INDONESIA: RECENT EXECUTIONS AND APPLICATION OF THE DEATH PENALTY

SUMMARY

The use of the death penalty in Indonesia as a punishment for both criminal and political offences has been of concern to Amnesty International, particularly as the number of judicial executions has risen sharply in recent years. According to Amnesty International's information, which may not be complete, there have been as many executions in the last three years as in the preceding 38, all of them involving political prisoners. The most recent judicial executions occurred in September and October 1986 when ten men sentenced to death on subversion charges were executed. Nine were accused of having been active in the Partai Komunis Indonesia (PKI), Indonesian Communist Party, which the Indonesian government has held responsible for an attempted coup in 1965. All had been in prison for more than 16 years. One man had been involved in a Muslim group which in 1981 attacked a police station, killing three officers, allegedly in an effort to obtain arms for a struggle to establish an Islamic state.

At least 28 people are believed to remain under sentence of death including 16 prisoners sentenced in connection with the 1965 coup attempt, three Muslim activists and nine criminals convicted of murder, drug-trafficking or rape.

Amnesty International is unconditionally opposed to the death penalty as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment. Both rights are proclaimed in the Universal Declaration of Human Rights.

Amnesty International's opposition is based on several considerations. Despite the most careful legal safeguards, there is always a risk that an innocent person may be executed. That risk is exemplified by the case of a Malaysian, Chan Tin Chong, who is awaiting execution in an Indonesian court after having been sentenced to death for drug trafficking in 1985. In August 1986, however, another man who received a life sentence in the same case admitted to having given false testimony which implicated Mr Chan. Had Mr Chan been executed before the revelation of his companion's perjury came to light, it is possible that a person innocent of a capital offence would have died. Amnesty International has called on the Indonesian Government to review Mr Chan's case.

Amnesty International believes that not only the execution itself
but the experience of awaiting execution constitutes cruel and inhuman treatment. Two criminals executed in 1980 had been under sentence of death for 16 years, and Tamuri Hidayat, one of the ten men executed in 1986, for 19. The Indonesian Government has attributed the length of time between sentencing and execution to "slow procedures" of the appeals process. However, the nine men linked to the PKI who were executed in September and October 1986 are believed to have all been tried in special military courts and had no right of appeal.

Amnesty International is aware of the reasons advanced for retaining the death penalty and of these, the value of capital punishment as a deterrent to crime is one frequently used in Indonesia. Amnesty International has not found any evidence to indicate that the death penalty serves to deter crime more effectively than other punishments, however.

Amnesty International has urged the Indonesian Government to abolish the death penalty and commute all existing death sentences in keeping with United Nations General Assembly Resolution 32/61 of 8 December 1977 in which the General Assembly reaffirmed that "the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view toward the desirability of abolishing capital punishment..."

In Indonesia the death penalty may be applied to a wide variety of offences including some incorporated in the Criminal Code, such as premeditated murder and some for which special legislation has been enacted, such as subversion. The death penalty is most frequently applied to people sentenced to death under the so-called "Anti-Subversion Law", Presidential Decree No.11/1963 which permits the death penalty for anyone convicted of undermining the authority of the state, disseminating feelings of hostility and distorting or deviating from the state ideology, Pancasila.

Amnesty International is concerned that the current trend in Indonesia is not toward abolition of the death penalty but on the contrary, to increased application of it. It is also concerned that many of the prisoners now under sentence of death may be executed in the near future. The Indonesian Government has not heeded urgent appeals to stay executions or commute death sentences from either Western or socialist bloc countries or from non-governmental organizations such as Amnesty International.

Nevertheless, several recent developments in Indonesia suggest that there may be scope for moving in the direction of the United Nations General Assembly's stated goal of reducing the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment.

The Criminal Code is now undergoing revision for the first time in Indonesian history; most of the existing Code is a direct borrowing from the Dutch Penal Code of the late 19th century. Amnesty International understands that the death penalty has been retained in the draft as it now stands but that the number of offences to which it is applicable may have been reduced. (As noted above, there are crimes not covered by the Criminal Code to which the death penalty is applicable as well, most notably subversion, so even removal of the death penalty from the Code would not mean abolition of capital punishment in Indonesia.)
At the same time, two developments suggest that the death penalty may become a topic for more public debate in Indonesia than at any time since 1980.

First, two death sentences were recently handed down in a murder case which has attracted widespread public attention in Indonesia because one of those sentenced is a woman, Mrs Lince Lembong. She becomes only the second woman in Indonesia ever to have received the death sentence. Mrs Lembong was found guilty by a district court in Bandung, West Java on 13 August 1986 of murdering her husband in May 1983; her alleged lover, Sgt Isto Sukarta, was sentenced to death by a military court in Bogor, West Java in March 1986 on charges of murdering Mrs Lembong’s son after he had discovered the fate of his father. Both Mrs Lembong and Sgt Sukarta have appealed their sentences, and the case is likely to remain in the public eye for some time to come. In Indonesia, criminal cases involving the death penalty historically have tended to generate more public debate than political cases.

