), Pekanbaru District Court (2021), and South Jakarta District Court (2023).

In another case, the judge acquitted the defendant, who was previously charged with the death penalty, namely in the narcotics case on behalf of the defendant Ilham Sirait a.k.a Kecap with case number 177/Pid.Sus/2023/PN Kis. The panel of judges at the Kisaran District Court stated that the public prosecutor could not prove the criminal act charged to the defendant based on the evidence presented by the public prosecutor. No witnesses' statements were related to each other to prove the criminal acts committed by the accused.¹⁷ However, the Supreme Court later commuted the acquittal to twenty years in prison after the public prosecutor filed a cassation. The judgment of the cassation judge remained unknown at the time of writing this report because the decision document at the cassation level with number 5645 K/Pid.Sus/2023 on behalf of the defendant Ilham Sirait a.k.a Kecap is not accessible to the public yet.

Judges' Stance towards the Death Penalty

Graph 8. Judges' Stance towards Death Penalty throughout 2023



Source: ICJR's internal database updated as of 20 March 2024

Throughout 2023, 66 defendants were previously charged with the death penalty, and the charges were then consistently granted by judges at first-instance hearings, appeals, and cassation. The opposite phenomenon was also found, as 9 defendants were sentenced to death by the judges without having previously been charged with the death penalty by the public prosecutor. Meanwhile,

¹⁷ Kisaran District Court Decision No. 177/Pid.Sus/2023/PN Kis, p. 60.

cases in which defendants were charged with the death penalty but were not granted by judges in either the first instance, appeal, or cassation constitute the highest trends in the analysis in this section, with 116 defendants.

Geographical Distribution of Cases

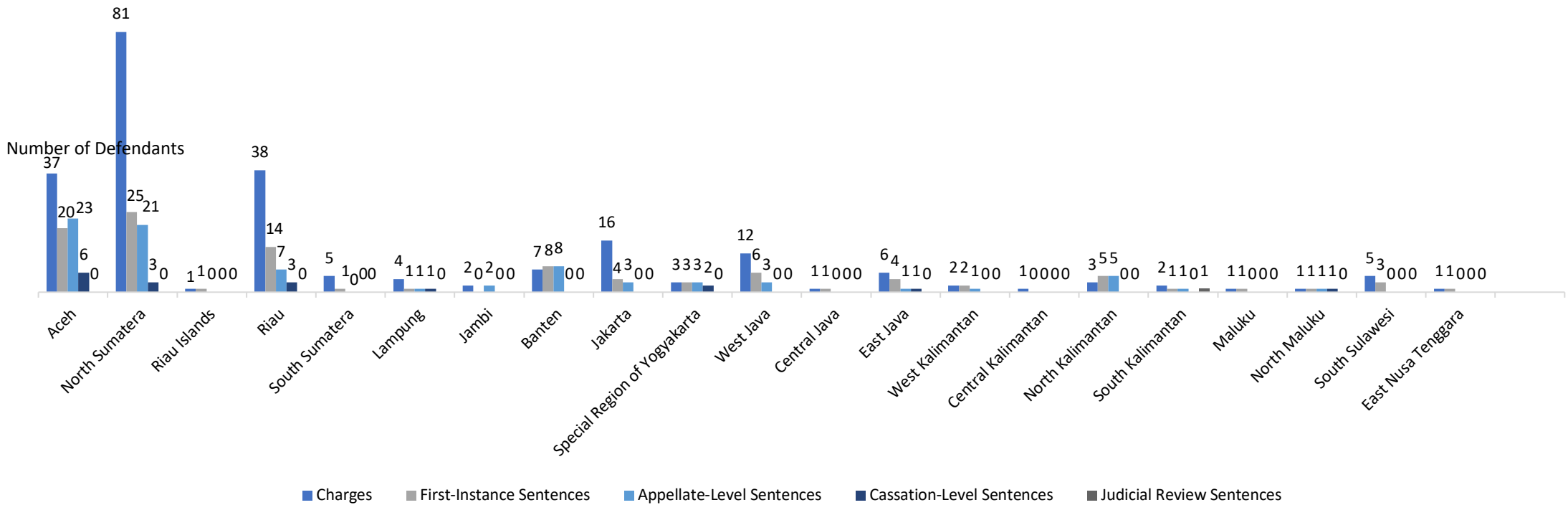
Nationally, the addition of cases prosecuted and/or sentenced to death in 2023 was found in 21 regions out of 38 provinces. The island of Sumatra is where the most new cases are found, with the addition of the highest death penalty charges in North Sumatra, Riau, and Aceh. North Sumatra has the highest number of additional death penalty charges, with 81 defendants. Aceh Province and Riau Province have 37 and 38 defendants, respectively. Similarly, with the increase in the number of death sentences by judges, especially through first-instance verdicts, the highest number was found in North Sumatra Province, namely against 25 defendants. Meanwhile, on the appellate level, the highest number of death sentences was found in Aceh, namely against 23 defendants. In contrast, the highest number of additional death penalty sentences at the first instance level was found in Banten Province, namely against eight defendants.

On Java Island, additional death penalty cases in 2023 were found in six provinces: Jakarta, West Java, Central Java, East Java, Banten, and Yogyakarta. Jakarta Province recorded the highest increase in the number of death penalty prosecutions on the island of Java, namely against as many as sixteen defendants. Meanwhile, the highest increase in the number of death sentences by judges, especially on the first-instance and appellate level, on the island of Java was found in Banten province, with a total of eight defendants respectively.

