



# **Drugs, Death, Despair:** Analysing Discourse over the Use of Capital Punishment for Drug Offences in Indonesia

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## Abstract

In 2014, the Indonesian President, Joko Widodo, declared the “war on drugs.” Despite global abolitionist movements, Indonesia has maintained its firm stance on the death penalty for drug offences. This study aims to examine the discursive struggle over the use of capital punishment for drug offences in Indonesia by analysing the discourse used by the government and the counter-discourse actors and delineating the consequences of the discourse. The counter-discourse actors include the National Commission on Human Rights, local NGOs, and human rights activists. Using a qualitative research method applying Foucauldian discourse analysis and incorporating discourse analysis concepts by Laclau and Mouffe, this study unfolded the hegemonic discourse articulated by the government and the subsequent challenges posed by counter-discourse actors. The findings reveal that the government constantly reproduced and articulated the threat, emergency, war, and capital punishment discourses. The capital punishment discourse is not only a discourse but also a concrete material consequence of the other discourses. Counter-discourse actors challenged the hegemonic discourse using the effectiveness, right to health, and also capital punishment discourses. The government legitimised capital punishment by articulating human rights and deterrence discourse. To challenge it, counter-discourse actors articulated human rights discourse, questioned the efficacy of deterrence, and emphasised the rehabilitative aspect of punishment to delegitimise capital punishment. Islamic discourse was present on both sides to a small extent. Finally, this study contributes to the growing body of knowledge on justice, the protection of human rights, and the development of policies that respect individuals' right to life.

*Keywords:* Indonesia, capital punishment, human rights, discourse, drugs, drug offences.

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# 1. Introduction

## 1.1. Background and Problem Statement

*“Be firm, especially to foreign drug dealers who enter the country and resist arrest. Shoot them because we indeed are in a narcotics emergency position now.”*

Joko Widodo, The President of Indonesia (*The Guardian*, 2017).

The discursive struggle over using the death penalty for drug offences has been a subject of extensive discussion globally. Drug offences, sometimes known as drug-related crimes or drug-related offences, are drug-related activities classified as crimes under domestic laws (Larasati and Girelli, 2021). These activities relate to trafficking, using or possessing controlled substances, and other associated inchoate offences such as “inciting, assisting, or abetting a crime” (Larasati and Girelli, 2021, p. 6). Amnesty International’s report shows that there are more than 700 executions for drug-related offences worldwide between 2018 and 2022, and this number accounts for 37% of the total executions confirmed in 2022 (Amnesty International, 2023).

Indonesia remains among the countries that still retain capital punishment for drug-related offences. In the global context, Indonesia was ranked in the sixth position out of 52 nations with the highest number of death sentences in 2022 (Amnesty International, 2023a). Notably, an overwhelming 92% of these sentences were attributed to drug-related crimes. Recent data from Harm Reduction International (HRI) shows that 66% of individuals currently on death row have been convicted of drug offences (Girelli, Jofré and Larasati, 2023). This emphasised the significant role of drug-related crimes in shaping Indonesia's approach to capital punishment.

After securing his presidency in October 2014, there was a great deal of hope that the nation's first “outsider” president, Joko “Jokowi” Widodo - with no military background nor connected to the founding aristocracy - might live up to his pledges to improve the human rights situations in Indonesia. However, not long after his election, Jokowi reinstated capital punishment for drug offences. While the legal framework has included it since 1997, there was a *de facto* moratorium on executions from late 2008 (Cook, 2018). Since then, Jokowi has overseen three series of executions.

In December 2014, Jokowi declared a national 'emergency' over drug issues and that no presidential pardon would be given to those found guilty of drug trafficking (Praditya, 2014). The following year saw the initiation of the "war on drugs" and the execution of eight death row prisoners sentenced for drug offences (Kine, 2015). He also increased the power of the National Police to carry out extrajudicial killings, resulting in 183 cases of shootings against suspected offenders in 2017 (Bajammal, 2020).

Following the resumption of the execution, the discursive struggle over the use of capital punishment for drug offences has intensified, with prominent government officials actively defending this stance. The head of the National Narcotics Agency (Badan Narkotika Nasional [BNN]) has been addressing this issue as a 'factual threat' and 'chronic problem' (Cabinet Secretariat of Indonesia [Setkab], 2015). Law enforcement officials in Indonesia,<sup>1</sup> such as the Police, have perpetuated the situation through extrajudicial killings (Amelia, 2017). Furthermore, if we look at one example from Medan district court, the one that gave the most death sentences in 2021, they often articulate that drug offences are a serious crime that can harm many people and destroy Indonesian society (KontraS, 2021).

These executions and unlawful killings have drawn condemnation from the international community, including the United Nations (UN) and other governments. They have called on Indonesia to abolish capital punishment, especially for drug offences (See Nichols, 2015 and Kine, 2015). Inside the country, a growing concern has emerged regarding the use of the death penalty for drug-related offences, drawing attention from various stakeholders. The National Commission on Human Rights (Komnas HAM) has often articulated that the institution will always agree with human rights institutions worldwide to oppose the death penalty (Wiwoho, 2017).

An increasing movement advocating for the abolition of the death penalty in Indonesia also involves multiple non-governmental organisations (NGOs) actively collecting information and publishing reports surrounding the issue. Some prominent local NGOs, including KontraS, articulated how the death penalty violates the right to life and fuels torture by neglecting fair trial principles in law enforcement, acting as a catalyst for human rights abuses (Mahendra *et al.*, 2023). Lembaga Bantuan Hukum Masyarakat (LBHM), an NGO focusing on drug policy issues, articulated that the death penalty for drug offences is not proven to deter crimes. The

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<sup>1</sup> In Indonesia, law enforcement officials consist of five entities, namely the police, prosecutors, judges, correctional facilities, and lawyers.

Director of LBHM added, "Achieving the abolition of the death penalty is not impossible in Indonesia" (LBHM, 2021).

According to the latest survey (See Hoyle, 2021), the majority of the public supports the retention of the death penalty. The Indonesian government often cites this sentiment to justify capital punishment to fight the country's 'drug emergency' challenge. The government's approach to this issue undoubtedly wields significant influence over public opinion formation. The discourse that is employed has managed to achieve strong dominance (hegemony), meaning that the ideas and values promoted by using a harsh stance to punish drug-related crimes become the dominant mindset in society. Various actors opposing capital punishment for drug crimes have actively challenged the existing discourse, creating a discursive struggle. Discursive struggle emerges over how the problem is defined and framed, how the public interprets the problems, and how shared meanings motivate action (Fischer and Gottweis, 2012; Stone, 2012). These actors seek to offer alternative viewpoints, highlighting why capital punishment should not be applied to drug offences and addressing what issues are left out by the discourse articulated by the government.

Consequently, it is essential to examine the existing discourse and how the discursive struggle between them plays out. By investigating this, I could analyse the effects of power produced by what is said and lay out the consequences of the discourse.

## **1.2. Research Aim and Research Questions**

The aim of this study is to analyse the discursive struggle over the use of capital punishment for drug-related offences in Indonesia. Analysing statements and arguments articulated by key stakeholders is vital for unravelling the frameworks that shape the discourse and understanding its consequences.

To reach this aim, the following questions will be addressed:

1. What discourses do government officials and law enforcement officials articulate over the use of capital punishment for drug offences?
2. What counter-discourses do some actors articulate to oppose the use of capital punishment for drug offences?
3. What are the consequences of the rhetoric found in the discourses?

### 1.3. Delimitations

Due to limited time and human resources, I have deliberately narrowed the research scope in terms of timeframe, geographical focus, and stakeholders selected. I focus solely on the Indonesian context, a domain I am most familiar with, in a specific relevant timeframe from 2014 to 2023. I chose 2014 as it marks President Jokowi's inauguration year, accompanied by his aggressive stance on combating drug-related issues shortly after assuming office. The decision to cover nine years, concluding in 2023, is strategic due to his continued tenure during this timeframe. Moreover, this period witnessed numerous significant events, including executions and statements by various actors that garnered extensive media coverage. I opted to leave the year 2024 to avoid encountering the need for sudden changes or additions to the thesis content if any new developments arise close to the submission deadline.

In this study, I have identified several key actors for analysis. Among government officials, I selected the President and the Narcotics Agency due to their central roles in framing drug offences and justifying the use of death penalty. Moreover, I also included a few statements from other relevant government officials who have addressed this issue. As for law enforcement officials, I included the National Police (Kepolisian Negara Republik Indonesia [POLRI]) and judges through their court judgments. The National Police plays a pivotal role in apprehending drug suspects and is involved in extrajudicial killings. Court judgments are crucial as they reveal the rationale behind sentencing individuals to death. I selected court judgments from district courts that have issued a high number of death sentences for drug offences. I also included noteworthy decisions from higher courts that elevated initial judgments to death sentences. The selection of court judgments was limited to 2020 to 2023 due to incomplete database updates beyond 2020. Moreover, in this study, I used the term "the government" to refer collectively to their stance, even though there are agencies within the government that oppose the death penalty for drug offences, such as the National Commission on Human Rights.

For the actors that oppose the death penalty for drug offences, I included the NHRI<sup>2</sup> and some NGOs, including LBHM, KontraS, and some activists from NGOs that are a part of Coalition for the Abolition of the Death Penalty. LBHM, in particular, is chosen due to their experience in assisting vulnerable defendants, especially those facing the death penalty for drug offences (Hoyle, 2021). Thus, these actors advocate for human rights and legal reform,

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<sup>2</sup> Throughout this study, I referred to the National Commission on Human Rights as the NHRI (National Human Rights Institute) for clarity purposes.



challenging the government's discourse and advocating for a more humane and rights-based approach to addressing drug-related issues.

Furthermore, the research looks into capital punishment for drug offences only, given its dominance in Indonesia's death penalty cases. Consequently, other types of crimes that have the death penalty in the law are not within the range of this study. Moreover, the primary emphasis of this study lies in deconstructing the discourses and delineating the consequences. Therefore, this study did not examine broader policy debates on drug control strategies or criminal justice reforms.

#### **1.4. Relevance to Human Rights**

The relevance to human rights in this study lies in the focus on the use of the death penalty for drug-related offences in Indonesia. Death penalty inherently involves the deprivation of a person's most fundamental human right—the right to life. It is worth noting that the right to life is protected under international human rights law, as stated in Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Civil and Political Rights (ICCPR). In the Indonesian context, the right to life is also guaranteed under Article 28A of the Constitution.

Even though the right to life is also subject to limitations, the death penalty is reserved only for the “most serious crimes”. Drug-related offences, however, do not meet this threshold. Various UN bodies have consistently underscored that drug offences do not constitute among the “most serious crimes”<sup>3</sup>. Furthermore, there is no empirical evidence showing that death penalty serves as a more effective deterrent for drug-related offences compared to incarceration (Amnesty International, 2015). Besides violating individuals' right to life, the process leading to execution itself has been found to violate another fundamental human right—the absolute and universal prohibition of torture, which cannot be limited or restricted in any way (OHCHR, 2023).

Therefore, this study is relevant to human rights. By examining the discourse used by the identified actors, I expect this thesis to have significant implications for understanding the complexity of capital punishment, drug policy, and human rights in Indonesia, contributing to broader discussions on justice and the protection of human rights. This understanding can serve as a foundation for creating advocacy strategies to raise public awareness and advocate for a

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<sup>3</sup> See UN General Comment 36 para. 35.

more humane approach. Additionally, it can contribute to the development of policies that respect individuals' right to life.

## **1.5. Content Description**

The thesis is divided into seven chapters as follows:

Chapter 1 – Introduction: This chapter sets the context for the study, where I outline the background, research questions, delimitations, and the study's relevance to human rights.

Chapter 2 - Literature Review: I reviewed literature and discussions on the death penalty for drug offences in Southeast Asia, notably Indonesia, and previous discourse analysis studies on the topic.

Chapter 3 – Methods: I explored Foucauldian discourse analysis method and explained the data collection method used in this study.

Chapter 4 – Theoretical Framework: I presented how others have identified and constructed discourses relevant to the research topic.

Chapter 5 – Findings and Analysis: I presented the collected data by showing the discourses I found and discussed their consequences.

Chapter 6 – Discussion: I analysed the discursive struggle based on my findings and discussed them using relevant theories from Chapter 4.

Chapter 7 – Conclusion, Concluding Discussion and Recommendations: I concluded the study by addressing the research questions. I also included concluding discussions and recommendations for future research and the Indonesian government.

## **2. Literature Review**

### **2.1. Trends of Capital Punishment for Drug Offences in Southeast Asia**

The recent increase in political support for capital punishment for drug offences, particularly prevalent in Southeast Asia, poses a danger of emboldening other nations in the region and beyond, potentially undermining decades of progress towards abolishing the death penalty for drug-related crimes (Sander, 2021). Some scholars related this phenomenon to populism. Girelli (2019) argued that there had been an increase in populist discourse reviving the forceful war on drugs in Southeast Asia.

Lasco (2020) used the framework of populism to present his case studies across Southeast Asian countries (Thailand, the Philippines, and Indonesia) and Bangladesh. He argued that rather than merely mirroring moral panics, populists amplify moral panics, raising them to such state of 'emergency,' 'war,' or 'crisis.' They facilitate other sectors of society, such as the media and religious organisations, to raise the issue and feed public fears. Bielawski (2023) added to the study by comparing Thailand, the Philippines and Indonesia and identified that the effectiveness and appeal of populist strategies have remained essentially unchanged for half a century. He argued that vigilantism emerges from populism and manifests as a spectacle characterised by elements like dehumanising rhetoric, extrajudicial executions, and the narrative of threat to the nation's moral integrity (Bielawski, 2023).

The war on drugs has emerged as a significant issue in Southeast Asia, becoming a focal point of policy and public discourse across the region among scholars. Raffle (2021) compared the strategies employed by the Philippines and Thailand in their war on drugs. He revealed a pattern of state vigilantism characterised by periods of rampant extrajudicial killings, where the state actively dehumanised a targeted group and orchestrated violence against them. In the Indonesian context, Simatupang (2017) identified several factors of its war on drugs. These factors include the failure to acknowledge the involvement of political actors in the drug issue and that the war on drugs is a populist policy intertwined with political interests, among others.

Previous studies have also focused on analysing public opinion support of capital punishment both in general and for drug offences across Southeast Asia. Cheong *et al.* (2018) conducted a public opinion survey in Singapore. His findings show that roughly 70% of individuals expressed approval for the general use of the death penalty, and over half supported

the discretionary application for drug trafficking and firearms offences. However, when confronted with factual details of cases involving intentional murder, drug trafficking, and firearms offences, the level of support for capital punishment declined (Cheong *et al.*, 2018). In Malaysia, Hood (2013) found that a vast majority of respondents supported either a compulsory or a discretionary death penalty: for murder (91%), for one of the five drug trafficking offences (ranging from 74% to 80%), and for firearms offences (83%). However, the support also decreased when respondents were confronted with specific case scenarios, some with aggravating features and others with mitigating elements, all of which they were informed had received mandatory death sentences (Hood, 2013).

In Indonesia, Hoyle (2021) found that over two-thirds (69%) of participants indicated their support of the death penalty. Of those supporting it, more than half (54%) attributed their stance to the belief that it serves as a deterrent against murder and drug offences. However, when asked about the measures most likely to decrease violent crime and drug offences, the overwhelming majority favoured more effective policing, moral education for youth, therapeutic interventions for people who use drugs, and social initiatives to alleviate poverty. Only a minority mentioned increasing the number of death sentences and executions (Hoyle, 2021).

## **2.2. Capital Punishment for Drug Offences in Indonesia**

Capital punishment for drug-related offences in Indonesia is regulated by the Narcotics Law No. 35 of 2009. The Narcotics Law establishes criteria for the imposition of death penalty based on the nature of the criminal offence in question and the quantity of drugs within a specified weight range. However, the legislation does not differentiate between the roles of perpetrators, whether they are mere users, couriers/middlemen, or drug kingpins distributing large quantities of drugs (Rahmawati, 2019).

Scholars have examined the issue from diverse perspectives. Indonesia, as a signatory to human rights conventions, also adheres to global drug control conventions. Fransiska (2022) suggested that human rights law seems to hold a lower status than drug control conventions despite human rights norms being theoretically superior. Kramer and Stoicescu (2021) explored the reinstatement of capital punishment for drug-related crimes during the tenure of President Jokowi. They noted that although human rights argument has become crucial in global campaign to abolish the death penalty, it has not been successful in Indonesia due to

state's resistance to human rights-based arguments. They highlighted the shifting strategies used by activists, including lobbying government officials, raising public awareness regarding the costs of conducting executions, and advocating for a thorough evaluation of current policies (Kramer and Stoicescu, 2021).

Previous studies have also examined both the pros and cons of applying the death penalty for drug offences. Purnomo (2016) argued that the death penalty for drug offences remains part of Indonesian criminal law because the society still desires it, and it is justified from the socio-legal theory. Rafsanjani and Mustafa (2022) added that the imposition of the death penalty for drug-related offences under Indonesian law is legal and justifiable, given the severity, characteristics, and repercussions of such crimes, resulted in significant social, economic, and resource loss to the nation and the people. Mahmud (2021) suggested that formulating policies that harmonise both pro and con views is vital to address the issue.

Sefriani and Heriyanto (2020) presented opposing viewpoints. They underscored that imposing the death penalty for drug offences contradicts both the principles outlined in the Constitution and international human rights laws. Gunawan, Pamintori, and Bajammal (2019) argued that from both the perspective of international human rights law and international drug law, the existence of the death penalty, including for drug offences, is unacceptable. It is often revealed that many death row inmates frequently experience violations of their right to a fair trial. A report from the Narcotics Agency indicated that despite the government's rigorous efforts, including the execution of individuals convicted of drug-related offences, the prevalence of drug abuse in Indonesia has continued to rise in recent years (Heriyanto and Gui, 2016).