Second, an Indonesian was recently executed in Malaysia on drug-trafficking charges, despite efforts of the Indonesian consul in Penang to save him. Ramli Kechik, who was hanged on 22 August 1986 in Taiping Prison thus became the first Indonesian to be executed for narcotics offences in Malaysia, and the Indonesian press noted sourly that there was no outcry on his behalf the way there had been for the two Australians executed the month before. The prospect of more Indonesian citizens facing the death penalty outside Indonesia may generate more opposition to it within the country.
INDONESIA: RECENT EXECUTIONS AND THE APPLICATION OF THE DEATH PENALTY

Introduction

The use of the death penalty in Indonesia as a punishment for both criminal and political offences has been of concern to Amnesty International, particularly as the number of judicial executions has risen sharply in recent years. According to Amnesty International’s information which may not be complete, there have been as many executions in the last three years as in the preceding 38, all of them involving political prisoners.

During the first two decades of Indonesian independence, under the so-called "Old Order" of President Sukarno which ended in 1965, the death penalty was imposed rarely and implemented only once, in a case involving three men accused of attempting to assassinate the President. They were executed on 28 May 1960. Two criminal offenders, Hengky Tupanwael and Kusni Kasdut, sentenced to death by courts of first instance in 1964, were executed 16 years later in 1980 after President Suharto rejected their appeals for clemency.

The "New Order" of President Suharto came to power following an attempted coup in 1965 which the Indonesian Government blamed on the now-banned Partai Komunis Indonesia (PKI), Indonesian Communist Party. Some sixty people linked either to the PKI or to military units which supported the coup effort were sentenced to death, either in special military courts (mahkamah militer luarbiasa, known as mahmillub) in which there was no right of appeal, or in regular civil or military courts in which prisoners could appeal their sentences to higher courts. No official figures on the number of prisoners sentenced to death or executed in connection with the coup attempt were ever made public, to Amnesty International's knowledge, but press reports indicated that ten people linked to the coup attempt were executed between 1965 and 1970.

After 1970, there were no executions for several years, leading one respected Indonesian legal scholar, Dr J.E. Sahetapy, to conclude in 1978 that Indonesia had de facto abolished the death penalty. In 1978, however, a man convicted of premeditated murder, Oesin Batfari, who had been sentenced to death in 1967, was executed. The following year, a man in Surabaya named Suparlan received the death sentence for having raped a seven-year-old girl. It was not clear at the time that this was a capital offence; the judge never mentioned which article of the Indonesian Criminal Code Suparlan had violated, and the prosecutor had only demanded a 14-year sentence, according to the Indonesian news magazine Tempo (12 January
Suparlan's subsequent fate is not known. Also in 1979, President Suharto rejected the appeals for clemency of the two men sentenced to death in 1964, and both men were executed the following year.

In 1983, a Muslim activist, Imron bin Mohamad Zein, accused of leading a group of men collectively known as the "Imron Group" which in 1981 hijacked an Indonesian airliner to Bangkok and later stormed a police station in Bandung, West Java, allegedly to obtain arms for the struggle to establish an Islamic state, was executed after a highly publicized trial.

In 1985, five men were executed: a member of the "Imron Group" named Salman Hafidz who had been sentenced to death two years earlier, and four men condemned to death in connection with the 1965 coup attempt. The trials of the latter had taken place between 1973 and 1976. All four, Mohamad Munir, Gatot Lestario, Djoko Untung and Rustomo had appealed to President Suharto for clemency; the appeals were rejected in 1983 and 1984. (See ASA 21/23/85 "Prisoners Under Sentence of Death for Alleged Offences Relating to an Attempted Coup in 1965 or Membership of the Indonesian Communist Party."

Ten more executions have followed in 1986. On 12 September 1986, Maman Kusmayadi, another member of the "Imron Group", was executed near Bandung. Between the last week in September and the first week in October 1986, nine other prisoners who had been tried in the mahmillub courts were executed: Supono alias Pono, Syam Kamaruzaman, Bono Walujo, Sudiono (also spelled as Soediono and Soediyono), Tamuri Hidayat, Aman Hanafiah, Abdullah Alihami, Suyono Wiroatmodjo and Kamil. All were in their late fifties or sixties.

According to Amnesty International's figures, therefore, at least 16 people have been executed between 1983 and October 1986, compared with a total of 16 executed between 1945 and 1983 (not including those Indonesians who may have been executed by enemy forces during the Indonesian Revolution 1945-49). The Indonesian Government does not publish statistics on death sentences or executions.

Prisoners Currently Under Sentence of Death in Indonesia

According to Amnesty International's information, which may not be complete, at least 28 prisoners remain under sentence of death. They include 16 prisoners sentenced in connection with the 1965 coup attempt, of whom nine were members of the Presidential Guard, known as the Cakrabirawa Unit, of the Indonesian army. The commander of the Cakrabirawa Unit was alleged to have been a leader of the attempt. The other seven linked to the coup attempt had been officials of the PKI. One member of the "Imron Group", Azhar bin Mohamad Sapar, remains on death row; his appeal to the High Court was rejected in September 1985. Two other Muslim activists, Bambang Sispoyo and Abdullah Umar, accused of involvement in an organization known as "Komando Jihad" or the Holy War Command, await execution in Central Java. Nine people, including two men who have escaped from prison since being convicted, are under sentence of death on criminal charges.