In other regions, such as on the island of Kalimantan, the addition of cases is spread across four provinces, namely North Kalimantan, West Kalimantan, Central Kalimantan, and South Kalimantan, with the total number of prosecutions and death sentences only ranging from 1 to 5 defendants. Meanwhile, new cases in eastern Indonesia were only found in South Sulawesi, Maluku, North Maluku, and East Nusa Tenggara, ranging from 1 to 5 defendants.

Graph 9. Distribution of Death Penalty Charges and Sentences Throughout 2023

Geographical Distribution of Death Penalty Charges and Sentences
(January-December 2023)



Source: ICJR's internal database updated as of 20 March 2024

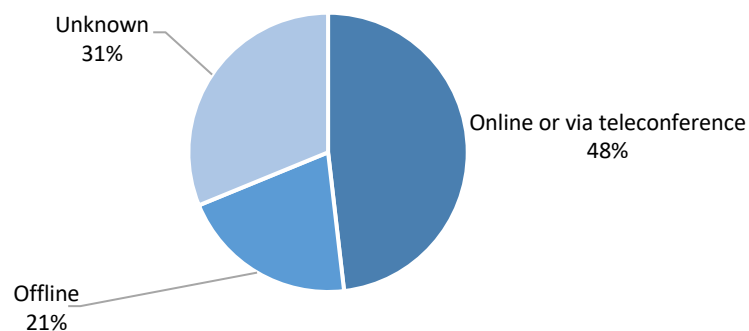
Moreover, there are at least 13 district courts known to have recorded death sentences for the first time in 2023 based on the ICJR's internal database, namely:

1. Wonosari District Court
2. Sei Rempah District Court
3. Sanana District Court
4. Sidoarjo District Court
5. Ketapang District Court
6. Karawang District Court
7. Kalabahi District Court
8. Dobo District Court
9. Cikarang District Court
10. Blambangan Umpu District Court
11. Batulicin District Court
12. Banjarnegara District Court
13. Medan I-02 Military Court

Formats of Legal Hearings

Graph 10. Formats of Hearings for the Reading of Case Verdicts Charged and/or Sentenced with Death Penalty Throughout 2023

Formats of Hearings for the Reading of Case Verdicts Charged and/or Sentenced with Death Penalty (January-December 2023)



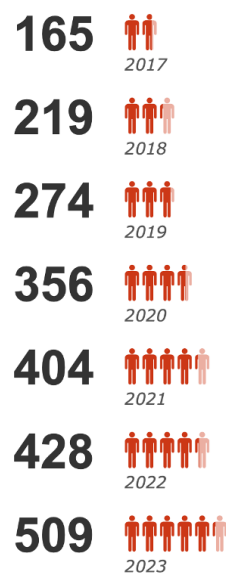
Source: ICJR's internal database updated as of 20 March 2024

Even though the pandemic had officially been declared over, in 2023, there were trials of death penalty cases held online or via teleconference. Based on the information contained in the first-

instance verdict documents that were successfully collected and information on media reports, for 48% of new criminal cases prosecuted and/or sentenced to death in 2023, the verdict hearings were carried out online or via teleconference, as shown in the graph above. Meanwhile, only 21% of cases had their trials done offline or attended directly by the defendant in the courtroom. There is no available information about the format of the verdict reading hearing for the remaining 31% of cases because their first-instance decision documents are not yet available, and information about this is not clearly stated in media reports.

3. The Issue of Time on Death Row in Indonesia

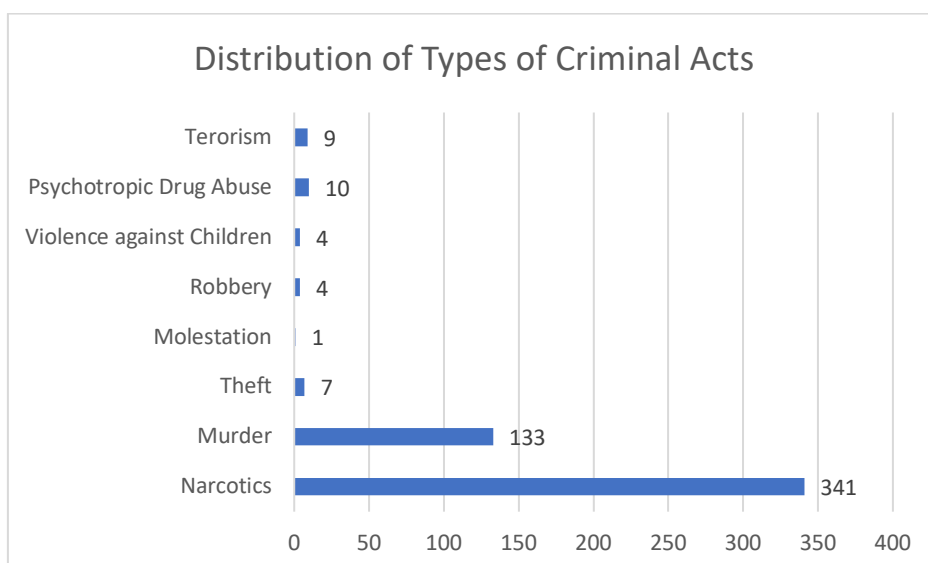
Graph 11. Comparison of the Number of Death row from 2017 to 2023



Source: Data from the Directorate General of Corrections of the Ministry of Law and Human Rights as of October 19, 2023 received in writing by ICJR

From 2022 through October 2023, there were an additional 81 people (19%) on death row in Indonesia. This 19% addition can be regarded as an increase compared to the addition ratio in 2021-2022, which was only 6%. Overall, per year, the highest addition of as much as 33% was in the 2017-2018 period, followed by the 2019-2020 figure of 30% and the 2018-2019 figure of 25%. The total number of inmates currently on death row in Indonesia as of October 19, 2023 is 509 people.

