

**Facts and Infelicities The Second Batch of Death Penalty Execution
The Commission For the Disappeared and Victims of Violence (KontraS)
29 April 2015**

The Commission for The Disappeared and Victims of Violence [KontraS] has found several important facts related to the unfairness of law enforcement on the practice of death penalty to the eight inmates executed on Wednesday, 29 April 2015. Besides the eight inmates that had been executed, we see the importance to cover all the unfairness experienced by the 10 inmates: Andrew Chan (Australia, age 31), Jamiu Owolabi (Nigeria, age 50), Mary Jane Fiesta Veloso (Philippines, age 30), Myuran Sukumaran (Australia, age 34), Martin Anderson (Nigeria, age 50), Okuwudili Oyatanze (Nigeria, age 41), Rodrigo Gularte (Brasil, age 42), Serge Atlaoui (France, age 51), Silvester Obiekwe (Nigeria, age 47), Zainal Abidin (Indonesia, age 50). Those ten inmates scheduled to be executed on the second batch of execution. However, the Government has delayed the execution of two inmates, Mary Jane Fiesta Veloso, and Serge Atloui, while the eight other inmates had been executed.

The findings below contain the facts and infelicities on the legal processes that had been done and also the ongoing legal processes. These findings prove the failure of the law enforcement system in Indonesia, which has been used as a reference in the term 'state of emergency' against narcotics and illicit drugs trafficking in Indonesia.

1. Andrew Chan dan Myuran Sukumaran

1. Andrew Chan and Myuran Sukumaran were arrested along with seven other suspects which later known as the Bali Nine on 17 April 2005. The trial conducted simultaneously since October 2005. In February 14, 2006, The Bali Distric Court sentenced Andrew Chan and Myuran Sukumaran to death. These were the first capital punishment issued by the Denpasar District Court for the accused drug dealers. The District Court has burdensome the two convicts for providing money, airfare and lodging accommodations for their couriers.
2. The appeal process had filed by Andrew Chan and Sukumaran at the Bali High Court, however it was rejected on 26 April 2005. At the same time, the punishment to the other seven 'Bali Nine' such as Lawrence, Michael Czugaj, Matthew Norman, Tan Duc Thanh Nguyen and Si Yi Chen were reduced 20 (twenty) years by the Bali High Court.
3. In 2007, the Constitutional Court gives the interpretation of the death sentence given to members of the Bali Nine (Andrew Chan and Myuran Sukumaran) stated that drug trafficking crime is not contrary to the Constitution, especially on the violations of the right to life provided on the Second Amandement of 1945 Constitution Article 28 (D). The interpretation issued by the Constitutional Court is the failure of

interpretation in view of the gradual trend of the international legal system to put the right to life as part of the rights that can not be reduced under any circumstances in accordance with Article 6 of the International Covenant on Civil and Political Rights. The death penalty could only be conducted for the most serious crimes, where the International Human Rights Instrument, including the UN Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) states the drug crime does not meet the standard of the most serious crime; and also asserted that the death penalty should not be given to drug related crime. The narrow interpretation of the law referred to the Constitution Law has been used as justification for the country-including law-enforcement officers in delivering a death sentence in Indonesia.

4. The First Judicial Review were submitted by Andrew Chan and Myuran Sukumaran on August 13, 2010. A year later (17 July 2011) the Supreme Court rejected the Judicial Review with the reason there is no unfairness in the prosecution in a lower level. Execution can only be postponed if the President give clemency to both convicts.
5. On January 20, 2015, Joko Widodo rejected the request for clemency to Andrew Chan. President stated that "There is no sufficient reason to give the clemency for the convict", where the clemency itself is referred to Article 4 paragraph 1, Second Amandment of 1945 Constitution and Law no. 22 of 2002 related to Clemency. This statement was also given as the basis to reject the clemency of Myuran Sukumaran on December 30, 2014. KontraS questioned the legal grounds of rejection the President above. There is no examination on the rejected clemency by President.
6. Andrew Chan and Myuran Sukumaran had also submitted their second Judicial Review in line with Indonesian legal system to allow the convict to file a Judicial Review. However, in April 2015 the Supreme Court rejected their Second Judicial Review with the argument; "there is no new evidence provided by the convicted." In this case KontraS views that the availability of judicial review opportunities in the Indonesian legal system does not guarantee the availability of a fair legal trial which can be used to examine the cases of the convicts.