Other studies have looked into the discrepancies in the application of capital punishment for drug-related offences involving women, vulnerable groups, and people from marginalised communities. Havenhand (2020) argued that the costly global effort to eliminate illegal drugs, such as the Narcotics Law, proves ineffective and counterproductive. It has seriously harmed public health and led to and exacerbated poverty, inequality, and violence. It has also exacerbated the stigmatisation and marginalisation of some of the most vulnerable members of society (Havenhand, 2020). Rahmawati (2019) found that compared to men, women tend to engage in less serious criminal activities, often driven by poverty, such as theft and minor drug offences without violence. Unfortunately, the existing criminal justice system in Indonesia lacks specific provisions to address the vulnerabilities faced by women, including those facing the death penalty. Mustafa (2021) argued that poverty was identified as a factor

driving individuals into the drug culture. He found that a significant portion of minors arrested for drug offences are individuals facing socio-economic challenges. These challenges also contribute to the circumstances where these minors feel they have no alternative options to prevent drug use. Thus, an underlying factor contributing to drug use is the circumstantial disadvantage rooted in socio-economic factors (Mustafa, 2021).

### **2.3. Applying Discourse Analysis on Capital Punishment and Drug Policies**

Previous studies have used discourse analysis to examine the issues surrounding the death penalty and punitive drug policies. Yap and Tan (2020) conducted a criminological critical analysis, examining Singapore's justifications for the death penalty through an examination of official discourse from 2004 to 2018. The main rationales that emerged included national sovereignty, deterrence, and safeguarding its citizens' safety and security. Another study was conducted by Brasilino (2019), who analysed statements made by Rodrigo Duterte, the former President of the Philippines. Brasilino demonstrated how Duterte sought to justify the extrajudicial killing of over 3,500 individuals who were portrayed as threats to public security and labelled as enemies by utilising a political discourse centred around the metaphor of the "war on drugs."

In the Indonesian context, numerous studies have been conducted on discourses surrounding the death penalty in general and issues related to drugs. Aladdin, Fadhal, and Fernando (2022) examined the stance of *Republika.co.id*, one of Indonesia's major national media outlets, regarding the implementation of the death penalty. *Republika*'s news reporting consistently aligns with the Indonesian government's policy and stands in favour of imposing capital punishment for serious crimes, including drug offences. From a linguistic perspective, Putri (2018) examined how two English-language newspapers in Indonesia, namely the *Jakarta Globe* and the *Jakarta Post*, portrayed the death penalty verdict against eight drug traffickers announced in early 2015. They found that both newspapers were neither assertive nor particularly metaphorical in presenting their perspectives to the readers (Putri, 2018). Milawaty and Hapsari (2016) examined news articles from the *Sydney Morning Herald* (SMH) during the Bali Nine case, a group of nine Australian nationals found guilty of trying to smuggle heroin out of Indonesia, focusing on the portrayal of Indonesia and the constructed ideology within. The findings reveal that SMH online's articles depict Indonesia as merciless, thoughtless, immoral, and a silent barbarian in its handling of the death penalty for the Bali Nine duo who were executed (Milawaty and Hapsari, 2016).

Prior research indicates a lack of academic exploration concerning the death penalty for drug offences in Indonesia despite numerous reports and statements addressing the topic. While previous literature has addressed the challenges of punitive drug policies in Southeast Asia, there has been limited focus on Indonesia specifically. Even though some relevant discourse analyses on this issue exist in academic journals, they often have a narrower scope, typically focusing on individual cases or a small selection of media reports. To the best of my knowledge, this is the first study where the focus is dedicated to analysing the discursive struggle over the use of capital punishment for drug offences in Indonesia. Additionally, to the best of my knowledge, no study has utilised judges' considerations in court rulings for discourse analysis in Indonesian context. By analysing the discursive struggle, this study would contribute to providing a comprehensive understanding of the complex dynamics at play and contribute to the existing literature in this field.

The research findings could contribute to influence advocacy efforts concerning capital punishment and criminal justice reform in Indonesia. Furthermore, this study holds broader academic significance due to Southeast Asia's reputation for strict application of capital punishment, particularly regarding its firm stance on drug-related offences.

### **3. Methodology**

As the study aims to analyse the discursive struggle by examining discourse, I have chosen to use discourse analysis. Discourse analysis differs from the analysis of, for example, ideas and ideology, in that it does not concentrate on the agents and the underlying motives behind their actions (Bergström, Ekström, and Boréus, 2017). Therefore, I chose discourse analysis because I am not interested in finding the underlying motives or analysing the ideology or ideas behind the actors' arguments. Instead, I am interested in exploring the consequences of the rhetoric found in the discourses.

#### **3.1. Discourse Analysis**

For this study, I used discourse analysis developed by Michel Foucault, also known as Foucauldian Discourse Analysis (FDA). I also incorporated some discourse analysis concepts developed by Ernesto Laclau and Chantal Mouffe.

Foucault explored various definitions of discourse across *The Archaeology of Knowledge* (1972) and *The Order of Discourses* (1981). The concept of discourse refers to “practices that systematically form the objects of which they speak” (Foucault, 1972, p. 49). He described it as a regulated practice, signifying the implicit rules, norms, and cultural frameworks producing particular utterances and statements (Foucault, 1972, p. 107). Thus, rather than conceiving discourse solely as a coherent set of statements, Foucault posits it as a multifaceted array of practices aimed at either maintaining the dissemination of statements and utterances or isolating them from broader circulation, effectively "excluding" them from public discourse (Mills, 2003).

To Foucault, discourses encompass various preconceived notions shaping our perceptions of the world and how individuals are controlled and organised as a result of their views. This happens due to several processes known as the "mechanism of exclusion" (Bergström, Ekström and Boréus, 2017). Examples of exclusionary mechanisms include situations where something is forbidden, viewed as deviant or non-deviant, traditional or non-traditional, and right or wrong (Bergström, Ekström and Boréus, 2017). Foucault noted that the restriction on discussing particular subjects like sexuality and politics “very soon reveal [discourse's] link with desire and with power” (Foucault, 1981, p. 211), suggesting that “discourse is not simply that which translates struggles or systems of domination, but is the



thing for which and by which there is a struggle, discourse is the power which is to be seized” (Foucault, 1981, p. 211).

Instead of looking for a universal truth, FDA is more interested in asking "how" and "why" questions regarding behaviours and beliefs (Springer & Clinton, 2015). FDA's primary purposes are to reveal things that are taken for granted, such as societal norms or things that are widely believed to be true, show how these norms are instruments of power, and provide an alternative view to the dominant discourse (Bicchieri, Muldoon, and Sontuoso, 2018).

This study followed the approach developed by Kendall and Wickham (1999) in *Using Foucault's Methods* (1999), with the five steps for conducting FDA. In implementing these steps, I integrated relevant concepts from Laclau and Mouffe's discourse analysis in *Hegemony and Socialist Strategy* (2001). These five steps are: (Kendall and Wickham, 1999, p. 42)

1. The recognition of discourse as a corpus of 'statements' whose organisation is regular and systematic;
2. The identification of rules of the production of statements;
3. The identification of rules that delimit the sayable;
4. The identification of rules that create the spaces in which new statements can be made;
5. The identification of rules that ensure that a practice is material and discursive at the same time.

**First:** For this study, the discourse used as the corpus is the use of capital punishment for drug-related offences in Indonesia from 2014 to 2023.

First of all, it must be asserted that the discourse surrounding capital punishment for drug-related offences in Indonesia is a set of regular and systematic statements. The discourse exhibits consistency in arguments and narratives reiterated across different contexts by different actors. For example, proponents of the death penalty emphasise its deterrent effect on drug offences. Some aspects of the discourse also follow a formalised structure, including the legal framework of capital punishment.

**Second:** Following the first step, I explored the rules of the production of statements by examining how these statements are constructed by the actors I identified. Discourses are typically characterised by their ability to diminish the ambiguity of signs, and discursification involves signs attaining a greater level of stability. Laclau and Mouffe (2001) used the concept of “element” to highlight the ambiguity of discourses and the continual process of meaning-

making processes. This process is related to the concept of “articulation”, referring to the construction of a discourse (Laclau and Mouffe, 2001). Articulation is a form of practice that establishes a specific relationship among the elements constituting the prerequisites for a discourse: "We will call articulation any practice establishing a relation among elements such that their identity is modified as a result of articulatory practice" (Laclau and Mouffe, 2001, p. 105). When various elements from diverse spheres, such as economic, political, and social, are articulated to generate a specific interpretation, this shared and altered significance can serve as the basis of a discourse (Smith, 1998).

In this step, I identified the elements and how they are articulated in the discourse. For example, authorities equate drug offences with things that were not previously associated with drug offences, such as ‘war’ and ‘threat’.

**Third:** Alongside the process of discursification and locking of meanings, alternative meanings are excluded. Laclau and Mouffe introduced the “field of discursivity” concept as a space filled with various meanings and remnants from other discourses, posing a potential threat to every discourse (Bergström, Ekström and Boréus, 2017). Laclau and Mouffe also coined the concept "floating signifiers" to describe contentious elements within a discourse and susceptible to various meanings (Laclau and Mouffe, 2001).

I identified the rules that delimit the sayable by analysing the elements that draw the border of the discourse and determine what is in and what is out. By using the “field of discursivity” concept, I highlighted a range of discourses located in the “discursive field” through the ways they are given meaning and highlighted what is considered as “floating signifiers.” For example, there is a struggle over filling the sign ‘human rights’ since it is being interpreted differently by both sides of actors.

**Fourth:** From step three, I found the so-called “chains of equivalence” (Laclau and Mouffe, 2001). A sign derives its meaning through a system of distinctions. A particular element is associated with specific signs while simultaneously being differentiated from other signs (Bergström, Ekström and Boréus, 2017). In this study, discourse concerning capital punishment for drug offences cannot be fully understood unless 'capital punishment' is examined in relation to what it is thought to be in opposition to and what it may be related to. Various signs or elements contrast with capital punishment. These included 'rehabilitation', 'human rights', and 'public health'. Conversely, there are elements that the death penalty for drug offences may be “positively” associated with, such as 'deterrence' and 'security'.

In this step, I expanded more from what I highlighted in the third step by identifying ‘what is out’ or ‘not allowed’ to be said as they are considered new statements or ideas to understand the discourse. I looked at approaches opponents used in the discourse and analysed the chains of equivalence.

**Fifth:** In the last step, I elucidated why the analysis of this discourse is material and discursive at the same time and emphasised the need not to look for a “deeper” reality behind the discourses themselves. I looked at consequences of the discourse, and these consequences can also be material, not just linguistic. In this study, for example, the material effects of the discourse are capital punishment and government’s resource allocation on punitive drug policies.

Additionally, I also used the concept of hegemony by Laclau and Mouffe (2001) as my analytical framework. Laclau and Mouffe see discourses and the construction of political identities as the result of hegemonic struggles stemming from an antagonism inherent in all present-day social interactions (Townshend, 2004). Their approach focuses on how dominant discourses and power relations operate to construct and maintain social and political hegemony. Laclau and Mouffe (2001) argue that hegemonic ideologies are formed through the articulation of various social demands and discourses into a coherent, dominant narrative. The articulation contains a particularity that assumes the place of universality (Machado, 2014).

In other words, hegemony is accomplished through the exercise of power and the fixation of meanings, but antagonism disrupts these efforts by challenging established meanings. I used the concept as a tool to identify the discursive struggle over the application of capital punishment for drug offences. I identified how the discourse justifying the application of the death penalty for drug offences operates as a hegemonic ideology within Indonesian society and portrayed how the counter-discourse from the actors opposing them contests the dominant knowledge of the issue.

### **3.2. Data Collection**

I used a combination of primary and secondary sources. The primary sources included the official website of the Presidential office, Narcotic Agency, and National Police and court judgements retrieved from the official database. Other primary data also included statements from selected NGOs and NHRI, published on their official website. As for secondary sources, I used reports from international and national non-governmental organisations, peer-reviewed

academic articles, and statements retrieved from reputable national and international media outlets. I translated the data myself from Indonesian to English.

I applied a source evaluation test developed by Blakeslee (2004), also known as CRAAP, to ensure the quality of the data used. I assessed the sources based on five criteria: currency, relevance, authority, accuracy, and purpose. I verified that the information was up-to-date (currency) and directly related to my research questions (relevance) while evaluating the credibility of the issuing institutions (authority). To fulfil these three criteria, I gathered relevant statements articulated by the identified actors from 2014 to 2023 from government and NGO official websites and well-known media sources. I also referenced the reports of reputable NGOs and international organisations. Moreover, I scrutinised all sources for accuracy, checking the reliability of data and correctness of the information. As for purpose (identifying potential biases that may influence the information presented), since I am not writing about the truth of some events but rather collecting statements, I study the “bias” instead and deconstruct it. Alongside collecting the empirical data available online, I also employed CRAAP analysis in my literature review and theoretical framework.

In summary, I used my primary and secondary sources to look for statements by the stakeholders I identified. I limited the materials to what is relevant to my study by only picking up the discourses articulated by the identified stakeholders, specifically concerning drugs and death penalty. Particularly, I focused on identifying discourses that formed chains of equivalence. I compiled statements into a separate document and categorised them manually. Next, I identified themes by examining specific codes within the materials. This involved identifying particular words or sentences that appear frequently, providing insights into the discourse. Then, I systematically coded and categorised statements based on recurring themes; for instance, themes included threat, deterrence, and human rights. The statements collected and how they were coded are attached as Annex 1. In this study, it is essential to reach data saturation. Saturation is when no additional data or themes arise from the dataset, signalling a thorough data exploration (Naeem, 2024). Therefore, I reviewed the dataset multiple times, enhancing my understanding and insight.

Next, I mapped the discourse and presented my findings on the main discursive themes identified. I used the concept of hegemony to examine the discursive struggle. I also used the concept of “floating signifier” to highlight what is located in the field of discursivity. I unfolded the hegemonic discourse and how it is used to legitimise capital punishment for drug offences

and how the articulation of counter-discourse challenged it. Lastly, I discussed the consequences of the rhetoric found in the discourse.

### **3.3. Ethical Consideration**

In this study, ethical considerations were avoided as empirical data collection did not involve collecting primary data such as interviews, surveys, or other similar methods. Therefore, potential ethical dilemmas typically associated with these methods were not encountered. Additionally, since the study primarily relied on public statements, there was less concern about privacy-related ethical issues. However, one research ethical issue arose regarding my own bias on the topic, which will be discussed in the next sub-chapter.

### **3.4. Reliability, Validity and Author's Reflection**

Reliability and validity are essential components for qualitative studies, as the subjectivity of the researcher may skew the interpretation of the data, and the research findings often face scrutiny within the scientific community (Cypress, 2017). Reliability concerns the consistency of measurements or findings, reflecting how consistently a study produces similar outcomes under similar conditions. High reliability indicates findings accurately represent the phenomenon under investigation (Bryman, 2016, p. 383). Validity concerns the accuracy with which a study measures its intended concept, the data's relevance over time, and its applicability to broader populations or contexts (Bryman, 2016, p. 383-388).

It is crucial to recognise my role as a researcher and how my personal experiences, perceptions, and biases may shape the understanding of the discourse, potentially impacting the study's ability to have consistent results when repeatedly applied. Growing up in Indonesia, I possess a deep understanding of its political and socio-cultural backdrop. My volunteering experience with LBHM and my internship experience with HRI may influence my knowledge, personal experiences, and emotional engagement with the subject. To mitigate bias, I maintained self-awareness throughout the research process, ensuring I did not misrepresent what was being studied. I remained critical by arguing based only on research and/or transparent discourse in the study. Moreover, I engaged with diverse sources in the literature review and presented my theories as a discourse, ensuring that I covered multiple perspectives. I also mitigated bias by including both sides of the proponents and opponents of the death penalty for drug offences, representing both sides' points of view. This approach ensured

critical analysis in examining and discussing the discourse. Furthermore, regarding reliability, I ensured that my analysis and findings accurately represent the discursive struggle on the topic. Additionally, I included the statements I collected with links to the sources in Annex 1 to enhance reliability and provide transparency on the situation under investigation. On validity, I expect my findings could be applied to broader contexts or countries with similar challenges in countering punitive drug policies.

## **4. Theoretical Framework**

I have put the theoretical framework after the methods chapter in this study. Building on insights of Jørgensen and Phillips (2002, p. 4), theory and method are deeply intertwined in discourse analysis, requiring researchers to accept the philosophical premises to employ discourse analysis as their chosen empirical methodology effectively. They proposed that theories be brought in as analytical lenses to help interpret the data and understand discursive practices. Consequently, in this study, the theoretical framework is not employed in the traditional sense; rather, it serves to present how others have identified and constructed discourses relevant to the research topic and how different actors utilised these discourses.

### **4.1. Discourse on Threat**

In international relations, threat is predominantly viewed in physical and material terms. Threats are perceived as factors that could potentially weaken a state's power relative to other states, and this power is typically understood in concrete, tangible terms (Creppell, 2011). Davis (2000, p.10) refers to threat as a situation where one party or group possesses the ability or intention to cause harm to another party or group. Threats are inherently speculative because they may or may not materialise. Threats can be categorised into two main types: those directed at individuals and those directed at collectives (MacKuen, Erikson, & Stimson, 1992). Threats against collectives typically manifest as military, economic, or cultural. On the other hand, threats against individuals may involve risks to their physical safety, financial well-being, or their values and beliefs (Rousseau and Garcia-Retamero, 2007). At times, a threat directed at a collective may also pose a personal threat to an individual within that collective (Rousseau and Garcia-Retamero, 2007). Salgueiro (2010) claims that threats demonstrate dominance or control when directed at someone who has not provoked them, giving an example of when a bully targets a peer. He added that threats can also imply potential acts of vengeance, causing the recipient to “suffer the anticipation of a disfavourable event” (Salgueiro, 2010, p. 217).