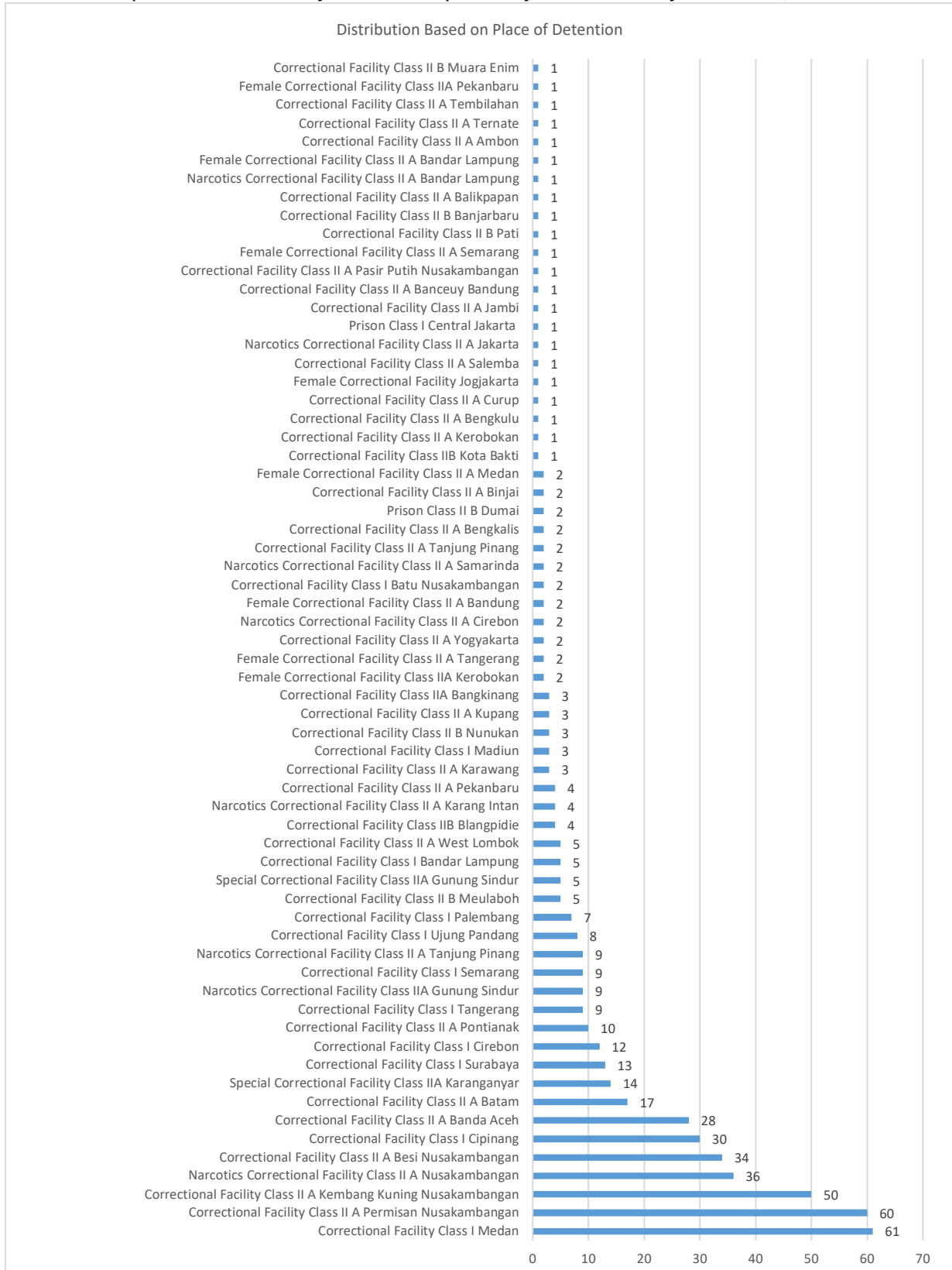
Graph 12. Distribution of Death Row by Type of Crime as of October 19, 2023



Source: Data from the Directorate General of Corrections of the Ministry of Law and Human Rights as of October 19, 2023 received in writing by ICJR

As in the previous years, the number of death row from narcotics and psychotropic drug trafficking cases remains in the highest position, with 351 death row (69%). There was an increase in the number of death sentences for narcotic or psychotropic crimes by 69% compared to the previous year, from 255 in 2022 to 351 death row in 2023. This figure is followed by that of general criminal cases (*i.e.*, murder, theft, molestation, robbery, and child protection), with 149 death row (29%), and that of terrorism crimes, with nine death row (2%).

