

Submission for the UN 3rd Cycle of Universal
Periodic Review Indonesia

DEATH PENALTY

Contributors:



Komisi untuk Orang Hilang dan Korban Tindak Kekerasan
The Commission for The Disappeared and Victims of Violence



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The Death Penalty in Indonesia
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International Federation for Human Rights (FIDH)
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I. Introduction

1. The Commission for the Disappeared and Victims of Violence (KontraS) is a human rights NGO based in Jakarta, Indonesia. KontraS has consistently undertaken efforts to campaign for the abolition of the death penalty in Indonesia. In order to get solid support for this movement, KontraS has taken an active role both in regional and global networks, namely the Anti-Death Penalty Asia Network (ADPAN) and the World Coalition Against Death Penalty, to bring attention to the issue. By using different approaches, such as popular campaigns, human rights research, and continuous advocacy, we hope to shift both the public and government paradigms on how to legitimately use the rule of law to address human rights issues in Indonesia.
2. The International Federation for Human Rights (FIDH) is an international human rights NGO that unites 184 member organizations from close to 120 countries. Since its foundation in 1922, FIDH has defended all civil, political, economic, social, and cultural rights set out in the Universal Declaration of Human Rights (UDHR).
3. Center of Human Rights Law Studies (HRLS), Faculty of Law, University of Airlangga, is a human rights research center based in Surabaya, Indonesia. HRLS is aimed to strengthen higher institutions and communities in changing awareness for human rights advancement toward critical legal educations. This has three key works, which are to promote human rights laws toward critical legal education, to empower human rights teaching methodologies and researches through participatory methods for changing political economy policies, and to build strategic network for progressing human rights policies at local local, national and international level. HRLS also jointly established Southeast Asian Human Rights Studies Network (SEAHRN), Indonesian Lecturer Association for Human Rights (SEPAHAM Indonesia).
4. In this submission, we will elaborate the progress status of previous cycle recommendations that have been rejected by the Indonesian government and highlight the government's failure to uphold several human rights obligations related to the use of death penalty in Indonesia.

II. Death penalty: Unrealistic drug-free policy goal

5. Important developmets took place in Indonesia with regard to the death penalty since the country's 2nd UPR cycle. During President Susilo Bambang Yudhoyono's term, Indonesia implemented a de facto moratorium on the death penalty (between November 2008 and March

2013).¹ Yet, before the end of Yudhoyono's term, the moratorium ended in March 2013 when five people were executed for drug-related offences.²

6. Indonesia abstained from voting on a moratorium on the use of the death penalty at the UN General Assembly in December 2014.³
7. The situation worsened at the beginning of 2015 when President Joko Widodo's administration expressed its support for the use of the death penalty for drug-related offences based on highly questionable evidence. President Widodo claimed that the country had a "drugs emergency" as he believed that at least 4.5 million Indonesians needed to be rehabilitated as a result of drug use and that 40 to 50 young Indonesians had died from illicit drug use. This triggered a response from civil society, including from academics, who worked collaboratively with Indonesian civil society.
8. The response was made through prominent, widely known medical journal, the Lancet. In a report published on 6 June 2015, the Lancet stated that, "as researchers, scientists and practitioners we have grave concerns the government is missing an opportunity to implement an effective response to illicit drugs informed by evidence."⁴ However, the Indonesian government continued with the policy. As a result, in 2015, 14 people of various nationalities (Australian, Brazilian, Dutch, and several African countries) were executed for drug-related offences.

III. The amendment of Penal Code and several laws that carry the death penalty

9. The punitive response to drug-related offenses through executions under President Widodo's administration is not the sole problem. Indonesia's Penal Code has long allowed the death penalty as a punishment for a number of crimes. In June 2015, the Indonesian government announced plans in Parliament to revise the Penal Code through a bill called Rancangan Kitab Undang-Undang Hukum Pidana (RKUHP - "draft Penal Code"). Instead of using this as an opportunity to reform the Penal Code, the RKUHP Bill promotes the use of the death penalty as a punishment. This is particularly evident in two articles (Articles 67 and 69), which retained the use of the death penalty as an alternative legal punishment.
10. Moreover, Article 91 of the RKUHP Bill states that "alternative legal punishment" can occur if an execution is postponed up to 10 years upon the rejection of a clemency petition made by the President. RKUHP also should be required with several conditions: (1) there are no adverse reactions from the public with regard to the inmate's case; (2) the inmate shows compunction so that he/she can undergo a rehabilitation process; (3) the inmate did not play an important role in the crime committed. If the inmate is able to meet these requirements, then the Minister of Law and Human Rights can declare an official decision to commute the sentence into a life or 20-year sentence.