Walter Stephan and Cookie Stephan (2000) developed Integrated Threat Theory (ITT) to understand intergroup relations and conflicts by examining how various threats shape perceptions and behaviours. ITT posits that individuals and groups experience different types of threats in intergroup interactions, including realistic threats, symbolic threats, intergroup anxiety, and negative stereotypes (Stephan and Stephan, 2000). Stephan and Renfro (2002) updated the theory, consolidating the four components into only realistic and symbolic threats.

Realistic threats encompass dangers to the ingroup's survival posed by the outgroup. This includes warfare, political and economic threats, and threats to the group's or its members' physical or material well-being, such as health concerns (Stephan and Stephan, 2000). Although this concept was rooted in realistic group conflict theory, the concept of realistic threats differs in two key aspects. Firstly, it has a broader focus, addressing any threat to the group's or its members' well-being. Secondly, it emphasises the subjective perception of conflict between groups. This emphasis on perceived realistic threats is crucial as such perceptions can lead to prejudice, regardless of whether the threat is real (Stephan and Stephan, 2000). Meanwhile, symbolic threats involve perceived differences in morals, values, standards, beliefs, and attitudes between groups, posing a threat to the worldview of the ingroup. These threats often emerge because the ingroup believes in the moral superiority of its value system (Stephan and Stephan, 2000).

## **4.2. Discourse on Punishment**

Rusche and Kirchheimer (1939) linked punishment to economic developments throughout history. They view punishment as a social phenomenon that cannot be fully explained solely by legal framework of society (Weihofen, 1939). Using their Marxian analysis of punishment, they argued that punishment is a form of class dominance. They also added that only when society can provide an acceptable standard of living and a certain level of security for its people can it influence the crime rate (Rusche and Kirchheimer, 1939, p. 207).

Foucault (1995) was fascinated by the shift from corporal punishment and torture towards a more “gentle” approach to punishment of prison sentences in the Western world. In *Discipline and Punish* (1978), Foucault started with the execution of Robert-François Damiens, who was publicly tortured and quartered after an attempted regicide on French king Louis XV. Foucault examined the historical transition from a penal system founded on shock punishment, also known as “culture of spectacle,” to one in which discipline and punishment are internalised into the societal institutions that mould modern man's character (Druzin, 2015). Foucault refers to this latter as a “carceral culture” (Brock, Glasbeek, and Murdocca, 2014). The subsequent change of physical punishment was exchanged for psychological punishment, where criminal justice system aimed for strict discipline and total control over prisoners through imprisonment (Meranze, 2003).



At the foundation of drug control policies lies a philosophy of punishment. The five primary underlying rationales for criminal punishment are retribution, incapacitation, deterrence, rehabilitation, and reparation (UNODC, 2019).

### ***Retribution***

On retribution, Baier (1977, p.37) argued that punishment is reserved solely for individuals convicted of wrongdoing or criminal acts. Baier (1977), Banks (2008), and Carlsmith (2006) emphasised that severity of the punishment should be proportionate to the gravity of the offence committed. This principle ensures that punishment neither falls short of nor exceeds the gravity of the crime. Von Hirsch (1976) delineates two dimensions of retribution: retribution as just deserts, where offenders repay the harm inflicted, and justice is restored through proportional and equitable processes, and retribution as revenge, characterised by a desire for retribution and retaliation without adherence to proportionality or fair procedures. Ho *et al.* (2002) argued that distinctions between revenge and justice motives are often blurred, with the state often justifying severe punishments under the guise of "justice."

### ***Incapacitation***

The phrase "Thug in prison can't shoot your sister" is frequently employed in movements advocating for robust prison policies and has been named Wattenberg's law after conservative commentator Ben Wattenberg. It is a simple message that claims that incapacitation works (Clear, 2016). The theory of incapacitation mirrors Wattenberg's law by saying that offenders who are incapacitated and isolated from the rest of society are unable to continue their crimes in that society. Consequently, higher imprisonment rates theoretically lead to lower crime rates, especially when targeting repeat offenders (Stahlkopf, Males, and Macallair, 2010). The debate surrounding using incapacitation as a punishment usually revolves around its effectiveness and ethical implications (Walker, Cane and Conaghan, 2008).

### ***Deterrence***

There is a reasonable argument that the key purpose of retribution and incapacitation is rooted in deterrence. The theorisation of deterrence does not conform to a singular theory. Instead, existing literature is characterised by several distinct research directions that often contradict each other (Zagare, 2013). Farrell (1985) argues that deterrence is morally justified because it promotes social order and protects individuals from harm. He contends that while general deterrence may not always succeed in preventing crime, it serves as a necessary

component of a just society by reinforcing societal norms and deterring potential offenders through the threat of punishment (Farrell, 1985).

Deterrence has been shown to work, at some times, with some offenders for some offences (Kennedy, 2009). Research on deterrence reveals conflicting results, and one criticism is the need for more conclusive evidence to support its effectiveness. Another critique is that deterrence may result in disproportionate punishments and penalties for crimes that have not yet been committed (Hudson, 2003).

### ***Rehabilitation***

Rehabilitation aims to reform offenders' behaviours so that they may desist from crime rather than preventing future crimes by incarcerating or deterring offenders. Rehabilitation can involve programs for mental health treatment, drug dependency, education, and vocational training (Huebner and Inzana, 2009). Research on the efficacy of rehabilitation programs indicates that such interventions can decrease the likelihood of reoffending, substance abuse, mental disorders, and, consequently, criminal behaviour (Weisburd *et al.*, 2017).

Critics of rehabilitative approaches argue that they excessively rely on a deterministic perspective of behaviour, placing too much importance on social and cultural factors without appropriately considering individuals' capacity to make decisions and choices (Zedner, 2004).

### ***Reparation***

Recent emphasis on restorative justice interventions involves engaging key stakeholders, such as the state, offender, and victim, to collectively determine the appropriate response to the offence, aiming for objectives like community and victim reparations (Ashworth, 2007). However, Johnstone (2014) suggests a different perspective, emphasising restorative justice's focus on repairing harm caused by the offender rather than solely on punishment. It emphasises "moral repair" to restore rights relations after wrongdoing (Johnstone, 2014). Restorative justice is seen as an alternative to coercive methods, emphasising dialogue to address conflicts and improve individuals' attitudes (Miller, 2011).

### 4.3. Discourse on Capital Punishment and the Right to Life

Humanistic arguments against capital punishment began to surface during the Renaissance<sup>4</sup> (Jouet, 2023). Within this context, Italian writer Cesare Beccaria emerged as a key figure in the movement advocating for the abolition of the death penalty (Jouet, 2023). Beccaria questioned the moral authority of capital punishment, challenging the legitimacy of an individual or state's right to take a life, and argued that individuals' lives should not be subject to the power of others (Maestro, 1973). He argued that capital punishment is irreversible in case of judicial error.

Girard (1966; 1977) offered mimetic theory and public sacrifice to explain capital punishment. When individuals imitate the desires of others, it often leads to feelings of envy, competition, and, ultimately, conflict and violence (Fleming, 2004; Girard, 1977; Girard, Oughourlian, and Lefort, 1987). To prevent chaos, the solution lies in establishing ritual sacrifice, initiated when a scapegoat is picked out (Girard, 1977). Girard suggests a moment where group members converge on a particular individual as a common enemy. Being the common adversary, this person draws a lot of "guilty" looks, and many justifications are made for why they are to blame. The group must eliminate the cause to recover from the disorder (Brewin, 2012). The scapegoat is then sacrificed, a ritual repeatedly performed to remember the initial redemption moment and to normalise violence through appropriate channels (Girard, 1986).

The abolitionists of the new world order started to use human rights as an argument against capital punishment, making them inherently distinct from premodern abolitionists such as Beccaria (Jouet, 2023). Capital punishment is seen as a violation of fundamental human rights, including the rights to life and freedom from torture or cruel, inhuman or degrading treatment or punishment (Hood and Hoyle, 2009).

Between the adoption of the UDHR in 1948 and the ICCPR in 1966, there was extensive debate regarding capital punishment in relation to the right to life. A compromise allowed for "limited retention" of the death penalty, as only a minority of states supported abolition at the time (Hood and Hoyle, 2009). Article 6(2) of the ICCPR states that "death sentence may be imposed only for the most serious crimes." Schabas (2004) argued that the ambiguous notion of "most serious" offences exists because the term could be subject to varied

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<sup>4</sup> Renaissance is the period in European history spanning the 15th and 16th centuries that marked the transition from the Middle Ages to modernity.

interpretations based on culture, tradition, and political orientation, which is always debatable when establishing the universality of human rights (Hood and Hoyle, 2009).

The UN Economic and Social Council (ECOSOC), through the adoption of Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty in 1984, specified that death penalty should be limited to intentional crimes with lethal or extremely grave consequences (ECOSOC, 1984, para 1). Following that, the Second Optional Protocol to the ICCPR was adopted in 1989 by the UN General Assembly (UNGA), aiming at the abolition of the death penalty (UNGA, 1989). Furthermore, several UN human rights agencies have refined and clarified the definition of "most serious crimes". In General Comment 36 on Article 6 of the ICCPR, the Human Rights Committee (2019, para. 5) reiterated that death sentences are only for the most serious crimes and only in exceptional cases under the strictest limits.

The Human Rights Committee has repeatedly considered that drug-related offences do not meet the threshold of most serious crimes.<sup>5</sup> This stance was reaffirmed in 2007 by former UN Special Rapporteur on extrajudicial, summary, or arbitrary executions, emphasising that death penalty should be reserved for cases involving intent to kill resulting in loss of life (Alston, 2007). UN experts have also criticised states' use of death penalty for crimes other than intentionally killing, including drug offences, claiming that it does not meet the threshold of most serious crimes (OHCHR, 2023a).

Riga (1981) observed an inherent ambivalence in international human rights conventions, noting that while they often describe the right to life as "inalienable," they lack explicit philosophical justification for it. This inconsistency becomes apparent when examining conditions allowing for the death penalty within these same documents, seemingly contradicting the notion of an inalienable right to life (Riga, 1981). The tension arises from balancing moral principles with practical considerations, resulting in varying interpretations and applications of the general moral principle across different countries, with each country given the freedom to apply its own understanding of the right to life within its domestic legal framework (Riga, 1981).

Jones (2023) argued that many still acknowledge the right to life without necessarily concluding that death penalty infringes upon it. When considering rights, it is important to recognise that few are absolute; there are circumstances where they can be limited or justifiably

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<sup>5</sup> UN Human Rights Committee (8 July 2005), *Concluding observations: Thailand*, CCPR/CO/84/THA, para. 14; UN Human Rights Committee (29 August 2007), *Concluding observations: Sudan*, CCPR/C/SDN/CO/3, para. 19.

infringed upon. These nuances in the nature of rights suggest that the right to life can potentially coexist with capital punishment. Therefore, it is not immediately evident that the right to life necessarily leads to the abolition of the death penalty (Jones, 2023).

Famankiwa (2011) offered an interpretation regarding the right to life as the right not to be killed unjustly. To him, defining what qualifies as just or unjust killing is essential. For instance, self-defence killings are considered just, while arbitrary killings are deemed unjust. Justice includes ensuring equal access to social benefits and responsibilities. Therefore, the fair distribution of the human right to life ensures that no individual receives preferential treatment over another (Famankiwa, 2011). Consequently, the right to life entails protection from unjust killing, as it is morally unacceptable for any individual to sacrifice their life for the sake of others (Thomson, 1996). This idea is also similar to Rawls' theory of justice. According to Rawls, "the rights secured by justice are not subject to political bargaining or to the calculus of social interests" (Rawls, 1995, pg. 4).

The Trolley Problem by Thomson (2006) presents a moral dilemma regarding the value of human life in ethical decision-making. In its classic form, the scenario involves a runaway trolley headed towards five people on a track, with the only way to save them being to divert the trolley onto another track where only one person stands. The dilemma is whether to switch the trolley actively, sacrificing one life to save five, or to do nothing and allow the trolley to continue its course, resulting in deaths of five people. Thomson's contribution to the problem involves exploring the moral distinctions between acting and refraining from acting. She suggests that while it may be morally permissible to divert the trolley, thereby sacrificing one life to save five, there is a fundamental difference between actively causing harm (in this case by pulling a lever to switch tracks) and allowing harm to occur through inaction (Thomson, 2006).

#### **4.4. Operationalisation of Theories**

In operationalising the theoretical framework for my discourse analysis of the death penalty for drug offences, I adopted an approach where my theoretical discussions are used as existing discourses that have already been identified within academic literature. These theories served as lenses through which I analysed and interpreted the discourses present in my research materials. By treating theory as discourse or a tool to assist in discourse analysis, I analysed how these theories intersect with the consequences of the rhetoric found in the discourses. For instance, I included the discourse on punishment to explore existing discourses in literature and

analysed and discussed its manifestation within my materials. Thus, I used theories to serve as a contextual background for identifying, analysing, and discussing key elements in my materials.

## 5. Findings and Analysis

### 5.1. The Government's Discourse

#### 5.1.1. Threat Discourse

I have found that the threat discourse emerged as a dominant narrative articulated by the government to portray drug-related issues. This discourse extends across various layers, encompassing a wide range of perceived threats, here so-called sub-discourses. In this context, sub-discourse refers to a specific discourse of its own theme within a larger discourse, which is the threat discourse. The sub-discourses include threats to the nation, the economy, the young generation, and health and social life. The government constantly reproduced and articulated the discourse on threat, reflecting a pervasive sense of insecurity and vulnerability within society.

The portrayal of drugs as a threat to the nation is often used by judges when they sentence individuals to death for drug offences. In its court rulings, the Pekanbaru Higher Court's judges articulated the potential risks posed by drug-related activities, "*It endangers life and cultural values of the nation, ultimately weakening national resilience*" ('PT Pekanbaru v. David,' 2023). The Jantho District Court used similar rhetoric in their judgments, articulating that if widespread drug use occurs in society, then Indonesia will become a weak and vulnerable nation ('PN Jantho v. Mulyadi,' 2023).<sup>6</sup>

Moreover, Banda Aceh Higher Court rulings used articulations that drug-related offences are threatening the future of the nation. Consequently, the court deems the death penalty as an appropriate punishment for such crimes.

*"According to the High Court Judges, an act that has widespread implications that could endanger or threaten human life, security, and order as well as the future of the Indonesian nation, it is only fitting that the punishment for the Defendant is the DEATH PENALTY"* ('PT Banda Aceh v. Maulidar,' 2023).

The Narcotics Agency further used vivid imagery and rhetorical questions to emphasise the severity of the situation, "*Imagine if the government remained apathetic. If that happens,*

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<sup>6</sup> See also: ('PN Jantho v. Bustamam,' 2021); ('PN Jantho v. Sofyan,' 2023).

*our nation will be destroyed*” (BNN, 2021a). This discourse highlights the dire potential outcome: the destruction of the nation.

Drugs are also framed as an enemy to the country and as a public enemy, requiring intense efforts to combat the individuals involved in drug-related activities (Agus, 2022). As articulated by the Police, *“We will chase them, even to rat holes,”* referring to people involved in drug-related activities (Purnama, 2021).

Drugs are portrayed as a threat to the economy. The Narcotics Agency articulated that the circulation of drugs in society would result in people prioritising drugs over everything else and violating the law because *“people will justify any means to make money to buy drugs, then Indonesia will experience an economic crisis”* (BNN, 2021a). The Agency further added that drugs can also impact the social and economic stability of a region, fueling criminal activities and intergroup conflicts (BNN, 2023a).

Moreover, drugs are often articulated as a significant threat to the young generation (Susilo, 2015; Purnama, 2021). The Narcotics Agency articulated the severity of drug offences by emphasising their detrimental effects on young people, which can destroy the aspirations and future of the nation's next generation (BNN, 2023b). This discourse is also frequently cited by judges as the primary rationale for sentencing individuals involved in drug-related crimes to death (See ‘PN Medan v. Ibrahim,’ 2023).<sup>7</sup>

The judges also considered the quantity of drugs presented as evidence in court of their potential harm to the young generation. The judges in Medan District Court articulated that *“the evidence in the form of narcotics weighing 10 kg was quite a lot, and can result in a large number of victims of drug abuse, especially among the young generation”* (‘PN Medan v. Indra,’ 2023).

Furthermore, drugs are also framed as a threat to health and social life. The Narcotics Agency highlighted the profound social and psychological toll of drugs, including the escalation of crime rates, increased school dropouts, familial dysfunction, and heightened risk of engaging in free sex<sup>8</sup>.

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<sup>7</sup> See also (‘PN Pekanbaru v. Budi and Aidil,’ 2023); (‘PT Banda Aceh v. Juwanda,’ 2023); (‘PN Medan v. Hendra,’ 2021); (‘PN Pekanbaru v. Sugeng,’ 2021).

<sup>8</sup> Free sex in the Indonesian context refers to sexual activity outside marriage, which is considered as wrong.



*“The impact is already very worrying, namely the increasing crime, school dropouts, parents neglect their children, free sex, mentally disturbed, and deaths”* (Setkab, 2015).

The Agency further warned about the consequences of using drugs, including detrimental effects on cognitive abilities, physical health, mental well-being, and social relationships. They also warned about the ripple effects of drug abuse, extending beyond the individual to affect families and educational opportunities by stating, *“It will affect the families because they have to bear the shame, and if known by schools/universities, the opportunity for education will be lost”* (BNN, 2022a).

The government employed threat discourse to emphasise the urgency of the drug problem. What is notable about the threat discourse is its multidimensional nature, wherein basically anything can be construed as a threat. Whether it is social instability, economic crisis, cultural changes, or other external influences, the discourse on threat encompasses a wide range of perceived dangers that purportedly pose risks to societal well-being. Drug is also portrayed as an enemy of the nation. By framing diverse issues and narratives within the threat context, the government reinforced a narrative of crisis and urgency by further articulating the emergency discourse.