2. Jamiu Owolabi

1. KontraS has found infelicitities on the legal process of Jamiu Owolabi. The convict had been in detention for 17 years in which he is an alleged victim of human trafficking syndicate.
2. It is known that there is a mistaken identity during the process of inquiry, investigation, until the execution. The media continue to proclaim him as Raheem Agbaji Salami, a name written in the false passport provided by the drug syndicate to Owolabi.

3. In the legal process, Owolabi did not accompanied by legal representative as a result of the financially incapacity. The absence of access to justice for those who are financially weak must not discriminate by the state. However, in reality the opposite side happens in Indonesia. The State does not implement the provisions in accordance with Article 56 paragraph 1 of the Criminal Procedure Code which provides the state's obligation to appoint legal counsel at all stages of the examination.
4. The legal team led by Utomo Karim had filed a lawsuit of the Act Against The Law on April 27, to sue mistaken identity (name, age, address) that have occurred in the case Owolabi.
5. Before the execution carried out, KontraS was informed by the legal team that Owolabi was asked on his clothe's size that will be used for execution, however there is no notification 3x24 hours to the Embassy of Nigeria and family. In this situation, KontraS see the inconsistency of the Attorney General Office in the use of their authority, play on the emotional and psychological of the convicted before the execution is set up.
6. His request for clemency was rejected by the President in early 2015. The President explained, "There is no sufficient reason to grant clemency to the convicted person".

3. **Mary Jane Fiesta Veloso**

1. Mary Jane Fiesta Veloso was not accompanied by a sworn interpreter in the legal process, and in the Police interrogation report in 2010 has violated the Article 53 of the Penal Code.
2. Due to the misunderstanding on the language- Mary Jane can not speak and understand well the Indonesian and English language, therefore she was unable to understand the question given to her in the process of trial. Thus, led her for a death sentence in the level of the first trial in the District Court of Sleman.
3. The request for clemency has been rejected by the President in December 2014 with the basis argument, "There is sufficient reason to grant clemency to the convicted person"
4. The two processes of Judicial Review on Mary Jane's case had failed. In this case KontraS see that the availability of judicial review opportunities in the Indonesian legal system does not guarantee the availability of fair legal arena that can be used to examine the cases of the convicted

4. **Martin Anderson**

1. The convict is not accompanied by the consular from the Embassy of Ghana since there is no Ghana Embassy in Indonesia. There is no communication from the Government of Indonesia to the Government of Ghana. This violated the International Convention on Consular Agreement. - Vienna Convention on Consular Relations Article 36.
2. Martin Anderson only owned 50 grams of heroin. With this minimum ownership, the North Jakarta District Court sentenced him to death. His legal team had taken effort for reducing his sentence, referring to the jurisprudence in which the Nigerian which sentence to death, name Hillary K. Chimezie whose owned 5,8 kg of heroin, his punishment being reduce until 12 years.
3. The rejected of clemency by the President in 2015 stated that, "There is no sufficient reason to give clemency to the convict".

5. **Okuwidili Oyatanze**

1. The death sentence given to the convict from the first stage of legal process in 2001. The President rejected the clemency given to him with the statement, "There is no sufficient reason to give the clemency to the convicted.". This argument is proven that the death penalty is haphazard given in the system of law enforcement in Indonesia

6. **Rodrigo Gularte**

1. Rodrigo Gularte was not file a cassation because he did not have the money to pay a lawyer and was not given the information related to Indonesia's legal system. Whereas, according to the Article 56 paragraph 1 Criminal Procedure Code states that the court must provide legal assistance to the convict who was sentence to death. Rodrigo Gularte was also not accompanied by a sworn interpreter. In accordance with the provisions of Article 53 of the Criminal Procedure Code, the convict must accompanied by legal assistance at all stages of the examination.
2. Rodrigo Gularte, based on the medical examinations had been suffered mental illness since 1982, based on these proven documents;

No	File	Result
1.	Report from psychiatrist of Cilacap Local Hospital (11 February 2015)	Diagnosed Rodrigo with schizophrenia paranoid & DD: Bipolar Disorder with psychotic traits.