Death Sentences Imposed since 1978 in Indonesia

<table>
<thead>
<tr>
<th>Date</th>
<th>Name</th>
<th>Charge</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978</td>
<td>Timzar Zubil</td>
<td>subversion</td>
<td>commuted 1986</td>
</tr>
<tr>
<td>1979</td>
<td>Suparlan</td>
<td>rape</td>
<td>not known</td>
</tr>
<tr>
<td>Year</td>
<td>Names</td>
<td>Charges</td>
<td>Fate</td>
</tr>
<tr>
<td>------</td>
<td>--------------------------------------------</td>
<td>---------------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>1981</td>
<td>Sgt. Edy Sampek</td>
<td>murder</td>
<td>escaped 1985</td>
</tr>
<tr>
<td>1982</td>
<td>Kaseng</td>
<td>murder</td>
<td>not known</td>
</tr>
<tr>
<td></td>
<td>Imron bin Zein</td>
<td>hijacking</td>
<td>executed 1983</td>
</tr>
<tr>
<td></td>
<td>Azhar bin Moh Sapar</td>
<td>subver/murder</td>
<td>appeal rejected 9.85</td>
</tr>
<tr>
<td></td>
<td>Salman Hafidz</td>
<td>subver/murder</td>
<td>executed 1985</td>
</tr>
<tr>
<td>1983</td>
<td>Maman Kusmayadi</td>
<td>subver/murder</td>
<td>executed 1986</td>
</tr>
<tr>
<td></td>
<td>Chang Sow Ver</td>
<td>drug-trafficking</td>
<td>reduced to 17 yrs</td>
</tr>
<tr>
<td></td>
<td>Lee Wah Ceng</td>
<td>drug-trafficking</td>
<td>reduced to 17 yrs</td>
</tr>
<tr>
<td></td>
<td>Sutianto</td>
<td>murder</td>
<td>not known</td>
</tr>
<tr>
<td></td>
<td>Pudji Hadiatmoko</td>
<td>murder</td>
<td>not known</td>
</tr>
<tr>
<td>1984</td>
<td>Haji M. Nur</td>
<td>murder</td>
<td>not known</td>
</tr>
<tr>
<td>1985</td>
<td>Husni alias Yono</td>
<td>drug-trafficking</td>
<td>escaped 5.85</td>
</tr>
<tr>
<td></td>
<td>Chan Tin Chong</td>
<td>drug-trafficking</td>
<td>appeal rejected</td>
</tr>
<tr>
<td></td>
<td>Bambang Sispyoo</td>
<td>subver/murder</td>
<td>awaiting execution</td>
</tr>
<tr>
<td></td>
<td>Abdullah Umar</td>
<td>subver/murder</td>
<td>awaiting execution</td>
</tr>
<tr>
<td>1986</td>
<td>Sgt. Isto Sukarta</td>
<td>murder</td>
<td>on appeal</td>
</tr>
<tr>
<td></td>
<td>Mrs Lince Lembong</td>
<td>murder</td>
<td>on appeal</td>
</tr>
</tbody>
</table>

In addition to the death sentences handed down by judges, prosecutors frequently demanded the death sentence in 1985 and 1986 but the judge imposed a lesser sentence in the final verdict. The recent cases known to Amnesty International where the death sentence was requested but a lesser sentence imposed are as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Names</th>
<th>Charges</th>
<th>Fate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1985</td>
<td>Georgio Serantoni</td>
<td>drug-trafficking</td>
<td>sentenced to 12 yrs</td>
</tr>
<tr>
<td></td>
<td>Richard Tattersall</td>
<td>drug-trafficking</td>
<td>sentenced to 10 yrs</td>
</tr>
<tr>
<td></td>
<td>Heinrich Weize</td>
<td>drug-trafficking</td>
<td>sentenced to 17 yrs</td>
</tr>
<tr>
<td></td>
<td>Moh Tarsif Tuasikal</td>
<td>subversion</td>
<td>sentenced to 17 yrs</td>
</tr>
<tr>
<td>1986</td>
<td>Moh Sanusi</td>
<td>subversion</td>
<td>sentenced to 19 yrs</td>
</tr>
<tr>
<td></td>
<td>Achmad Muladawillah</td>
<td>subversion</td>
<td>sentenced to 20 yrs</td>
</tr>
<tr>
<td></td>
<td>Abdul Kadir al-Habsi</td>
<td>subversion</td>
<td>sentenced to 20 yrs</td>
</tr>
</tbody>
</table>

**Amnesty International's Concerns**

Amnesty International is unconditionally opposed to the death penalty as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading punishment, both of which are proclaimed in the Universal Declaration of Human Rights.

Despite the most careful legal safeguards, there is always a risk that an innocent person may be executed. That risk is exemplified by the case of a Malaysian national, Chan Tin Chong, who is presently awaiting execution in Indonesia after having been sentenced to death for drug trafficking in 1985. His appeal against the death sentence was rejected in April 1986 but four months later, his companion, who received a life sentence, admitted to having given false testimony to government investigators which implicated Mr Chan (Jakarta Post 14.8.86). Had Mr Chan been executed before the revelation of his companion's perjury came to light, it is possible that a person innocent of a capital offence would have died.

Amnesty International is also concerned that those who lack the legal and financial resources needed to mount an adequate defence are more at risk of being sentenced to death than those who have adequate resources. This concern was expressed in an article on the death penalty in the Indonesian weekly Mutiara (27 August - 9 September 1986) in which an Indonesian critic of the death penalty was quoted as saying "Only the little fish get caught in the death penalty net. The big fish can protect
themselves from the grasp of law because they have connections, money, and so on. The little fish have no influence at all."