### **5.1.2. Emergency Discourse**

The government's use of emergency discourse intensified the perceived threat surrounding drug-related issues, elevating it to a heightened state of alertness. The President articulated emergency discourse on numerous occasions, emphasising the critical nature of the situation.

*“There is a very urgent situation. Everyone must cooperate because it is an emergency”* (Akuntono, 2015).

The President also articulated a statement emphasising the need for courage and determination to confront the drug emergency. He stated, *“This is indeed an emergency. If we do not have the courage to determine a stance, this issue will never be resolved”* (Akuntono, 2015). This articulation suggests a sense of urgency, indicating the importance of decisive leadership and assertive decision-making in resolving the problem.

The Narcotics Agency repeatedly used the emergency discourse. To reinforce the severity of the issue further, the agency highlighted the high prevalence of narcotics. The Agency also referenced the UNODC regarding Indonesia's geographic position and drug trade, adding credibility and legitimacy to its claim.

*“Indonesia is one of the countries facing a narcotics emergency, considering the high prevalence of narcotics every year. Not only that, the UNODC states that our country is among the top in the golden triangle of narcotics trade”* (BNN, 2020).

Furthermore, the Narcotics Agency articulated the pervasive nature of narcotics throughout Indonesia, asserting that no area in the country is free from drugs, including remote regions (BNN, 2016). This articulation portrays drugs as a nationwide problem that affects all segments of society, regardless of geographical location.

The emergency discourse is deeply intertwined with the threat discourse. By using the emergency discourse, the government effectively heightened the perceived threat surrounding drugs, thereby elevating it to a state of urgency and alertness within society. The emergency discourse amplified the sense of urgency surrounding drug-related issues, portraying drug abuse as a national emergency requiring immediate, decisive action. By framing drugs as an imminent danger, the emergency discourse reinforces the severity of the threat depicted in the threat discourse and justifies aggressive enforcement measures.

### **5.1.3. War Discourse**

The discourse on threat and emergency was further intensified through the utilisation of the war discourse, particularly evident in the government's declaration on the “war on drugs.” Employing the rhetoric of “war” not only heightened the perceived threat and emergency narrative surrounding drug-related issues but also perpetuated the adoption of aggressive enforcement measures.

The President declared the “war on drugs” in 2015 by stating, *“Once again, I emphasise that it's time for us to wage war against drugs”* (Susilo, 2015). The Police reiterated a similar discourse by addressing the war on drugs as a top priority (Purnama, 2021). On numerous occasions commemorating the International Day Against Drug Abuse and Illicit Trafficking, the Narcotics Agency has employed the slogan “War on Drugs.” The Agency also stated, *“We*

*are inviting all sectors of society to stand united and 'take up arms' against narcotics, mobilising all available resources"* (BNN, 2021b).

Similarly, the Ministry of Law and Human Rights (Kemenkumham) articulated the same discourse using "war".

*"The war against narcotics requires Penta helix collaboration, involving cooperation from all elements, starting from the government, academia, business actors, society, and media, using war strategies and tactics"* (Kemenkumham, 2022).

The term "war" depicts drugs as a significant adversary demanding a concerted effort to combat the drug problem with such intensity. Moreover, the use of militaristic language like *"take up arms"* shows imagery of an actual battle. The Ministry of Law and Human Rights statement also used a similar narrative, *"by using war strategies and tactics,"* suggesting a need for coordinated and strategic actions akin to military operations. This militaristic language underlines the severity of the drug issue and the necessity for resolute action.

The war discourse is also linked to the increased power of the police by the President. The President granted the authority to use extreme measures such as extrajudicial killings and gave orders to the police to shoot involved individuals on the spot, *"Enough, shoot them immediately. Don't show mercy"* (*The Guardian*, 2017). In a war context, casualties are expected, making it easier to legitimise violence within the war discourse.

The articulation of the war discourse further heightened the sense of urgency, with the government adopting a militaristic framework, framing drug abuse as a battle that must be fought and won. The war discourse intertwined with the threat and emergency discourses, strengthening the narrative of drugs as a formidable enemy that requires an immediate response. By using the war discourse, government officials seek to influence the public consciousness with the notion that drastic measures, including lethal force and death penalty, are necessary to combat the enemy. By framing the war on drugs as akin to a literal war, they evoke imagery of conflict and the necessity of eliminating the enemy of the state. This discourse serves as a powerful vehicle for propagating violence, inherently associated with warfare. Consequently, it legitimised the implementation of aggressive enforcement tactics and punitive measures against individuals involved in drug-related activities.

The threat, emergency, and war discourses together operate as hegemonic discourse and a powerful mechanism for constructing reality, shaping perceptions, and legitimising power within society, aligning with Foucault's idea on discourse and instrument of power. Drawing from the framework of Laclau and Mouffe, the hegemonic discourse consolidates power by framing drug-related issues as an emergency that poses existential threats to every aspect of life. In other words, the articulation of the discourse contains a particularity that assumes the place of universality of the issue. The concept of hegemonic discourse also extends beyond mere language because it encompasses how dominant ideologies are disseminated and internalised within society. In the context of the "war on drugs," the discourse on the threat, emergency, and war functions as a hegemonic framework through which the government shapes public perception, mobilises public support and actually exercises its power.

#### **5.1.4. Capital Punishment Discourse**

Capital punishment discourse is another vital component of the hegemonic discourse. However, capital punishment extends beyond mere discourse because it is also the concrete material consequence of the other discourses, intertwining with the threat, emergency, and war discourse. The capital punishment discourse is reproduced in a way that it is tied to the other discourses, and the consequences of these discourses lead in this direction, which is imposing capital punishment for drug offences. Capital punishment is used as a tool to solve the problem, which is the threat of drugs. Thus, the legitimisation of capital punishment relies on the reinforcement of threat, emergency, and war discourses, as without them, its legitimacy may be questioned.

In the capital punishment discourse, the government legitimises its action using human rights discourse. This discourse is mainly present indirectly in the statements, often focusing on protecting the rights of the wider society and making cursory legal arguments on how capital punishment does not violate human rights.

Among the officials who are in favour of applying death penalty for drug offences, the statements articulated by some actors showed a prioritisation of collective rights over individual rights. The Narcotics Agency articulated this sentiment, framing people with drug-related convictions as endangering the lives of potentially thousands of people.

*“If a thousand people's lives are threatened because of just one drug offender committing a crime for their own or their group's interests, do you still think that a*

*thousand people's lives are worth sacrificing to save one drug offender?"* (BNN, 2019).

By framing the imposition of death penalty as a means of protecting the more significant population, the Narcotics Agency seeks to legitimise the use of capital punishment, portraying it as a necessary sacrifice to curb the circulation of drugs and maintain societal order. In one statement, the Agency articulated how enforcing death penalty for drug kingpins must be done for the greater good of society (BNN, 2023b). However, in practice, it is usually not the drug kingpins who receive death sentences. In many cases, individuals who are merely victims of circumstances, such as drug mules or couriers, were also sentenced to death. In one of the Banda Aceh Higher Court's rulings, one of the considerations used against the defendant was that without his role as a courier, drug dealers or kingpins would not be able to market or trade their narcotics to buyers. Therefore, the judges stated they must also be punished, *"even with the most severe punishment"* ('PT Banda Aceh v. Munawir,' 2023).

The Narcotics Agency further articulated a discourse that constructed a legal rationale for capital punishment in the Constitution and argued that the relativity of human rights in the legal system allows for the compatibility of capital punishment with the right to life (BNN, 2019).

*"Death penalty does not contradict the right to life guaranteed by the 1945 Constitution because the Indonesian constitution does not adhere to the principle of absolute human rights"* (BNN, 2019).

Moreover, the Narcotics Agency also articulated that capital punishment is not contrary to human rights because it is not inconsistent with the ICCPR (BNN, 2023b). This discourse seeks to legitimise capital punishment by aligning it with internationally accepted norms, thus deflecting criticism based on human rights violations.

Furthermore, the government often justified punitive actions, particularly the death penalty, by invoking the deterrence discourse. The government argued that death penalty serves as a deterrent to potential offenders, dissuading them from engaging in drug-related crimes. The President often called for strict law enforcement against drug offences to create a deterrent effect (Setkab, 2023). *"There is no mercy for drugs. We need it for shock therapy"* (Susilo, 2015). The Narcotics Agency articulated that death penalty is deemed necessary due to its dual capacity to serve as a deterrent and to instil fear in potential violators (BNN, 2019).

*“It is pointless to make rules if no sanctions are applied because there is no deterrent effect. Therefore, the death penalty is vital because, besides preventing and instilling fear in others, it can also provide everyone with a sense of safety and protection”* (BNN, 2019).

Pekanbaru and Banda Aceh Higher Court rulings emphasised a similar narrative. The judges emphasised that the most important thing is for the general public not to repeat the same actions or emulate similar behaviour in the future as the Defendant did (‘PT Banda Aceh v. Munawir,’ 2023).<sup>9</sup> In Jantho District Court’s ruling, judges frequently articulated that death penalty is still needed for deterrent effect for the offenders, and *“the basis of the argument is for its deterrent effect on the perpetrators of the crime”* (‘PN Jantho v. Zulfikar,’ 2023). This statement highlights the significance of preventing criminal behaviour among the broader population, as exemplified by the defendant's actions.

### **5.1.5. Islamic Discourse**

Islamic discourse emerged as an intriguing aspect, although its emergence may not be as dominant as other discourses. Islam constitutes over 87% of the population. The incorporation of religious rhetoric into discussions about drug issues reflects the intersection of religious beliefs and societal values. Some officials drew upon religious arguments to justify their stance on capital punishment.

During the Narcotics Law judicial review process, a government expert articulated that only God holds ultimate authority over life and death. However, the statement also acknowledges individual agency, asserting that how a person chooses to live and die is determined solely by that individual. By stating that people arrested for drug offences *“choose their death by capital punishment”*, the discourse frames capital punishment as personal responsibility.

*“Only God has the right to determine someone's life and death. But how one lives and dies is determined solely by oneself. It means, for drug offenders, choosing their death by capital punishment”* (Indonesian Supreme Court, 2017).

Drugs are also portrayed as haram goods. "Haram" itself means prohibited or forbidden in Islamic law, emphasising the religious prohibition against the use and distribution of drugs.

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<sup>9</sup> See also (‘PT Pekanbaru v. David,’ 2023).

The Narcotics Agency articulated, *“The Islamic scholars agree that the consumption of these substances is haram, with the scope similar to alcohol”* (BNN, 2022b). The word “haram” was also used many times by the Police in their statements (POLRI, 2023).

The utilisation of the term "haram" is deeply rooted in the country's predominantly Muslim population and the strong religious significance attached to the concept. Given that Islam plays a central role in shaping norms and values in society, using the notion of "haram" carries significant weight and credibility among the population. Therefore, the Islamic discourse, in a way, validates punitive measures against people involved in drug-related activities by aligning them with religious principles while also reinforcing the moral condemnation of drug usage.

## **5.2. The Counter-discourse**

I have found the counter-discourse actors did not articulate any arguments countering the hegemonic discourse on drugs as a threat or emergency to deal with. They did not argue that there are no problems or negative consequences for individuals and society. Instead, they challenged the government’s discourse by articulating the effectiveness and the right to health discourse.

### **5.2.1. Effectiveness Discourse**

I have found that the effectiveness discourse emerged as a dominant narrative articulated by counter-discourse actors to challenge the government’s hegemonic discourses. They highlighted the ineffectiveness of punitive measures and proposed some approaches that are deemed more effective in tackling the drug problem.

LBHM articulated how the statistics show a continuous increase in drug offences despite the 'narcotics emergency' slogan and punitive approaches, showing the ineffectiveness of the government’s measures.

*“Statistical data indicates that from year to year in Indonesia, the rate of narcotics crimes continues to increase, even though during those years the slogan 'narcotics emergency' and death penalty have been consistently implemented”* (Wirayuda, 2019).

Similarly, KontraS also added how the circulation of narcotics has become more rampant, and even worse, with the involvement of law enforcement officers in the drug trade, which highlights systemic issues within the criminal justice system (KontraS, 2016).

Moreover, the counter-discourse actors also addressed their concern regarding the extrajudicial killing measures taken by the government. Some human rights activists articulated their scepticism about the extrajudicial killings efficacy and compared it to the case of the Philippines, which was not proven effective (Artharini, 2017). LBHM (2022) reiterated how this repressive approach has not reduced the drug offence rate. LBHM further articulated, *“Forcing individuals involved in the drug trade to admit their involvement, under the threat of immediate execution, will only push the circulation of drugs further into the black market”* (Artharini, 2017). Consequently, it would become even more challenging for the Police because the drug syndicates might modify their mode of operations (Artharini, 2017).

Some actors offered approaches deemed more effective in responding to the issue. The former head of NHRI suggested a shift away from punitive measures like the death penalty towards more targeted and impactful approaches (Ameliya, 2021). By emphasising the importance of legal actions such as dismantling criminal networks and confiscating assets, NHRI highlights the need for comprehensive strategies that can effectively address the root causes of drug-related crimes.

*“For example, in the context of drug misuse cases, which are the most commonly punished by the death penalty, legal steps such as dismantling networks and confiscating all the defendant's assets are more important to be taken”* (Ameliya, 2021).

Several human rights activists also added to the discourse, focusing on addressing the root causes of criminal behaviour by targeting the economic motivations behind such activities, which could be more effective. Increasing the threat of economic punishment would dissuade individuals from engaging in unlawful behaviour, particularly in the context of bribery to law enforcement. *“So, when they are poor, they will find it difficult to bribe”* (Artharini, 2017). This perspective reflects a recognition of the potential flaws and injustices inherent in applying capital punishment. LBHM offered similar proposals, including sanctions, fines, participation in courses, or community service (Gumilang, 2015).

Thus, rather than disputing the existence of drug-related issues or the need for urgent action, these counter-discourses challenged the dominant discourse by highlighting the ineffectiveness of punitive measures that do not seem to reduce the number of people who use



drugs or drug-related crimes. The counter-discourse actors argued that punitive measures are not the solution to the problem. They articulated arguments showing how punitive measures, such as imprisonment, extrajudicial killings, as well as the death penalty, fail to mitigate drug abuse and may even exacerbate the problem by pushing individuals further into the criminal justice system. They highlighted that punitive measures do not effectively address the root problems associated with drug abuse. Ultimately, what matters most is identifying and implementing effective solutions to resolve the issue.

### **5.2.2. Right to Health Discourse**

The right to health discourse centres around health and medical aspects. KontraS articulated how the criminalisation of drug use constitutes a violation of people who use drugs' right to health.

*“The criminalisation of drug use as stipulated in Law Number 35 of 2009 on Narcotics is a violation of the right to health of people who use drugs and leads to a series of other human rights violations”* (KontraS, 2016).

By framing drug use as a health issue rather than solely a criminal one, KontraS challenged the punitive approach of the government. They advocated for a more compassionate and rights-based approach to drug policy. KontraS added that *“drug eradication policies should utilise a health approach with harm reduction based on scientific knowledge”* (Saptohutomo, 2023). This is because criminalisation leads to negative consequences, particularly in terms of access to healthcare services and dependency recovery programs. As a result, individuals who use drugs may be deterred from seeking necessary medical treatment or assistance in overcoming their addiction due to the fear of legal repercussions.

*“The criminalisation of drug use makes people who use drugs reluctant and difficult to access narcotics dependency recovery programs and keeps them away from the reach of health services, for fear of imprisonment”* (KontraS, 2016).

Furthermore, counter-discourse actors also brought up the decriminalisation approach. LBHM articulated that decriminalisation of people who use drugs does not imply that drugs are sold freely. *“There is also decriminalisation of people who use drugs. It is not the same as legalisation; drugs are not freely sold”* (Gumilang, 2015). They gave an example of drug enforcement in Portugal. There, people who use drugs are not judged by judges but handled by

health officials or people who understand addiction issues. It is also articulated by a human rights activist how decriminalisation efforts with a health approach and social-based interventions provide solutions for 87 percent of people who use drugs without disorders (Arthatrini, 2017). LBHM also articulated a similar discourse, emphasising the importance of prioritising medical and social rehabilitation over punitive measures in tackling addiction. *“Indonesia should learn from countries that have failed in prioritising the war on drugs policy and transform towards a humanistic medical approach”* (LBHM, 2022). This discourse suggests a recognition of the limitations of punitive measures and the potential benefits of adopting a more holistic and compassionate approach to drug policy.

Hence, instead of solely emphasising punishment, counter-discourse actors advocate for a more holistic approach using the right to health discourse. They argue that prioritising prevention, harm reduction, and rehabilitation is essential for upholding the health rights of individuals who use drugs. Essentially, they contend that this approach is more effective in addressing the issue. Furthermore, they propose decriminalisation as a viable alternative, highlighting its potential to encourage individuals to seek help without fear of legal repercussions and to facilitate access to essential healthcare services and support systems. By redirecting resources towards prevention and treatment efforts rather than punitive measures, this approach would address the underlying causes of drug abuse and promote healthier outcomes for individuals and communities.

### **5.2.3. Capital Punishment Discourse**

It becomes natural for the counter-discourse actors to articulate and reproduce the capital punishment discourse to counter the government’s argument on capital punishment. The discourse is articulated to argue that the death penalty is an inefficient tool for solving drug problems. The capital punishment discourse is intertwined with the discourse on effectiveness and the right to health. On top of that, the counter-discourse actors also brought other values into their capital punishment discourse to delegitimise the death penalty. They argued that the government should not use the death penalty by invoking human rights discourse, highlighting issues of wrongful convictions, and emphasising that punishment should focus on rehabilitative aspects. In other words, the capital punishment discourse here emerged as a consequence of countering the government’s capital punishment discourse, with actors articulating other arguments from several discourses to delegitimise the death penalty.