2.	Medical Certificate from neurologist and neuron surgeon Erasto Cichon (22 December 2004)	Stated that Rodrigo since 1982 suffered <i>cerebral dysrhythmia</i> caused him to act involuntary, aggressive, impulsive without calculating the risk, showing lack of inner control.
3.	Medical Report from Dr. Cezar Roberto de Camargo Morris (24 August 2004)	Stated that Rodrigo has been treated since May 1987 by family request. Symptoms show lack of attention caused of internal family problem.
4.	Inpatient Admittance Procedure Entry No. 1053 Quinta Do Sol Clinic (1 May 1996)	Stated Rodrigo's mother hand over his son for a full rehabilitation in Quinta do Sol Clinic.
5.	Revision of The Medical-Psychiatric Report of Mr. Rodrigo Gularte, Considering Case Development and New Clinical Information (31 March 2015) Wrote by Valter Luiz Abel	Stated after seeing Rodrigo's progress and his early medical check-up report, Rodrigo might suffer Bipolar alongside with psychotic addict.
6.	Inpatient Evolution Summary Alcohol and Drug Therapy Klinik Quinta Do sol (25 August 2004)	Stated that Rodrigo's condition on drug addiction has increased, therefore he must carry out the rehabilitation in Rehabilitation Hospital of Drug Addiction in Clinica Quinta Do Sol, Brazil in 1996

7.	Medical-Psychiatric Report Wrote by Dr. Valter Luiz Abel (20 August 2004)	Stated that Rodrigo has been checked by Dr. Valter Luiz Abel from March until November 1996 and diagnosed with Hyperactive and Attention Deficit Disorder & Bipolar.
8.	Statement letter from dr. Alexandre Karam J. Mousfi (20 March 2015)	Stated Rodrigo's mother, Clarrise Muxfeldt Gularte, since 17 March 2014 has get medical treatment for her Bipolar disorder.
9.	Statement letter from psychiatrist,	Stated Rodrigo's older

	Antonio Vilella Lemos (24 Maret 2015)	brother, Cassio Gularte, has become his patient since 21 March 1983 caused of CID 10 F32.1
10.	Statement letter from psychiatrist, Antonio Vilella Lemos (24 Maret 2015)	Stated that Rodrigo's sister, Adriana Gularte, has been his patient since April 1987 cause of showing manic, depress, and aggressive symptoms.
11.	Information letter from dr. Pedro Jose Schaefer Eirene Psychiatric Sanatorium (11 March 2015)	Stated that Rodrigo Gularte has been in an undergoing treatment at a sanatorium since 17 May 1999 until June 1999
12.	Information letter from dr. Eugenio Vargas Pena Brain Function Diagnostic Clinic affiliation with HZI Research Center (24 June 1999)	Stated that C-EEG report from Rodrigo abnormal.
13.	Information letter from psychology test by Fanny Monges, clinical psychologist (9 September 2009)	Showed that Rodrigo behaves impulsively and showing the trait of paranoia.
13.	Summary Report Psychological Assisting for Rodrigo Gularte Kusumowardhani Psychological Consultant & Center of Behavioral Studies (3 November 2014)	Rodrigo's condition was unstable with depression plus paranoid schizophrenia. This condition caused Rodrigo to suffer delusion and hallucinations.

3. According to the condition of Rodrigo's mental illness as described above, the article 44 of Penal Code of Indonesia stated that *not punishable shall be the person who commits an act for which by reason of the defective development or sickly disorder of his mental capacities, he is not liable*, in which conclude that Rodrigo is not liable for punishment of his act.
4. 28 April 2015, legal advisor team from KontraS and LBHM (legal aid institutions) has received the guardianship notification that the trial will be held on Wednesday, 6 May 2015 and the respond from administrative court Cilacap in response to the refusal of clemency by the president. This means there are still ongoing legal proceedings that should be respected by the executor team.

7. Serge Atlaoui

1. Serge Atlaoui arrested alongside with another 17 people in November 2005 at the drugs factory in Cikande, Tangerang, and Banten. From 13 people convicted, nine of them sentenced to death (the other two convicts died in prison). Now Serge Atlaoui is the only convict left in the case of the drugs factory included in the list of the convict that soon to be executed.
2. Serge Atlaoui was sentenced to life imprisonment in the District Court and Higher Court, but he was sentenced to death in Supreme Court (2007)
3. Serge Atlaoui appealed for clemency on February 2014 which was rejected by Jokowi in the end of December 2014. On 11 February 2015 Serge Atlaoui appealed for Judicial Review (the trial was held on 11 March and 1 April in Tangerang district court) which was also rejected on 20 April 2015.
4. During legal proceedings, several facts proven in Crime Investigation Report and the trial process stated that Sergei was only a welders and he was not a chemical technician that has been blamed to him on producing narcotics.
5. Serge Atlaoui was drawn from a list of 10 death convict because the ongoing legal process in the State Administrative Court. The ongoing legal process subjects on the rejection of clemency by Jokowi.
6. According to the spokesperson of Attorney General Office, Tony Spontana, Serge Atlaoui will possibly be executed alone without waiting the next execution batch if the legal process has done.
7. By the constitution No.2/PNPS/1964 regarding the procedures of death penalty (article 2-2) several death row inmates on the same matter/verdict should be executed simultaneously in the same place and time.
8. Article 2-2 constitution 2/PNPS/1964 explains the every law efforts must be finish before implementing the execution to every death row inmates on the same case in order not to harm the other inmates
9. Serge Atlaoui was sentenced to death with the six other persons on the same case, Cikande factory case. Meanwhile, there are 13 (thirteen) people involve in this case, but the others are not given the death sentence. Even though they are in the same case, same evidences, and same witnesses.
10. On the verdict of the trial, Serge Atlaoui along and the other inmates were sentenced by the same organized crime which related to each other.