Dr Sahetapy, the legal scholar mentioned above, suggests in a study on the death penalty that the social class of the victim in a murder case can influence the sentence given the murderer. In the case of Kusni Kasdut, the criminal executed in 1980, Dr Sahetapy believed he may have received the death penalty only because his victim was a person of high social standing in Jakarta.

The death penalty is degrading to all who are involved in the process: prisoners, families, witnesses and officials. The Indonesian law on implementation of the death penalty (Presidential Decree No. 2/1964 Relating to Methods of Carrying Out the Death Penalty, later incorporated in Law No. 5/1969), indicates the range of people involved in the execution process:

- the condemned person must be given 72 hours notice of the execution (a pregnant woman cannot be executed until 40 days after the birth of her child)
- the lawyer of the condemned person may attend the execution
- executions will not be carried out in public
- the firing squad will be composed of 14 members of the Mobile Brigade
- the condemned person may be accompanied to the place of execution by a religious counsellor
- the condemned person will be blindfolded unless s/he requests otherwise
- the condemned person may be executed standing, sitting or kneeling, and if necessary, their hands and feet may be bound
- the commander of the firing squad will give an order to get ready, and by raising his sword will signal the squad to aim at the condemned person's heart. A rapid lowering of the sword will be the signal to fire
- if the condemned still shows signs of life, the commander of the squad will order the non-commissioned officer to fire a last shot into the head of the condemned, directly over his/her ear.
- a doctor shall confirm the death
- arrangements for burial will be turned over to the family or friends of the executed person unless the prosecutor in the public interest decides otherwise
- the prosecutor must prepare a report on the execution

It is not only the execution that is a measure of extreme cruelty but also the experience of awaiting execution which has been likened to a living death. The two prisoners executed in 1980 had been under sentence of death for 16 years at the time of their execution. Mohamad Munir, a PKI trade unionist executed in May 1985, had been in prison for 17 years and under sentence of death for more than 12. Tamuri Hidayat, a PKI official in Bali who was executed in September 1986, had been under sentence of death for 19 years.

According to a Reuter dispatch of 10 October 1986 regarding the most recent executions, the Indonesian Government attributed the length of time between sentencing and execution to "slow procedures" of the appeals process. While in earlier cases, this may have been true — in Kusni Kasdut’s case, it took eight years for the High Court to reach a decision on an appeal from the lower court, for example — in the case of the nine men executed in September and October 1986, appeals to higher courts were not possible. The men could only seek a presidential pardon, and of the nine, eight requested a pardon shortly after being sentenced and one,
Supono, never even made a request. As Haji Princen of the Institute for the Defence of Human Rights in Jakarta noted, "You don't leave 20 years to ask the President for a pardon. It is immensely cruel to keep people in prison and in uncertainty about their fate that long." (Guardian, 10 October 1986).

Amnesty International is aware of the reasons advanced for retaining the death penalty, and of these the value of capital punishment as a deterrent to crime is one frequently used in Indonesia. Amnesty International has not found any evidence to indicate that the death penalty serves to deter crime more effectively than other punishments. A working paper on capital punishment prepared by the United Nations Secretariat for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders noted:

"Despite much more advanced research efforts mounted to determine the deterrent value of the death penalty, no conclusive evidence has been obtained on its efficacy."

Dr J. E. Sahetapy concluded in 1978 in his doctoral dissertation entitled Suatu Studi Khusus Mengenai Ancaman Pidana Mati terhadap Pembunuhan Berencana (A Case Study on the Threat of the Death Penalty as a Deterrent to Premeditated Murder) that the threat of the death penalty was not an effective deterrent to such murder in Indonesia.

The Death Penalty in Indonesian Law

Amnesty International has urged the Indonesian Government to take steps to abolish the death penalty, in keeping with United Nations General Assembly Resolution 32/61 of 8 December 1977 in which the General Assembly reaffirmed that "the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment."

In Indonesia, the death penalty may be applied to a wide variety of crimes, including some incorporated in the Criminal Code and some not. In the existing Criminal Code, the following offences may be punished by death:

Article 104: attacks on the President or Vice-President
Article 111(2): persuading another country to enter into hostilities or war
Article 124(1): assisting the enemy in wartime
Article 124 passim: causing, inciting or facilitating a riot
Article 140(3): premeditated attack on the head of state or monarch of a friendly country which results in death
Article 340: premeditated murder
Article 365(4): violent robbery which results in serious injury or death
Article 444: piracy on the seas which results in death
Article 479: airplane hijacking (This was added to the Code as Law No.4/1976).

In addition to the above crimes, there are those for which separate legislation has been enacted to which the death penalty is also applicable. The most important of these is the so-called "Anti-Subversion Law", Presidential Decree No.11/1963, which permits the death penalty for anyone who engages in subversive activities, including undermining the authority of the state, disseminating feelings of hostility and distorting or
deviating from the ideology of Pancasila. The death penalty is most frequently applied to people charged under this law.

Other laws relating to crimes not covered by the Criminal Code include:

1. Law No.5/1959, incorporated into Law No.6/1969, gives the Attorney General or his military equivalent the authority to increase the maximum allowable sentences for any act which endangers the provision of basic food and clothing supplies in times of national emergency. It specifies the death penalty for violations of Emergency Law No.7/1955, the Regulation on the Elimination of Corruption and certain crimes in the Criminal Code, all of which refer to crimes which impede government programs such as ensuring the stockpiling of food in times of shortage, maintaining the security of the public and the state, and continuing the struggle against economic and political imperialism. (The last clause referred specifically to the effort to acquire West Irian from the Netherlands in the early sixties and is no longer relevant.) Amnesty International does not know of anyone having been executed under this law.