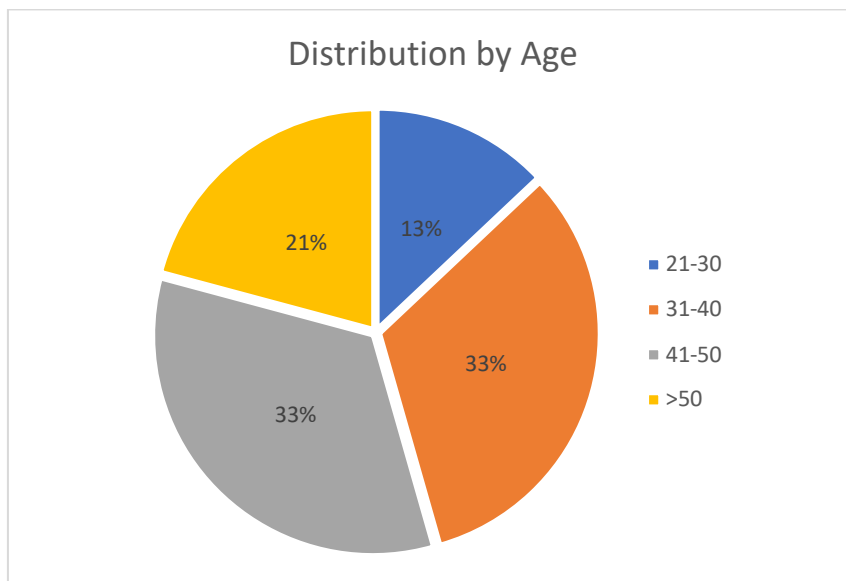
Graph 13. Distribution of Death row by Place of Detention as of October 19, 2023



Source: Data from the Directorate General of Corrections of the Ministry of Law and Human Rights as of October 19, 2023 received in writing by ICJR

As seen from Graph 13, the highest number of death row was found in Correctional Facility Class I Medan (61 death row), followed by Class IIA Permisan Nusakambangan (60 death row), Class IIA Kembang Kuning Nusakambangan (50 death row), and Narcotics Correctional Facility Class IIA Nusakambangan Prison (36 death row). 21 facilities are accommodating at least one death row prisoner. Correctional Facility Class I Medan is also known as the prison with the highest placement in the previous period; in 2022-2023, there was an increase from 48 to 61 on death row (up 27%) in this facility.

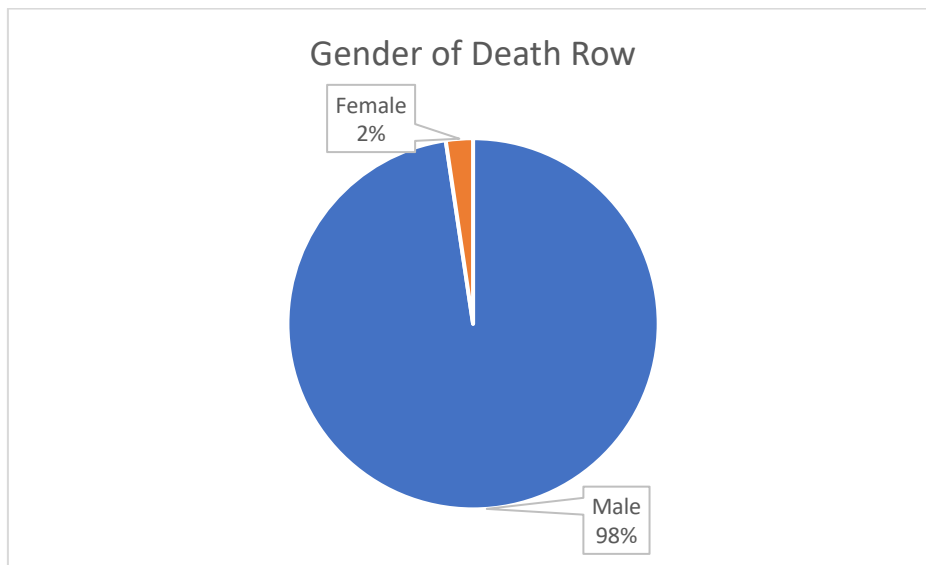
Graph 14. Distribution of Death Row by Age as of October 19, 2023



Source: Data from the Directorate General of Corrections of the Ministry of Law and Human Rights as of October 19, 2023 received in writing by the ICJR

Based on the age distribution of death row inmates, as many as 66 death row (13%) are aged 21-30 years, 166 death row (33%) are aged 31-40 years, 171 death row (33%) are aged 41-50 years, and 21% of death row are over 50 years old, with the oldest age of 78.

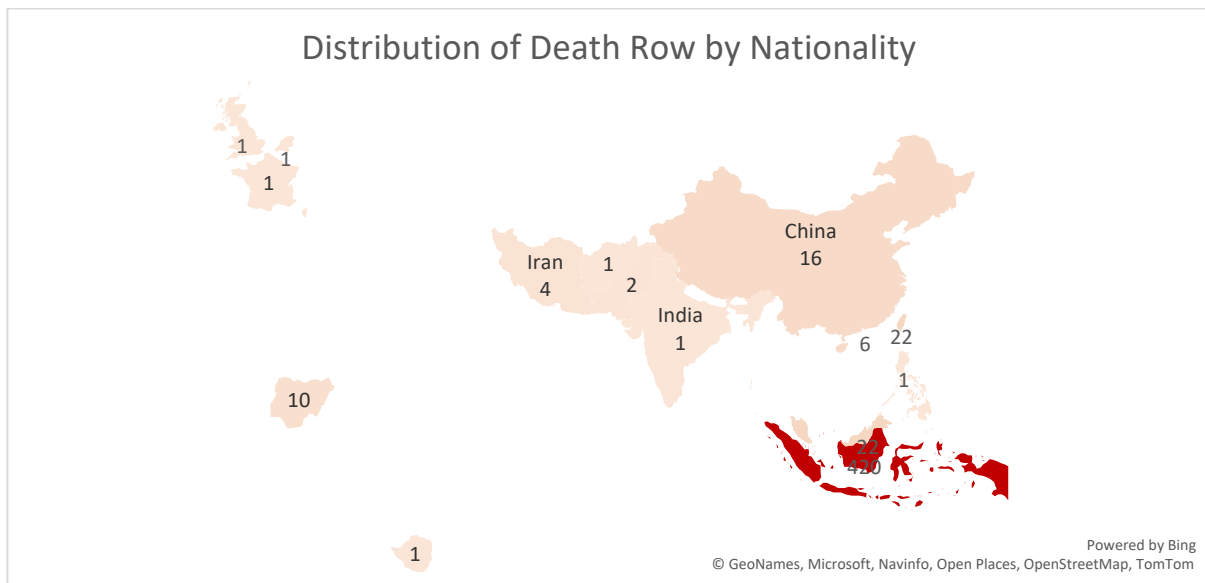
Graph 15. Distribution of Death row by Gender as of October 19, 2023