11. Therefore, on the legal view, Serge Atlaoui must not be executed if the other convicts on the same case with Atlaoui have not been finish yet. We are informed that the other five inmates are still waiting for the verdict of their second judicial review, while the one other has not been submitted his judicial review.
12. One of the inmates is Benny Sudrajat- the head of Syndicate and the owner of the factory. There is a possibilities of the new evidence which can proves that Serge Atlaoui is only a welder and he is not deserve a death sentence.
13. The decision for executing Atloui in the near future is invalid based on the national law and regulation.
14. The government must not execute Serge Atlaoui before the head of syndicate is executed. The government has neglecting the Law no 2/PNPS/1964.
15. The Government of France is not interfere with Indonesian sovereignty, however it is their obligation to ensure their citizen is given the fair trial by the Government of Indonesia by the Consular protection and it is their obligation also to questioning the discriminative treatment to Atlaoui based on the Vienna Convention on Consular Relations article 36. The same way will be done by Indonesian Government if there is an Indonesian citizen sentenced by death penalty abroad.

8. Silvester Obiekwe

1. In 2012, Obiekwe operationalize the circulation of narcotics behind the prison of Nusakambangan. In KontraS' perspective, if the convict is taking control of narcotics activities behind the prison, it is a serious mistake that never responded even from the head of the detention center. Even though, Nusakambangan known for having a strict security systems.

9. ZainalAbidin

1. On December 21, 2000, Zainal Abidin arrested in his house in Palembang, South Sumatra, because of the ownership 58,7 kg marijuana. On August 2001, Zainal was charged by 15 years in prison by the Prosecutor. Meanwhile, in the Tangerang District Court, he was charged heavier by 18 years in prison.
2. Palembang High Court charged death sentence on September 4, 2001 that strengthened by the Supreme Court on December 3, 2001.
3. The Judicial Review submitted by Zainal Abidin in 2005 has not being responded. Later, we found the fact that the Judicial Review on May 2nd 2005 "stuck" for many years because the document was slipped in the Palembang District Court. After 10 years, Zainal's Judicial Review

immediately sent to Supreme Court with Number 65 PK/Pid.Sus/2015. The Judicial was rejected only in few days.

4. Judicial Review application submitted by Zainal had rejected on April 27th 2015. Supreme Court stated that he is a big dealer of marijuana. The Attorney General HM Prasetyo stated that this decision is made in order to accelerate the trial process.
5. Zainal Abidin was imprisonment for 15 years before the execution.
6. The last five years he spent on Nusakambangan, Cilacap, Central Java after he was transferred from Palembang, South Sumatra. During the 15 years, none of his family came to visit him.
7. Until the process of the execution, Zainal Abidin never went out from the isolation room because his family did not come due to a problem of poverty.

Those findings of the facts and infelicitities above have proven the unfairness of law enforcement occurre in the Republic of Indonesia. The Government has failed to stand the law, use the function of state apparatus to guarantee the existence of legal certainty on every investigation process that has been conducted.

The withdrawal of Mary Jane Fiesta Veloso from the list of the execution was a form of a bad precedent on the law system in Indonesia; that step should be questioned while the other eight inmates were executed. The execution was an evidence of how the state has corrupt legal products, not accountable and anti-criticism. KontraS afraid, if the state stil legitimize an anti-human rights and humanity law products, Indonesia will be the State full of Mafia related to the Legal System.

KontraS would like to ask the Indonesian society to step forward, to speak rejection of the cruel and inhuman punishment, including abolishing death penalty in the Indonesian legal system. We also encourage the Government of Indonesia to ratify the Second Optional Protocol of the Covenant on Civil and Political Rights. Last but not least, we must continue to discover the unfair trial on the legal processes.

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