¹ Seen by the last statement of the Ministry of Foreign Affairs, Mr. Dicky Komar, Director General of Human Rights and Humanitarian Affairs <http://mission-indonesia.org/2015/03/06/statement-by-the-delegation-of-the-republic-of-indonesia-high-level-panel-discussion-on-the-question-of-the-death-penalty-regional-efforts-aiming-at-the-abolition-of-the-death-penalty-and/>

² See more at: Jakarta Globe. 2013. The document can be accessed from: <http://jakartaglobe.beritasatu.com/news/first-execution-in-4-years-a-major-setback-for-indonesia-human-rights-watch/>. KontraS. 2015. Death Penalty is Not Solution. Document can be accessed from: http://www.kontras.org/eng/index.php?hal=siaran_pers&id=257 accessed on 06 September 2016

³ Indonesia's voting records: <http://www.un.org/press/en/2014/ga11604.doc.htm> accessed on 06 September 2016

⁴ See more: The Lancet. 2015. Evidence-Informed Response to Illicit Drugs in Indonesia. The source can be accessed at: [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(15\)61058-3/abstract](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(15)61058-3/abstract).

11. The RKUHP Bill contains 26 articles that confirm at least 15 offences punishable by death, including drug-related crimes, terrorism, treason, and corruption. The Indonesian government maintains that these crimes fall under the category of the “most serious crimes.” Nevertheless, international jurisprudence has repeatedly stated that these categories of crimes do not meet the threshold of the “most serious crimes” under international norms, as stated in Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR).⁵
12. Another consideration is related to the plan to revise the 2003 Anti-Terrorism Law. After the January 2016 bomb blasts in Jakarta, the Indonesian government stated the need to revise the Anti-Terrorism Law in order to take firm action to tackle terrorist groups. The proposed amendments to the 2003 Anti-Terrorism Law, drafted by the the Indonesian government, maintain the death penalty as punishment in Articles 6 and 14.⁶

IV. Torture, Cruel, Inhuman or Degrading Treatment

13. Concerning the Indonesian government’s commitment related to the fulfillment of its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), we regret that executions continued throughout 2015 and 2016. These executions violated Indonesia’s international human rights obligations under Articles 1 and 16 of the CAT, and Article 7 of the ICCPR.

IV.1 Conditions in isolation cells

14. After the latest round of executions on 29 July 2016, KontraS conducted a special investigation into Nusakambangan island prison (where executions are carried out) in Central Java. Throughout the process, we found that the isolation cells where prisoners are held prior to their execution were in very poor condition.⁷ Several key informants said that the isolation cells could not withstand the massive influx of water when it rained. This resulted in the cells filling up to waist-level with water. Such conditions violate the Standard Minimum Rules for the Treatment of Prisoners and can be considered cruel, inhuman, and degrading treatment.⁸

IV.2 Notification duty

15. All executions are legally required to be undertaken based on the provisions contained in Article 6(1) of the Law No. 2/PNPS/1964 regarding the Procedures of Death Penalty, which requires the authorities to notify the family, respective embassies of prisoners (if the prisoners are foreigners), and legal counsel 72 hours before the execution takes place. The 72-hour notification in most cases is not sufficient for the death row inmates to file a clemency petition.⁹

⁵ See more: Human Rights Council. 2013 Question of the death penalty. The source can be accessed at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/157/38/PDF/G1315738.pdf?OpenElement>.

⁶ See more: ICJ and KontraS. Comments on the Amendments to Indonesia Anti Terrorism Law. The source can be accessed at: <http://icj2.wpengine.com/wp-content/uploads/2016/03/Indonesia-Letter-to-Gvt-Advocacy-Open-letters-2016-ENG.pdf>.

⁷ The investigation was conducted in the beginning of September 2016.

⁸ See more: Standard Minimum rules for the Treatment of Prisoners)adopted by the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by Its Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. The document can be accessed at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>.