2. Law No.21/1959 increases the penalties for any crime which can cause economic disruption. One person was sentenced to death under this law but the sentence was not carried out.

3. Law No.31/1964 specifies the death penalty for those who reveal secrets related to Indonesia’s atomic energy program.

4. Law No.12/1951 allows the death penalty for importing or illegally obtaining firearms, ammunition and explosives

5. Law No.9/1976 Article 36, 5b and 4b allows the death penalty for transporting narcotics, and illegally importing, exporting, offering with the intention of selling, buying, handing over or acting as an intermediary in the sale or trade of narcotics. At least four people have been sentenced to death under this law but no executions have been carried out.

The Appeals Process

A death sentence imposed by a district court (pengadilan negeri) may be appealed to a high court (pengadilan tinggi) and to the Supreme Court (mahkamah agung). A lesser sentence may also be raised to the death penalty in the appeals process as happened in June 1985 when a sentence of life imprisonment given to Abdullah Umar, a Muslim activist, was raised to death by an appellate court in Yogyakarta, Central Java. A presidential pardon (grasi) may be sought at any stage after the initial sentencing; many prisoners appear to wait until the appeals process has been exhausted before seeking such a pardon. If it is rejected, as often occurs several years after the request for clemency has been made, or if it is not sought, executions may be carried out. Death sentences are occasionally commuted to life through a remissions procedure which is separate from the appeals process; Amnesty International has repeatedly expressed concern in recent years about the arbitrary fashion in which the remissions procedure has been applied.

Prospects for Abolition

Amnesty International is concerned that the current trend in Indonesia is not toward abolition of the death penalty but on the contrary, to
increased application of it. It is also concerned that many of the prisoners now under sentence of death, particularly Azhar bin Mohamad Sapar of the "Imron Group" and the 16 prisoners linked to the 1965 coup attempt, may be executed in the near future. The Indonesian Government has not heeded urgent appeals to stay executions or commute death sentences from either Western or socialist bloc countries or from non-governmental organizations such as Amnesty International.

Particularly after the protests against the executions of the PKI leaders in May and July 1985, the Indonesian government reaction was one of anger at external interference in questions of domestic jurisdiction. This was reflected in an editorial in Pelita newspaper which asked why no outcry had been made when other people in Indonesia had been executed; why was it only only when Communists prisoners were executed? That reaction was echoed in the statements of several Indonesian parliamentarians reacting to the European Parliament’s resolutions protesting the executions: one said he was amazed that the Europeans could defend those who had betrayed the 1945 Indonesian revolution. The editorial on 2 July 1985 in the government-oriented newspaper Suara Karya said in reference to the European Parliament resolutions, "They don't know what happened in Indonesia but they dare to behave as if they are protectors of our morality. Now they are preparing a resolution on the implementation of human rights in the whole world. Apparently they get guidance from anti-Indonesia groups like Amnesty International which PKI remnants outside the country have used to stir up enmity against Indonesia ever since their 30 September movement was annihilated." (30 September was the day of the attempted coup in Indonesia in 1965.)

Nevertheless, several recent developments in Indonesia suggest that there may be scope for moving in the direction of the United Nations General Assembly's stated goal of reducing the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment. The drafting of a new Criminal Code provides an excellent opportunity to restrict the application of the death penalty in law.

The Criminal Code is now undergoing revision for the first time in Indonesian history; most of the existing Code is a direct borrowing from the Dutch Penal Code of the late 19th century. The draft, which is being prepared under the auspices of the Badan Pembinaan Hukum Nasional (BPHN, National Legal Development Agency), part of the Ministry of Justice, will shortly be ready to submit to the Indonesian parliament, the Dewan Perwakilan Rakyat (DPR). Since this year's session of the DPR is almost over and next year's will be wholly preoccupied with the national parliamentary elections in April, the full debate on the Code may not begin in earnest until 1988. Amnesty International understands that the death penalty has been retained in the draft as it now stands but that the number of offences to which it is applicable may have been reduced. (As noted above, there are crimes not covered by the Criminal Code to which the death penalty is applicable as well, most notably subversion, so even removal of the death penalty from the Code would not mean abolition of capital punishment in Indonesia.)

At the same time, two developments suggest that the death penalty may become a topic for more public debate in Indonesia than at any time since 1980.

First, two death sentences were recently handed down in a murder case
which has attracted widespread public attention in Indonesia because one of those sentenced is a woman, Mrs Lince Lembong. She becomes only the second woman in Indonesia ever to have received the death sentence. Mrs Lembong was found guilty by a district court in Bandung, West Java on 13 August 1986 of murdering her husband in May 1983; her alleged lover, Sgt Isto Sukarta, was sentenced to death by a military court in Bogor, West Java in March 1986 on charges of murdering Mrs Lembong's son after he had discovered the fate of his father. Both Mrs Lembong and Sgt Sukarta have appealed their sentences, and the case is likely to remain in the public eye for some time to come. In Indonesia, criminal cases involving the death penalty historically have tended to generate more public debate than political cases. The last major debate on the issue in 1980 centered on the execution of the criminal, Kusni Kasdut. The attached article from the Indonesian weekly Mutiara (27 August-9 September 1986) gives some flavor of that debate.