Source: Data from the Directorate General of Corrections of the Ministry of Law and Human Rights as of October 19, 2023 received in writing by ICJR

Based on gender, there are 497 male death row (98%) and 12 female death row (2%).

Graph 116. Distribution of Death Row by Nationality as of October 19, 2023



Source: Data from the Directorate General of Corrections of the Ministry of Law and Human Rights as of October 19, 2023 received in writing by ICJR

Of the total 509 death row, 89 (17%) were identified as foreign citizens, and the remaining 420 (83%) were Indonesian citizens. During this period, Malaysian and Taiwanese citizens, with 22 people each, still occupy the highest number of foreign death row in Indonesia. It is followed by sixteen Chinese citizens, ten Nigerians, six people from Hong Kong, four Iranians, two Pakistanis, and one person each from Afghanistan, the Netherlands, the Philippines, India, the United Kingdom, France, and Zimbabwe.

Similar to the prior year, there were limitations in collecting data on death row obtained by ICJR from the Director General of Corrections of the Indonesian Ministry of Law and Human Rights for the 2023 reporting period. To calculate the delay period for the execution of each death row could only be done by referring to the data obtained by ICJR on October 9, 2019, and September 8, 2020, which include detailed names of death row and processed the time to today's date. Based on the processed data, the total number of death row who have **been delayed for execution for more than 10 years as of February 29, 2024, is estimated at 110 people.**

4. Mandate of the New Criminal Code to Draft Implementing Regulations on Death Penalty Provisions

The new Criminal Code will come into force in early January 2026. Article 621 of the new Criminal Code commands that all implementing regulations mandated by the new Criminal Code must be

completed within two years after ratification, which is January 2025 at the latest. Several new criminal mechanisms introduced by the new Criminal Code, including the death penalty, require regulations for their implementation.

Under Article 100 and Article 98 of the new Criminal Code, the death penalty can be delivered with a ten-year probation period.¹⁸ For this reason, the execution of death row is automatically postponed until the completion of the probation period. After the probation period ends, the death row will undergo an assessment process that can determine the awarding of commutation or change of sentence against him/her from the death penalty to life imprisonment.

Explanation of Article 98 of the Criminal Code

... The death penalty is imposed with probation so that within the probation period, the convict is expected to improve him/herself so that the death penalty does not need to be carried out and can be replaced with life imprisonment.

In comparison, the provision for life imprisonment is explicitly stated in Article 69 paragraph (2) of the new Criminal Code that the procedure for changing it to 20-year imprisonment will be regulated by the government regulation. This explicit mandate is not found in the death penalty provisions in the new Criminal Code. However, there is a need to regulate the procedure for changing the death penalty to life imprisonment in a more technical element at the level of government regulations, similar to the provision for life imprisonment.

At least three mechanisms need to be specifically regulated related to the procedure for changing the death penalty to life imprisonment. The first is an automatic commutation mechanism through issuing a Presidential Decree for those on death row who have been denied clemency. They will not be executed until the new Criminal Code is enacted ten years after rejection.¹⁹ The second is a commutation mechanism that is automatically given after a probation period of 10 years for any

¹⁸ The provisions in Article 100 of the New Criminal Code state that if the death penalty is imposed, a probation period of 10 (ten) years will be applied on the defendant. Then if he/she shows commendable attitudes and deeds, then the death penalty can be changed to life imprisonment by Presidential Decree after the consideration of the Supreme Court is obtained. In addition, there is an explanation to article 98 of the Criminal Code, which states that the death penalty is imposed with probation so that within the period of the probation period, the convict is expected to improve him/herself so that the death penalty does not need to be carried out and can be replaced with life imprisonment.

¹⁹ Article 100 of the new Criminal Code: "If a death row prisoner's clemency application was rejected and the death penalty is not carried out in 10 (ten) years since the clemency was rejected, not because the convict absconded, the death penalty may be changed to life imprisonment by Presidential Decree."

person sentenced to death after enacting the new Criminal Code who meets the conditions of showing commendable attitudes and deeds during the probation period.²⁰ The third one is the commutation mechanism for death row, who have been waiting for execution for more than 10 years when the new Criminal Code comes into force but have never applied for clemency.

