

# SUMMARY REPORT FOR THE UNIVERSAL PERIODIC REVIEW OF INDONESIA

The report for the Working Group on the Universal Periodic Review (UPR) presents information and data on the use of the death penalty in Indonesia since the last session of the UPR (2018), for the 4<sup>th</sup> examination cycle (November 2022).

## FACTS AND FIGURES

- After a series of executions between 2013 and 2016, Indonesia has not carried out any executions since 2017. However, during that same year 47 individuals were sentenced to death, 37 in 2018.
- Since 2015, President Joko Widodo's call to eradicate narcotics crime resulted in law enforcement officials racing to provide very strict actions and ended in the rise of the use of the death penalty.
- The exact number of people on death row is not clear as there are no published statistics. In 2019, authorities had provided a number of 268 death row prisoners, while NGOs had an estimate number fluctuating between 236 and 308 in 2018.
- According to NGOs monitoring, from 2019 to 2021, 171 defendants were sentenced to death. Most of the sentences were handed down for drug cases, terrorism and murder.

## Recommendations

- **Abolish the death penalty and commute the sentences of all those on death row so that they are no longer subject to death row living conditions.**
- **Publish annual data on the number of people sentenced to death, the nature of the offences for which they have been sentenced and the number of cases that are on trials/police investigation that warrant a death sentence.**
- **Establish guidelines for the application of the right to a fair trial for people facing the death penalty in accordance with international standards.**

## CONTEXT AND LEGAL FRAMEWORK

### National legal framework

- There is no mention of the death penalty in the Indonesian Constitution but Article 28A of the Constitution states that "Everyone has the right to live and to defend his/her life and livelihood."
- The death penalty is applicable in several Indonesian legislation including the Criminal Code of 1946 (KUHP), the Law no.35/2009 on Narcotics and the Military Criminal Code (KUHPM).
- Indonesian legislation has approximately 50 criminal offences that are punishable by death.
- In 2015, legislative reform was initiated to revise Indonesian criminal legislation. The new legislation included the death penalty for at least 15 offences comprising treason, drug-related crimes, terrorism and corruption. The proposed Draft provided for a 10-year stay on executions, after which the death penalty could be commuted to life imprisonment or 20 years' imprisonment under certain conditions.
- According to the new 2019 Draft Criminal Code, the death penalty with 10 years of probation is not given automatically anymore but under stricter conditions defined by the judge.
- Currently, Indonesia does not have a mechanism of commutation or change of punishment for death row prisoners per se, except for the clemency mechanism by the President, who has the constitutional power to grant clemency (Article 14). Several dispositions limit the right to seek clemency.
- Because of the Government's "war on drugs", clemency petitions are systematically rejected for drug-related crimes.
- Indonesia has a commutation mechanism known as remission. It is a reduction of the criminal sanction given to prisoners who have met the condition, one of which is "serving a temporary prison sentence and a prison sentence," strictly speaking cannot be enforced for death row prisoners.
- Normatively, the Supreme Court Circular Letter No. 7 of 2014, the submission of case review is only allowed once.

## Recommendations

- **Remove capital punishment from all Draft pieces of legislation, including the RKUHP and the Draft anti-terrorist law.**
- **Bring national legislation into line with international standards by removing all offences that are not the “most serious crimes”, as defined by the United Nations Human Rights Committee in 2018, from the scope of the death penalty.**
- **Open and guarantee a transparent discussion of the latest Draft Criminal Code and expand the expert pool to improve the Draft Criminal Code.**
- **Apply the probation mechanism to all people facing the death penalty, automatically and unconditionally.**
- **Introduce a commutation for those who have been on death row for at least more than 10 years.**
- **Amend the law to ensure that Indonesian and foreigners can challenge the constitutionality of national laws and regulations before the Indonesian Constitutional Court (MKRI) without discrimination.**
- **Ensure transparency, consistency, and clear guidelines on clemency processes.**
- **Ensure that all clemency petitions are meaningfully considered and that no one, including people convicted of drug-related crimes, is a priori excluded from clemency procedures.**
- **Review and overturn death sentences for people sentenced under the age of 18 and people suffering from mental impairment to be in line with the international treaties that Indonesia has ratified.**
- **Revising Supreme Court Circular Letter No. 7 of 2014 on Submission for Judicial Review, a person sentenced to death can apply for Judicial Review for more than once.**

## International instruments

- Indonesia has ratified the ICCPR in 2006, the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) in 1998 and the Convention on the Rights of the Child in 1990.
- Indonesia did ratify neither the Optional Protocol to the CAT, nor the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.
- Regarding the United Nations General Assembly Resolution calling for a universal moratorium on the use of the death penalty, Indonesia shifted from a negative vote to an abstention in 2012 and has remained abstaining up to and including the most recent vote in December 2020.

## Recommendations

- **Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.**
- **Support the UNGA Resolution on the establishment of a universal moratorium on the use of the death penalty.**

## NATIONAL CONTEXT

- Normatively Indonesia does not have a special place for death row prisoners to be detained before the execution, but in practice, death row prisoners are placed in correctional institutions scattered throughout Indonesia thus making death row prisoners the subject of a correctional training programs in the correctional institution.
- Several capital cases in Indonesia have shown failures in the judicial process and the application of the law.
- A fact-finding mission carried out in 2019 on the conditions of detention of death row prisoners in Indonesia, highlighted several issues such as poor medical conditions (physical and mental), lack of communication with the outside world, as well as related to the appropriateness of the conditions of the place of detention.
- As of 2020, 60 death row prisoners have been experiencing what is known as the “Death row phenomenon”, as they have been on death row for more than 10 years in conditions that arguably meets the definition of inhumane and degrading treatment.

## Recommendations

- **Guarantee that interviews with accused individuals during the police investigation phase are conducted in official police offices.**
- **Define torture in the national legal framework and ensure that its definition complies with the Convention against Torture.**
- **Ensure that alleged victims of torture or ill treatment have access to a forensic examination as soon as possible.**
- **Train police forces about the absolute prohibition of torture and ill treatment.**
- **Ensure that experienced, independent and competent lawyers represent those facing the death penalty as soon as they are arrested and throughout the judicial process.**
- **Significantly increase the budget allocated to legal aid.**
- **Improve the conditions of detention of people sentenced to death:**
  - **Amend the prison regulations to comply with international standards, including the Nelson Mandela Rules, for all categories of prisons, including Batu high risk security prison;**
  - **Train prison guards on the treatment of detainees, including the specificity of housing death row prisoners.**