

Index: 21/3220/2016

Mr. Luhut Panjaitan,
Coordinating Minister for Politics, Law and Security Affairs
Coordinating Ministry for Politics, Law and Security Affairs
Jl. Merdeka Barat No. 15,
Jakarta Pusat 10110
Indonesia

18 January 2016

Dear Minister,

Indonesia's authorities must end executions and abolish the death penalty

We are writing to you on the issue of the application of the death penalty in Indonesia. It has been a year since your administration resumed executions in Indonesia on 18 January 2015, after a four year hiatus, despite strong protests from human rights organizations and the international community.

Our organizations are concerned despite your public announcement in November 2015 that Indonesia government would suspend any executions in near future¹ the Attorney General has recently announced² that further executions will be carried out in 2016. As there continues to be serious concerns about violations of fair trial and other human rights in the use of the death penalty in Indonesia we ask for your immediate intervention to address these issues. In particular, we urge you to ensure all death sentences are reviewed by an independent and impartial body, with a view to their commutation.

Research findings by the National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia*, Komnas HAM)³ and additional independent research carried out by Amnesty International,⁴ ICJR (Institute for Criminal Justice Reform)⁵, and other human rights organizations,

¹ BBC, "Indonesia announces temporary halt to executions", 19 November 2015, available at <http://www.bbc.co.uk/news/world-asia-34867235>.

² Jakarta Post, "More drug convicts to be executed next year", 23 December 2015, available at <http://www.thejakartapost.com/news/2015/12/23/more-drug-convicts-be-executed-next-year.html#sthash.roUDe3yX.dpuf>.

³ 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 (North Sumatra, West Sumatra, Riau, Jambi, South Sumatra, Banten, Jakarta, West Java, Central Java, East Java, West Kalimantan, Bali and East Nusa Tenggara), 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.

⁴ 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/>.

⁵ Institute for Criminal Justice Reform (ICJR), Overview on Death Penalty in Indonesia, 2015, available at:

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 cases⁶:

- Defendants in the cases under analysis did not have access to legal counsel from the time of arrest and at different stages of their trial and appeals; they were subjected to ill-treatment while in police custody to make them “confess” to their alleged crimes or sign police investigation reports.
- Prisoners were brought before a judge for the first time when their trials began, months after their arrest.
- In several cases involving foreign nationals, particularly those convicted of drug-related offences, the authorities failed to correctly identify or verify the identity of the prisoner and notify relevant country representations of the arrest. The authorities also failed to provide translation and interpretation to those prisoners who could not understand Bahasa, whether they were foreigners or Indonesian nationals.
- The death penalty continued to be used extensively for drug-related offences, even though these offences do not meet the threshold of the “most serious crimes”, 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, pending its abolition.

In addition, despite the clear prohibition under international law concerning the use of the death penalty against persons who were below 18 years of age or have a mental or intellectual disability, credible claims put forward by prisoners in relation to their age and mental illness were not adequately investigated by the authorities and have resulted in the unlawful imposition of the death penalty and, in at least one case, execution. While Indonesian law requires that all births be registered, in practice many people do not undergo this process, making the determination of one’s age particularly challenging. This, coupled with a lack of legal assistance, increases the risk that persons who were below 18 when the crime was committed are exposed to the death penalty. Additionally, defendants and prisoners are not regularly and independently assessed, which can result in mental disabilities remaining undiagnosed and prisoners not being afforded the care and treatment they might need.

Research findings also show that in some cases prisoners 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. Furthermore, the execution of some death row prisoners went ahead even though the Indonesian courts had accepted to hear their appeals. The announcement by President Joko Widodo in December 2014 and February 2015 that he would not grant clemency to any individuals convicted of and sentenced to death for drug-related crimes and information relating to some clemency rejections cast doubts on the meaningful exercise of the President’s constitutional power to grant clemency and the country’s compliance with the ICCPR.

As of today, 140 countries are abolitionist in law or practice. Three more countries – Fiji, Madagascar and Suriname- became abolitionist for all crimes in 2015 alone and the Parliament of

<http://icjr.or.id/data/wp-content/uploads/2015/06/Overview-on-Death-Penalty-in-Indonesia.pdf>.

⁶ Among other standards, the UN Safeguards guaranteeing protection of the rights of those facing the death penalty, Approved by Economic and Social Council resolution 1984/50 of 25 May 1984.

Mongolia adopted a new Criminal Code at the end of last year, removing the death penalty as possible form of punishment under the laws of the country. The resumption of executions in Indonesia have not only set the country against its international obligations, but also against the global trend towards abolition of the ultimate cruel, inhuman and degrading punishment.

Our organizations reiterate our calls on the government of Indonesia to establish a moratorium on executions as a first step towards abolition of the death penalty. Pending full abolition, we urge you to immediately 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 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.

This letter is co-signed by the following organizations:

Amnesty International

Elsam (Institute for Policy Research and Advocacy)

HRWG (Human Rights Working Group)

ICJR (Institute for Criminal Justice Reform)

Imparsial (the Indonesian Human Rights Monitor)

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

LBH Masyarakat (Community Legal Aid Institute)

Migrant Care

PKNI (Indonesian Drug User Network)

YLBHI (Indonesia Legal Aid Foundation)