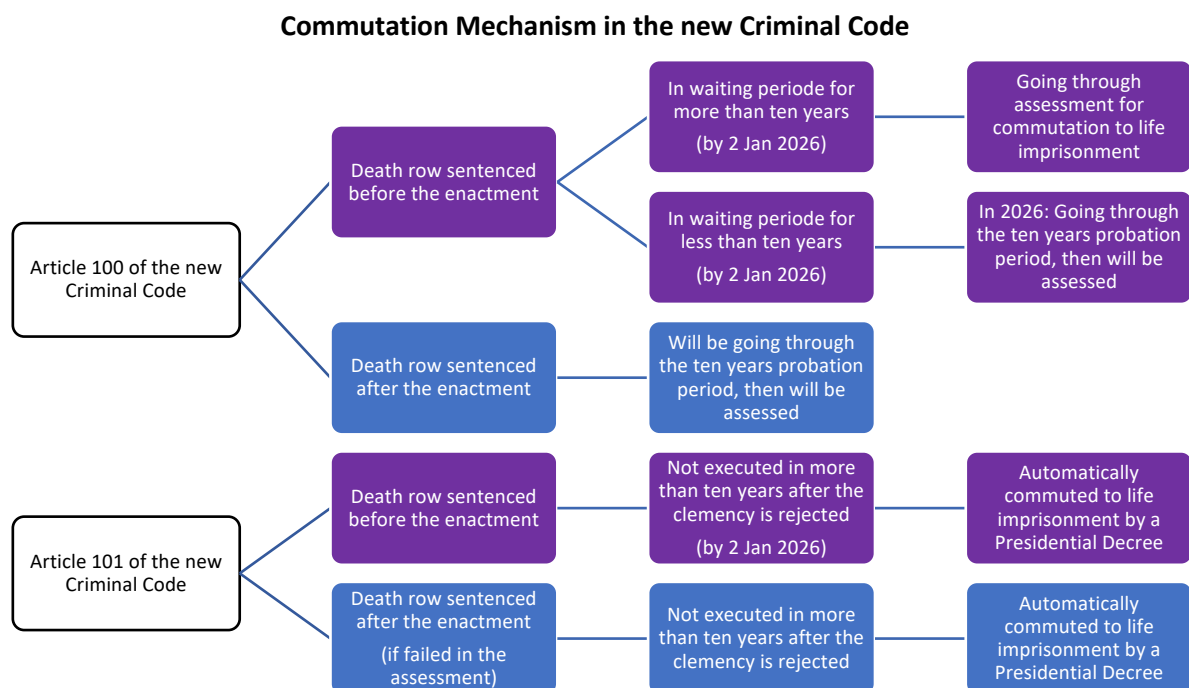
The third point related to the arrangement of the commutation mechanism for death row who have been waiting for execution is in line with the government's statements and the results of discussions by the House of Representatives regarding the death penalty article. At the socialization activity of the new Criminal Code at Syah Kuala University Banda Aceh on February 28, 2023, the Deputy Minister of Law and Human Rights of the Republic of Indonesia at that time, Prof. Eddy O. S. Hiariej, confirmed that the death penalty provision in the new Criminal Code, which contains a 10-year probation period for death row, came into effect since the law was passed even though the effective enactment of the law will only begin on January 2, 2026. The Vice Minister of Law and Human Rights of the Republic of Indonesia explained that based on Article 3 paragraph (1) of the new Criminal Code, if there is a change in laws and regulations, then the reported, the examined, suspects, defendants, and convicts must benefit from the Law. As a consequence, the execution of all death row inmates needs to be postponed.²¹

The statement from the Vice Minister of Law and Human Rights of the Republic of Indonesia is an implementation of one of the main principles of criminal law, namely the principle of "*in favor reo*," which is regulated in Article 1 paragraph (2) of the old Criminal Code, which is still valid today. The provisions of this article state that "If the law is changed after the criminal act has been committed, the suspect shall be subject to provisions favorable to him." The death penalty provisions in the new Criminal Code are more mitigating for defendants compared to the old Criminal Code because the death penalty in the new Criminal Code is no longer categorized as a basic type of punishment but a special punishment. The specific nature of the death penalty, which is automatically imposed with probation for ten years and followed by an assessment for commutation or a change of sentence to life imprisonment so that in that period, execution must be postponed, is a more mitigating condition for the defendant. Given the regulation of Article 3 paragraph (1) in the new Criminal Code and Article 1 paragraph (2) in the old Criminal Code currently in force, consequently, the government has to not

²⁰ This mechanism is intended to accommodate the provisions of Article 100 in the new Criminal Code.

²¹ Susana Rita Kumalasanti, Kompas, *Wamenkumham: Ada Aturan Baru soal Pidana Mati, Eksekusi Harus Ditunda* [Deputy Minister of Law and Human Rights: New Rules on Death Penalty, Executions Must Be Postponed], accessed at <https://www.kompas.id/baca/polhuk/2023/02/28/wamenkumham-ada-aturan-baru-soal-pidana-mati-eksekusi-harus-ditunda>

only postpone execution but also prepare derivative rules of the Criminal Code to regulate the mechanism for changing the death penalty for death row who are currently waiting for execution.



