ACTIVITY REPORT

National Conference ‘20 Years of Reform: Crime & Punishment in Human Rights Discourse in Indonesia

Jakarta, 8 May 2018

In commemoration of 20 years of Reformasi, the Commission for the Disappeared and Victims of Violence (KontraS) with LBH Masyarakat and IMPARSIAL as members of the Anti-Death Penalty Asia Network (ADPAN) in Indonesia, in collaboration with the National Commission on Human Rights (Komnas HAM) and Ensemble Contre la Peine de Mort (ECPM) held a National Conference titled ‘20 Years of Reform: Crime & Punishment in Human Rights Discourse in Indonesia’ on 8 May 2018 at the Santika Premiere Hotel, Slipi - West Jakarta. The National Conference was attended by government representatives, state institutions, former House of Representatives Members, lawyers for death row inmates, academics, advocates, embassies officials and civil society organisations. The involvement of diverse stakeholders was to make the dialogue robust and more comprehensive especially when it came to the discourse of Criminal Law and the practice of capital punishment in Indonesia.

The National Conference began with remarks from representatives of the organisers: Beka Ulung Hapsara (Komnas HAM); Yati Andriyani (KontraS); Ngeow Chow Ying (ADPAN); and Marie-Lina (ECPM). The event was followed by a case update on the problems and challenges of the death penalty in Indonesia, presented by representatives of IMPARSIAL, KontraS, and LBH Masyarakat. Moderator Miko Ginting (lecturer at Jentera Law School and researcher at the Center for Indonesian Law and Policy Studies), led the first session on the subject of a testimony from: Christina who was a lawyer for Rodrigo Gularte (executed in the Second Batch, 2015); Dentist from Padjajaran University Bandung (UNPAD), drg. Fahmi Oscandar, who became a forensic expert on odontology for the case of death row inmate; Yusman Telaumbanua; and the victim's family representatives. This session examined how the weak law enforcement and the practice of death penalty which in fact is an absolute punishment and cannot be corrected had deadly and irreversible consequence to the death-row inmates, the victim's family, and the whole Indonesian people.

The second session was related to the process of the practice of the death penalty in the Penal Code Bill. Speakers in this session were Didi Irawadi (Member of Commission III of the Democrat Fraction 2009-2014), Sriyana (Komnas HAM), staff of the Directorate General of Human Rights of the Ministry of Justice
and Human Rights, and Sutira Dirga (Institute of Crime and Justice Reform). This session resulted in a
conclusion that even though the Directorate General of Human Rights and Komnas HAM had
recommended several times to moratorium or even eliminate the death penalty from the Penal Code Bill,
this has been ignored by the Government and Parliament because the death penalty was still considered
as the most explicit form of punishment and a deterrent effect. In the Penal Code Bill, the death penalty
was indeed reduced to alternative punishment, but the Directorate General of Human Rights concluded
with the view that do not focus on the death penalty but on the process of prosecution. However, the
representative from ICJR stated that the practice of the death penalty as an alternative punishment was
still very ambiguous, due to a ten-year probation and no guarantees to be exempt from the claim, plus an
overcrowded Indonesian prison situation.

The third session discussed the judicial situation of death-row inmates. Arif Nur Fikri (KontraS) and
Muhammad Afif (LBH Masyarakat) explained the current judicial situation for death-row inmates in
Indonesia. There were still many maladministration and malpractice in the investigation, inquiry and
judiciary in Indonesia. Some cases the law enforcement officials tortured the death-row inmates to force
them to confess an alleged crime or to provide inaccurate information. The foreigners who were
sentenced to death did not receive the interpretation service during the investigation. They were often
not given competent lawyers that were familiar with the cases they experienced. One of the problems
was the issue of discrimination against the alleged perpetrators of narcotics crimes that often happened
to Nigerian. Meanwhile, Alex Argo Hernowo (DPN Peradi) also added that embassies of foreign countries
whose citizens were prisoners in Indonesia must stop using commercial lawyers who had little perspective
on human rights in the process of mentoring their citizens. Alex also urged the need to capacitate
commercial lawyers to have an appropriate perspective when handling cases related to capital
punishment.

The fourth session discussed the recommendations and legal perspectives to limit the practice of death
penalty. Speakers in this session were Siti Nurherwati (Komnas Perempuan), Haris Azhar (Trisakti
University), Anugerah Rizky Akbari (Jentera Law School), and Nurrahman Aji Utomo (Komnas HAM). This
session concluded that there was a need for simultaneous movement of various lines to encourage the
death penalty to be limited or abolished. The moratorium or abolition of the death penalty had not yet
become a populist issue in society. Even in the academic world itself, there was no adequate study of this
issue, only the interpretation of the articles without touching empirical facts. It should also be noted that
there was no control over the quality of investigations the judiciary regarding the performance of judges.

The final session was a panel discussion moderated by Puri Kencana Putri (Amnesty International
Indonesia) on the comparison of international jurisdictions with foreign countries. The panelists were
Marie-Lina Samuel (ECPM), Julian McMahon (Reprieve), Ricky Gunawan (LBH Masyarakat), Anugrah Rizky
Akbari (STH Indonesia Jentera) and Mimin Dwi Hartono (Komnas HAM). This panel session concluded that
Indonesia needed to look at the facts that the crime rates had decreased in countries that have abolished
death penalty such as Europe and Latin America. This was a tool that could be used to measure the
effectiveness of capital punishment. Indonesia also can not turn a blind eye to the right violation and say
that ‘we are a sovereign country, we can do whatever we want,’ because all countries in the world are
interconnected and anything done by one country will have an effect on other countries.
National Conference: 20 Years of Reformasi: Crime and Punishment in Indonesia reaffirms the attitudes and values that civil society groups believe about rejecting the practice of capital punishment. We believe that the death penalty is a shortcut for a country that is too lazy to seek and systematically solve the root cause of a crime, because the death penalty only resolves the life of the perpetrator, but does not solve the root cause of the crime. We believe that the 1945 Constitution does not provide the argument for the state to diminish the right of life of its people under any circumstances, so that any law under the 1945 Constitution must remain proportionate to the constitution of the state.

We believe that the combination of criminal justice system in Indonesia that is still a mess from upstream to downstream with the death penalty that in fact cannot be corrected again will be a deadly combination for the right of life in Indonesia. We believe that Indonesia cannot turn a blind eye to globalization that makes all countries connected to each other. Indonesia must think about the effectiveness of state diplomacy to fight for the fate of Indonesian citizens abroad who become death-row inmates, while in the country continue to kill the lives of foreigners and citizens of their own country. We believe that the government's stance in holding the execution of death row inmates should be addressed by more constructive arguments rather than for political reasons such as the desire to become the UN Security Council. We believe the duty of the state is to glorify the right to life of every citizen not to be as cruel to the perpetrators of crime. We believe that the death penalty only answers the question of who, without answering the question of what, why, and how. Lastly, we believe that abolishing and rejecting the death penalty shows that our nation is a civilized nation. May these values we believe can serve as learning for Indonesians as well as broaden the community's perspective on the importance of rejecting the death penalty.