

# Suspension of the Death Penalty Execution to Anticipate Adverse Effect of Miscarriage of Justice in Indonesia

Widodo

Professor, Lecture in The Criminal Law of Universitas Wisnuwardhana of Malang, East Java, Indonesia

## Abstract

The purpose of writing this article is to find the basis of juridical and empirical justification about the necessary of suspending the execution of the death penalty to anticipate the bad effect of miscarriage of justice, and to find the form of legal product used to regulate the provision of a minimum period of suspension in the execution of a the death penalty. The meaning of postponing the execution of the death penalty is the granting of a certain period of time by the state to a death penalty of murder perpetrator before undergoing execution to avoid execution errors due to a miscarriage of justice practice. The miscarriage of justice is the justice process in which there are procedural errors and/or misappropriation of the law resulting in the imposition of a criminal to a person not a perpetrator of criminal. The reasons for justifying the suspension of the execution of death penalty are: (a) juridical justification, namely the implementation of the Constitutional Court of The Indonesia Republic in order to the death penalty to conduct Judicial Review more than once for the achievement of material justice because justice is more important than legal certainty; (b) empirical justification, ie (1) To Anticipate to the execution error for the death penalty who is tried by a miscarriage of justice; (2) the win-win solution between the group that wants to stop the execution of death penalty with a group that wants the acceleration of the execution of the death convict ,(3) the provision of support to the Government of Indonesia Republic so that if the death penalty is considered fair, it will not hesitate in executing the death penalty, but if in doubt of the death penalty then it is necessary to immediately cancel the death penalty by granting clemency. The legal product that can be used to regulate suspension of the execution of death is the Presidential Regulation, as it is in accordance with the Prosecutor's Office of Indonesia Republic (as the holder of the execution authority of death penalty in Indonesia), is the executive authority of the President's subordinate who are obliged to submit to the president's order. Based on the provision of the Regulation of President, the Attorney General will surely postpone the execution of the death penalty. The time span for the suspension of the execution of the death penalty is 5 years from the date of the issuance of a court decision that already has permanent legal force.

**Keywords:** Execution, Death Penalty, Miscarriage of Justice

## 1. Introduction

The death penalty is a type of criminal since the formation of the state of Indonesia until now. In fact, the death penalty has been occurred in centuries before the colonial era<sup>1</sup>, for example in Aceh, Toraja, Timor, Bali, Java. All the execution process of death penalty are done cruelly<sup>2</sup>. There are 9 types of crimes that are threatened with the death penalty in the Criminal Code of Indonesia, one of which is a criminal act of voluntary manslaughter<sup>3</sup>. In China and several countries outside Indonesia, the death penalty is also threatened against the perpetrator of a criminal act of murder<sup>4</sup>. Since 1945, Indonesia Court has imposed the death penalty on hundreds of defendants, and between 1979 and 2015 there had been 26 murderers executed dead<sup>5</sup>, but still 65 murderers are waiting for execution<sup>6</sup>.

The goal of Indonesia criminal justice system is to find out the truth of material, i.e the complete truth of a criminal case. The method is to apply the legal provisions honestly and correctly so that it is found to look for who the perpetrator can be indicted for a violation of the law, and subsequently requested an examination and court decision to determine whether a criminal act has been committed and whether the accused person can be blamed. If one of the personnel of a criminal law enforcement agency makes a mistake in the procedure or misappropriation of the law, then the material truth is not found. Moreover, if an error occurs at the level of investigation by the police, it will have an impact on the guiltiness of a prosecutor's prosecution, the examination of cases in meeting by the judge, as a result it causes the determination of criminal for the criminal offender. This kind of cases can be called a miscarriage of justice. The meaning of miscarriage of justice term can be paralleled by the term miscarriage of justice, ie mistakes made in court that result in innocent person is

<sup>1</sup> Tina Asmarawati, *The Death Penalty and Its Problems in Indonesia*, Deepublish, Sleman-Yogyakarta, 2013, hlm. 5

<sup>2</sup> J.E. Sahetapy, *op.cit.*, 1982, p. 243-244.

<sup>3</sup> Andi Hamzah. *The Basis of Criminal-law Procedural Code*. Ghalia Indonesia, Jakarta, 1986, p. 26

<sup>4</sup> Andi Hamzah dan A. Sumangelipu, *The Death Penalty in Indonesia in The Past Time, Nowadays, and the Future*. Ghalia Indonesia, jakarta, 1985 hlm. 79.

<sup>5</sup> *The Day of Anti-The Capital Punishment: The State Shoot to die 79 The Death Convicted since 1979*. <http://www.cnnindonesia.com>

<sup>6</sup> *Amnesty International of Broadcast News*, October 15<sup>th</sup>, 2015, <https://www.amnesty.org>

Convict<sup>1</sup>. The miscarriage of justice also refers to a wrong or unfair or incorrect act of law or judgment, especially in convicting a person for a crime which he/she does not commit<sup>2</sup>, and the defendant is sentenced even though there is no strong evidence of the crime charged<sup>3</sup>.

The conception of miscarriage of judicial term is a term which Open interpretation, both in defining and applying<sup>4</sup>, But in this article the author determined the definition that the meaning of "miscarriage of justice is a criminal judicial procedure that contains elements of the error of procedural and / or misappropriation of the provisions of the law causing a decision of court that imposed a criminal against the defendant, Then after the convict has filed a review effort, the Supreme Court rules that based on new evidence submitted, the prisoner is free because he/she is not a criminal offender.

In the history of human civilization, the miscarriage of justice is always happening<sup>5</sup>. In Indonesia, there is often miscarriage of justice, one of the causes is the arrogance and the nature of militaristic of the law enforcers, especially the Police of Indonesia Republic at the time of investigation of criminal cases<sup>6</sup>. Based on the documentation study on the court's decision in Indonesia, there were at least 6 defendants who have been convicted of criminal murder and then the Convict person has been sentenced to imprisonment. However, after the new evidence was tested by the Supreme Court through the effort of Judicial Review, the Convict was not the murderer, the Convict Sengkon and Karta, Risman Lakoro and Rostin Mahaji, Imam Hambali and David. In the case of the death penalty to Tibo and his friends, the team of advocate had accused the judge had applied a miscarriage of justice because the defendants were innocent in the case of the riot in Poso<sup>7</sup>. The miscarriage of justice also occurred in the United States with an amount of between 2.3% to 5% of prisoners<sup>8</sup>.

In some countries are in the outside Indonesia had been a crime of execution of death penalty, and the death penalty were not the perpetrators of crime, for example in the case of Chiang Kuo-ching got the death convicted for murder. However, in September 2011, the Taiwan Justice Ministry announced that there was a mistake for Chiang Kuo-ching's death convicted in 1997 because of the decision of a military court that Chiang Kuo-ching was not guilty

In the legal perspective, in order to anticipate the occurrence of the bad impact of the miscarriage of justice on the death penalty in the form of guiltiness of the execution, there should be a legal provision which regulate the minimum time of postponing the execution of death penalty so that the Convict may file a Judicial Review of several judicial decision. The suspension is crucial for the protection of human rights (both Convict and public) as it allows all parties to rethink and seek new evidence to change the death penalty, and ensure that the verdict on imposing a death penalty is fair.