Second, an Indonesian was recently executed in Malaysia on drug-trafficking charges, despite efforts of the Indonesian consul in Penang to save him. Ramli Kechik, who was hanged on 22 August 1986 in Taiping Prison thus became the first Indonesian to be executed for narcotics offences in Malaysia, and the Indonesian press noted sourly that there was no outcry on his behalf the way there had been for the two Australians executed the month before. An article in the Indonesian newsweekly Tempo (30 August 1986) contrasted Malaysia's harsh application of its drug laws with Indonesia's relative leniency; the article noted that since the death penalty for drug offences had been possible since 1976, only four people had been sentenced to death and none had been executed. The tendency, on the contrary, was for the Supreme Court to reduce the sentence after appeal. The prospect of more Indonesian citizens facing the death penalty outside Indonesia may generate more opposition to it within the country.

The Mutiara article gives some idea of the range of opinion on the death penalty in Indonesia. There is also a fairly extensive literature on the subject in Indonesia, some of which favours the retention of capital punishment. Some arguments in support of the death penalty found in scholarly treatises include that of state security (the death penalty acts as a kind of societal self-defense against those who would rebel against the state) and that of level of development (the only abolitionist countries are in the developed world, but the death penalty is still needed in the developing world). It should be noted, however, that Nicaragua, Brazil, Vanuatu and Papua New Guinea are among those countries which have abolished the death penalty.

Another argument frequently raised is that of the need to combat an alarming increase in the crime rate. In the latter regard, the authors of The Death Penalty in Indonesia: Past, Present and Future (Pidana Mati di Indonesia di lalu, kini dan di masa depan), Dr Andi Hamzah and A Sumangeliipu contrast the use of judicial executions of common criminals with the extrajudicial executions or so-called "mysterious killings" which they believe took place because the conventional system of justice was unable to deal with rising crime. The term "mysterious killings" refers to the deaths, usually by shooting, of over 4000 suspected criminals by unidentified killers between 1983 and 1985 in what was widely believed to have been an anti-crime campaign conducted by the Indonesian security forces. The authors imply that if the death penalty were forcefully applied, there would be no need to resort to extrajudicial measures. This is a variation on the argument that the death penalty deters crime.
Appendix I

PRISONERS UNDER SENTENCE OF DEATH IN INDONESIA

I. Prisoners sentenced in connection with 1965 Coup Attempt (PKI)

Name                      Prison
Ruslan Widjayasastra      Cipinang
Sukatno                   
Iskander Subekti          
Asep Suryaman alias Hamin 
Satar Suryanto            
Raswad                    
I Bungkus                 
Suroyo (Hadiwoyono)       
Sukardjo                  
Suleman                   
Nurhayam                  
Anatasius Buang          
Giyadi (Wignyosuhrjo)    
Marsudi                   

Sukarman                  Pamekasan
Suwandi                   

(for further information on the above prisoners see Prisoners Under Sentence of Death for Alleged Offences Relating to an Attempted Coup in 1965 or Membership of the Indonesian Communist Party (PKI) ASA 21/23/85)

II. Muslim Activists

Azhar bin Moh. Sapar (member of Imron Group)
Bambang Sispoyo
Abdullah Umar

(for further information on Bambang Sispoyo and Abdullah Umar see UA 193/85 ASA 21/25/85 and Further Information: ASA 21/40/85; for further information on Azhar bin Moh. Sapar, see ASA 21/02/85.)

III. Prisoners convicted of common crimes (see p.3 of external paper)

Suparlan (ask for clarification of his status)
Kaseng
Sutianto
Pudji Hadiatmoko
Haji M. Nur
Chan Tin Chong
Sgt. Isto Sukarta
Mrs Lince Lembong
Appendix II

THE PROBLEM OF THE DEATH PENALTY
Between Two Poles Which Will Never Meet

by Nunik Iswardhani

Mutiara, 27 August-9 September 1986

Have you ever witnessed an execution? Whether by sword, hanging, firing squad, electric chair, gas chamber, lethal injection, or the guillotine, just to imagine it makes the hair stand on end, say some. If you do have the chance to watch, you can imagine the feelings of Richard Jorandby, the defence lawyer from West Palm Beach, USA, who has seen two of his clients executed. "I tossed and turned," he said. "I woke up in the middle of the night, remembering it all. It was terrifying," was his final comment.

Of approximately 140 countries which retain the death penalty in their criminal codes, a few offer the general public the opportunity to witness executions; America is one example. In the United States at this moment, 1400 convicted persons await the implementation of the death penalty and almost twice that number have signed up to watch.

Even though there have been efforts in the last decade to make the implementation of the death penalty as "humane" as possible by not prolonging the suffering of those to be executed—for example, when lethal injections are used, the person is put to sleep first—opponents of the death penalty still consider it to be "inhumane". Even the act of being sentenced to death makes a person "dead before death", according to some of this persuasion.

The pros and cons of the need for the death penalty bring us to two opposite poles, each with its own set of arguments, from the naive and unsophisticated to a view from the legal, moral and religious arguments which form the basis of the truth behind each group's opinions.

Indonesia itself retains the death penalty in Article 10 of the Penal Code as a key punishment in addition to imprisonment, incarceration and fines. And according to Prof. Oemar Senoadji, Minister of Justice from 1966-1978 who is helping to draft a new Criminal Code as the old one is considered inadequate, the death penalty is retained in the new draft.