⁹ According to the UN Human Rights Council in the 33rd session on the Question of the Death Penalty report of the Secretary General (A/HRC/33/20), it states that the UN urges for each government to provide mandatory sufficient

16. In the case of Martin Anderson, a Ghanaian national who was executed in April 2015, there was no direct communication between the Indonesian government to the Ghanaian government. This situation violated the International Convention on Consular Relations – Vienna Convention on Consular Relations’ Article 36.¹⁰ The authorities failed to fulfill the 72-hour notification requirement as part of the process that led to the executions of four drug convicts shortly after midnight on 29 July 2016. The family of Nigerian national Michael Titus Igweh said they did not receive notification of his execution either from the Attorney General’s Office or the Nigerian Embassy. The family heard the news on television.¹¹

IV.3 Method of execution

17. According to Law No. 2/PNPS/1964 on the Means of Implementation of the Death Penalty Imposed by the General and Military Courts, the use of firing squad is the sole method of execution. Such a method has caused both physical and mental suffering. Based on KontraS’ monitoring of the 2015 and 2016 executions, we discovered that most of the inmates suffered from their gunshot wounds for 10–15 minutes before being pronounced dead by the prison doctor. This act violates the prohibition on cruel, inhuman, and degrading treatment under Article 16 of the CAT.¹²

IV.4 Death row phenomenon

18. There are no official data that can be used as a source to know the actual number of death row inmates in Indonesia. However, according to KontraS’ research, as of 4 October 2016, there were at least 179 inmates awaiting execution.¹³ The element of uncertainty in regards to when they will be executed strongly impacts the inmates; these inmates have to spend a prolonged period of time behind bars prior to their execution.

IV.5 Torture and mental abuse

19. Torture – both physical and mental – occurred in several cases of death row inmates, including: Zulfikar Ali (Pakistan); Humphrey Jefferson, Michael Titus Igweh, Hillary K. Chimezie (Nigeria); and Yusman Telambanua, Rusula Hia, and Merry Utami (Indonesia). The torture practices occurred at different levels of the criminal justice system. There are specific times where torture in death penalty cases tend to happen, notably during imprisonment, in detention centers, and throughout police investigations. UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Ernesto Mendez has previously urged the Indonesian

time for the inmates in order to exercise its right to seek clemency before the execution is carried out. The document can be accessed at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/150/51/PDF/G1615051.pdf?OpenElement>.

¹⁰ See more: UN. 1961. Vienna Convention on Diplomatic Relations. The document can be seen at: http://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf.

¹¹ See more: Kompas. 2016. Keluarga Titus mengaku hanya tahu kabar eksekusi mati dari media. The article can be seen at: <http://megapolitan.kompas.com/read/2016/07/29/16023991/keluarga.titus.mengaku.hanya.tahu.kabar.eksekusi.mati.dari.media>.

¹² See more: UN. 1984. Convention Against Torture. The document can be accessed at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

¹³ See more: KontraS. 2016. Death row inmates list in Indonesia. The document can be accessed at: http://kontras.org/data/20161004_Data_Hukuman_Mati_di_Indonesia_2016_987jg2478n2y.pdf.

government to halt the execution of a number of prisoners, including prisoners who were allegedly tortured, and retry them in compliance with international standards.¹⁴

IV.6 The uncertain reasons and information on the last-minute reprieve for 10 death row inmates in July 2016

20. In the batch of executions that occurred in July 2016, the Indonesian authorities suddenly cancelled the planned execution of 10 inmates on death row for no specific reason. On 29 July 2016, Attorney General H.M Prasetyo only stated that their execution had been postponed “to conduct further study.” Prasetyo said that only four of the 14 drug convicts who were facing the firing squad – Freddy Budiman (Indonesia), Seck Osmane (Senegal), and Michael Titus Igweh and Humphrey Jefferson (Nigeria) – were executed due to the gravity of the crimes they committed, and after the authorities had taken into account the juridical and non-juridical aspects of their cases. Michael Titus Igweh was still in the process of submitting a petition for a judicial review of his case.

V. Fair trial conditions

V.1 Miscarriage of justice

V.1.1 Death sentence for minors

21. There are strong indications that the implementation of the ‘war on drugs’ in Indonesia has been linked to unfair trials for the defendants. The case against Indonesian national Yusman Telambanua, for example, has been marred by allegations of unfair legal proceedings. KontraS discovered that the death sentence imposed on Yusman has legal defects in terms of evidence against him, the use of torture that resulted in his forced confession before the court, and the prosecution’s failure to prove that Yusman was not a minor before he was sentenced. Yusman’s legal counsel even requested the use of the death penalty as his final sentence.

