

**Imposition of the Death Penalty and its Impact**

To: OHCHR-eje@ohchr.org

Subject: The Imposition of the Death Penalty and Its Impacts

*LBHM is a legal aid institute, based in Jakarta, that provides free legal assistance to marginalized groups, including people facing the death penalty and executions.*

**1. Individuals sentenced to death**

**How many individuals were on trial in Indonesia facing a possible death sentence and how many were sentenced to death in 2021?**

- Although Article 28F of the Constitution mandates transparency in public information,<sup>1</sup> Indonesia has not practically implemented transparency relating to the death row inmates data.<sup>2</sup>
- Limited official data exists regarding death row prisoners. According to KontraS' data in 2021, at least 32 death sentences were recorded,<sup>3</sup> Reprieve recorded at least 87 death sentences imposed in Indonesia, with 67 drug cases in 2021.<sup>4</sup>

**How many individuals were on death row awaiting execution at the end of 2021 in Indonesia? Include details on charges and disaggregated data on gender, age, nationality, ethnic origin and other relevant demographics of the persons affected**

- Indonesia has not released official information regarding the gender, age or any demographic information as well as number of individuals awaiting executions.<sup>5</sup>

**How many years on average do individuals spend on death row in Indonesia?**

- Per Article 100(1) of the 2019 Draft of the Criminal Code (RKUHP) provides that judges can impose capital punishment with probation for 10 years that is subject to judgment.
- However, the government does not release official data on the length of imprisonment duration of the death row inmates.<sup>6</sup>

**2. Procedures and conditions of detention**

**Administration of the death penalty in Indonesia conforming with international norms and standards, including with regard to ensuring due process and fair trial guarantees in all stages of criminal proceedings leading to a possible imposition of a death sentence**

Administration of the death penalty in Indonesia fails to conform with international norms and standards and fails to ensure there is due process:

- *Intimidation and ill-treatment during police interrogation*

Several people sentenced to death have been beaten up by police during interrogation to confess or provide information relating to a crime, affecting the offender's evidence.<sup>7</sup>

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<sup>1</sup> *Undang-Undang Dasar Negara Republik Indonesia 1945* [Constitution of the Republic of Indonesia 1945] Article 28F.

<sup>2</sup> Joint Stakeholders' Report on the 4th UPR of Indonesia on Issues Relating to the Death Penalty <[https://lbhmasyarakat.org/wp-content/uploads/2022/04/Joint-Stakeholder-Report-on-Death-Penalty\\_final.pdf](https://lbhmasyarakat.org/wp-content/uploads/2022/04/Joint-Stakeholder-Report-on-Death-Penalty_final.pdf)>.

<sup>3</sup> Indonesia Joint Stakeholder Report for the 41st Session of the Working Group on the Universal Periodic Review (2022) <<https://docs.google.com/document/d/1SXg0O4xOIWEYPLBG1X9tus7V7IWMG60z/edit>>.

<sup>4</sup> Reprieve's record on the death penalty in Indonesia cited in Joint Stakeholders' Report on the 4th UPR of Indonesia on Issues Relating to the Death Penalty <[https://lbhmasyarakat.org/wp-content/uploads/2022/04/Joint-Stakeholder-Report-on-Death-Penalty\\_final.pdf](https://lbhmasyarakat.org/wp-content/uploads/2022/04/Joint-Stakeholder-Report-on-Death-Penalty_final.pdf)>.

<sup>5</sup> Joint Stakeholders' Report on the 4th UPR of Indonesia on Issues Relating to the Death Penalty, [2] <[https://lbhmasyarakat.org/wp-content/uploads/2022/04/Joint-Stakeholder-Report-on-Death-Penalty\\_final.pdf](https://lbhmasyarakat.org/wp-content/uploads/2022/04/Joint-Stakeholder-Report-on-Death-Penalty_final.pdf)>.

<sup>6</sup> Ibid.

<sup>7</sup> Carole Berrih and KontraS, *Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia* (2009) ('*Dehumanized*').

- *Poor quality of legal representation*

Several prisoners sentenced to death indicated that the law ers who assisted them during the police investigation and trial were disinterested in their case.<sup>8</sup> For ██████████<sup>9</sup> her lawyer failed to submit appeal documents.