Based on the idea, the writing of this article is aimed at finding the basis of juridical and empirical justification about the necessary of postponing the execution of death penalty to anticipate the bad effect of miscarriage of justice, and finding the form of legal product used to regulate the minimum time stipulation of the execution of death penalty. The results of the study can be utilized by the Indonesian government as one of the basic considerations of the establishment of legal norms regarding the suspension of the execution of the death penalty.

## 2. Theoretical Framework

The right to life is the basic human right for every human being in Indonesia, so it is natural that everyone is given the opportunity by the state to preserve alive and living. However, the human right in Indonesia is not absolute because it can be restricted by the act, including the right to life. Therefore, the existence of death penalty in Indonesia does not violate the human right, because if a person is Convict with the death penalty, then surely the crime committed has violated human right is very seriously.<sup>9</sup> Consequently, the state through its organs may limit the human right, but if the state will limit the human right to human rights it must be with the legitimate act, and if the state will convict the death penalty to a person, it must be done through an honest criminal process so that material justice reflects.

<sup>1</sup> <https://www.merriam-webster.com>

<sup>2</sup> Miscarriage of Justice Law and Legal Definition, <https://definitions.uslegal.com>

<sup>3</sup> Bryan A. Genner, Black's Law Dictionary, West Publishing Company, 2004, p. 811

<sup>4</sup> Hugo Adam Bedau and Michael L. Radelet, *Miscarriages of Justice in Potentially Capital Cases*, Stanford Law Review, Vol. 40, No. 1 (Nov., 1987), pp. 21-179, P. 39.

<sup>5</sup> Adnan Buyung Nasution, Ramadhan Karta Hadimadja, Nina Pane Budiarto, *The Association Without Stopping*, Aksara Karunia, Jakarta, 2004, p. 359

<sup>6</sup> Nur Muhammad Wahyu Kuncoro, *69 The Law Cases Shake Indonesia*, Raih Asa Sukses, Jakarta, 2012, p. 47

<sup>7</sup> M. Tito Karnavian, dkk. *Indonesian Top Secret: Dismantle the Conflict of Poso*, Gramedia Pustaka Utama, Jakarta, 2008, p. 221

<sup>8</sup> Na Jiang, *Wrongful Convictions in China: Comparative and Empirical Perspectives*, Springer-Verlag, Berlin Heidelberg, 2016, p. 27

<sup>9</sup> Muladi file The Conditional Death Penalty, Monday, February 17, 2003, <http://www.suaramerdeka.com>

The death penalty is the most controversial type so that in convicting it must be done with thrifty, meticulous, careful, humane, and used only as a last method, imposed on the extraordinary offender of criminal<sup>1</sup>, including the offender of voluntary manslaughter, ie someone who deliberately lose the soul of someone and with a planned first<sup>2</sup>. The process of execution of the death penalty in detail in the Act and Regulation of the Chief of Police of Indonesia Republic, i.e it is done by shot not in public by the shooter team to death. The definition of pass away is a condition of the disappearance of signs of life, arrest stop, and breathing stop by saying of a doctor<sup>3</sup>.

The verdict of the death penalty must be passed through an honest criminal procedure by professional law enforcer to ensure the rights of the convicted person are met. However, the fact that the verdict of the death penalty which already has a permanent legal force does not always guarantee justice for all parties. The incorrect many executions of death penalty outside Indonesia caused by a miscarriage of justice, namely the process of imposing a death penalty on a person, even though the person is not a criminal offender. According to Adami Chazawi, the definition of a miscarriage of justice is an activity tried by the court by examining the case and the defendant, but the process contains the elements which are incorrect, such as the fault of procedural, applying the rule of law so that the court's decision harms the defendant<sup>4</sup>. Radically, in the act of criminal procedure of Indonesian, there is no term "miscarriage of justice." The only editorial that the author used as consideration of mention of miscarriage of justice is "a real mistake" as the content of Article 263 section (2) letter c of the Criminal Law Procedural Code, Which provides that a Judicial Review may be presented by a convict if "there is one reason for filing a Judicial Review, that is, if the verdict clearly shows a judge's mistake or "a real mistake".

Many negative responses from the public, experts and human right advocate in the criminal justice process are committed against death convicted, and they want a moratorium on the execution of death penalty. The reason they disagree with the execution of convicts is that many of the death penalty resulting from the miscarriage of criminal justice, with an indicator of dishonest proceedings, the absence of advocate of convict prisoner from the beginning, and lack of the professional law enforcement. However, many also the parties want the execution of the death penalty immediately carried out by the state because the criminal type as one solution to solve the crime of heavy category and to create the nine for all. Eliminating death penalty in Indonesia is not necessarily correct, executing death convicted without caution is very dangerous because if the criminal is used carelessly and forcibly it will become the main threat to human freedom<sup>5</sup>.

Based on the Criminal Law Procedural Code, in relation to the final attempt of death convicted to examine the truth of the contents of the decision of the court that has been enforced by law firmly regulated in the Indonesian criminal procedure act, namely the Judicial Review. While the legal effort is in the form of clemency granted by President, it is not an attempt to examine the content of the judgment of court, but it is only the attempt of the death convicted to ask forgiveness of the president to be criminally excused or lightened because the death convicted has pleaded to guilty

Based on two contradictory opinions concerning the importance of carrying out the execution of death penalty immediately and terminate the execution of death penalty, the legal side is needed win-win solution, namely the suspension of the execution of death Convict within a certain period of time through legal norms. This function of suspension is to allow for the death convicted to find new evidence that can be used as a basis for changing the types of the death penalty through Judicial Review. Based on the norm, the state (in this case the government) will be able to ensure that the criminal justice has been done honestly, all legal efforts of the death penalty has been passed, so if there is the execution of the death penalty, the Convict will not become the victim of a miscarriage of justice. The author's idea is in relevant with the purpose of the state, which is to protect the entire nation of Indonesia, and the content of the Constitutional Court of the Indonesia Republic, namely the right of the Convict to propose Judicial Review more than once, and the purpose of criminal case is to find material truth. If the state does not give sufficient time and the death Convict is executed when a miscarriage of justice is found, it will have an adverse effect, for example: the death convict (for losing their right to life arbitrarily by the state), for the families of death convict (for losing loved family member), for the state (because it will reduce trust and dignity in the face of national and international society), the law enforcement (the professionalism of law enforcement is doubtful), and for the society of Indonesia (creating fear and disharmony).