Next, Article 102 of the new Criminal Code also mandates the establishment of another implementing regulation regarding the provisions of the death penalty in the form of law: “Further provisions regarding procedures for the execution of the death penalty are regulated by law.” To understand the scope of the content of the material discussed concerning the procedure for carrying out the death penalty, it is also necessary to see the provisions of Article 99 paragraph (3) of the new Criminal Code, which specifies the method of carrying out the death penalty to be shooting by firing squad as follows: *“The death penalty is carried out by shooting the prisoner to death by firing squad or by other means specified in the Law.”*

Currently, the procedures for implementing the death penalty are regulated in the Presidential Decree of the Republic of Indonesia Number 2 of 1964 concerning Procedures for the Implementation of the Death Penalty Imposed by Courts in the General and Military Courts. The Presidential Decree was then ratified into Law Number 2/PNPS of 1964 through Law Number 5 of 1969 concerning the Statement of Various Presidential Decrees and Presidential Regulations as Law.

However, two things remain that need improvement from the substance in Law 2/PNPS of 1964. First, on the procedural side, it is necessary to ensure guarantees of general norms of execution so that they are not arbitrary; for example, execution can only be carried out when legal remedies have been

exhausted, and there is a decision made on the clemency application, as well as the sufficient time between notification and execution.²² In addition, adjustments to international human rights standards need to be made when it comes to groups of people who should not be executed, such as (1) children under 18 years old, (2) elderly people with a maximum age limit, such as 60 years old, (3) people who later become mentally or intellectually disabled after being prosecuted or sentenced to death, and (4) women who are pregnant, breastfeeding, or in care of small children whose growth and development will be affected if their parents are executed.²³ Both of these things need to be considered by policymakers in drafting laws on procedures for executing the death penalty as mandated by the new Criminal Code by revising or improving Law 2/PNPS of 1964.

5. Supporting the Creation of an Assessment Mechanism for Commutation for Death Row under the Provisions of the New Criminal Code

As mentioned above, the commutation of the death penalty is not only for death row sentenced after the new Criminal Code comes into force but also for those currently on death row who have been in delayed execution for more than ten years. According to the data mentioned in the previous section, there are 110 death row inmates as of February 29, 2024, who have been waiting for execution for more than ten years.

The above argument is based on the principle of *Lex Favor Reo*, which mandates that if laws and regulations are changed after a criminal act has occurred, the provisions of the law that are more favorable to the perpetrator must be enacted. This principle is reflected in the provisions of Article 2 of the current Criminal Code as well as Article 3 Paragraph (1) and Article 3 Paragraph (7) of the new Criminal Code.

²² Iftitahsari, 2022, *Mendorong Pengaturan Hak-Hak Fair Trial Khusus Bagi Orang yang Berhadapan dengan Pidana Mati dalam RKUHAP [Encouraging the Regulation of Special Fair Trial Rights for Persons Facing the Death Penalty in the RKUHAP]*, Institute for Criminal Justice Reform, Jakarta, p. 34.

²³ *Ibid*, p. 36.

Article 2 of the Criminal Code

Criminal provisions in Indonesian legislation apply to any person who commits a criminal act in Indonesia.

Article 3 Paragraph (1) of Law 1/23 (New Criminal Code)

In the event that there is a change to laws and regulations after the criminal act occurs, new laws and regulations will be applied, unless the provisions of the old laws and regulations are favorable for the perpetrators and helpers of the criminal act.

Article 3 Paragraph (7) Law 1/23 (New Criminal Code)

After the conviction has permanent legal force and the act that occurs is threatened with a lighter criminal penalty according to the new legislation, the implementation of the sentence is adjusted to the criminal limit according to the new legislation.

Based on this, two categories of death row will undergo an assessment process to get changes of sentences, namely convicts sentenced to death before the new Criminal Code²⁴ and convicts sentenced to death with probation after the enactment of the new Criminal Code. Moreover, the assessment mechanism for the two categories of death row needs to be distinguished. This difference in assessment mechanisms is very relevant, considering the different levels of vulnerability and psychological conditions experienced by each category of death row.

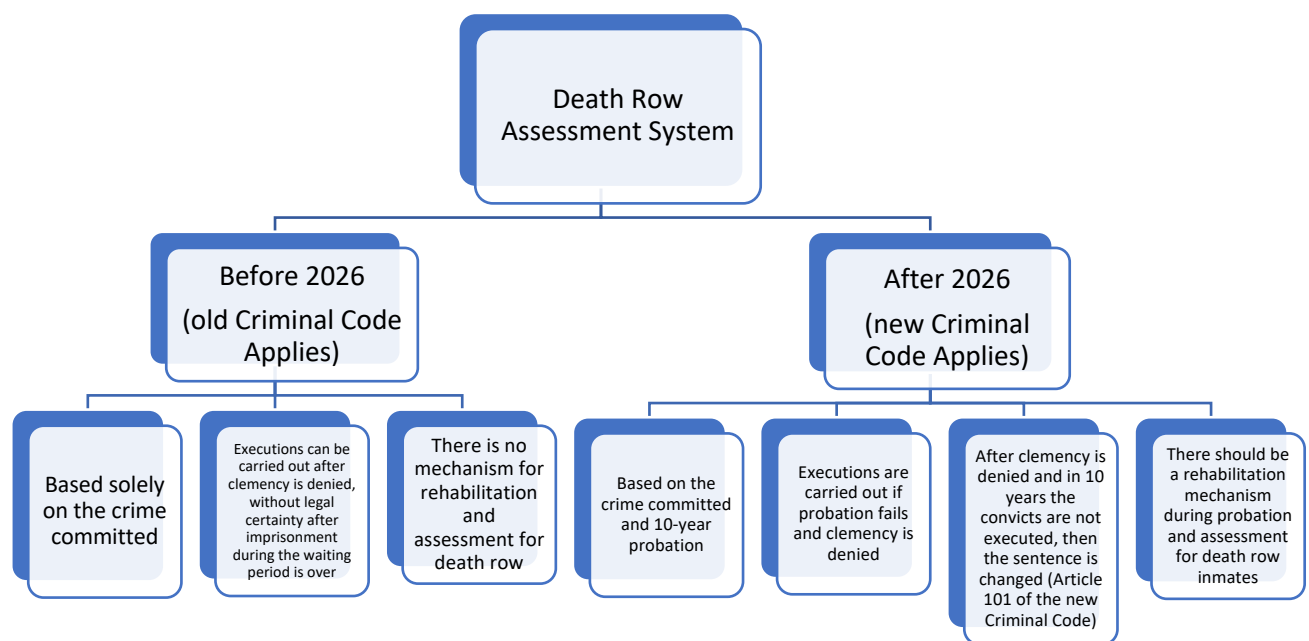
Death row inmates who have spent years in prison awaiting execution were found to have psychological conditions with the highest level of surrender resulting from the rehabilitation/correction process to prepare for execution. In psychology, this is called *learned helplessness*,²⁵ which refers to human conditions due to trauma, threats, or situations that result in surrender and lead to indifference and a tendency to lose sensitivity, thus no longer trying to improve their existing conditions. According to the authors, this is one of the noticeable reasons why death row inmates commit offenses during the period of waiting for execution. Unlike those on death row

