



Policy Brief

Death Penalty towards Alternative Human Sanctions: A Response to Drug Wars Movement in Indonesia

This policy brief is based on a research project funded by SHAPE SEA and carried out by Inosentius Samsul, Nukila Evanty, Lidya Suryani, Simplexius Asa, and Erick Sihotang.



1. Introduction

The right to life is guaranteed in Article 28A of the 1945 Constitution of the Republic of Indonesia, stating: *"Every person shall have the right to life and to defend his or her life."* The guarantee of the right to life is further provided in Article 9 of Law No. 39 on Human Rights of 1999: "Everyone has the right to life, to live and to improve his or her standard of living." Moreover, the Indonesian government also ratified the International Covenant on Civil and Political Rights (ICCPR) by Law No. 12 of 2005 which ensures the right to life, listed in Article 6 which reads: *"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."*

Despite these commitments and acknowledgements made to preserve the right to life, the Constitutional Court rejected a judicial review on the death penalty in its Narcotics Law in a decision in late October 2007, stating that the death penalty in the Narcotics Law is not contradictory to the right to life guaranteed by the Constitution. The death penalty consistently imposed by the court decision refers to Article 10 of the Indonesian Criminal Code (KUHP) as well as Articles 113, 114, 116, 118, 119, and 121 of the Law Number 35/2009. In imposing the death penalty for crimes related to drugs, Supreme Court judges have considered several international human rights conventions such as the Universal Declaration of Human Rights and the ICCPR Covenant. However, they are subsequently faced with significant, mandatory assessments to examine drug-related crimes with regards to the impact of the crime, the motives of the perpetrator, and the mode of the crimes. Prosecutors hence determining the categories of criminal sentencing with respect to the existing Narcotics Law, and apply the death penalty as a maximum sentence for deterrence effect.

2. The Death Penalty

Both the death penalty itself as well as prisoners' detention on the 'death row' violate human rights beyond the inherent right to life. Moreover, the death penalty is contradictory to the Constitution, Law Number 39 Year 1999 on Human Rights, as well as international instruments of human rights that have been ratified by Indonesia, such as International Covenant on Civil and Political Rights (ICCPR) and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The dilemma that judges are facing in making their verdict could be eased by equipping them with a variety of alternate

human sanctions such as imprisonment in line with the principles of an independent judiciary.

3. Conclusion

This article comes up with the following findings:

1. The Criminal Code and the Law on Narcotics contradict the Constitution and several international human rights covenants that have been ratified by the Government of Indonesia;
2. The death penalty is still consistently imposed by the courts, however there are “dissenting opinions” by the judges in the panel which are supported by legal scholars, NGOs, and religious groups calling for the abolition of the death penalty for drug criminals;
3. In the case of drug abuses, alternate human sanctions that can be considered are life imprisonment and 20-years imprisonment with the possibility of clemency after 10 years in prison;
4. The abolishment of the death penalty in the Narcotics Law can be accomplished by changing its punishment from capital punishment (main sanction) to an alternate sanction in Criminal Code as part of the basic criminal law in the criminal justice system of the Republic of Indonesia.

4. Policy Recommendations

1. Revise the Criminal Code by changing the death penalty from main sanction to alternate sanction to minimize the practice.
2. Incorporate several rational choices as alternate human sanction for drug crimes in the Narcotics Law as follows:
 - Life imprisonment, until natural death, with no possibility of release, or with a possibility of a pardon/clemency.
 - Imprisonment for 20 years with remission.