In order to ensure legal certainty for the suspension of the execution of death penalty, legally required legal product, namely legislation. A form of legislation in Indonesia has been regulated in a standard manner,

<sup>1</sup> Barda Nawawi Arief. 1994. *The Policy of Legislative: in Preventing a Crimes by Criminal Law*, the agency of Publishing of Diponegoro University, Semarang, 1994, p. 221

<sup>2</sup> R. Soesilo, *The Penal Code*

<sup>3</sup> The Regulation of The Chief of Police of Indonesia Republic Number. 2 in 2012 Article 1 number 4

<sup>4</sup> <http://adamichazawi.blogspot.co.id>

<sup>5</sup> Herbert L. Packer *The Limits of the Criminal Sanction*, Stanford University Press, Stanford California, 1968, p.366

including the content of the material and its respective hierarchy. In order that the provisions of the legislation to be established have the binding power, it must be made by the competent authorities, made on the basis of the drafting technique of the legislation, the provision regulated shall not exceed the authority possessed by the legislator, and its contents are not contradictory to regulation that are hierarchically present on the product of law made, and the principle is not contradictory to the values of Pancasila.

### 3. Research Method

This study is a doctrinal legal research, which examined the urgency of issuing product of legal (ie President Regulation) based on the provision of other legal product (the Constitution in 1945, Act, Constitutional Court Decision, Supreme Court Decision, and District Court Decision). The legislation approach is used to examine the problems. The legal substances used are primary legal materials (ie Article 28 of the Constitution in 1945, Article 10 of the Criminal Law Procedural Code, Article 263 of the Criminal Law Procedural Code, Article 2 of the Office of Public Prosecutor Act, Article 5 of Law on the Establishment of Legislation), secondary law materials (explanation of Article 263 of Criminal Law Procedural Code), the material of legal tertiary (Decision of the Constitutional Court, Supreme Court, and District Court). The Legal material is analyzed with deductive and comparative thinking techniques.

#### a. General Description of Threat of Death Penalty, Death Convict, and Execution of Death Convict In Indonesia

The number of death Convict in murder cases in Indonesia is the most second sequence after the death Convict in narcotics and psychotropic cases. Based on the recapitulation of the Attorney General of the Indonesia Republic, in 2012 the number of death Convict awaiting execution is 133 people, 60 of them murderers<sup>1</sup>. In 2015, there were 121 death Convicts waited to be executed prison, 65 of them murderers<sup>2</sup>, so in just 3 years the number of death Convict of murder actor increased 5 people. The age of death Convict is the most between 21-30 years<sup>3</sup>, 71.74% of them were Indonesia citizens<sup>4</sup>, and the male majority (86.96%)<sup>5</sup>. During waiting and in near of death execution, the convicts in Indonesia is held in Penitentiary Institution or jail<sup>6</sup>, and they have not received adequate mental and mental guidance<sup>7</sup>. The perpetrators of murder in Indonesia were executed by being shot by firing squads to death, not in public. Since 2013 there has been an increase in the number of execution in Indonesia so that it is ranked 5<sup>th</sup> in the world after China, Iran, Iraq, Saudi Arabia and the United States<sup>8</sup>.

#### b. The Fact and Opportunities Happen the Miscarriage of Justice to the Suspect of Criminal Murder in Indonesia

Referring to the definition of miscarriage of judiciary is the judicial process by a court that contains elements of procedural error and / or misappropriation of the rule of law so that the defendant who has been sentenced to criminal is not the offender charged, Then the indicator of miscarriage of justice is a mistake of conviction, then the convict is released by the Supreme Court through the decision of Judicial Review. The Judicial Review is based on new evidence that could prove the convict is not the perpetrator of a crime of murder. Based on the indicator, then factually at least 6 people who become victims of a miscarriage of justice in Indonesia, as follows.

- (1) Sengkon and Karta. Based on the Decision of Bekasi District Court (West Java Province) No. : 2 / KTS / Bks / 1977 October 20, 1977, Sengkon was sentenced to 12 years imprisonment and sentenced to 7 years in jail for both of them were proven to be perpetrators criminal act of theft and murder to Sulaiman and Siti Haya. But after both of them have been imprisoned in Correctional Institution for 5 years, it was revealed that the actor of robbery and murder of Sulaiman and Siti Haya are not Sengkon and Karta, but General. After it was tried, Genul was sentenced to 12 years in jail for committing a crime as charged to Sengkon and Karta. Based on the Judicial Review, Sengkon and Karta are declared free<sup>9</sup>.
- (2) Risman Lakoro and Rostin Mahaji. Based on the Decision of District Court of Tilamuta (Gorontalo Province) in 2002, Risman Lakoro and Rostin Mahaji were sentenced to 3 years imprisonment for being legally and convincingly murdered Alta Lakoro (Convict child). However, after the convict finished undergoing prison sentence in The Correctional Institution of Gorontalo, on June 26, 2007, in the fact that

<sup>1</sup> <http://www.kejaksaan.go.id>, accessed May 3, 2013, at 09.00 the time of West Indonesia

<sup>2</sup> Amnesty International, Broadcast News, October 15, 2015, <https://www.amnesty.org>

<sup>3</sup> Supriyadi W. Eddyono, Erasmus A.T. Napitupulu, Yonatan Iskandar Chandra. Media Briefing 1/2015 "On Behalf Justice based on The One Divinity ...". The Picture (Potret) of The Capital Punishment in The Criminal Justice Peradilan ( the study for 42 Decisions of Court) Institute for Criminal Justice Reform, 2015, Jakarta, Hlm. 7

<sup>4</sup> Ibid., p. 8

<sup>5</sup> Ibid., p. 9

<sup>6</sup> Widodo, *Capita-Selecta apita of Criminal*, Kertagama Publishing, Jakarta, 2007, p. 57.

<sup>7</sup> Amir Hasan Ramli

<sup>8</sup> <http://hukumanmati.web.id>

<sup>9</sup> *Remembering Karta Sengkon is a Forerunner of Judicial Review*, <http://www.kompasiana.com>



- Alta Lakoro did not die<sup>1</sup>. The investigator of the murder case did not do the examination the victim's body by the installation of forensic medicine (visum et repertum)<sup>2</sup>.
- (3) Imam Chambali and Devid Eko Priyanto. Jombang District Court (East Java Province) Number 48 / Pid.B / 2008 / PN JMB April 17, 2008, imposed a jail sentence to Imam Chambali (17 years); the Decision of District Court of Jombang Number 49 / Pid.B / 2008 / PN JMB dated April 17, 2008 that sentenced imprisonment for 12-year to Devid Eko Priyanto, as both legally proven and committing a criminal of murder (article 340 related to 55 (1) 1st of Penal Code and article 338 related to 55 verse (1) 1st of Penal Code) to victim M. Asrori. The Judicial Review which was granted by the Supreme Court with the Decision of Supreme Court Number 89 PK / PID / 2008 and Number 90 PK / PID / 2008 December 3, 2008, freed Imam Chambali and Devid Eko Priyanto. The Judicial Review was based on new evidence proving that the perpetrator of the murder of M. Asrori is Ferry Idham Henryansyah, and it turns out the corpse victimized in the trial of Imam Chambali and Devid Eko Priyanto is Fauzan Suyanto, not M. Asrori as mentioned in the indictment.