- *Lack of appropriate interpreters*

Prisoners sentenced to death reveal that despite a guarantee that an accused person is entitled to a competent and qualified interpreter durin the olice investigation and trial proceedings, such expectations are not met in practice.<sup>10</sup> The case of ██████████<sup>11</sup> who could not speak Indonesian or English, was given an interpreter who was only a linguistic student capable of minimal English comprehension.<sup>12</sup>

- *Restricted access to appeals, case review and clemency procedures*

High Court decisions are inconsistent regarding the number of case reviews that can be submitted prior to execution and the applicable procedure. In the case of ██████████ and ██████████, who were sentenced to the death penalty for drug trafficking in Bali, both had clemency petitions that were never examined and outrightly rejected without reason.<sup>13</sup>

### **Conditions of detention of prisoners on death row in Indonesia including visits by family members and others, and other relevant circumstances, such as any support provided to exercise one's religion**

- *Conditions of detention of prisoners - Overcrowding*

Indonesian prisons are often subject to overcrowding.<sup>14</sup> From 2013 to 2019, the prison population rose from 160,064 to 261,394.<sup>15</sup> Over this time, the occupancy capacity increased only 16,000, whilst there was an increase of 100,000 prisoners.<sup>16</sup> As of 1 April 2022, the prison population total, including pre-trial detainees and remand prisoners is 271,069.<sup>17</sup>

- *Conditions of detention of prisoners - poor hygiene*

Official data revealed that 448 prisoners died in custody in 2017. This was attributed to diseases due to poor hygiene,<sup>18</sup> unavailability of proper healthcare and delayed delivery of health services.<sup>19</sup> By law, Indonesia is doing relatively well because the referral facility for detainees is possible if there is a recommendation from the Correctional Facility doctor and a permission from the chief of the Correctional Facility.<sup>20</sup> However, monitoring is still necessary on the implementation.<sup>21</sup>

- *Conditions of detention of prisoners - Security*

Additionally, security in Correctional Facilities has not been properly implemented, as proven by the continued acquisition of sharp weapons in Correctional Facilities. This is also evidenced by the fact that the perpetrators of most murder cases are fellow detainees.

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<sup>8</sup> Ibid.

<sup>9</sup> Jat Lie Chandra; Case number: 1386/PID.B/2008/PN.Jkt.Bar.

<sup>10</sup> Ibid.

<sup>11</sup> *Mary Jane Fiesta Veloso*; Case number: 385/ Pid.B/2010/PN.Slmn.

<sup>12</sup> *Dehumanized* (n 7).

<sup>13</sup> Todung Mulya Lubis, 'Death Penalty and the Road Ahead: A Case Study of Indonesia' (2015) *Centre for Indonesian Law, Islam and Society* 25.

<sup>14</sup> *Dehumanized* (n 7).

<sup>15</sup> World Prison Brief, *World Prison Brief Data* (Web Page, 1 April 2022) <<http://www.prisonstudies.org/country/indonesia>>.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> *Dehumanized* (n 7).

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ajeng Larasati, *Death of Prisoners Failure of Sentencing*, (Lembaga Bantuan Hukum Masyarakat, 2017), 12 <<https://lbhmasarakat.org/wp-content/uploads/2017/08/Death-of-Prisoners-Failure-of-Sentencing.pdf>>.

- *Support of activities*

The type of activities allowed in prisons varies according to their level of security.

*High risk security prisons:* Only religious activities and walking in front of their cell for one hour per day, hand-cuffed, and leg cuffed, under strict supervision are allowed.<sup>22</sup> Any books requested must be approved by prison staff to acknowledge that ‘the book does not contain radical values or provocative thoughts.’