The government emphasised that capital punishment does not violate the right to life. To challenge this, counter-discourses emphasised the right to life as non-derogable right. The NHRI asserted the non-derogable nature of certain human rights, specifically the rights to life and freedom from torture, as enshrined in the Constitution. This discourse positions human rights as paramount and questions the legitimacy of state actions that violate them.

*“The right to life and the right not to be tortured are non-derogable human rights that cannot be reduced in any situation”* (Komnas HAM, 2022).

Some human rights activists also highlighted the systemic flaws inherent in applying the death penalty for drug offences, such as prolonged waiting periods, which amount to torture, and procedural injustices, which undermine the legitimacy and fairness of the process. In particular, concerns are raised about the psychological toll inflicted on death row inmates that violates anti-torture conventions (Ameliya, 2021) and the lack of adequate legal representation, which hinders defendants' ability to present a robust defence (Wicaksana, 2023). LBHM also articulated the notion of wrongful executions, drawing attention to the possibility that innocent individuals may be subjected to capital punishment (Rahadi, 2023). This discourse emphasised the inherent risks and consequences associated with capital punishment, particularly the irreversible nature of executions. *“Once someone is dead, we cannot bring that person back to life”* (Wirayuda, 2019).

Discrimination is another flaw inherent in applying the death penalty for drug offences. Counter-discourse actors showed that the criminal justice system fails to consider the backgrounds or mitigating factors of death row convicts, including their poor economic background (Octavia, 2023). LBHM articulated, *“Courts in Indonesia do not consider the possibility of other backgrounds of death row convicts in drug cases”* (Octavia, 2023). It is often followed by inadequate legal representation, exacerbating the disparity (Wicaksana, 2023). The statement addressed concerns over access to justice and the protection of marginalised groups' rights.

*“The death penalty is often applied disproportionately, tending to target poor communities who lack access to adequate legal representation to assist in their defence”* (Wicaksana, 2023).

The counter-discourse also challenged the ground of deterrence articulated by the government. The former head of NHRI highlighted the persistent belief among the government

and the public that the death penalty serves as the ultimate deterrent, emphasising its ineffectiveness in preventing crime. She articulated the entrenched focus on retribution within punitive practices, suggesting a societal preference for punishment as a means of seeking revenge or compensation for committed crimes (Komnas HAM, 2022). Human rights activists have also explicitly stated that the death penalty does not have a deterrent effect.

*"Research has shown that it is evident that the death penalty does not provide a deterrent effect and is not an effective method in combating drug trafficking"* (Erdianto, 2016).

Moreover, the opposing actors challenged the deterrence argument further by emphasising the rehabilitative aspect of punishment. LBHM articulated that death penalty in the context of drug offences contradicts the modern philosophy of punishment, which focuses on rehabilitation (Wirayuda, 2019). The death penalty also contradicts the purpose of rehabilitation because punishment should focus on the recovery and reintegration of offenders into society rather than terminating their lives (Rahadi, 2023). NHRI added to this discourse, *"Everyone has dignity, the right to protection, and everyone is very likely to make mistakes, but there is an opportunity to correct those mistakes"* (Komnas HAM, 2022). It suggested that punishment should aim at rehabilitation and personal development rather than mere retribution, pointing at the state's role in giving punishment as a means for individuals to better themselves.

#### **5.2.4. Islamic Discourse**

I have come across a statement by LBHM using Islamic discourse, although once again, it was not the dominant discourse used. LBHM countered the government's discourse, articulating that humans do not have the right to take the lives of others and only God possesses such authority. *"Because only God has the right to take human life, right? So why do people feel the need to take the lives of others?"* (Wirayuda, 2019). This counter-discourse disrupts the government's narrative and opens space for alternative perspectives rooted in religious values. Many religious traditions, including Islam, uphold the sanctity of human life and emphasise principles of forgiveness, redemption, and mercy. In this context, the imposition of capital punishment may be seen as conflicting with these values, as it involves the deliberate taking of a human life.

## 6. Discussions

### 6.1. The Discursive Struggle

Throughout my research, I have observed the discursive struggle between the hegemonic discourse and the counter-discourse. While the government continues to reinforce the threat discourse through its policies and rhetoric, voices within civil society are pushing back against this narrative. These dissenting voices challenged the *status quo* by using the effectiveness discourse and advocating for measures grounded in human rights and social justice principles.

The hegemonic discourse articulated by the government portrays drug-related issues as urgent threats requiring emergency responses. The hegemonic discourse used aligns with a previous study conducted by Lasco (2020), wherein governments intensified moral panics by elevating the situation to a state of emergency and war. The narrative also framed drugs as enemies to be combated through measures similar to warfare, where in a war, you are allowed to kill people, therefore the imposition of the death penalty and extrajudicial killings. The practice reflects Brasilino's findings (2019) in the Philippines, where people involved in drug-related activities were depicted as threats to public security and labelled as enemies.

In contrast, the counter-discourse challenges this hegemonic narrative by highlighting the ineffectiveness of punitive measures, particularly the death penalty, in addressing drug-related issues. The actors challenged that despite all the strict measures taken, drug offences continue to rise, indicating the failure of current approaches. Instead, they advocated for an alternative approach grounded in the right to health, prioritising treatment and rehabilitation over punitive measures. The counter-discourse employed supports the findings of Havenhand (2020), which demonstrated that punitive measures are ineffective and counterproductive. They result in severe harm to public health, exacerbate poverty and inequality, and increase stigmatisation.

Davis (2000) discussed the speculative nature of threats and divided them into two categories: those targeting individuals and those aimed at collectives (MacKuen, Erikson, & Stimson, 1992). With integrated threat theory, Stephan and Stephan (2000) addressed the subjective perceptions of threats, which could lead to prejudice regardless of whether the threat was real or not. The hegemonic discourse articulated by the government reflects the speculative nature of the threat, as highlighted by Davis (2000). The discourse used also reflects the

categorisation of threat by Davis, suggesting that drug offences pose a risk both against collectives and individuals due to their multifaceted threat, encompassing not only health risks and other personal threats to individuals but also economic and social implications for the nation. Stephan and Stephan's (2020) emphasis on subjective threat perception is also relevant, as the government's portrayal of drugs as an urgent threat lacks substantial evidence and relies heavily on subjective interpretation. This perception then led to the adoption of strict measures, including the imposition of the death penalty, despite the lack of empirical support for their effectiveness.

### **6.1.1. Capital Punishment and Human Rights**

Referring back to Girard's theory of public sacrifice (1966; 1977) provides a lens to discuss the practice of capital punishment in the context of drug-related offences. According to Girard, chaos often leads to identifying a scapegoat, an individual or group blamed for the disorder. This scapegoat becomes the target of collective blame and is sacrificed to restore order (Brewin, 2012). In the case of capital punishment for drug offences, the government framed drugs and the individuals involved as the cause of chaos needing emergency response, portraying them as threats and public enemies. These people are thus singled out as scapegoats, bearing the blame for the disorder resulting from the drug emergency. Through the imposition of capital punishment, the government seeks to eliminate these scapegoats as a means of restoring order. By sacrificing them through the judicial system, the government reinforced the narrative of blame. It justified the use of the death penalty as a solution to the perceived threat posed by drugs. The discussion on scapegoating will be discussed further in sub-chapter 6.2.

The discursive struggle emerged as the government articulated legal arguments and human rights discourse to legitimise capital punishment. They framed their discourse in a way that seemingly aligns with human rights regulations, affirming that the death penalty does not violate the right to life and is done to protect the wider society. Moreover, they amplified the severity of drug offences by framing them as the most serious crimes through the threat, emergency, and war discourse.

Riga (1981) highlights the inconsistency between coupling the right to life with terms like "inalienable" while allowing for the death penalty within the same human rights documents, revealing a tension between moral principles and legal applications. Jones (2023) further explores the nuanced nature of rights, suggesting that the right to life can coexist with capital punishment. His perspective challenged the assumption that the right to life inevitably

leads to the abolition of the death penalty, emphasising the diversity of interpretations and applications of moral principles across different countries. In light of these insights, the government's utilisation of legal arguments and human rights discourse to legitimise the death penalty reflects the broader context of varying interpretations and applications of the right to life. The absence of a unified agreement on this matter shows the complexities of navigating between moral principles and practical considerations within domestic legal systems. Thus, the government's stance on the death penalty reflects the diversity of interpretations surrounding the right to life and adds to the ongoing debate surrounding its universal application.

The interpretation of the term "most serious" could also vary depending on cultural, traditional, and political perspectives, leading to ongoing debates about the universality of human rights (Schabas, 2004). Despite some statements and reports produced by the UN stating that drug-related offences do not meet the criteria for the "most serious" crimes, consensus on this matter remains elusive due to differing viewpoints. This ambiguity results in the complexity of universally defining and applying human rights principles.

The counter-discourse actors challenged the narrative by articulating more of the human rights discourse. They argued that capital punishment violates the right to life and leads to further human rights violations, including unfair trials. It supports previous findings by Gunawan, Pamintori, and Bajammal (2019), which unveiled the prevalence of unfair trials among death row inmates. The counter-discourse actors advocate for the right to health approach and address root causes of drug-related issues, such as poverty, to effectively mitigate drug problems.

Beccaria's questioning of the moral authority of capital punishment aligns with the arguments put forth by counter-discourse actors challenging the government's narrative. According to Beccaria, the legitimacy of an individual or state's right to take a life is dubious, as it undermines the inherent value of human life and subjects it to external control (Maestro, 1973). As the counter-discourse actors stated, any situation cannot reduce a person's right to life. Beccaria's argument regarding the irreversible nature of capital punishment was also a concern raised by counter-discourse actors. For that, they advocated for alternative approaches that respect the sanctity of life.

Furthermore, Famankiwa's argument addresses the principle of fair distribution of the right to life, rejecting the moral acceptability of sacrificing one life for the benefit of others (Famankiwa, 2011). Similarly, Rawls' theory of justice reinforces the notion that certain rights,

including the right to life, are inviolable and not subject to negotiation or calculation for the greater good of society (Rawls, 1995). Based on this theory, the government's justification of the death penalty as a means of protecting society raised ethical concerns. By sacrificing the life of one individual to protect the wider society, the government may be perceived as giving some individuals preferential treatment over others. Supposedly, the right to life should not be subject to political bargaining or calculus of social interests.

Thomson's Trolley Problem also offered insights into the ethical aspects of the death penalty for drug-related crimes, questioning the moral permissibility of sacrificing one life to save others and emphasising the distinction between causing harm and allowing harm to happen (Thomson, 2006). The government's justification of the death penalty mirrors the scenario of actively causing harm because it involves actively taking life to protect society purportedly. By imposing the death penalty for drug-related offences, the government takes a proactive stance, arguing that failure to act decisively would lead to the destruction of the nation.

The discursive struggle surrounding capital punishment for drug offences reveals different approaches in using human rights discourse. Government officials used human rights rhetoric to justify the death penalty, seeking to interpret human rights in a way that aligns with their perspectives. The government reproduces a particular aspect of the human rights discourse by arguing that the death penalty is permissible despite existing human rights considerations, citing it as necessary for the greater good. Nevertheless, the government's articulation of human rights discourse appears limited, primarily relying on basic legal arguments and oversimplified interpretations to justify that the death penalty does not violate human rights. In contrast, human rights discourse is more explicitly present in counter-discourses, which challenged the legitimacy of capital punishment by emphasising its ineffectiveness, violation of human rights, and advocating the people's right to health. In essence, the utilisation of human rights discourse by both sides illustrates the concept of a "floating signifier," wherein the meaning of human rights is subject to interpretation and manipulation by various actors.

I have found that the lack of use of human rights discourse may reflect a strategic choice by the government to avoid engaging in deeper discussions that would further open up avenues for human rights discourse and trigger counter-discourse. Thus, it could be something they have intentionally left out. Additionally, it is intriguing to see why human rights discourse appears somewhat toned down even though it is present in counter-discourse. It could be a



strategic choice due to its perceived ineffectiveness in influencing government policy. As Kramer and Stoicescu (2021) highlighted in their previous study, the Indonesian government has shown resistance to human rights-based arguments despite the increasing prominence of such arguments in the global movement towards abolition. Alternatively, it could be influenced by the ongoing human rights dilemma within the international community regarding the right to life and the abolition of the death penalty.

### **6.1.2. Purpose of Punishment**

The discursive struggle is also present as the government articulated the deterrence discourse to legitimise capital punishment for drug offences. They argued that capital punishment serves as a deterrent to potential offenders or as a shock punishment, thereby preventing them from engaging in future drug-related crimes.

Foucault explored the historical shift from a penal system centred on shock punishment (Druzin, 2015; Brock, Glasbeek, and Murdocca, 2014). Foucault (1978) discussed the execution of Robert-François Damiens, in which brutal torture and execution were used as a public spectacle. The public nature of this event was intended to symbolise the King's absolute authority and dominance over the people. Although the public spectacle of torture and execution is absent in modern executions in Indonesia, the government's rhetoric surrounding such punishments, often employing terms like "shock therapy", reflects a continuation of the character of shock punishment. Despite the shift away from public displays, the underlying intention remains: to instil fear and deterrence among others not to commit the violation, mirroring the discourse used by the government. Therefore, while the execution itself may not be conducted as a public spectacle, the discourse surrounding the practice mirrors shock punishment, serving to reinforce the government's dominance and sense of social control.

Counter-discourse actors challenged this discourse by emphasising the ineffectiveness of deterrence as a grounds for the death penalty. The counter-discourse questioned the effectiveness of deterrence, arguing that it does not have the intended effect of dissuading individuals from committing crimes. The counter-discourse actors also contended that the practice of capital punishment reflects a form of retribution or vengeance. They emphasised that the imposition of the death penalty is, in reality, a form of seeking revenge or compensating for crimes rather than a genuine means of deterring future offences.

Kennedy (2009) and Hudson (2003) highlighted the limitation of deterrence, particularly the lack of conclusive evidence supporting its effectiveness and the potential for disproportionate punishments for crimes not yet committed. It reflects the counter-discourse argument on the lack of evidence supporting the effectiveness of punitive measures, including death penalty, suggesting that punitive measures alone fail to address the drug-related issue because the circulation of drugs has become more rampant. This then raised questions about the potential for disproportionate punishment and the risk of wrongful convictions, as emphasised by the counter-discourses actors drawing attention to the possibility that innocent individuals are subjected to capital punishment.

Discussing the Indonesian government's discourse on capital punishment also reveals a narrative that aligns with principles of retribution. As outlined by Banks (2008) and Carlsmith (2006), retribution asserts that criminal offenders should be punished in proportion to the severity of their wrongdoings, reflecting society's belief in justice and accountability. In this study, judicial rulings emphasised that it is fitting to give capital punishment due to the gravity of the offence and its threat to society and the nation. This rhetoric implies a belief in the proportional nature of the death penalty for drug-related crimes, which are consistently portrayed as the most serious crimes in the government's discourse, thereby adhering to the principles of retribution.

In addition to challenging the deterrence argument, the counter-discourse actors highlighted the importance of the rehabilitation aspect within the criminal justice system. Huebner and Inzana (2009) argued that rehabilitation aims to address the root causes of criminal behaviour through interventions to reform offenders to commit future offences. This approach could be in the form of programs targeting mental health, drug dependency, and vocational training as means to facilitate behavioural change and reintegration (Huebner and Inzana, 2009). This theory reflects the counter-discourse criticism regarding the contradiction of the government's approach to the modern philosophy of punishment, which focuses on rehabilitation. By denying offenders the opportunity for personal growth and the chance to correct their mistakes, punitive measures such as the death penalty undermine the potential for behavioural change and social reintegration. Thus, it is essential to prioritise programs to reform offenders and promote societal well-being over punitive measures. As articulated by counter-discourse actors, this perspective prioritised the health approach and rehabilitation as an alternative approach to addressing the issue.

The government's legitimization of capital punishment based on deterrence somewhat reveals a contradiction. While the government repeatedly used the deterrence discourse to solve drug-related crimes, there is also an acknowledgement of a rise in such offences, indicating a lack of conclusive evidence to support its stance. Despite this acknowledgement, the government continues to use deterrence grounds, thereby creating an oxymoron in their argumentation. Nevertheless, the discursive struggle illustrates different punishment approaches in addressing the issue. It is important to note that the presence of the counter-discourse does not necessarily mean that there is a disagreement regarding the existence of the drug problem; rather, it highlights the disagreement on the chosen measures taken by the government due to their ineffectiveness.

### **6.1.3. Islamic Discourse**

In discussing the discursive struggle of Islamic discourse, it is interesting that while Islamic rhetoric emerged, it is not as prevalent as other discourses. This finding is intriguing given that Indonesia is a Muslim-majority society, where Islamic values deeply influence societal norms and beliefs. Despite this, Islamic discourse does not dominate the discourse at all.

One possible interpretation of this phenomenon is that Islamic discourse might offer less of a strategic advantage in the ongoing discourse struggle. For instance, the government may be hesitant to overly associate its policies with Islamic principles to avoid being perceived as an Islamic state, especially considering the presence of other religious groups comprising around 13% of the population. Similarly, the counter-discourse might avoid relying heavily on Islamic rhetoric to prevent the perception of exclusively representing the majority religion and disregarding minority perspectives.

Another interpretation is that the Islamic discourse might align differently with the government's objectives in the discursive struggle. The intricacies of using more Islamic discourse may complicate the aim of advancing specific policy positions. For instance, the counter-discourse might challenge the government by arguing that Islamic values uphold the sanctity of life and principles of forgiveness and mercy. However, this argument was not articulated. Therefore, it can be argued that the government does not want to open up the Islamic discourse further but rather opt for other discourses that directly address their respective objectives and resonate more strongly with their target audiences.