After several executions of persons involved in the G30 S/PKI coup attempt in 1965 were carried out, a heated debate arose among several groups about the problem of the death penalty. One group was for, the other against. We remember how grieved we were, without wanting to denigrate the authority of another country, when two Indonesian sailors were executed in Singapore, after the confrontation between Indonesia and Malaysia had already ended. Likewise, when Oesin Batfari was executed in 1979. Then when Kusni Kasdut and Hengky Tupanwael were executed in 1980, observers of the legal scene split in two between the "Pahama" group (Pembela Hukuman Mati, Defenders of the Death Penalty) and "Hati" (Hapus Hukuman Mati, Abolish the Death Penalty).

It was no less a personage than the late vice-president Adam Malik who supported the Hati group by wearing a Hati T-shirt when he went jogging in the morning at Senayan. The Pahama group drew support from the late
Minister of Justice, Murdjono. And when there was occasion for the two hostile groups to meet, there wasn't a single point of agreement between them, although each respected the other's principles.

The Pahama group based its position on the rise in number and gravity of crimes in recent years. Criminals who were increasingly savage needed to be given a kind of "shock therapy" in the form of the death penalty. In earlier times, the death penalty was imposed by the ruler so that his subjects would be obedient, and it was necessary to preserve control, that is, when man was still in the state of homo homini lupus.

Of course, an emperor like Nero who derived pleasure from beheading people is not the best model. But is the situation today any better than it was then? "Who says so?" asked one woman heatedly. "Maybe people today are more barbaric than the primitive people of ancient times. Just look at the terrorism, hijackings and wars. With more modern weapons, of course the effects are going to be worse," she told Mutiara. Newspapers which rarely printed crime stories in their headlines now carry stories of murder and sadistic acts on the first page, she added.

Mochtar Lubis, the writer and journalist who was part of the Hati group expressed the fear that, "Only the little fish get caught in the death penalty net. The big fish can protect themselves from the grasp of the law because they have connections, money and so on. The little fish have no influence at all," he added during a heated exchange between the two groups in 1980.

Indeed, from one perspective, the death penalty precludes the possibility of righting a wrong that could have taken place in court. And the death penalty also denies the accused the chance to rehabilitate himself. The risk of imposing a disproportionate penalty always exists. And the death penalty is final--once it is carried out, it can't be altered, even if the good name of the convicted person can be restored to the family.

"Take the case of Sengkon and Karta, who after they were sentenced, turned out to be innocent. We know, don't we, how difficult the procedure is of demanding a herziening (legal procedure for reviewing a verdict). If they had been executed, what then?" asked Brongkos, who at this moment has the status of a convicted criminal in Paledang Prison, Bogor. Brongkos, a law graduate, of course opposes the death penalty because he knows what it feels like when one's fate is determined by the judge's gavel striking the green baize. "It's not humane, because our country is a Pancasila state, isn't it?" he asked.

A fellow convict of Brongkos Syahban S.H. at Paledang Prison, Machtino Ediwan, who was the focus of press attention in the Arie Hanggara case, also firmly opposes the death penalty. Machtino relates his stance to the problem of self-control. "If we can all exercise self-control, and this is the essence of P4 courses, the death penalty would no longer be needed. In my opinion, the death penalty is in violation of Pancasila," said the father of Arie Hanggara, who can be seen immersing himself in P4 and studying religion while he serves his term in prison. Brongkos, who likes to read books, put forth an argument based on the opinion of Herman Mostard in his book Wayward Justice. "If a person commits a wrong and is sentenced, don't let the judge or prosecutor commit another wrong in their decision on that person," he cautioned.
There are those who believe the death penalty must be retained as a "deterrent force." But Tjipta Lesmana S.H. thinks that we are mistaken if we think that the death penalty can be used effectively as a tool to eliminate criminal behavior. There are also those who think the death penalty will spur criminals on to be more aggressive so that they feel like a "martyr" among their peers.

Public opinion can be influential. As Dr Abdul Mun'im Idries from the Criminological Institute of the University of Indonesia noted, "If the person who dies is the criminal, why does the public focus so much attention on the case to the point that it is fanned into flames by the people's representatives in parliament? While conversely, if two policemen carrying out their duties are shot dead by a criminal, this isn't considered unusual, and the public even grumble about why can't the police be taught to defend themselves." Nurin Nursin, head of Paledang Prison, supports the death penalty but only in very specific cases. "Such as recidivists who go in and out of prison like a revolving door. It can almost be proven that they can't be reformed. Sometimes a stiff sentence is needed--let them be deterred," he said.

Looked at from the point of view of religion, the death penalty has another side. Here it is stressed that a sentence imposed on the person who commits a crime is not a form of revenge but a way of forcing the perpetrator to take responsibility for his acts.

In Islam, it is well known that there is the law of gisas, according to which a murderer can be given the death penalty by the family of the victim, except if the murderer is forgiven and then he only has to pay a fine, the amount of which already has been determined. Dr Harun Nasution, from the theology faculty of the State Islamic Institute in Jakarta, explained that the death penalty as known in Islam is not "an eye for an eye" as is often depicted. According to the professor, "Regarding the question of philosophy, does the philosophy place more emphasis on the individual or society? In Islam, law is based on the Quran and Hadith and is balanced between the two. If a person is proven to have deliberately committed murder, then there is a law to apply to him. And if a person is sentenced to be killed, this in the final analysis is to protect society. There is also a social effect, to force a person to think long and hard before he commits a murder."