The effect of a miscarriage of justice, the six persons have violated their basic rights, namely the right to freedom of movement because all the convicts have been in detention or criminal time in Correctional Institution.

In Indonesia, there has not been the execution of death row inmates because of a miscarriage of justice, but there is a chance of a victim of a miscarriage of judicial victim against a death row inmates. The opportunity is due to (a) the defendant is not accompanied by an advocate adequately at the initial phase of the investigation, (b) the defendant is unable to pay advocate service so that it is only accompanied by a free advocate provided by the state

Some detainees have no access to advocates or are not adequately accompanied by advocates at various levels of litigation<sup>3</sup>. Of the 42 decision of death penalty, there were 7 decisions that turn out the death inmates were not accompanied by an advocate, and generally, the absence of accompaniment of advocate actually occurred at the level of investigation and prosecution, even though the period is the most important stage for an advocate to conduct the defense process<sup>4</sup>. In 2003, the death inmate, A Yam, and Jun Hao were not accompanied by an advocate<sup>5</sup>, whereas the defendant threatened with the death penalty for a professional advocate plays an important role in ensuring that the defendant has been tried under an honest judicial system and that all his/her rights are properly met. Furthermore, of 42 verdicts, there were 11 decisions unknown whether the death Convict accompanied by an advocate or not accompanied.<sup>6</sup>

The opportunity for the occurrence of the a miscarriage of justice in the process of imposing the death penalty is greater because although normatively in Indonesia there is a chance for death inmate to file a judicial review, but not all convicts can perform properly, especially they who are poor because they can not afford the services of advocates. Indeed, Indonesian law regulates the free provision of an advocate for each person threatened with the death penalty, but whether the qualification of an advocate is adequate. As a flashback, it turns out that in two decisions of death penalty that were tried in the District Court of Gunung Sitoli (ie Decision Number 07/Pid.B/2013/PN-GS, for death Convict named Rusula Hia, and Decision Number 08 / Pid.B/2013/PN-GS with death row inmate named Yusman Telaum Banua), it turns out that their advocates did not defend or seek the fulfillment of their rights that were threatened with death penalty, but instead requesting the judges to have their clients sentenced to death<sup>7</sup>.

### **c. The Juridis and Empirical Justification Regarding Urgency of Suspension of the Death Convict for an Actor of Homicide**

Referring to the fact in some countries about the execution of death penalty against a person who are not actually the perpetrators of criminal because in making the decision there is a miscarriage of judicial element, and based on the fact that in Indonesia there were Convict murder cases that also contain elements of miscarriage of justice, and the possibility of a miscarriage of justice in prosecuting death convict, in order of murderer, then to anticipate the worst risks (ie the wrong execution of death convict) the author supposed that necessary the policy of suspension of execution of the death Convict in Indonesia to ensure that all death row inmates have been processed through an honest trial.

<sup>1</sup> *Tragegy "Sengkon-Karta" Gorontalo, The Bad Gift for The Birthday of Bhayangkara, July 10, 2007* <http://www.antaranews.com>

<sup>2</sup> *The Misguided Justice, Revision of Criminal-Law Procedural Code Answered*, <http://www.hukumonline.com/>

<sup>3</sup> *The Misguided Justice, the judicature is not Fair and The Capital Punishment in Indonesia*, Amnesty International Ltd Peter Benenson House 1 Easton Street London WC1X 0DW United Kingdom © Amnesty International 2015, p. 63

<sup>4</sup> *Ibid.*

<sup>5</sup> A Yam is The death Convicted returned directly to Nusakambangan, <http://batam.tribunnews.com>

<sup>6</sup> *The Misguided Justice, the judicature is not Fair and The Capital Punishment in Indonesia*, Amnesty International Ltd Peter Benenson House 1 Easton Street London WC1X 0DW United Kingdom © Amnesty International 2015, p. 19

<sup>7</sup> p.12

The meaning of postponing the execution of death row inmates is the granting of a certain period of time by the state to the death-row inmates before the execution. The span of time is 5 years from the date of a court decision which already has permanent legal force. During the period of suspension of the execution of the death convict, the judge shall ensure that the death convict remains in prison and receive proper treatment as a prisoner in accordance with the regulations. If within 5 years there are no exceptional judicial decisions that can change the sentence of death, then the death sentence can be executed by the attorney. Therefore, it is understandable that the policy of postponing the execution of death convict in this context does not mean to change the type of death penalty to another type of crime, such as life imprisonment or 20 years, but only suspension the execution and if it has fulfilled a certain time the convict can be executed.

The reason of justification that the author uses in the idea of postponing the execution of death convicts is as follows.

### **(1) Juridical Justification**

The suspension of the execution of death Convict is the implementation of the decision of the Constitutional Court of the Republic of Indonesia to allow death inmate to review more than once for the achievement of material justice. Based on the Decision of the Constitutional Court of the Republic of Indonesia Number 34 / PUU-XI / 2013, each prisoner may execute effort a judicial review more than once. This decision also applies to the death convict as mentioned in the decision of the Constitutional Court is "every convicted person", whereas the death Convict belongs to the category of the convicted person. The requirement of submission of Judicial Review is if the Convict person has new evidence that has not been disclosed in court

The submission of the Judicial Review is more than once based on the consideration that the extraordinary legal in form of Judicial review historically-philosophical is a legal remedy that was born to protect the interests of the convicted person in order to find justice and material truth, so that his discovery of justice can not be limited by time or formalities as stipulated in Criminal-Law Procedural Code that can only be submitted once. It is possible that after the Convict submits Judicial Review and rejected, then a substantial new situation ( the new evidence) is found so that can be used submission of the next Judicial Review. The Constitutional Court also argues that justice is a very basic human need and more fundamental than legal certainty. Institutionally, the existence of the Constitutional Court in making such decisions is unquestionable because its existence is regulated by the Constitution, and its operation is regulated by act so that the decision is final and binding, and the Constitutional Court is a 'court of law', which function to judge the legal system and justice system<sup>1</sup>.

However, after a decision of the Constitutional Court which provides the opportunity for the convict to conduct a judicial review more than once, the Supreme Court of the Republic of Indonesia issued a circular of the Supreme Court of the Republic of Indonesia Number 7 in 2014 concerning Submission of a Judicial Review in Criminal Case, its content affirm that Judicial Review only be submitted once.

Based on the two provisions, the Judges of Supreme Court Justice who entered the Pina's room held a plenary meeting in 2015 and agreed that the Judicial Review can be executed 2 times. This agreement was made so that there was certainty that Judicial Review was not only done once (because it can ignore justice), and Judicial Review more than 1 time (because it does not contain legal certainty)<sup>2</sup>.