## 6.2. Revealing the Hidden Discourse

The hidden discourse in this context refers to another level of discursive struggle that is not self-evident, which is the contrasting perspectives regarding individual versus collective responsibility. The government's stance on the protection of society serves as a legitimisation for the imposition of death penalty. However, simultaneously, there exists an individualised distribution of responsibility, where individuals are held accountable for their actions, with the government emphasising personal choice and awareness of the consequences, which is death penalty. Mitigating circumstances is often overlooked within this narrative. Reflecting on these circumstances brings us back to Girard's scapegoating concept (Girard, 1966). Scapegoating places the responsibility for problems in society on an individual and disregards other social factors, the government's responsibility beyond punishment, and other mitigating circumstances.

Counter-discourses emerged as a response, challenging the discourse by highlighting the socio-economic factors that drive individuals, particularly those from marginalised communities, into the drug trade. Poverty, lack of education, and limited access to healthcare are identified as key determinants that push individuals towards drug-related activities as a means of survival. This is consistent with findings from Mustafa's (2021) prior research, which explored how socio-economic disadvantages influence individuals' engagement in drug-related activities. Counter-discourses stress the importance of addressing these underlying social determinants through a better system available for everyone, including access to education, healthcare, and economic opportunities. By addressing these root causes, counter-discourses argue, societies can effectively reduce drug-related problems and promote the overall well-being of the people.

## 7. Conclusion, Concluding Discussion and Recommendations

### 7.1. Conclusion

This study aimed to analyse the discursive struggle over the use of capital punishment for drug-related offences in Indonesia. It was accomplished by analysing the statements and arguments articulated by key stakeholders.

The first research question is: What discourses do government officials and law enforcement officials articulate over the use of capital punishment for drug offences?

The government and law enforcement officials articulated the threat, emergency, war, and capital punishment discourses, which are deeply intertwined. The government<sup>10</sup> used the emergency discourse to elevate the state of urgency coming from the perceived threat posed by drugs. The threat and emergency discourses were further intensified through the articulation of the war discourse, which further elevated the urgency level even more and perpetuated the adoption of aggressive measures. The capital punishment discourse was articulated, and it is not only a discourse in itself but also a form of concrete material consequence of the other discourses. These discourses operate as a hegemonic discourse that is employed to influence public perception, garner public support, and for the government to legitimise and actually exercise its power to sentence someone to death for committing drug offences and execute them. The Islamic discourse was also articulated by the government, though less prominently.

The second research question is: What counter-discourses do some actors articulate to oppose the use of capital punishment for drug offences?

The counter-discourse actors articulated the effectiveness, the right to health, and capital punishment discourses. These discourses were used to challenge the hegemonic discourse. I have observed that the counter-discourse actors did not oppose the threat or emergency discourses directly and have refrained from disputing the existence of drug-related issues. Instead, they challenged the hegemonic discourse by highlighting the ineffectiveness of punitive measures, including extrajudicial killings and the death penalty, in reducing the number of drug use or drug-related crimes. The right to health discourse was articulated to offer a more holistic approach to solving the issue. They emphasised the importance of prioritising prevention, harm reduction, and rehabilitation to protect the rights of individuals

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<sup>10</sup> As mentioned in Chapter 1, I used the term "the government" to refer collectively to their stance in this study.

who use drugs. Capital punishment discourse was articulated and reproduced as a response to challenge the government’s discourse in legitimising capital punishment. Islamic discourse was also found to a small extent.

The third research question is: What are the consequences of the rhetoric found in the discourses?

The consequence of the rhetoric found in the discourses is the government’s legitimisation of capital punishment, which is also materialised in the form of the death penalty itself. The threat, emergency, war, and capital punishment are intertwined, and the consequences of these discourses lead to the imposition of the death penalty for drug offences. In legitimising capital punishment, the government articulated human rights discourse, although with limited emphasis, primarily focusing on the priority of collective rights, how capital punishment does not violate human rights, and its perceived necessity to serve as a deterrent. Consequently, it becomes natural for the counter-discourse actors to articulate and reproduce the capital punishment discourse to delegitimise the government’s discourse on capital punishment. Besides arguing that the death penalty is an inefficient tool for solving drug problems, the actors also articulated other arguments from several discourses to delegitimise the death penalty. These include using discourse on human rights, systemic flaws, wrongful conviction, and rehabilitative aspects of punishment.

Furthermore, human rights were found to be a floating signifier because their meaning was subject to different interpretations. The government emphasised protecting collective rights, while the counter-discourse emphasised the non-derogable nature of rights to life.

The result of the study is summarised in the table below.

*Table 1. The discursive struggle*

<b>Discourse</b>	<b>The Government</b>	<b>Counter-Discourse</b>
Threat	Various layers of perceived threats, including threat to the nation, to the economy, to the young generation, and to health and social life.	Challenged the ineffectiveness and advocated for the right to health.
Emergency	Heightened state of alertness regarding perceived threats.	
War	Adoption of aggressive enforcement measures.	

Discourse	The Government	Counter-Discourse
Human Rights	Collective rights over individual's rights; the death penalty does not contradict the right to life.	Right to life as non-derogable rights; systemic flaws and discrimination in applying the death penalty.
Punishment	Death penalty as deterrence.	Ineffective; rehabilitative aspect of punishment.
Islam	Crime as individual responsibility despite God who determines someone's death; drugs are haram.	Only God can take someone's life.

## 7.2. Concluding Discussion

To reflect, the Indonesian government's stance in legitimising the death penalty for drug offences while the other side is arguing against it illustrates the complexity of this issue in the international community on the whole matter. It can be argued that Indonesia's continued use of the death penalty is also affecting the human rights discourse and the entire human rights system, not only in the country itself but also in the global discussion. By firmly supporting the death penalty, particularly for drug offences, and asserting that it does not violate human rights, Indonesia strengthens the retentionist position globally. On the positive side, reflecting on what has happened in the last ten years in the country, the counter-discourse also played its part in strengthening the human rights discourse both nationally and internationally. While the strategies employed by counter-discourse actors may not directly change government policies, their articulation of alternative viewpoints undoubtedly influences public perspectives. Nevertheless, Indonesia could have chosen another path back in 2014 by making the *de facto* moratorium official with the goal of abolishing capital punishment altogether. This move not only would have reduced the attractiveness of the death penalty for other states but also aligned with the global trend towards abolition. However, Indonesia opted for a different course of action, one that has strengthened the retentionist stance on capital punishment.

Moreover, redirecting resources towards measures to address the underlying factors that contribute to involvement in drug-related activities is essential rather than putting them on costly punitive drug policies like capital punishment. The financial resources for prosecuting, sentencing, and keeping individuals on death row (usually for an extended period) are substantial. Instead, the government can allocate the funds to enhance access to quality education to open up more opportunities for individuals who might otherwise commit drug

offences for economic reasons, with a long-term goal of breaking the cycle of poverty. The government can also initiate partnerships with private stakeholders in impoverished areas to create more job opportunities and reduce the economic motivation that often leads to drug involvement.

Furthermore, it is intriguing that the government articulated emergency discourse. During states of emergency, individuals often agree to give up some freedoms or may agree to measures they would typically oppose in non-emergency situations. This, in a way, also relates to the recent survey by Hoyle (2021), which indicates that although general support for the death penalty remains high at 69%, people tend to agree less when confronted with real contexts. The strong support is often based on the assumption that capital punishment is imposed fairly and proportionately, and when people find that it is not, the support diminishes. It suggests that the people themselves are not staunch supporters of the death penalty, even though they accept the idea. Thus, there is tension in how the discourse on the death penalty is articulated.

Lastly, while life imprisonment still serves as an alternative to the death penalty in Indonesia, keeping these individuals alive poses no threat to society if that is what the government is concerned about. There is a common argument that imprisonment demands excessive resources, while the death penalty appears to be cost-effective. However, in reality, the death penalty can end up costing more resources due to prolonged waiting periods, sometimes spanning 10-20 years, without certainty of execution. This point itself is intriguing to observe, as the extended waiting period might suggest hesitancy in taking someone's life. This seemingly goes against the harsh and merciless discourse employed by the government, leaving this anomaly unanswered.

### **7.3. Recommendations**

The research findings lead to further research questions:

1. Indonesia's legal framework includes capital punishment for some other crimes other than drug offences, such as premeditated murder and corruption. However, a significant majority of death sentences are given for drug-related offences. Therefore, it is interesting to investigate the government's priorities and how the public views these other types of crimes.



2. Regarding public support of capital punishment, one crucial area requiring further investigation is how the public actively shapes discourse to support the retentionist position, especially within digital platforms. By analysing existing narratives, the research would uncover the reasons behind the prevailing public acceptance of the death penalty and why the pro-death penalty discourse seems to resonate well in the current political situation in Indonesia.
3. Indonesia has a notable practice of prolonged waiting periods for individuals on death row. Conducting research to investigate the underlying reasons for this practice would be intriguing. This study could involve interviews with key stakeholders such as judges, prosecutors, police officers, and legal experts to gain insights into the factors contributing to this practice.
4. Exploring the experiences and perspectives of individuals directly affected by punitive drug policies could offer insights into the human rights implications and consequences of capital punishment for drug offences in Indonesia. This study might include prisoners on death row, their families, or people who use drugs.
5. Further research on a comparative study with Malaysia, another Muslim-majority nation, would be fascinating, considering Malaysia's recent abolition of the mandatory death penalty for drug offences. Exploring the prominence of Islamic discourse in these contexts would also be particularly intriguing. Additionally, examining the role of civil society in advocating for such changes and its potential as a model for similar movements elsewhere could provide valuable lessons.

Finally, the Indonesian government shall:

- Put an official moratorium on execution, with the ultimate goal of abolishing it entirely.
- Develop policies that prioritise health and justice.
- Engage with civil society organisations, human rights activists, and other relevant stakeholders to ensure that diverse perspectives on resolving the drug issue are considered.

## Bibliography

- Agus, F. (2022) 'Perang Besar Lawan Narkoba,' *Riau Pos*, 26 June. Available at: <https://riaupos.co/nasional/26/06/2022/75761/perang-besar-lawan-narkoba/> (Accessed: 18 March 2024).
- Akuntono, I. (2015) 'Presiden Jokowi: Indonesia Gawat Darurat Narkoba,' *Kompas*, 4 February. Available at: <https://nasional.kompas.com/read/2015/02/04/10331931/Presiden.Jokowi.Indonesia.Gawat.Darurat.Narkoba> (Accessed: 15 March 2024).
- Aladdin, Y.A., Fadhal, S., and Fernando, J. (2022) 'Counter hegemonic representation of Islamic media in Indonesia on death penalty issue', *Jurnal Magister Ilmu Komunikasi*, 8(2). Available at: <http://dx.doi.org/10.30813/bricolage.v8i2.3232>.
- Alston, P. (2007) *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, 29 January. UN Doc. A/HRC/4/20. Available at: <https://documents.un.org/doc/undoc/gen/g07/105/00/pdf/g0710500.pdf?token=LlOfqxFOtBGXEPoyZu&fe=true> (Accessed: 1 May 2024).
- Amelia, M. (2017) 'Polisi Tembak Mati WN Taiwan Bos Penyelundup 1 Ton Sabu', *Detiknews*, 13 July. Available at: <https://news.detik.com/berita/d-3558187/polisi-tembak-mati-wn-taiwan-bos-penyelundup-1-ton-sabu> (Accessed: 19 February 2024).
- Ameliya, T. (2021) 'Komnas HAM: Masa tunggu hukuman mati yang lama jadi soal serius HAM,' *Antara*, 19 October. Available at: <https://www.antaraneews.com/berita/2469025/komnas-ham-masa-tunggu-hukuman-mati-yang-lama-jadi-soal-serius-ham> (Accessed: 15 March 2024).
- Amnesty International (2015) *Is the death penalty the answer to drug crime?* Available at: <https://www.amnesty.org/en/latest/campaigns/2015/10/is-the-death-penalty-the-answer-to-drug-crime/> (Accessed: 26 February 2024).
- Amnesty International (2023) *Death sentences and executions 2022*. Available at: <https://www.amnesty.org/en/documents/act50/6548/2023/en/> (Accessed: 23 February 2024).
- Amnesty International (2023a) *Unlawful and discriminatory - the death penalty for drug related offences*. Available at: <https://www.amnesty.org/en/documents/act50/7213/2023/en/> (Accessed: 23 February 2024).
- Artharini, I. (2017) 'Instruksi Presiden Jokowi untuk menembak pengedar narkoba 'dikecam', *BBC*, 24 July. Available at: <https://www.bbc.com/indonesia/indonesia-40698883> (Accessed: 20 March 2024).
- Ashworth, A. (2007) 'Sentencing,' in M. Maguire, R. Morgan, R. Reiner, eds. *The Oxford Handbook of Criminology*. Oxford: Oxford University Press.

- Badan Narkotika Nasional (BNN) (2014) *Hukuman Mati Bagi Bandar Narkoba Melindungi dan Menyelamatkan Bangsa Indonesia dari Bahaya Penyalahgunaan Narkoba*. Available at: <https://bnn.go.id/hukuman-mati-bagi-bandar-narkoba-melindungi-dan-menyelamatkan-bangsa-indonesia-dari-bahaya-penyalahgunaan-narkoba/> (Accessed: 16 March 2024).
- Badan Narkotika Nasional (BNN) (2016) *Negara Darurat Narkoba, masyarakat harus bangkit ikut perangi narkoba*. Available at: <https://jdih.pasuruankab.go.id/index.php/berita/detail/negara-darurat-narkoba-masyarakat-harus-bangkit-ikut-perangi-narkoba-.html> (Accessed: 12 March 2024).
- Badan Narkotika Nasional (BNN) (2019) *Mengapa Gembong Narkoba Pantas Dieksekusi Mati?* Available at: <https://asahankab.bnn.go.id/498-2/> (Accessed: 12 March 2024).
- Badan Narkotika Nasional (BNN) (2020) *Indonesia darurat Narkoba!* Available at: <https://malut.bnn.go.id/indonesia-darurat-narkoba/> (Accessed: 12 March 2024).
- Badan Narkotika Nasional (BNN) (2021a) *NARKOBA SEBAGAI MUSUH BERSAMA*. Available at: <https://kepri.bnn.go.id/narkoba-sebagai-musuh-bersama/> (Accessed: 13 March 2024).
- Badan Narkotika Nasional (BNN) (2021b) *PERANG MELAWAN NARKOBA (WAR ON DRUGS) DI ERA PANDEMI COVID-19 MENUJU INDONESIA BERSIH NARKOBA*. Available at: <https://bnn.go.id/hani-2021-perang-melawan-narkoba-war-drugs/> (Accessed: 13 March 2024).
- Badan Narkotika Nasional (BNN) (2022a) *Hindari Narkotika Cerdaskan Generasi Muda Bangsa*. Available at <https://bnn.go.id/hindari-narkotika-cerdaskan-generasi-muda-bangsa/> (Accessed: 13 March 2024).
- Badan Narkotika Nasional (BNN) (2022b) *Melihat Narkoba dari Kacamata Islam*. Available at: <https://kuningankab.bnn.go.id/melihat-narkoba-dari-kacamata-islam/> (Accessed: 13 March 2024).
- Badan Narkotika Nasional (BNN) (2023a) *Narkoba merusak generasi bangsa?* Available at: <https://tubankab.bnn.go.id/narkoba-merusak-generasi-bangsa/> (Accessed: 12 March 2024).
- Badan Narkotika Nasional (BNN) (2023b) *PENJATUHAN HUKUMAN MATI BAGI BANDAR NARKOBA MENURUT HUKUM DAN HAK ASASI MANUSIA*. Available at: <https://bengkulu.bnn.go.id/penjatuhan-hukuman-mati-bagi-bandar-narkoba-menurut-hukum-dan-hak-asasi-manusia/> (Accessed: 12 March 2024).
- Baier, K. (1977) 'The Strengths and Limits of the Theory of Retributive Punishment', *Philosophic Exchange*, vol. 8, No. 1, 37-53. Available at: <http://hdl.handle.net/20.500.12648/3327>.
- Bajammal, M. (2020) 'Tembak Mati di Tempat', *Lembaga Bantuan Hukum Masyarakat*, Available at: <https://lbhmasyarakat.org/wp-content/uploads/2020/02/Mondok-Tembak-di-Tempat-2019.pdf> (Accessed: 23 February 2024).

- Banks, C. (2008) *Criminal justice ethics: theory and practice*. 2nd ed. Thousand Oaks: Sage.
- Banks, C. (2016) *Criminal justice ethics: theory and practice*. 4. rev. ed. Thousand Oaks: Sage.
- Bergström, G., Ekström L., and Boréus K. (2017) 'Discourse Analysis', in Kristina Boréus and Göran Bergström (eds) *Analyzing text and discourse : eight approaches for the social sciences*. London: SAGE Publications Inc.
- Bicchieri, C., Muldoon, R., and Sontuoso, A. (2018) 'Social norms', in E. N. Zalta (Ed.), *Stanford encyclopedia of philosophy*. Available at: <https://plato.stanford.edu/entries/social-norms/> (Accessed: 14 February 2024).
- Bielawski, K. (2023) 'Drugs and State Vigilantism as a Strategy of Political Activity: The Example of Thailand, the Philippines, and Indonesia', *Polish Political science Yearbook*, vol. 52(3), pp. 153-164. Available at: <https://doi.org/10.15804/ppsy202306>.
- Blakeslee, S. (2004) 'The CRAAP Test', *LOEX Quarterly*, 31.
- Bossuyt, M. (2018) 'The UN Optional Protocol on the Abolition of the Death Penalty', in *Arcs of Global Justice*. New York: Oxford University Press, pp. 109–115. Available at: <https://doi.org/10.1093/oso/9780190272654.003.0007>.
- Brasilino, G.G. de O. (2019) 'The Metaphor of "War on Drugs" and "Mass Murder" in the Philippines: discourse analysis, power relations, and an interview with President Rodrigo Duterte', *Cadernos Argentina Brasil*, 7(1). Available at: <https://doi.org/10.12957/neiba.2018.42489>.
- Brewin, M. (2012) 'Girard, Mediated Texts, and the Modern Death Penalty', *Journal of media and religion*, 11(4), pp. 177–188. Available at: <https://doi.org/10.1080/15348423.2012.730318>.
- Brock, D., Glasbeek, A., and Murdocca, C. (2014) *Thinking Differently About Crime*, 17. Toronto: University of Toronto Press
- Bryman, A. (2016) *Social research methods*. 5th ed. Oxford: Oxford University Press.
- Cabinet Secretariat of Indonesia (Setkab) (2015) *No Mercy Anymore, President Jokowi: Catch and Arrest the Dealers and Distributors of Drugs*. Available at: <https://setkab.go.id/en/no-mercy-anymore-president-jokowi-catch-and-arrest-the-dealers-and-distributors-of-drugs/> (Accessed: 18 February 2024).
- Cabinet Secretariat of Indonesia (Setkab) (2023) *Presiden Minta Jajaran Lakukan Terobosan Dalam Pemberantasan dan Penanganan Kasus Narkoba*. Available at: <https://setkab.go.id/presiden-minta-jajaran-lakukan-terobosan-dalam-pemberantasan-dan-penanganan-kasus-narkoba/> (Accessed: 15 March 2024).
- Carlsmith, K.M. (2006) 'The roles of retribution and utility in determining punishment', *Journal of experimental social psychology*, 42(4), pp. 437–451. Available at: <https://doi.org/10.1016/j.jesp.2005.06.007>.