Even so, Dr Harun Nasution who also teaches in the Humanities Faculty of the University of Indonesia in the philosophy department is of the opinion that the death penalty should not be applied too often. Only in the cases of serious crimes which upset society and disturb the stability of the state is the threat of the death penalty perhaps necessary. And even in Islam, it is not absolute that the death penalty must be carried out. There are exceptions. And perhaps the death penalty is needed to give shock therapy to hardened criminals.

Judge Bismar Siregar does not differ greatly in his opinion from Harun Nasution. When he was head of the High Court in Medan, Bismar handed down a decision in a narcotics case that was considered controversial because it was a heavier sentence than the prosecutor had demanded. Bismar has always been known as a judge who often bases his decisions on his religious beliefs. "If I say that it's not necessary to have the death penalty, it means I am weakening God's words which are contained in the Holy Book. In the Quran, the issue of the death penalty is mentioned in Surat al-Baqarah:178 and Surat an-Nissa:92 for one kind of crime, namely,
premeditated murder."

Nevertheless, according to Bismar, "It's better that we encourage a forgiving attitude in the philosophy behind our criminal law. Not every serious crime must be given a serious penalty. Many people can be guided along the right path." How about narcotics cases? "That's an exception. If a person murders, then his target is clear. Maybe it's the result of emotion or something. But narcotics crimes are something different. A friend, relative or child can fall victim, but the important thing for the criminal is money or profit. Are we going to take humanitarian considerations into account for those who don't respect humanity?"

B.S. Mardiatmadja, better known as Father Mardi from the Driyakarya Philosophy High School, in a written interview with Mutiara, expressed the opinion that from the perspective of the Christian worldview, there were objections to the death penalty. "The convicted person is despite everything a child of God. Jesus Christ's message of reconciliation must be applied even when we confront a criminal of the 'big fish' class. We must follow the example of God's readiness to search for ways to reconcile and improve mankind, not disobey Him by rushing to extinguish the life of a child of mankind who perhaps has difficulty in finding himself in society (or who sometimes is just disturbed) and in front of God." Father Mardi believes that perhaps in this regard, the mass media has helped to create a psychosis of mass fear that the world has become full of 'big fish' so that the death penalty has to be imposed.

"Maybe a little discretion in reporting in the newspapers, radio, television and printed media is necessary so that this psychosis disappears and people return to reality. Crimes certainly take place and must be dealt with but in a manner proportional to the fact that all members of the human community are children of God." In the Bible, it is difficult to find a clear text supporting or opposing the death penalty as it is often debated now. According to Father Mardi, the essential themes of the New Testament about renewal, mercy and love are difficult to reconcile with the possibility that Jesus Christ supported the death penalty.

Objections also come from psychologists who know with certainty how heavy the psychological burden is for those sentenced to death in the moments preceding the implementation of the sentence. "It is the worst form of torture," writes a Western psychologist. In fact, the principle of imposing punishments originated with the theory of Edward Thorndike, a psychologist who put forward the idea that people were inclined to repeat what they had done in the past if they received positive reinforcement. Likewise, the opposite. This theory which is no longer popular, was known as The Law of Effect.

Also among the moralists and humanists, human rights defenders have taken a position opposed to the death penalty. Mulya Lubis S.H., the Legal Aid Institute lawyer who this year received the Adam Malik Award for Human Rights, remains committed to the opinion he held six years ago as the spokesman for the campaign of the Hati group. "I will never back down from the position that it is not appropriate for us to retain the death penalty. The death penalty is a degrading form of punishment. Moreover, the death penalty used as shock therapy has no lasting effect. The effect very much depends on the situation. And I still believe that only God has the right to take another person's life," said the lawyer who is director of the Legal Aid Institute. "When a person commits a crime, it doesn't mean that any good potential he has in himself disappears. I think life imprisonment
should be the heaviest penalty. Maybe Alcatraz Prison is an appropriate model for the most serious offenders."

The imposition of sanctions or punishments must conform to values of justice which represent the ultimate objective of the legal structure. According to Sarjono Soekanto and Purnadi Purbacaraka, both professors at the University of Indonesia Law Faculty, justice is one value which represents the point of harmony between the certainty of law and the relativeness of law. Does the death penalty fulfill the values of justice, and for what kind of wrongdoing is the punishment of the death penalty appropriate?

"Only very serious crimes," says Professor Oemar Senoadji. "Like hijacking, terrorism, premeditated murder, narcotics, and the like. But no matter how much we speak of the interests of the state, the boundaries of what constitutes a serious crime are blurred. For example, the primary issue in Malaysia is the abuse of narcotics and the frequency with which drug dealers force the state to take extremely harsh measures."

And we can link this to the fundamental question of whether human beings have the right to take the life of another human being, even if they are given the authority to do so. The first phrase of every court decision, "for justice based on a belief in one God" truly has a very deep meaning. In its connection to the theory of the objectives behind sentencing, there arises another area of conflict between supporters and opponents of the death penalty.

Although the debate is not as sharp as it has been in the past, the debate over the death penalty continues. Divided into two opposite poles, they will never meet because they have different perspectives and different interests even though both are based on the principles of humanity and justice. Maybe we need to recall the old adage which says that whenever two lawyers meet, there are three opinions: each others', and the agreement to disagree.