Based on the Constitutional Court's Decision and the content of agreement of the Judge of the Criminal Chamber, the author acknowledged that Judicial Review of the death Convict may be submitted twice, but it has not been regulated at the last time of the Judicial Review. In the provision of criminal law in Indonesia has not been regulated when the second time of Judicial Review, whether the Judicial Review should be done before the request for a clemency or after a clemency application. The provisions that exist, the Judicial Review must be done before the petition for clemency, while the longest clemency is done within 1 year from the date of the verdict which already has a permanent legal force (Article 7 section (2) of Act Number 5 in 2010).

### **(2) Empirical Justification**

#### **(a) The Suspension of the Execution of the Death Convict to Anticipate Occurrence the Erroneous execution of the Death Convict**

Based on data in the United States, although the criminal justice system is relatively good, in the period between 1900 to 1987 there were 23 people sentenced to death and already executed when there was a mistake in the imposition of the death penalty (miscarriage of justice)<sup>3</sup>. According to Amnesty International, in the United States since 1977 at least 23 innocent people have been executed<sup>4</sup>. Based on the results of Bharat Malkani's research, since 1976, 1,348 people had been executed in death penalty in the United States, but there were 136 people had been released by the court from the death penalty because it was evident that they were not the

<sup>1</sup> Jimly Asshiddiqie, *the position of constitutional court in the state structure in Indonesia*. <http://www.jimlyschool.com>

<sup>2</sup> *The judicial Review can be carried out two times in the conditional time*, <http://www.gresnews.com>

<sup>3</sup> *Controversion Of The Capital Punishment for a Corruptor*, [www.koran.tempo.co](http://www.koran.tempo.co)

<sup>4</sup> Fatal Flaws: Innocence And The Death Penalty In The Usa, Amnesty International November 1998, <https://www.amnesty.org/>, p. 5.

perpetrators of crimes that caused them to be sentenced to the death penalty<sup>1</sup>

The Victims of a miscarriage of justice that had been executed of the death penalty because of murder cases among others as follows. Timothy Evans was executed in 1950 for murder cases, but in 1966 it was revealed that the murderer was John Reginald Halliday Christie, then the name Evans was rehabilitated. Mahmood Hussein Mattan was executed in 1952 in a murder case, but in 1998 the Court of Appeals claimed the case was legally flawed, and the good name of Mahmood Hussein Mattan was rehabilitated and his family was compensated for 725,000 Pounds, Sterling<sup>2</sup>. In cases of corruption, among others on April 21, 1998, Supreme Court of Uzbekistan forgone the verdict to Vakhobzhan Usmanov, when he had been executed in 1986 on a charge of corruption. A number of countries that still impose the death penalty, and then release several death row inmates for being criticized for the possibility of miscarriage of justice that resulting in the erroneous decision, including the Philippine, Malaysia, Belize, China, Pakistan, Trinidad and Tobago, Malawi, Turkey, and Japan, including the United States<sup>3</sup>.

The United Nations of the survey in 1988 and 2002 concluded that the parties need to be cautious in accepting the hypothesis that the death penalty can reduce the crime of murder more effectively than a lifetime imprisonment. According to Amnesty International, the death penalty in Indonesia has many weaknesses due to lack of access to an advocate who accompany defendant at every phase of the judiciary, lack of access to translators; and the occurrence of suspect torture. In some cases, there has been no application of fair justice in the criminal justice process<sup>4</sup>.

**(b) The suspension of the Execution of Death Convict is a Compromise to Mediate Opinion Which Wants Termination of Convict Execution with the parties Requiring Accelerated Execution of the Death Convict**

The majority of Commissioners of the National Commission on Human Rights in 2013 rejected the death penalty<sup>5</sup>. The National Alliance of Penal Code Reform along with the contra of the death penalty Coalition urged President Joko Widodo to abolish the death penalty in Indonesia,<sup>6</sup> because there is still an indication of a miscarriage of justice.<sup>7</sup> According to ICJR, there were 11 of 42 cases indicated by torture and intimidation from law enforcement officer to suspects or witnesses in order to facilitate proof<sup>8</sup>. of the 42 decisions, there are 11 decisions unknown whether the death row inmate has an advocate or legal aid<sup>9</sup>. Fair principles of justice have not been implemented in Indonesia<sup>10</sup>.

Many the parties also want the death penalty to be carried out because it has long been articulated and considered fair so that Indonesia also opposes three resolutions of United Nation on the abolition of the death penalty<sup>11</sup>. Empirically, based on the results of Indo-Barometer survey in 2015, it turns out that majority of respondents in Indonesia (84.1%) agree with the death penalty<sup>12</sup>. The Theologian Council of Indonesia supported the imposition of death penalty for the certain criminal<sup>13</sup>. Therefore, Indonesia continues to impose the death penalty<sup>14</sup>.

**(c) Suspension of execution of death penalty Convict may provide support to the government not to hesitate in making choices, namely to execute the death Convict or to cancel the death penalty by granting clemency**

The government's doubts in executing the execution of death Convict can be illustrated by the length of the waiting period for death Convict waiting for execution. As an illustration, In 2009, the number of death Convict

<sup>1</sup> Bharat Malkani, *Killing the Innocent: The Death Penalty and Miscarriages of Justice*, <http://www.birmingham.ac.uk>

<sup>2</sup> *KThe Case of the Wrongness of The Death Execution Which Happened*, <http://www.dream.co.id>

<sup>3</sup> **Fatal** Flaws: *Innocence And The Death Penalty In The USA*, Amnesty International November 1998, <https://www.amnesty.org/>, p. 4-5.

<sup>4</sup> Erasmus A.T. Napitupulu dan Anggara, *The Image of Decision of The Death Penalty In Indonesia*, Institute for Criminal Justice Reform, Jakarta, 2016, P.19

<sup>5</sup> *HThe Death Penalty Suitable with the Spirit of Protection The Human Rights*, <http://www.hukumonline.com>

<sup>6</sup> *The Day of The Death Penalty Mati: It is 6 Demands For Jokowi*, <https://beritagar.id>

<sup>7</sup> <http://hukumanmati.web.id>. Open Letter on the Commemoration of Two Years of the Death Execution in President Joko Widodo's Government

<sup>8</sup> Erasmus A.T. Napitupulu dan Anggara, op.cit. p. 11

<sup>9</sup> *Ibid.*, p.19

<sup>10</sup> Erasmus A.T. Napitupulu dan Anggara, op.cit. p. 11

<sup>11</sup> *the Deficiency, Unfair Justice and Death Penalty in Indonesia*, Amnesty International Ltd Peter Benenson House 1 Easton Street London WC1X 0DW United Kingdom © Amnesty International 2015, p. 22-23

<sup>12</sup> *The People Agree the Law of the Dead for Drug Traffickers*, <http://www.pikiran-rakyat.com>