²⁴ It should be noted that, as explained in the previous section, the commutation mechanism for convicts sentenced to death before the enactment of the new Criminal Code is differentiated into a mechanism for those who have been denied clemency and not executed within 10 years after the refusal and a mechanism for those who have never applied for clemency and have not been executed for 10 years until the new Criminal Code comes into force. For death row who have been denied clemency and not executed for 10 years, based on Article 101 of the new Criminal Code, commutation is given automatically through the issuance of a Presidential Decree so that they do not need to undergo an assessment process. This is different from death row who have never applied for clemency and have not been executed for 10 years until the new Criminal Code takes effect. These death row will undergo an assessment process to obtain commutation.

²⁵ Martin E. P. Seligman, *Learned Helplessness: Theory and Evidence*, Journal of Experimental Psychology: General, 1976, Vol. 105, No. 1, 3-46, accessed at <https://ppc.sas.upenn.edu/sites/default/files/lhtheoryevidence.pdf>

who are currently awaiting execution, groups on death row sentenced after the passing of the new Criminal Code tend to have different psychological conditions because they have the hope of living and returning to society, which affects the changes in their behavior during rehabilitation/correctional programs.

Arrangements that ensure judgment due to differences in conditions between death row before and after the new Criminal Code comes into force are in line with the purpose of punishment stipulated in Article 51 of the Criminal Code jo. Article 98 of the Criminal Code. That punishment is intended to protect the community and socialize the convict by relying on rehabilitation and correction to become a good and useful person. The explanation to Article 98 of the new Criminal Code also states that "... The death penalty is imposed with probation so that within the period of probation, the death row is expected to improve him/herself, removing the need for the death penalty to be carried out and possibly replacing it with life imprisonment."



Therefore, further arrangements or assessment mechanisms are needed for those who have been sentenced to death and have been in prison undergoing correctional programs even though they were waiting for execution before the new Criminal Code was passed. The assessment approach also needs to be tailored for people sentenced to death after the new Criminal Code comes into force in the future. These two methods of death row assessment need to be regulated to carry out the provisions of the new Criminal Code.

6. Recommendations

Regarding the 2023 death penalty policy and its implementation in Indonesia, ICJR recommends several points for each stakeholder.

- **Recommendations for the Government of Indonesia (executive):**
 - The Attorney General shall place a moratorium on prosecutions of the death penalty, reflecting on legal politics leading to criminal abolition
 - The government should not carry out executions because the politics of death penalty law have changed after the 2023 Criminal Code, and all death row will be subject to assessment for changing their sentences
 - The government should issue regulations on the assessment mechanism for death row, including rules for death row who were already in prison before the passing of the new Criminal Code
 - The government should accelerate the assessment process and regulate the mechanism for changing the death penalty, following the UPR commitment, for at least 110 people who have been on death row for more than 10 years
- **Recommendations for the Government and House of Representatives:**
 - To always refer to international human rights standards in drafting laws on the procedures for carrying out the death penalty
 - In the process of discussing the revision of the Narcotics Law to no longer introduce the death penalty
 - In the process of discussing the revision of the Criminal Procedure Code, need to regulate stricter procedural law provisions for people who are charged, prosecuted, and sentenced to death
- **Recommendations for the Supreme Court:**
 - The Supreme Court needs to place a moratorium on the death penalty by prioritizing other types of criminal punishment in examining criminal cases
 - The Supreme Court should pay attention to the disparity in death penalty sentences, especially for drug-related crime cases
- **Recommendations for the National Prevention Mechanism against Torture (NHRI, National Commission on Violence Against Women, Ombudsman, Indonesian Child Protection Commission, Witness and Victim Protection Agency:**
 - They should activate monitoring mechanisms at places of detention to assess the conditions of death row inmates, especially in the context of preventing torture on death row

- They need to urge the Government of Indonesia to issue a policy of commutating the death penalty, especially for convicts who have been in delayed execution for more than 10 years
- They need to urge the Government of Indonesia and parliament to commit to the abolition of the death penalty in the legislative process, especially the revision of the Narcotics Law

Authors' Profile

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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.

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