V.1.2 Justice intended to fail

21. The execution against Fredy Budiman tent to have several extraordinary infelicities while he already proved committed to four narcotics offenses which involving the apparatus elements, where this apparatus already committed to blackmail. The blackmail case that have a relations with Fredy Budiman network at the end affected to death sentence against Teja Harsoyo that already blackmail by the prosecutor as much as 130 million rupiah.¹⁵ The police also pushed Fredy Budiman to buy the evidence to be sell as the operational funds for the anti-narcotics program in Indonesia, in this case two police officers were committed in 2013 named Sugito and Bahri. The Commissioned Police, Kristian Siagian also pushed

¹⁴ See more: UN News Centre. 2016. UN appeals for halting imminent execution of prisoners in Indonesia. The article can be seen at: <http://www.un.org/apps/news/story.asp?NewsID=54580>.

¹⁵ Teja Harsoyo was involved in the importing scandal of 1,4 billion pills MDMA through the port in 2012. This case had involving different state apparatus organisations named the National Customs and the Indonesian National Anti Narcotics Agency (BNN) through controlled delivery operation. However, there was error in persona of Teja Harsoyo’s indictment that led to a death sentence to his life. He was accused with a strong conspiracy to imported those drugs from China when Fredy Budiman asked him to met with several people and introduced his name with alias’ name as Rudi. While in fact there was a man named Rudi Suwandi who was actually involved with this illegal imported drugs. Teja Harsoyo had also been extorted by the prosecutor for more than One Billion Rupiah if he wanted to get commute sentence.

Fredy Budiman to buy the narcotics from the international networks, which his name already occurred in the result of Police Investigation of Fredy Budiman Testimony on September 15, 2016.¹⁶

V.1.3 Access of information and clemency procedure

22. President Widodo stated that he would reject all clemency appeals from death row inmates convicted of drug-related offenses.¹⁷ KontraS' findings of the President's clemency by the Public Information Openness (Keterbukaan Informasi Publik – KIP) mechanism according to Law No. 14/2008 found that almost every denial of clemency by President Widodo stated that there were *“not enough reasons to give clemency to those inmates.”* There was no clear legal reasoning behind the President's decision to reject the petitions. The Indonesian government violated the Constitutional Court verdict No. 107/PUU-XIII/2015, which prohibits the execution of death row inmates who are in the process of submitting a clemency appeal. Three of the death row inmates executed on 29 July 2016 (Seck Osmane, Humprey Jefferson, and Freddy Budiman) were in the process of submitting a clemency appeal when they were executed. The statement from the Attorney General that there is deadline in submitting clemency according to Article 7, clause (2) of the Law on Clemency is irrelevant, because according to the above-mentioned Constitutional Court verdict, Article 7, clause (2) of the Law on Clemency has already been revoked.¹⁸ The arbitrary denial of clemency also contravenes Article 6(4) of the ICCPR, which states that *“anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.”*

VI. Protection of persons with disabilities

23. KontraS' findings concerning the protection of persons with disabilities are related to the unfair enforcement of the death penalty against Brazilian national Rodrigo Gularte. Gularte, who was executed on 29 April 2015, had been suffering from mental illness (schizophrenia) since 1982. Article 44 of Indonesia's Penal Code states that a person who commits an act by reason of the defective development or sickly disorder of his/her mental capacities, shall not be punished. It can therefore be concluded that due to Rodrigo Gularte's mental illness, he was not liable, and should not have been punished for his act.¹⁹ The Attorney General repeatedly stated that the law only prohibited the government from executing pregnant women and children under 18 years of age and stated that it was lawful to execute Rodrigo Gularte.²⁰

VII. Indonesian migrant workers

24. The use of a double standards approach with regard to the death penalty is reflected in the government's efforts to intervene to save the lives of Indonesian migrant workers who have been sentenced to death abroad while continuing to execute inmates, including foreigners, in Indonesia. According to the latest numbers from Migrant Care, an Indonesian organization that promotes the

¹⁶ See more: Berita Satu. 2016. Inilah Hasil Laporan TPF Kesaksian Fredy Budiman. The source can be accessed at: <http://www.beritasatu.com/nasional/385854-ini-kesimpulan-dan-rekomendasi-tpf-fredy-budiman.html>

¹⁷ See supra note No. 2

¹⁸ See more: Republika. 2016. Jaksa Agung eksekusi mati tak langgar UU Grasi. The article can be accessed at: <http://nasional.republika.co.id/berita/nasional/hukum/16/08/13/obt3nd330-jaksa-agung-eksekusi-mati-tak-langgar-uu-grasi>.