<sup>13</sup> *The Practice of Death Penalty in Indonesia*, www. Kontras.org

<sup>14</sup> Saharuddin Daming, *The Configuration of regulation of Abolitionism Versus Retesionism in Discourse of Existence of Dead and Criminal Institutions Dead in Global Levels*, Juornal of National Commission of human rights Vol. 8 Tahun 2012, p. 174

in Indonesia awaiting the execution of 109 people<sup>1</sup>, because the government is hesitant in executing the death penalty<sup>2</sup>, and criminal law of Indonesia has not set about the maximum length of the waiting period for someone waiting for the execution of the death penalty. Many convicts await the death execution for decades at Correctional Institution, for example Bahar bin Matar (died in Correctional Institution after waiting 42 years)<sup>3</sup>, Suryadi (23 years), Thun Tuck Yin (19 years)<sup>4</sup>, Swabuana (22 years old)<sup>5</sup>, Sumiarsih and Sugeng (20 years), Nameona Denis (14 years), Marco Moreira (11 years), Daniel Enemuo (11 years), and Rani Andriani (15 years)<sup>6</sup>. The death Convict who was fastest executed is Tran Thi Bich Hanh (2 years)<sup>7</sup>. During waiting and coming to the execution, the Convict in Indonesia is detained in Correctional Institution<sup>8</sup>. In comparison, it was necessary known that approximately 3,250 the death penalty in the United States are awaiting execution within the Correctional Institution. Of the 34 the states that still impose the death penalty in the United States, at least they were in solitary confinement for 23 hours or more in each day. Of the 52 executed in the United States in 2009, the average waiting duration of the execution was 169 months (over 14 years), and during waiting, they were not allowed to deal directly with members or friends, except at nearly to death execution<sup>9</sup>. In the United States, Brandon Jones waited for 36 years, James Freeman was 7 years<sup>10</sup>.

The waiting time for the death penalty can be used for consideration for the government to immediately execute or change the Death Penalty Type through the President's clemency.

**(d) Perform immediately the Execution of the death penalty**

If the government believes that the death penalty is imposed right on the convict and the suspension period of 5 years has passed, then the government needs to immediately execute. It is based on the following two reasons.

(1) Death Penalty is a Legal Criminal Type in Indonesia

The author's juridical reason is that if the time of suspension is finished then the convict is executed as follows. The right of human life is the most basic human right in Indonesia, can only be limited by Act. Normatively, the death penalty in Indonesia is not contradictory to the Constitution of the Republic of Indonesia in 1945 because according to Article 28 letter J, the human right can be restricted by Act and the provision of the death penalty is regulated in Act, i.e the type of death penalty is regulated in Article 10 of Act Number 1 of (in) 1946 about the Practice of Criminal Law, and the execution of death row inmates based on President's Decision Number 2 of 1964 about Procedure for the implementation of death penalty determined by the Courts in the General and Military Courts envisaged in the Act through Act number 5 of 1969. All criminal acts that are threatened with death penalty shall be regulated in Act.

In addition to the norm, the Constitutional Court of Indonesia, as the only court authorized to examine the contents of the Act against the Constitution, has 3 times confirmed in its verdict that the type and execution of death penalty in Indonesia is not contrary to the Constitution, i.e when testing the lawsuit in 2007 (lawsuit about the legality of death penalty for narcotics crimes), in 2008 (lawsuit about regulating the use of firing squads to execute death Convict), and in 2012 (a lawsuit on the qualification that criminal act of theft by violence that resulted in the dead is not classified as serious crimes whose perpetrator is punished death as regulated in the ICCPR). The Constitutional Court considered that the death penalty is not contradictory to Pancasila and the Constitution of 1945 as well as some international agreements. Its reason is the right to life as regulated in Article 28J section (2) of the Constitution of 1945 is an exception to Article 28A and Article 28I section (1) of the Constitution of 1945. The provision in the Act and the Constitutional Court's decision is the basis of a law that the death penalty is still valid and still retained in Indonesia. In 2017, all fractions of in the Legislative Assembly of Indonesia Republic have agreed to keep the death penalty but its imposition must always be cautious, and the execution is

<sup>1</sup> *The Attorney General's office Wait the Mandate of Supreme Court*, <http://www.seputar-indonesia.com>., Accessed August 21, 2011

<sup>2</sup> The law draft of Criminal Code still Impose The Capital Punishment, *law online*, accessed August 21, 2011.

<sup>3</sup> <http://the.web.id> death penalty

<sup>4</sup> 52 The death convict waits *the execution*, *Radar of Semarang*, accessed September 2, 2008

<sup>5</sup> 52 *The Prisoner wait The Death Execution*, <http://www.kapanlagi.com>, accessed August 21, 2011

<sup>6</sup> 52 The death convict waits *the execution*, *Radar of Semarang*, accessed September 2, 2008

<sup>7</sup> Supriyadi W. Eddyono, *The death Penalty in the draft of Criminal Code: Win-win solution which is doubt*, Jakarta, Institute for Criminal Justice Reform, p. 29

<sup>8</sup> Widodo, *Capita Selecta of the Capital Punishment*, Kertagama Publishing, Jakarta, 2007, p. 57.

<sup>9</sup> *The Death Penalty is a Human Rights Violation: An Examination of the Death Penalty in the U.S. from a Human Rights Perspective*, Center for Constitutional Rights, 666 Broadway, 7th Floor, New York, NY 10012 [www.CCRjustice.org](http://www.CCRjustice.org), accessed 12 January 2016.

<sup>10</sup> <http://www.deathpenaltyinfo.org/execution-list-2016>



tightened<sup>1</sup>.

(2) The Death Penalty Has an Effective Crime Prevention Effect

Based on the results of the study, there was a real effect of the death penalty to the eradication of obscenity in some countries. Saudi Arabia, as the state, applies the Islamic crime in which it regulates the death penalty (and the law is enforced) so that the state has a low crime rate. Based on the data of the United Nations Office on Drugs and Crime in 2012, the rate of murder crime in Saudi Arabia was only 1.0 per 100,000,000 people. It is far different from the facts in countries that do not impose the death penalty, eg Finland (2.2 per 100,000,000 people); Belgium (1.7 per 100,000,000 people); And Russia (10.2 per 100,000,000 people)<sup>2</sup>.

(e) Grant Immediately a Clemency to Change the Dead Penalty Type

If the government is hesitant to execute death row convicts, it is better to change immediately the type of death penalty by granting clemency to the President. Based on the results of the research it turns out that if the death Convict waits in prison, that the time is too long, the execution time is unclear, placement in special isolation room, condition of prison is uncomfortable, lack of education and recreation activities, it will result in mental trauma and severe physical suffering of the death penalty.<sup>3</sup>

(3) Regulation of President as A Legal Product Which Can Regulate the Suspension of Execution of the Death Convict is the Shortest During for 5 Years

As with the Attorney General Act, the Attorney General is the executor of the execution of death Convict. Institutionally, the Public Prosecution Service is a government institution, which is also within the domain of executive power<sup>4</sup>, therefore to arrange for the Attorney General to postpone the execution of death Convict, simply by issuing a President's Regulation, because the President of Indonesia Republic is the chief executive power.

