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## **INDONESIA: OPEN LETTER ON ANNIVERSARY OF FIRST EXECUTIONS UNDER PRESIDENT WIDODO**

Dear Chief of the Presidential Staff Office

On the occasion of the second anniversary of the resumption of executions under President Joko Widodo, I am writing on behalf of the undersigned organizations to bring to your attention our ongoing concerns on the use of the death penalty in Indonesia. We renew our calls on the country's highest authorities to immediately establish a review of all death sentences with a view to commutation, and to establish a moratorium on the implementation of the death penalty, as essential first steps towards its abolition.

The first executions since Joko Widodo became President were carried out on 18 January 2015, when six prisoners were shot by firing squads. Since then, 12 more have been executed, including most recently on 29 July 2016. All the executed prisoners, who included three Indonesians and 15 foreign nationals, had been convicted of drug-related offences.

The authorities had selected for execution on 29 July a further ten people, but at the last minute granted them a stay of execution to allow for their cases to be reviewed to ensure that there is "no judicial and non-judicial error", in the words of Attorney General M. Prasetyo later on the same day.<sup>1</sup> While the stay of execution was a welcome development, our organizations remain deeply concerned that human rights violations have tainted the cases of several of the 18 prisoners executed in the past two years; that the stay of execution granted to the ten prisoners in July was only a temporary measure; and that the review of the cases does not appear to be mandated to an independent or impartial body, nor will it apply to all existing death sentences which have been imposed.

### ***Breaches of fair trial safeguards and other human rights violations***

Research findings by the National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia*, Komnas HAM)<sup>2</sup> and additional research carried out by Amnesty International,<sup>3</sup> ICJR (Institute for

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<sup>1</sup> "Relief for Indian national as Indonesia suspends execution of 10 convicts", Wio News, 29 July 2016, available at <http://www.wionews.com/world/relief-for-indian-national-as-indonesia-suspends-execution-of-10-convicts-3532>

<sup>2</sup> Komnas HAM issued two reports in 2010 and 2011. The 2011 report was based on a research mission conducted between September and December 2011 into 17 prisons in 13 provinces, during which 56 death row prisoners were interviewed. The 2010 report was based on a monitoring mission to 10 prisons in five provinces and on interviews with 41 death row inmates between September and October 2010.

<sup>3</sup> Amnesty International, "Flawed Justice-Unfair trials and death penalty in Indonesia" (ASA 21/2434/2015), October 2015, available at <https://www.amnesty.org/en/documents/asa21/2434/2015/en/>

Criminal Justice Reform),<sup>4</sup> and other human rights organizations, point to systemic flaws in the administration of justice in Indonesia and violation of fair trial and other international safeguards that must be strictly observed in all death penalty cases.

In several of the cases examined in the context of this research, defendants did not have access to legal counsel at crucial stages of the process, whether from the time of arrest or at different stages of their trial and appeals. In some cases the police ill-treated them to make them “confess” to the crimes or countersign police investigation dossiers used as evidence in court. Several prisoners were brought before a judge for the first time only when their trials began, months after their arrest. Some of them did not receive legal assistance when appealing against their conviction or sentence, or did not even submit an appeal application because they were not informed by their lawyers of their right to do so.

In some cases in 2015 and 2016 executions went ahead despite the courts having accepted prisoners’ applications to submit appeals, which had not yet been heard by the courts. Despite the clear prohibition under international law on the use of the death penalty against persons who were below 18 years of age at the time of the offence, or who have a mental or intellectual disability, our organizations documented that claims which two prisoners made in relation to being under 18 and mental disability were not adequately investigated, resulting in the unlawful imposition of the death penalty and, in one of these cases, execution. The death penalty also continues to be used extensively for drug-related offences, even though these offences do not meet the threshold of the “most serious crimes”, which, pending abolition, is the only category of crimes for which the death penalty can be imposed under the International Covenant on Civil and Political Rights, to which Indonesia is a state party.

Our organizations call on the authorities to:

- Establish a moratorium on all executions with a view to abolishing the death penalty;
- Establish an independent and impartial body, or mandate an existing one, to review all cases where people have been sentenced to death, with a view to commuting the death sentences;
- In particular, in all cases where the death penalty has been imposed for drugs offences or where the trial did not meet the most rigorous international fair trial standards, or in cases where the procedures were seriously flawed, offer a retrial that fully complies with international fair trial standards and which does not resort to the death penalty.

### ***The case of Yusman Telaumbanua***

Among those currently on death row in Indonesia is Yusman Telaumbanua, who was arrested together with another man and detained on 14 September 2012 for the murder of three men in April 2012 in the North Sumatra province. They were detained for at least four months before appearing before a judge at the first trial hearing on 29 January 2013. It was not until this hearing that the two men received legal assistance when the District Court appointed the same legal team to act for both of them.