- Cheong, C. W., Ser, T. E., Lee, J., and Maathi, B. (2018) 'Public Opinion on the Death Penalty in Singapore: Survey Findings', *NUS Law Working Paper* No. 2018/002, Available at SSRN: <http://dx.doi.org/10.2139/ssrn.3122150>.
- Chilton, B.S. (2001) 'Criticizing postmodern criminal justice theory at its root: Nietzsche's justice theory', *Justice professional*, 14(1), pp. 79–94. Available at: <https://doi.org/10.1080/1478601X.2001.9959611>.
- Clear, T.R. (2016) "'A Thug in Prison Can't Shoot Your Sister'", *Criminology & public policy*, 15(2), pp. 343–347. Available at: <https://doi.org/10.1111/1745-9133.12202>.
- Cook, E. (2018) 'Beware Indonesia's Quiet Drug War', *The Diplomat*, 12 January. Available at: <https://thediplomat.com/2018/01/beware-indonesias-quiet-drug-war/> (Accessed: 23 February 2024).
- Creppell, I. (2011) 'The concept of normative threat', *International theory*, 3(3), pp. 450–487. Available at: <https://doi.org/10.1017/S1752971911000170>.
- Cypress, B.S. (2017) 'Rigor or reliability and validity in qualitative research: Perspectives, strategies, reconceptualization, and recommendations', *Dimensions of critical care nursing*, 36(4), pp. 253–263. Available at: <https://doi.org/10.1097/DCC.0000000000000253>.
- Davis, J. (2000) *Threats and Promises: The Pursuit of International Influence*. Baltimore: Johns Hopkins University Press.
- Druzin, B.H. and Wan, A.S. (2015) 'The theatre of punishment: case studies in the political function of corporal and capital punishment', *Washington University global studies law review*, 14(3), p. 357.
- Economic and Social Council (ECOSOC) (1984) *Safeguards guaranteeing protection of the rights of those facing the death penalty*, adopted on 25 May.
- Erdianto, K. (2016) 'Hukuman Mati Tak Turunkan Angka Pengguna Narkoba,' *Kompas*, 1 August. Available at: <https://nasional.kompas.com/read/2016/08/01/06050081/Hukuman.Mati.Tak.Turunkan.Angka.Pengguna.Narkoba?page=all>. (Accessed: 20 March 2024).
- Erdianto, K. and Maharani D. (2018) 'LBH Masyarakat: Hentikan Praktik Tembak Mati Kasus Narkoba,' *Kompas*, 4 March. Available at: <https://nasional.kompas.com/read/2018/03/04/19311201/lbh-masyarakat-hentikan-praktik-tembak-mati-kasus-narkotika> (Accessed: 20 March 2024).
- Famakinwa, J.. (2011) 'Interpreting the right to life', *Diametros*, 29(29), pp. 22–30.
- Farrell, D.M. (1985) 'The Justification of General Deterrence', *The Philosophical review*, 94(3), pp. 367–394. Available at: <https://doi.org/10.2307/2185005>.
- Fischer, F. and Gottweis, H. (2012) 'Introduction: The argumentative turn revisited,' In *The Argumentative Turn Revisited. Public Policy as a Communicative Practice*, edited by Frank Fischer and Herbert Gottweis. Durham and London: Duke University Press, pp. 1–27.

- Fleming, C. (2004) *René Girard : violence and mimesis*. Oxford: Polity.
- Foucault, M. (1972) *The archaeology of knowledge and the discourse on language*.  
Translated from the French by A. M. Sheridan Smith. New York: Pantheon Books.
- Foucault, M. (1978) *DISCIPLINE AND PUNISH: The Birth of the Prison*. 1st ed. New York: Pantheon Books.
- Foucault, M. (1981) 'The Order of Discourse', in R. Young (ed.), *Untying the Text: a Post-structural Anthology*. Boston: Routledge & Kegan Paul, pp.48-78.
- Foucault, M. (1995) *Discipline and Punish: The Birth of the Prison*. 2nd ed. New York: Vintage Books.
- Fransiska, A. (2022) 'Weighing of the criminalization of cannabis in Indonesia narcotic law with international human rights law perspective', *International Journal of Research in Business and Social Science*, 11(6), pp. 591-599. Available at: <https://doi.org/10.20525/ijrbs.v11i6.1972>.
- Girard, R. (1966). *Deceit, Desire, and the Novel: The self and other in literary structure*. Baltimore, Johns Hopkins P.
- Girard, R. (1977) *Violence and the sacred*. Baltimore, Md.: Johns Hopkins Univ.Press.
- Girard, R. (1986). *The scapegoat*. Baltimore: Johns Hopkins University Press.
- Girard, R., Oughourlian, J.M. and Lefort, G. (1987) *Things hidden since the foundation of the world*. London: Athlone.
- Girelli, G. (2019) *The Death Penalty for Drug Offences: Global Overview 2018*. Harm Reduction International Publication. Available at: <https://hri.global/wp-content/uploads/2019/02/GO2018-Final-web.pdf> (Accessed: 10 March 2024).
- Girelli, G. (2021) 'Alternative facts': Public opinion surveys on the death penalty for drug offences in selected Asian countries', *The International journal of drug policy*, 92, pp. 103155–103155. Available at: <https://doi.org/10.1016/j.drugpo.2021.103155>.
- Girelli, G., Jofré M., and Larasati A. (2023) *The Death Penalty for Drug Offences: Global Overview 2022*. Harm Reduction International Publication. Available at: [https://hri.global/wp-content/uploads/2023/03/HRI\\_DeathPenalty\\_Report2022\\_REV.pdf](https://hri.global/wp-content/uploads/2023/03/HRI_DeathPenalty_Report2022_REV.pdf). (Accessed: 22 February 2024).
- Gumilang, P. (2015) 'Alternatif Lain Hukuman Mati,' *CNN*, 13 October. Available at: <https://www.cnnindonesia.com/nasional/20151010183804-12-84183/alternatif-lain-hukuman-mati> (Accessed: 20 March 2024).
- Gunawan, R., Pamintori R. T., and Bajammal, M. (2019) *Memperkuat Perlindungan Hak Orang Berhadapan dengan Hukuman Mati/Eksekusi*. LBH Masyarakat. Available at: [https://lbhmasyarakat.org/wp-content/uploads/2019/03/000319\\_Laporan-Kebijakan\\_Safeguard-DP\\_LBHM.pdf](https://lbhmasyarakat.org/wp-content/uploads/2019/03/000319_Laporan-Kebijakan_Safeguard-DP_LBHM.pdf). (Accessed: 13 March 2024).

- Hascal, E. J. (2013) 'An explication of Nietzsche's views on punishment', *College of Arts & Sciences Senior Honors Theses*, Paper 51. Available at: <http://doi.org/10.18297/honors/51>
- Havenhand, G. (2020) *Reorienting Drug Policy in Indonesia: Pathways to the Sustainable Development Goals*, Reprieve and LBH Masyarakat. Available at: [https://reprieve.org/wp-content/uploads/sites/2/2020/07/ReorientingDrugPolicyinIndonesia\\_June2020.pdf](https://reprieve.org/wp-content/uploads/sites/2/2020/07/ReorientingDrugPolicyinIndonesia_June2020.pdf). (Accessed: 13 March 2024).
- Heriyanto, D.S.N. and Gui, H. (2016). Death Penalty Legislation in China and Indonesia Under International Human Rights Law Perspective. *Jurnal Hukum IUS QUIA IUSTUM*, 23(4), pp.576–592. doi:<https://doi.org/10.20885/iustum.vol23.iss4.art3>.
- Ho, R., ForsterLee, L., ForsterLee, R., and Crofts, N. (2002) 'Justice versus vengeance: motives underlying punitive judgements', *Personality and individual differences*, 33(3), pp. 365–377. Available at: [https://doi.org/10.1016/S0191-8869\(01\)00161-1](https://doi.org/10.1016/S0191-8869(01)00161-1).
- Hood, R. (2013) 'The Death Penalty in Malaysia, Public opinion on the mandatory death penalty for drug trafficking, murder and firearms offences', *The Death Penalty Project*. Available at: <https://www.deathpenaltyproject.org/wp-content/uploads/2018/02/Malaysia-report.pdf> (Accessed: 13 March 2024).
- Hood, R. and Hoyle, C. (2009) 'Abolishing the Death Penalty Worldwide: The Impact of a "New Dynamic"', *Crime and justice (Chicago, Ill.)*, 38(1), pp. 1–63. Available at: <https://doi.org/10.1086/599200>.
- Hoyle, C. (2021) 'Investigating Attitudes to the Death Penalty in Indonesia,' *The Death Penalty Project*. Available at: [https://www.deathpenaltyproject.org/wp-content/uploads/2021/06/DPP-Indonesia-Public-Opinion-Report\\_Web.pdf](https://www.deathpenaltyproject.org/wp-content/uploads/2021/06/DPP-Indonesia-Public-Opinion-Report_Web.pdf). (Accessed: 13 February 2024).
- Hudson, B. (2003) *Understanding justice : an introduction to ideas, perspectives, and controversies in modern penal theory*. 2. ed. Buckingham: Open University Press.
- Huebner, B. M., and Inzana, V. (2009) 'Rehabilitation,' in *Criminology*. Available at: <https://doi.org/10.1093/obo/9780195396607-0046>.
- Human Rights Committee (2018) *General Comment 36 on Article 6 (Right to Life) of the International Covenant on Civil and Political Rights (ICCPR)*, adopted on 30 October, UN Doc CCPR/C/GC/36.
- Indonesian Supreme Court (2017) *Pro-Kontra Hukuman Mati Berlanjut*. Available at: <https://www.mkri.id/index.php?page=web.Berita&id=13> (Accessed: 15 March 2024).
- International Covenant on Civil and Political Rights (ICCPR)* (1966) Treaty no. 14668. United Nations Treaty Series, vol. 999, adopted in 16 December.
- Johnstone, G. (2014) 'Restorative Justice in Prisons: Methods, Approaches and Effectiveness', *Council of Europe*. Available at: <https://rm.coe.int/16806f9905>. (Accessed: 13 March 2024).

- Jones, B. (2023) 'Death Penalty Abolition, the Right to Life, and Necessity', *Human rights review* (Piscataway, N.J.), 24(1), pp. 77–95. Available at: <https://doi.org/10.1007/s12142-022-00677-x>.
- Jørgensen, M. and Phillips, L. (2002) *Discourse analysis as theory and method*. London: Sage.
- Jouet, M. (2023) 'Death Penalty Abolitionism from the Enlightenment to Modernity', *The American journal of comparative law*, 71(1), pp. 46–97. Available at: <https://doi.org/10.1093/ajcl/avad011>.
- Kendall, G. and Wickham, G. (1999) *Using Foucault's Methods*. 1st edn. London: SAGE Publications.
- Kennedy, D.M. (2009) *Deterrence and Crime Prevention: Reconsidering the Prospect of Sanction*. 1st ed. Oxford: Routledge. Available at: <https://doi.org/10.4324/9780203892022>.
- Kepolisian Negara Republik Indonesia (POLRI) (2023) *Residivis Pengedar Barang Haram Narkoba Digulung Polisi*. Available at: <https://humas.polri.go.id/2023/07/23/residivis-pengedar-barang-haram-narkoba-digulung-polisi/> (Accessed: 15 March 2024).
- Kine, P. (2015) 'Dispatches: Indonesia's Death Penalty Double Standard', *Human Rights Watch*, 15 January. Available at: <https://www.hrw.org/news/2015/01/15/dispatches-indonesias-death-penalty-double-standard> (Accessed: 23 February 2024).
- Kine, P. (2015) 'Why Did Indonesia Just Execute Eight People for Drug Crimes?', *Human Rights Watch*, 30 April. Available at: <https://www.hrw.org/news/2015/04/30/why-did-indonesia-just-execute-eight-people-drug-crimes> (Accessed: 23 February 2024).
- Komisi Nasional Hak Asasi Manusia (Komnas HAM) (2022) *Realita Hukuman Mati dari Perspektif HAM*. Available at: <https://www.komnasham.go.id/index.php/news/2022/6/6/2144/realita-hukuman-mati-dari-perspektif-ham.html> (Accessed: 18 March 2024).
- KontraS (2016) *Saatnya Mengedepankan Hak Asasi Manusia Dalam Menanggulangi Persoalan Narkotika*. Available at: <https://kontras.org/2016/04/19/saatnya-mengedepankan-hak-asasi-manusia-dalam-menanggulangi-persoalan-narkotika/> (Accessed: 11 March 2024).
- KontraS (2021) *Laporan Hari Anti Hukuman Mati Internasional: Konsistensi Negara dalam Melanggengkan Hukuman Mati*. Available at: <https://kontras.org/wp-content/uploads/2021/10/Laporan-Hukuman-Mati-2021.pdf> (Accessed: 21 February 2024).
- Kramer, E. and Stoicescu, C. (2021) 'An uphill battle: A case example of government policy and activist dissent on the death penalty for drug-related offences in Indonesia', *The International journal of drug policy*, 92, pp. 103265–103265. Available at: <https://doi.org/10.1016/j.drugpo.2021.103265>.



- Laclau, E. and Mouffe, C. (2001) *Hegemony & socialist strategy*. 2nd ed. London: Verso.
- Larasati A. and Girelli, G. (2021) *The Death Penalty for Drug Offences: Global Overview 2020*. Harm Reduction International Publication. Available at: [https://www.hri.global/files/2021/04/07/HRI\\_Death\\_Penalty\\_Report\\_2020\\_FINAL.pdf](https://www.hri.global/files/2021/04/07/HRI_Death_Penalty_Report_2020_FINAL.pdf). (Accessed: 22 February 2024).
- Lasco, G. (2020) 'Drugs and drug wars as populist tropes in Asia: Illustrative examples and implications for drug policy', *The International journal of drug policy*, 77, pp. 102668–102668. Available at: <https://doi.org/10.1016/j.drugpo.2020.102668>.
- Leechaianan, Y. and Longmire, D. (2013) 'The Use of the Death Penalty for Drug Trafficking in the United States, Singapore, Malaysia, Indonesia and Thailand: A Comparative Legal Analysis', *Laws*, 2(2), pp. 115–149. Available at: <https://doi.org/10.3390/laws2020115>.
- Lembaga Bantuan Hukum Masyarakat (LBHM) (2021) 'Mengungkap Sikap Publik Indonesia Terhadap Hukuman Mati', 30 June [Press Release]. Available at: <https://lbhmasyarakat.org/rilis-pers-mengungkap-sikap-publik-indonesia-terhadap-hukuman-mati/> (Accessed: 26 February 2024).
- Lembaga Bantuan Hukum Masyarakat (LBHM) (2022) 'Hentikan Pendekatan Punitif Dalam Kasus Narkotika & Penjatuhan Hukuman Mati,' 14 January [Press Release]. Available at: <https://lbhmasyarakat.org/siaran-pers-hentikan-pendekatan-punitif-dalam-kasus-nya-hentikan-penjatuhan-hukuman-mati/> (Accessed: 26 March 2024).
- Machado, I. S. (2014) 'Laclau and Mouffe's Theory of Discourse and Hegemony: a Possible Approach to Law and its Integrity?', *Archiv für Rechts- und Sozialphilosophie*, 100(3), pp. 323–335.
- Mackuen, M., Erikson, R. and Stimson, J. (1992) 'PEASANTS OR BANKERS - THE AMERICAN ELECTORATE AND THE UNITED-STATES-ECONOMY', *The American political science review*, 86(3), pp. 597–611. Available at: <https://doi.org/10.2307/1964124>.
- Maestro, M. (1973) 'A Pioneer for the Abolition of Capital Punishment: Cesare Beccaria', *Journal of the history of ideas*, 34(3), pp. 463–468. Available at: <https://doi.org/10.2307/2708966>.
- Mahendra, H. H., Alfian, R. F., Ihyaroza, M. Y., Rumpia, J. R., Yosua, H. G., Sodik, R. B., and Yunus, A. (2023) *Steep Road for Abolishing Death Penalty in Indonesia*. KontraS International Death Penalty Report 2023. Available at: <https://kontras.org/en/2023/10/10/executive-summary-report-on-the-2023-anti-death-penalty-day-the-challenging-path-to-abolishing-the-death-penalty/> (Accessed: 26 February 2024).
- Mahmud, A. (2021) "PROBLEMA PIDANA MATI TERHADAP PELAKU TINDAK PIDANA NARKOTIKA DALAM SISTEM HUKUM INDONESIA," *Jurnal Hukum & Pembangunan*: 51(2). Available at: <https://doi.org/10.21143/jhp.vol51.no2.3060>.