Judicially, the Regulation of President can be used quickly to regulate the execution of death row inmates because (a) can be made quickly without waiting for mutual consent with the Legislative Assembly as an Act; (b) the Regulation of President may contain material to exercise the exercise of governmental power (Article 13); and (c) The President is authorized to make a President's Regulation

The giving of the respite time is done in order to (a) achieve the core purpose of the Procedure of criminal, namely finding the truth of material as is managed in the Criminal Procedure Code ; (c) the fulfillment of the right of the death Convict to file a Judicial Review is more than once in accordance with the decision of the Constitutional Court of the Indonesia Republic; (c) find a win-win solution between the opinion of the pro and contra with the implementation of death penalty in Indonesia; (d) achieve the purpose of punishment based on the concept of individualization of punishment which prioritizes mono dualistic equal; (e) use of experience in some countries where people are wrong in executing the death execution to avoid guiltiness in Indonesia; (f) carrying out Indonesia criminal law policy in preventing crimes; and (g) follow the global trend of restriction of death penalty that is only for very serious crimes. Regulating resolute in the President's Regulation is necessary for Indonesia to regulate the suspension of death penalty

The opinion of the author is that the time of suspension of the death sentence is 5 (five) years at a minimum. The writer's idea about the timing of the execution of the death Convict is at least 5 years with the following rationality. If the second Judicial Review is done after the request for clemency (eg by the calculation that the death Convict propose clemency by the end of 1<sup>st</sup> year), then the Presidential's Decree on rejection of the clemency request is issued in 2<sup>nd</sup> year, Then request the 2<sup>nd</sup> Judicial Review may be submitted to death Convict in the 4<sup>th</sup> year, then the court finished the examination of the new novum up to the determination of Decision of the Judicial Review in the 5<sup>th</sup> year). In addition to these considerations, according to the writer that 5 years is sufficient to provide a respite time for the invention of new novum that be found from advocates and families of death Convict. The new novum may also be found by others (eg journalist, expert, or science finding) as it happens in the United States.

As a comparison, in the United States due to wrongness in the judicial system, more innocent defendants will be executed, among others, 69 had been released from the death penalty since 1973 after they had been proven innocent. In the state of Illinois, there were 7 people of 21 death inmates released since 1993. In the last 20 years, there were 48 defendants who were released from the death penalty because of new evidence that they are innocent. All of them were released not because of the appeal of their verdict, but because of new scientific

<sup>1</sup> The Majority of the Fraction of Legislative Assembly is called Agree with The Death Execution is Complicated, <http://news.detik.com>.

<sup>2</sup> Roby Arya Brata, *Pro and Contra of the Death Penalty (for Perpetrator of Drug Crime)*, <http://setkab.go.id>

<sup>3</sup> Ban Ki-moon, *Turning from the Death Penalty: A Study from Southeast Asia*, "Death penalty has no place in the 21st century" the Office of the High Commissioner of UN for Human Rights Southeast Asia Regional Office , <http://bangkok.ohchr.org>

<sup>4</sup> Yusril Ihza Mahendra, *The position of the Prosecutor General and the position of the Attorney General in the Presidential System Under the constitution in 1945*, <Http://Yusril.Ihzamahendra.Com>

evidence, an investigation by journalists, and the results of experts' thought<sup>1</sup>. In addition to the consideration of the origin of the new evidence, respite time of 5 years is also appropriate with experience in Indonesia. Based on the calculations, finding the new novum as the basis for proposing Judicial Review that was granted by the Supreme Court on the crimes of murder as described above (ie in the case of Sengkon and Karta, Risman Lakoro and Rostin Mahaji, Imam Hambali and David) all require a range time maximum 5 years.

#### 4. Conclusion

Based on the discussion in this article, it can be concluded as follows

- a. The suspension of the execution of death Convict is necessary to anticipate the impact of the miscarriage of justice. The period of at least 5 years from the date of a court decision that already has permanent legal power. The time period is sufficient to allow the death Convict to file a Judicial Review, and the period is sufficient for the government to consider justice for the death Convict. The justification for the suspension of the execution of death Convict is: (a) the juridical justification, ie to give sufficient time for death inmates to conduct a Judicial Review is more than once in order to obtain material justice; (b) the empirical justification, ie (1) in anticipation of the fault of execution as occurred outside Indonesia, (2) a compromise to mediate the opinion of the pro and contra of the death penalty, (3) giving support to the Government of the Indonesia Republic is not hesitate to execute the death Convict, or if it is necessary immediately cancel the execution of death Convict through clemency
- b. The legal product that can be used as a regulator for the suspension of death execution in Indonesia is the Regulation of President, because of the Attorney General, as the executor of death Convict, is a subordinate of the president who must submit to the Regulation of President. The Regulation of President is faster and easier to be made than the creation or amend the Act

#### References

##### Books

- Arief, Barda Nawawi Arief. 1994. *The Legislative Policy: in Countering Crimes with Criminal Law*, Publishing Agency of Diponegoro University, Semarang
- Asmarawati, Tina, 2013. *The Death Penalty and its Problem in Indonesia*, Deepublish, Sleman-Yogyakarta
- Asshiddiqie, Jimly, *The position of the Constitutional Court in the Structure of the Constitution in Indonesia*. <http://www.jimlyschool.com>
- Eddyono, Supriyadi W., Erasmus A.T. Napitupulu, Yonatan Iskandar Chandra, 2015. *Briefing Media: "For the sake of Justice by the Almighty God ..... The Image of Death Penalty in Criminal Justice (Study of 42 Court Decisions)*, Institute for Criminal Justice Reform, Jakarta
- Eddyono, Supriyadi W., *Hukuman Mati dalam R KUHP: Jalan Tengah Yang Meragukan*, Jakarta, Institute for Criminal Justice Reform, Jakarta
- Genner, Bryan A. 2004, *Black's Law Dictionary*, West Publishing Company
- Hamzah, Andi, 1986. *Pokok-Pokok Hukum Acara Pidana*. Ghalia Indonesia, Jakarta
- Hamzah, Andi dan A. Sumangelipu, 1985. *Pidana Mati di Indonesia di Masa Lalu, Kini, dan di Masa Depan*. Ghalia Indonesia, Jakarta.
- Karnavian, M. Tito Karnavian, dkk. 2008. *Indonesian Top Secret: Membongkar Konflik Poso*, Gramedia Pustaka Utama, Jakarta
- Kuncoro, Nur Muhammad Wahyu, 2012. *69 Kasus Hukum Mengguncang Indonesia*, Raih Asa Sukses, Jakarta
- Napitupulu, Erasmus A.T. dan Anggara, 2016, *Gambaran Penjatuhan Pidana Mati di Indonesia*, Institute for Criminal Justice Reform, Jakarta
- Nasution, Adnan Buyung, 2004. ,Ramadhan Karta Hadimadja NinaPane Budiarto, *Pergaulan Tanpa Henti*, Aksara Karunia, Jakarta
- Pecker, Herbert L. 1968. *The Limits of the Criminal Sanction*, Stanford University Press, Stanford California
- Sahetapy, J.E. 1982. *Ancaman Pidana Mati terhadap Pembunuhan Berencana, Alumni, Bandung*
- Soesilo, R, 1986. *Kitam Undang-Undang Hukum Pidana (KUHP)*, Politea, Bandung.
- Widodo, 2007. *Kapita Selekta Hukum Pidana*, Kertagama Publishing, Jakarta.