¹⁹ Opcit

²⁰ See more: The Sydney Morning Herald. 2015. Mentally ill Brazilian Rodrigo Gularte fit to execute Indonesia. The article can be accessed at: <http://www.smh.com.au/world/mentally-ill-brazilian-rodrigo-gularte-fit-to-execute-indonesia-20150419-1mofb0.html>.

protection of Indonesian migrant workers, there are approximately 281 Indonesian migrant workers who have been sentenced to death in various retentionist countries.²¹

VIII. Recommendations

We call upon UN member states to make recommendations to the Indonesian government to:

1. Re-instate a moratorium on all executions.
2. Conduct independent, transparent, and competent investigations into the alleged violation of the Law on Clemency and Constitutional Court verdict No. 107/PUU-XIII/2015.
3. Establish an independent committee to conduct a review of all current death row cases to investigate alleged violations of fair trial rights.
4. Urge the President to consider seriously assessing the clemency appeals of death row inmates, and request the President to approve the clemency appeal of death row inmates.
5. Urge the government to immediately revoke the death sentence of Yusman Telaumbanua, an underage death row inmate.
6. Urge the President to return the moratorium policy as a first step to abolishing death penalty in Indonesia, which strengthen with the numerous of infelicities in the practice of death penalty in Indonesia. The moratorium also according to the legal condition principals that could not guarantee the next death penalty will accordingly with the unfair trial that contradict with the principals of fair trial;
7. Urge the President and Attorney General to take responsibility on the violation of Law on Clemency and Constitutional Court verdict No. 107/PUU-XIII/2015;
8. Urge the President to establish independent team to conduct assessment and research of the whole death-row inmates cases since there are still a lot of unfair trial that contradict with the fair trial principals;
9. Urge the President to consider analyzing and assessing seriously the clemency towards the death-row inmates, above that consideration request the President to approve the clemency towards the death-row inmates as a commitment of human rights enforcement;
10. Urge the government to immediately revoke the Attorney General of the bad achievement and fatal failures in implementing the illegal death penalty instruction against the four death-row inmates on the third batch of execution;
11. Urge the government to immediately make an instruction to the law enforcement such as Attorney General and Gunungsitoli District Court to revoke the death sentence against Yusman Telaumbanua, the underage death-row inmate;
12. Urge the government to immediately commute all death sentences to prison terms;

²¹ See more: Migrant Care. 2015. Peringatan hari anti hukuman mati internasional. The document can be accessed at: <http://migrantcare.net/siaran-pers-bersama-memperingati-hari-anti-hukuman-mati-internasional/>.

13. Urge the government to significantly reduce the number of criminal offenses that could be punished by death by ensuring the death penalty is allowed only for the most serious crimes, in accordance with international standards;
14. Urge the government to respect the international human rights standards related to the right to a fair trial and due process, including the right to appeal to a higher court;
15. President Joko Widodo should establish Independent Team of Narcotics Eradication Syndicate that has an authority to measure the evaluation of law enforcement practices, particularly the narcotics cartel;
16. Urge the security and law enforcement insitutions such as BNN, Polri, TNI and Customary Agency should collaborate together, providing information and comply to the investigation process of the Independent Team of Narcotics Eradication Syndicate;
17. Maintain and make publicly available up-to-date information and statistics (disaggregated by nationality; sex; age; racial or ethnic origin; religion or belief; sexual orientation and other status, including disability) on: the number of persons sentenced to death; the number of executions carried out; the number of persons under sentence of death; the number of death sentences reversed or commuted on appeal; and the number of instances in which clemency has been granted;
18. Extend a standing invitation to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment;
19. Sign and ratify the International Covenant on Civil and Political Rights (ICCPR) and the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty;
20. Vote in favor of the next UN General Assembly resolution that calls for a moratorium on executions;