- Meranze, M. (2003) 'Michel Foucault, the Death Penalty and the Crisis of Historical Understanding', *Historical reflections*, 29(2), pp. 191–209.
- Milawaty and Hapsari, N.F. (2016) 'The Representation of Indonesia in an Australian Newspaper Sydney Morning Herald Online 2015 Covering the Case of Andrew Chan and Myuran Sukumaran's Death Penalty: A Critical Discourse Analysis', *Allusion Journal Universitas Airlangga*, 5(2). Available at: <https://journal.unair.ac.id/index.php/jpbm/article/view/ALLUSION@the-representation-of-indonesia-in-an-australian-newspaper--sydney-morning-herald-online-2015-covering-the-case-of-andrew-chan-article-11359-media-95-category-8.html>. (Accessed: 29 February 2024).
- Miller, S. (2011) *After the Crime: The Power of Restorative Justice Dialogues between Victims and Violent Offenders*. New York: New York University Press.
- Mills S. (2003). *Michel Foucault*. London: Routledge.
- Ministry of Law and Human Rights (Kemenkumham) (2022) *Kolaborasi Pentahelix Penting Dalam Perang Melawan Narkoba*. Available at: <https://ntt.kemenkumham.go.id/berita-kanwil/berita-utama/10428-wagub-ntt-josef-nae-soi-kolaborasi-pentahelix-penting-dalam-perang-melawan-narkoba> (Accessed: 29 March 2024).
- Muradi, C., Agustino, L., Akbar I., and Manan F. (2020) 'Narkoba and security threats in Indonesia: Regional responsiveness index and eradication policies', *Journal of advanced research in law and economics*, 11(4), pp. 1206–1217. Available at: [https://doi.org/10.14505/jarle.v11.4\(50\).17](https://doi.org/10.14505/jarle.v11.4(50).17).
- Mustafa, C. (2021) 'Key finding: Result of a qualitative study of judicial perspectives on the sentencing of minor drug offenders in Indonesia: Structural inequality', *Qualitative report*, 26(5), pp. 1678–1692. Available at: <https://doi.org/10.46743/2160-3715/2021.4436>.
- Naeem, M., Ozuem, W., Howell, K., & Ranfagni, S. (2024) 'Demystification and Actualisation of Data Saturation in Qualitative Research Through Thematic Analysis', *International Journal of Qualitative Methods*, 23. Available at: <https://doi.org/10.1177/16094069241229777>
- Nichols, M. (2015) 'U.N. chief appeals to Indonesia to stop death row executions', *Reuters*, 14 February. Available at: <https://www.reuters.com/article/indonesia-executions-un-idINKBN0LI06O20150214/> (Accessed: 21 February 2024).
- Octavia, S. (2023) 'Seruan Hentikan Hukuman Mati, LBHM: Pengadilan Wajib Pelajari Background Terpidana,' *Gatra*, 16 May. Available at: <https://www.gatra.com/news-571798-hukum-seruan-hentikan-hukuman-mati-lbhm-pengadilan-wajib-pelajari-background-terpidana.html> (Accessed: 20 March 2024).
- OHCHR (2023) *UN experts call for States to uphold absolute prohibition of torture in armed conflict*, 26 June. Available at: <https://www.ohchr.org/en/statements/2023/06/un->

experts-call-states-uphold-absolute-prohibition-torture-armed-conflict (Accessed: 25 February 2024).

OHCHR (2023a) *UN experts call for universal abolition of the death penalty*, 9 October. Available at: <https://www.ohchr.org/en/press-releases/2023/10/un-experts-call-universal-abolition-death-penalty> (Accessed: 25 March 2024).

‘PN Jantho v. Bustamam’ (2021) *Pengadilan Negeri Jantho*, case no. 161/Pid.Sus/2021/PN Jth. Judgement of 20 December. Available at: <https://103.226.55.85/direktori/putusan/zaec6306586c0e519313630353434.html> (Accessed: 22 March 2024).

‘PN Jantho v. Mulyadi’ (2023) *Pengadilan Negeri Jantho*, case no. 27/Pid.Sus/2023/PN Jth. Judgement of 19 June. Available at: <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaec20925e688bc48aaa313535393131.html> (Accessed: 21 March 2024).

‘PN Jantho v. Sofyan’ (2023) *Pengadilan Negeri Jantho*, case no. 29/Pid.Sus/2023/PN Jth. Judgement of 19 June. Available at: <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaec0fe0b20eeb2897ed313030373032.html> (Accessed: 21 March 2024).

‘PN Jantho v. Zulfikar’ (2023) *Pengadilan Negeri Jantho*, case no. 24/Pid.Sus/2023/PN Jth. Judgement of 19 June. Available at: <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaec208ced83d832b3ac313532303134.html> (Accessed: 22 March 2024).

‘PN Medan v. Hendra’ (2021) *Pengadilan Negeri Medan*, case no. 3923/Pid.Sus/2020/PN Mdn. Judgement of 13 April. Available at: <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaebfbf69b75a532baff313232333335.html> (Accessed: 17 March 2024).

‘PN Medan v. Indra’ (2023) *Pengadilan Negeri Medan*, case no. 1479/Pid.Sus/2023/PN Mdn. Judgement of 28 November. Available at: <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaec8f4e1c9e757a806c313430303134.html> (Accessed: 17 March 2024).

‘PN Pekanbaru v. Budi and Aidil’ (2023) *Pengadilan Negeri Pekanbaru*, case no. 600/Pid.Sus/2023/PN Pbr. Judgement of 10 October. Available at: <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaec689ada74cb4cb2a2303830313139.html> (Accessed: 18 March 2024).

‘PN Pekanbaru v. Sugeng’ (2021) *Pengadilan Negeri Pekanbaru*, case no. 220/Pid.Sus/2021/PN Pbr. Judgement of 28 July. Available at: <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaebf0d2dbeb189caaa5303830393538.html> (Accessed: 18 March 2024).

Praditya, I.I. (2014) ‘Jokowi Tegaskan Indonesia Darurat Narkoba’, *Liputan 6*, 18 December. Available at: <https://www.liputan6.com/news/read/2149061/jokowi-tegaskan-indonesia-darurat-narkoba> (Accessed: 23 February 2024).

- ‘PT Banda Aceh v. Maulidar’ (2023) *Pengadilan Tinggi Banda Aceh*, case no. 165/PID.SUS/2023/PT BNA. Judgement of 20 June. Available at: <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee0f1c0bb064c49f11313033393232.html> (Accessed: 17 March 2024).
- ‘PT Banda Aceh v. Munawir’ (2023) *Pengadilan Tinggi Banda Aceh*, case no. 166/PID.SUS/2023/PT BNA. Judgement of 20 June. Available at: <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee0f1d7d125b62ac0f313034393432.html> (Accessed: 19 March 2024).
- ‘PT Pekanbaru v. David’ (2023) *Pengadilan Tinggi Pekanbaru*, case no. 423/PID.SUS/2023/PT PBR. Judgement of 20 September. Available at: <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee576ba891d5f68fab3131313033339.html> (Accessed: 18 March 2024).
- Purnama, R. (2021) ‘Narkotika Musuh Bersama, Polisi: Sampai Lubang Tikus Akan Kita Kejar,’ *Sindonews*, 18 January. Available at: <https://metro.sindonews.com/read/305608/170/narkotika-musuh-bersama-polisi-sampai-lubang-tikus-akan-kita-kejar-1610967675> (Accessed: 15 March 2024).
- Purnomo, A. (2016) ‘Hukuman Mati Bagi Tindak Pidana Narkoba di Indonesia: Perspektif Sosiologi Hukum,’ *De Jure: Jurnal Hukum dan Syar'iah*, 8(1), pp. 15-23. Available at: <https://doi.org/10.18860/j-fsh.v8i1.3726>.
- Putri, S.A.S.M. (2018) ‘Death Penalty in The Jakarta Post and The Jakarta Globe Editorials: Neutral or Loaded? Assertive or Timid?’ *Journal of Language and Literature*, 18(2). Available at: <https://doi.org/10.24071/joll>.
- Raffle, E. (2021) ‘The war on drugs in Southeast Asia as ‘state vigilantism’’, *The International journal of drug policy*, 92, pp. 103114–103114. Available at: <https://doi.org/10.1016/j.drugpo.2021.103114>.
- Rafsanjani, O. and Mustafa, A. (2022) ‘Why Should The Death Penalty Not Be Abolish For Narcotics Crimes? A Case Study In Indonesia’, *Jurnal Ilmiah Ilmu Pendidikan*, 5(8), pp 3104-3110. Available at: <https://doi.org/10.54371/jiip.v5i8.813>.
- Rahadi, F. (2023) ‘LBHM Nilai Hukuman Mati Bertentangan dengan Prinsip Permasalahan.’ *Republika*, 21 May. Available at: <https://rejogja.republika.co.id/berita/ruzdbs291/lbhm-nilai-hukuman-mati-bertentangan-dengan-prinsip-permasalahan> (Accessed: 11 March 2024).
- Rahmawati, M. (2019) ‘Analyzing Fair Trial Aspect of Death Penalty for Drug Cases in Indonesia,’ *Institute for Criminal Justice Reform*. Available at: <https://icjr.or.id/wp-content/uploads/2021/09/Analyzing-Fair-Trial-Aspect-of-Death-Penalty-for-Drug-Cases-in-Indonesia-Policy-and-Implementation-Special-Cases-on-Women.pdf>. (Accessed: 13 March 2024).
- Rawls J. (1995) *A Theory of Justice*. Cambridge: The Belknap Press.

- Riga, P. J. (1981) 'Capital Punishment and the Right to Life: Some Reflections on the Human Right As Absolute', 5 *SEATTLE U. L. REV.* 23.
- Rousseau, D.L. and Garcia-Retamero, R. (2007) 'Identity, Power, and Threat Perception: A Cross-National Experimental Study', *The Journal of conflict resolution*, 51(5), pp. 744–771. Available at: <https://doi.org/10.1177/0022002707304813>.
- Rusche, G. and Kirchheimer, O. (1939) *Punishment and social structure*. Colombia: Columbia University Press.
- Salgueiro, A.B. (2010) 'Promises, threats, and the foundations of Speech Act Theory', *Pragmatics : quarterly publication of the International Pragmatics Association*, 20(2), pp. 213–228. Available at: <https://doi.org/10.1075/prag.20.2.05bla>.
- Sander, G. (2021) 'State sanctioned killing in the name of drugs: Laws, practice and conflicting trends in Asia', *The International journal of drug policy*, 92, pp. 103266–103266. Available at: <https://doi.org/10.1016/j.drugpo.2021.103266>.
- Saptohutomo, A. (2023) 'Jokowi Diminta Gunakan Pendekatan Sains dan HAM dalam Rehabilitasi Narkoba,' *Kompas*, 13 September. Available at: <https://nasional.kompas.com/read/2023/09/13/23520851/jokowi-diminta-gunakan-pendekatan-sains-dan-ham-dalam-rehabilitasi-narkoba> (Accessed: 11 March 2024).
- Schabas, W. A. (2004) 'International Law and the Death Penalty: Reflecting or Promoting Change?' In P. Hodgkinson and W. Schabas, *Capital Punishment: Strategies for Abolition*. Cambridge: Cambridge University Press.
- Sefriani and Heriyanto, D. (2020) 'Ineffective and Inhumane: Time to End Indonesia's Death Penalty for Drug Traffickers', *International Journal of Innovation, Creativity and Change*, 13, pp. 647-661. Available at: [https://dspace.uui.ac.id/bitstream/handle/123456789/23930/13790\\_Sefriani\\_2020\\_ER.pdf?sequence=1&isAllowed=y](https://dspace.uui.ac.id/bitstream/handle/123456789/23930/13790_Sefriani_2020_ER.pdf?sequence=1&isAllowed=y)
- Simatupang, E. (2017) 'Getting Out of the Trap of War on Drugs', *JKAP. Jurnal Kebijakan dan Administrasi Publik*, 20(2), p. 9. Available at: <https://doi.org/10.22146/jkap.15548>.
- Smith, A.M. (1998) *Laclau and Mouffe : the radical democratic imaginary*. London: Routledge.
- Springer, R.A. and Clinton, M. (2015) 'Doing Foucault: inquiring into nursing knowledge with Foucauldian discourse analysis: Methodology - 'Doing Foucault,' *Nursing philosophy*, 16, pp. 87–97. Available at: <https://doi.org/10.1111/nup.12079>.
- Stahlkopf, C., Males, M. and Macallair, D. (2010) 'Testing Incapacitation Theory: Youth Crime and Incarceration in California', *Crime and delinquency*, 56(2), pp. 253–268. Available at: <https://doi.org/10.1177/0011128707307227>.
- Stephan, W. G. and Renfro, C. L. (2002) 'The role of threat in intergroup relations' In D. M. Mackie & E. R. Smith (Eds.), *From prejudice to inter-group emotions: Differentiated reactions to social groups*. New York: Psychology Press.

- Stephan, W. G. and Stephan, C. W. (2000) 'An integrated threat theory of prejudice,' in Oskamp, S. *Reducing Prejudice and Discrimination*. Mahwah, N.J.: Lawrence Erlbaum Associates.
- Stone, D. (2012) *Policy paradox : the art of political decision making*, 3rd ed. New York: W.W. Norton & Co.
- Susilo J. (2015) 'Presiden nyatakan perang terhadap narkoba,' *Antara*, 26 June. Available at: <https://www.antaraneews.com/berita/503644/presiden-nyatakan-perang-terhadap-narkoba> (Accessed: 15 March 2024).
- The Guardian* (2017) Indonesia police ordered to shoot drug dealers to tackle "narcotics emergency", 23 July. Available at: <https://www.theguardian.com/world/2017/jul/23/indonesia-police-ordered-to-shoot-drug-dealers-to-tackle-narcotics-emergency> (Accessed: 23 February 2024).
- Thomson J.J. (1996) 'A Defense of Abortion,' In D. Bonevac (ed.), *Today's Moral Issues*. London: Mayfield Publishing Company.
- Thomson, J.J. (2006) 'The Trolley Problem' In S.M. Cahn, P. Markie (ed.), *Ethics, Theory, and Contemporary Issues*. New York: Oxford University Press.
- Townshend, J. (2004) 'Laclau and Mouffe's Hegemonic Project: The Story So Far', *Political studies*, 52(2), pp. 269–288. Available at: <https://doi.org/10.1111/j.1467-9248.2004.00479.x>.
- UN General Assembly (UNGA) (1989) *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty*. Resolution 44/128. Adopted 15 December.
- UNODC (2019) *University Module Series on Crime Prevention and Criminal Justice*. Available at: <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-7/key-issues/2--justifying-punishment-in-the-community.html#:~:text=There%20are%20five%20main%20underlying,%3B%20deterrence%3B%20rehabilitation%20and%20reparation.> (Accessed: 13 March 2024).
- Von Hirsch, A. (1976). *Doing justice: the choice of punishments* : report of the Committee for the Study of Incarceration. New York: Hill and Wang.
- Walker, D.M., Cane, P. and Conaghan, J. (2008) *The new Oxford companion to law*. Oxford: Oxford University Press.
- Weihofen, H. (1939) 'RUSCHE AND KIRCHHEIMER - Punishment and Social Structure (Book Review)', *Washington University Law Quarterly*. St. Louis, Mo: Washington University, p. 144.
- Weisburd, D., Farrington, D.P., Gill, C. and Ajzenstadt, W.M. (2017) 'What Works in Crime Prevention and Rehabilitation: An Assessment of Systematic Reviews', *Criminology & public policy*, 16(2), pp. 415–449. Available at: <https://doi.org/10.1111/1745-9133.12298>.

- Wicaksana, D. A. (2023) 'Pakar Menjawab: Alasan Mengapa Hukuman Mati tidak Efektif dan Harus Dihentikan, Terlepas Apapun Kasusnya,' *Indonesia Judicial Research Society*. Available at: <https://ijrs.or.id/2023/11/30/pakar-menjawab-alasan-mengapa-hukuman-mati-tidak-efektif-dan-harus-dihentikan-terlepas-apapun-kasusnya-2/> (Accessed: 20 March 2024).
- Wirayuda, W. (2019) 'Bincang Tokoh Bersama LBH Masyarakat: Hentikan Hukuman Mati Sekarang Juga,' *Suara Kita*, 30 August. Available at: <https://suarakita.org/2016/08/liputan-bincang-tokoh-bersama-lbh-masyarakat-hentikan-hukuman-mati-sekarang-juga/> (Accessed: 20 March 2024).
- Wiwoho, B. (2017) 'Komnas HAM Desak Presiden Setop Hukuman Mati', *CNN Indonesia*, 13 December. Available at: <https://www.cnnindonesia.com/nasional/20171213022502-12-261976/komnas-ham-desak-presiden-setop-hukuman-mati> (Accessed: 19 February 2024).
- Yap, A. and Tan, S.J. (2020) 'Capital punishment in Singapore: A critical analysis of state justifications from 2004 to 2018', *International journal for crime, justice and social democracy*, 9(2), pp. 133–151. Available at: <https://doi.org/10.5204/ijcjsd.v9i2.1056>.
- Yost, B.S. (2010) 'Kant's Justification of the Death Penalty Reconsidered', *Kantian review*, 15(2), pp. 1–27. Available at: <https://doi.org/10.1017/S1369415400002417>.
- Zagare, F. C. (2013). Deterrence Theory, Then and Now: There is No Going Back. *St. Antony's International Review*, 9(1), pp. 157–167. Available at: <http://www.jstor.org/stable/26229108>. (Accessed: 1 May 2024).
- Zedner, L. (2004) *Criminal Justice*. Oxford: Oxford University Press.