Anyone arrested or detained on a criminal charge has the right to competent and effective legal counsel as soon as they are deprived of liberty and at all stages of criminal proceedings, including during the preliminary investigation, before and during the trial and appeals. If they cannot afford to pay, a lawyer must be assigned to them free of charge. In cases which can lead to the death penalty, the authorities have a particular obligation to ensure that the appointed lawyer is competent and effective.

During the police interrogation, Yusman Telaumbanua did not have a legal counsel assisting him. He could not speak Indonesian, the language used during the investigation, and could not read or write. Yusman Telaumbanua told his current lawyer that during this period of custody he and his co-defendant were beaten and kicked on a daily basis by police officers, or by detainees ordered by the

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<sup>4</sup> Institute for Criminal Justice Reform (ICJR), Overview on Death Penalty in Indonesia, 2015, available at <http://icjr.or.id/data/wp-content/uploads/2015/06/Overview-on-Death-Penalty-in-Indonesia.pdf>

police. Although his current lawyers have submitted a complaint to the police, to date there has been no independent investigation into these allegations.

When delivering the indictment, the prosecutor sought life imprisonment for the two men. Their lawyers representing them at that time, however, asked the judges to sentence them to death, although both Yusman Telaumbanua and the other man asked the judges for lenient sentences. Based on their first lawyers' request, the Court eventually sentenced them to death. Neither of the men submitted an appeal to a higher court, as they did not know they had the right to do so and the lawyers then representing them did not inform them of this right.

Furthermore, according to the police, Yusman Telaumbanua was born in 1993. However, he claims he was born in 1996, which means he would have been under 18 years old at the time the crime was committed and at the time when he was sentenced to death. He does not have a birth certificate as births are not usually registered in his village of origin. His current lawyers managed to gather information from his family and village neighbours, who confirmed that he was born in 1996. A group of forensic radiology experts instructed by the Ministry of Law and Human Rights established that Yusman Telaumbanua was between 18 years and 4 months and 18 years and 5 months of age at the time of the examination in November 2015.

Our organizations call on the authorities to:

- Establish an independent and impartial investigation into the allegations of ill-treatment, and ensure that those responsible are brought to justice in fair trials;
- Ensure protection of the best interest of the child as required by the Convention on the Rights of the Child, to which Indonesia is a state party, and, in cases such as Yusman Telaumbanua's, where the age of the defendant(s) is disputed, to give them the benefit of the doubt;
- Establish an independent and impartial body to review Yusman Telaumbanua's death sentence, with a view to its commutation.

### ***New opportunities for human rights and abolition of the death penalty***

The Indonesian Parliament is currently examining proposed amendments to the Indonesian Criminal Code, which include some proposals to move away from the death penalty. Our organisations were encouraged by President Widodo's statements on 5 November 2016 that Indonesia wants to move towards abolition.<sup>5</sup> At a time when more and more countries are abolishing the death penalty and 141 in total are now abolitionist in law or practice, the proposed legislative reforms represent a unique opportunity for Indonesia to uphold human rights and end human rights violations associated with the use of the death penalty.

There is no conclusive evidence that capital punishment has a unique deterrent effect. Statistics from countries that have abolished the death penalty show that its absence has not resulted in an increase in the crimes previously subject to capital punishment. Furthermore, evidence has shown that punitive policies have had little influence on the prevalence of drug use.

Our organizations oppose the death penalty in all cases and under any circumstances as a violation of the right to life, recognized by the Universal Declaration on Human Rights, and as the ultimate cruel, inhuman and degrading punishment.

Our organizations renew our calls on the Indonesian authorities to take the opportunity of the reform of the Criminal Code to abolish the death penalty from national legislation.

I remain at your disposal should you wish to discuss this matter. A copy of this letter will be sent to Mr. Wiranto, Coordinating Minister for Politics, Law and Security Affairs; Mr. Bambang Soesatyo,

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<sup>5</sup> Indonesia moving towards abolishing death penalty: Widodo, SBS, 5 November 2016, available at <http://www.sbs.com.au/news/article/2016/11/05/indonesia-moving-towards-abolishing-death-penalty-widodo>

Chairperson of the Commission III of the House of Representatives of the Republic of Indonesia (DPR RI); and Mr. Imdadun Rahmat, Chairperson of the National Human Rights Commission (Komnas HAM).

Yours sincerely

Josef Benedict  
Campaigns Director, South East Asia and the Pacific Regional Office

This letter is co-signed by

Amnesty International

Elsam (*Lembaga Studi dan Advokasi Masyarakat*/Institute for Policy Research and Advocacy)

Human Rights Working Group (HRWG)

Imparsial

Institute for Criminal Justice Reform (ICJR)

KontraS (the Commission for the Disappeared and Victims of Violence)

LBHM (*Lembaga Bantuan Hukum Masyarakat*/Community Legal Aid Institute)

PKNI (Persaudaraan Korban NAPZA Indonesia/ Indonesian Drug Users Network)