#### The Results of Research

- Bedau, Hugo Adam and Michael L. Radelet, 1987. *Miscarriages of Justice in Potentially Capital Cases*, Stanford Law Review, Vol. 40, No. 1 (Nov. 1987).
- Daming, Saharuddin, 2012. *Konfigurasi Pertarungan Abolisionisme Versus Retesionisme dalam Diskursus Keberadaan Lembaga Pidana Mati di Tingkat Global dan Nasional*, Jurnal HAM, Komisi Nasional Hak

---

<sup>1</sup> Richard C. Dieter, Innocence and the Death Penalty: *The Increasing Danger of Executing the Innocent*, Death Penalty Information Center, July 1997, <https://deathpenaltyinfo.org>

Asasi Manusia, Vol. 8 Tahun 2012

Ramli, Amir Hasan, 2012, *Model Pembinaan Mental dan Kerohanian bagi Terpidana Mati Selama Menunggu dan Menjelang Eksekusi Mati*, Laporan Penelitian Hibah Bersaing, Lembaga Penelitian dan pengabdian kepada Masyarakat Universitas Wisnuwardhana Malang.

#### Article on Internet

- Brata, Roby Arya Brata, 2014. *Pro Kontra Hukuman Mati (Bagi Pelaku Kejahatan Narkoba)*, <http://setkab.go.id>
- Dieter, Richard C., 1997. *Innocence and the Death Penalty: The Increasing Danger of Executing the Innocent*, Death Penalty Information Center, July 1997, <https://deathpenaltyinfo.org>
- Jiang, Na, 2016. *Wrongful Convictions in China: Comparative and Empirical Perspectives*, Springer-Verlag, Berlin Heidelberg
- Ki-moon, Ban. *Berpaling dari Hukuman Mati: Kajian dari Asia Tenggara, "Hukuman mati tidak memiliki tempat di abad ke-21."* Kantor Komisaris Tinggi Hak Asasi Manusia PBB Kantor Regional Asia Tenggara, <http://bangkok.ohchr.org>
- Mahendara, Yusril Ihza, *Kedudukan Kejaksaan dan Posisi Jaksa Agung dalam Sistem Presidensial di Bawah UUD 1945*, <http://Yusril.Ihzamahendra.Com>
- Malkani, Bharat Malkani, *Killing the Innocent: The Death Penalty and Miscarriages of Justice*, <http://www.birmingham.ac.uk>
- Sesetyo, Heru, *Menimbang Hukuman Mati*, <http://www.republika.co.id>

#### News on Internet

- 52 Napi Tunggu Eksekusi Mati, <http://www.kapanlagi.com>, accessed 21 August 2011.
- 52 Terpidana Mati Tunggu Eksekusi, Radar Semarang, accessed 2 September 2008
- A Yam Terpidana Mati Langsung Dipulangkan ke Nusakambangan, <http://batam.tribunnews.com>, accessed 2 Juli 2014.
- Amnesty International Siaran Pers, <https://www.amnesty.org>, accessed 1 August 2014.
- Execution List 2016. <http://www.deathpenaltyinfo.org>
- Fatal Flaws: Innocence and The Death Penalty in The USA, Amnesty International November 1998, <https://www.amnesty.org>, accessed 21 January 2016.
- Hari Anti Hukuman Mati: Ini 6 Tuntutan Untuk Jokowi, <https://beritagar.id>, accessed 1 August 2013.
- Hari Anti-hukuman Mati: Negara Tembak Mati 79 Terpidana sejak tahun 1979. <http://www.cnnindonesia.com>, accessed 21 September 2016.
- Hukuman Mati Senafas dengan Semangat Perlindungan HAM, <http://www.hukumonline.com>, accessed 21 Januari 2015.
- Kasus Salah Eksekusi Mati yang Pernah Terjadi, <http://www.dream.co.id>, accessed 21 Desember 2016.
- Keadilan yang Cacat Peradilan yang Tidak Adil dan Hukuman Mati di Indonesia, 2015. Amnesty International Ltd Peter Benenson House 1 Easton Street London WC1X 0DW United Kingdom © Amnesty International, accessed 2 December 2016.
- Kejagung Tunggu Fatwa MA, <http://www.seputar-indonesia.com>, accessed 21 August 2011.
- Kontroversi Hukuman Mati Koruptor, [www.koran.tempo.co](http://www.koran.tempo.co), accessed 21 Desember 2016.
- Mayoritas Fraksi di DPR Disebut Setuju Eksekusi Mati Dipersulit, <http://news.detik.com>, accessed 21 Mart 2017.
- Mengenang Karta Sengkon Sang Pelopor PK, <http://www.kompasiana.com>, accessed 2 Oktober 2016.
- Miscarriage of Justice Law and Legal Definition, <https://definitions.uslegal.com>, accessed 31 December 2015.
- Pengadilan Sesat, Revisi KUHAP Menjawab, <http://www.hukumonline.com>, accessed 2 October 2016.
- Peninjauan Kembali Boleh Dua Kali untuk Keadaan Tertentu, <http://www.gresnews.com>, accessed 2 Oktober 2016.
- Praktek Hukuman Mati di Indonesia, www. Kontras.org, accessed 2 October 2016.
- Rakyat Setuju Hukum Mati Bagi Pengedar Narkoba, <http://www.pikiran-rakyat.com>, accessed 2 October 2016.
- RUU KUHP Masih Berlakukannya Hukuman Mati, [www.hukumonline.com](http://www.hukumonline.com), accessed 21 August 2011.
- Surat Terbuka pada Peringatan Dua Tahun Eksekusi Mati di Pemerintahan Presiden Joko Widodo, <http://hukumanmati.web.id>, accessed 12 December 2016.
- The Death Penalty is a Human Rights Violation: An Examination of the Death Penalty in the U.S. from a Human Rights Perspective, Center for Constitutional Rights, 666 Broadway, 7th Floor, New York, NY 10012 [www.CCRjustice.org](http://www.CCRjustice.org), accessed 12 January 2016., accessed 12 October 2016.
- Tragedi "Sengkon-Karta" Gorontalo, Kado Buruk HUT Bhayangkara, 10 July 2007 <http://www.antarane.com>, accessed 23 Oktober 2016.

death