*Other prisons:* Socialising with other prisoners and exercising religious activities are without any restrictions. According to [REDACTED], a death row prisoner held at Lowokwaru, “we can be outside the cell to do crafts, religious activities, sports during the day, until 5PM”.<sup>23</sup>

- *Visits by family members*

Contact between prisoners and visits by family and others is at the discretion of individual prisons regarding visitation lengths. An example is Batu prison staff only allowing visitations once a month for a maximum duration of thirty minutes under the supervision of five prison guards.<sup>24</sup> However, other prisons such as Kembang Kuning, allow visitors to visit three times a week.<sup>25</sup>

### **Is there a monitoring body that oversees the conditions of detention and welfare of individuals sentenced to death in Indonesia?**

- Discussions reveal that there is no routine monitoring system to supervise places of detention.<sup>26</sup> In 2017, Indonesia accepted recommendations to consider future ratification of the Optional Protocol to the Convention against Torture (‘OPCAT’). This is to obligate States to establish an independent National Prevention Mechanism (‘NPM’), which monitors places where people are deprived of their liberty and makes recommendations.

### **Recent studies carried out in Indonesia on the impact of the death penalty on individuals sentenced to death and/or on their families**

- Restrictions on prison access during the pandemic have impeded efforts to reduce prison crowding. Vulnerabilities of women who are incarcerated and instead are based solely on the duration of imprisonment are not considered.<sup>27</sup> A recent report documented inadequate food and water, and special dietary accommodations for those with medical conditions. Moreover, pregnant women who give birth in two women’s prison facilities are forced to make payments for their medical care.<sup>28</sup>
- Additionally, women are disproportionately affected by the death penalty for drug offences. Typically, women are either tricked or coerced into smuggling drugs, or arrested with their husbands and deny involvement in their husband’s drug-related activities.<sup>29</sup> As of April 2020, seven women were on death row in Indonesia, four of whom had been sentenced to death for non-violent drug-related offences.<sup>30</sup> ICJR conducted an in-depth review and concluded that none of them “had held a major role in the drug activity that led to their conviction.”<sup>31</sup>

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> *Dehumanized* (n 7).

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Indonesia’s Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women <[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IDN/INT\\_CEDAW\\_ICO\\_IDN\\_42436\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IDN/INT_CEDAW_ICO_IDN_42436_E.pdf)>

<sup>28</sup> *Dehumanized* (n 7).

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Harm Reduction International, Institute for Criminal Justice Reform, and Lembaga Bantuan Hukum Masyarakat, Submission to The Human Rights Committee, 129th Session (1 June 2020).

### 3. Family members

#### Support provided in Indonesia for children and other family members of individuals sentenced to death or executed

- Women prisoners have the right to raise their children (if born in prison) until the child reaches two years old, and they will be given additional food for support.<sup>32</sup>
- LBHM is currently empowering the family of ██████████ (RS) (who has been sentenced to death) to carry out legal advocacy. They also provided psychological assistance for families to support them undergoing the legal process and its impact (i.e., the trauma of their family member getting executed).

#### Assessment

- The initial assessment is carried out using observation and interview techniques to understand the actual situation and explore in-depth problems faced by the core members of RS's family.

#### Observation

- The observation is to obtain information regarding the facts of circumstances, cases, objects and descriptions of individual behaviours. In RS's scenario, the team listened carefully to the explanations from RS's family and the team also intended to provide psychological assistance to families to resolve the impact of RS's legal problems (that is, a death penalty).

#### Intervention plan

- During the intervention, education services were provided, aiming to improve the understanding of the public regarding the death penalty in Indonesia and vulnerable groups who could experience the punishment.
- Implementing the Psychosocial Support Program (PSP) was designed to improve the psychological wellbeing of individuals and communities. It involves three main aspects, including human capital, social capital and cultural capital, which are interrelated with each other. Furthermore, the implication in the interventions is to restore the community to the state before a difficult experience could occur, meanwhile increasing the community's ability to empower resources.

#### Family members and children contact with individuals sentenced to death in Indonesia

- Article 30(1) of PP NO.32 of 1999 specifies that each prisoner has the right to receive visits from family, legal counsel or other people.<sup>33</sup> Visits shall be recorded in the Visitor Register and each Correctional Institution to provide at least 1 special room to receive visits.<sup>34</sup>

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#### Contact details

Muhammad Afif (he/him/his)

Director

LBH Masyarakat

[mafif@lbhmasyarakat.org](mailto:mafif@lbhmasyarakat.org)

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<sup>32</sup> PP NO.32 of 1999 on the Terms and Procedures for Citizen Rights Patronage of Corrections Article 20.

<sup>33</sup> Ibid Article 30(1).

<sup>34</sup> Ibid Article 30(3).