

# The Death Penalty and Foreign Drug Offenders in Indonesia: A Judicial Perspective on Justice

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## ABSTRACT

The phenomenon of narcotics abuse in Indonesia continues to escalate, including the involvement of foreign nationals (FNs) in international trafficking networks. The Indonesian government has responded to this threat through Law No. 35 of 2009 on Narcotics, which explicitly provides for the possibility of imposing the death penalty. This article examines the judicial considerations underlying the imposition of capital punishment on foreign nationals convicted of narcotics offenses, as well as its implications for the principles of justice and human rights. Employing a normative juridical approach and case analysis, this study finds that the death penalty is regarded as an *ultimum remedium* instrument applied to extraordinary crimes. However, disparities in judgments across similar cases indicate the presence of judicial discretion that may generate issues of legal certainty and substantive justice.

**Keywords:** Death penalty, narcotics, judge's consideration, justice

## INTRODUCTION

The issue of narcotics in Indonesia has far-reaching implications, not only for public health but also for socio-economic development and national security. The illicit circulation of narcotics undermines the productivity of younger generations, increases the burden on the healthcare system, and exacerbates crime rates. Research indicates that countries with a high prevalence of narcotics abuse tend to suffer significant economic losses due to declining productivity and rising healthcare costs (UNODC, 2020).

As both a transit point and a primary destination for international narcotics trafficking, Indonesia faces serious challenges in law enforcement. Its strategic geographic position, coupled with weak maritime surveillance, has facilitated the entry of narcotics from international networks into the country. Transnational legal studies underscore that Indonesia has become one of the largest markets in Southeast Asia, with repressive measures often justified as essential to safeguarding state sovereignty (Nasir & Rosadi, 2019).

The application of the death penalty for narcotics offenders is rooted in the doctrine that such crimes constitute extraordinary crimes requiring extraordinary measures. The Constitutional Court, in Decision No. 2-3/PUU-V/2007, affirmed that the death penalty remains constitutional when applied strictly, proportionally, and as an *ultimum remedium*. This aligns with international scholarship, which notes that several Asian countries retain capital punishment for narcotics offenses on the grounds of deterrence, although its effectiveness remains highly contested (Hood & Hoyle, 2017).

The controversy surrounding capital punishment is closely tied to human rights principles, particularly the right to life. Amnesty International (2021) highlights that the majority of executions in Southeast Asia are related to narcotics cases, drawing criticism from the international community regarding the proportionality of such punishment. However, the Indonesian government argues that narcotics offenders themselves violate the fundamental rights of others, namely the right of younger generations to live healthily and productively (Amnesty International, 2021).

Disparities in sentencing within narcotics-related death penalty cases, particularly those involving foreign nationals (FNs), reveal the complexity of Indonesia's judicial practice. In some cases, defendants initially

received life imprisonment at the trial court level, only to have the sentence converted to death on appeal or cassation. This inconsistency raises questions about judicial coherence and the application of legal certainty. Studies in Indonesian criminal law indicate that such disparities are often influenced by judges' perceptions of the social impact of narcotics and by both national and international political pressures (Arief, 2018).

In response, the government enacted Law No. 35 of 2009 on Narcotics, which authorizes the imposition of the death penalty. Nevertheless, the application of capital punishment remains controversial, particularly in cases involving foreign nationals. Debates over justice, human rights, and sentencing disparities remain central. This article seeks to analyze the judicial considerations underpinning death penalty rulings against foreign nationals convicted of narcotics offenses in Indonesia, focusing on the cases of Thai Woon Foi and Thai Woon Fong.

## RESEARCH METHODOLOGY

This study employs a normative juridical approach, which examines legal norms contained in statutory regulations as well as judicial decisions. The primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, the Indonesian Criminal Code (KUHP), the Indonesian Criminal Procedure Code (KUHAP), Law No. 35 of 2009 on Narcotics, and Law No. 39 of 1999 on Human Rights. Secondary legal materials are drawn from academic literature, jurisprudence, and legal doctrines. The analysis is conducted through a case study of the South Jakarta District Court Decision No. 1372/Pid.B/2012/PN.Jkt.Sel and the Jakarta High Court Decision No. 118/PID/2013/PT.DKI.

## RESULTS AND DISCUSSION

The South Jakarta District Court Decision No. 1372/Pid.B/2012/PN.Jkt.Sel affirmed that narcotics-related crimes fall within the category of extraordinary crimes due to their detrimental impact on public health, society, and national security. The judges emphasized the large quantity of evidence as an indicator of the gravity of the offense. This perspective is consistent with the view of the National Narcotics Agency, which identifies narcotics as a serious threat to the younger generation and national stability (UNODC, 2020).

In the case of Thai Woon Foi and Thai Woon Fong, the trial court imposed a life sentence, taking into account the defendants' polite demeanor, expressions of remorse, and absence of prior criminal records. However, on appeal, the Jakarta High Court, through Decision No. 118/PID/2013/PT.DKI, imposed the death penalty, reasoning that the mitigating factors were disproportionate to the magnitude of harm caused by narcotics to society. The judges underscored the principle of community protection as the primary consideration, a doctrine commonly referred to as the social defence theory (Arief, 2018).

Law No. 35 of 2009 on Narcotics authorizes the imposition of the death penalty for certain crimes, particularly large-scale trafficking. Capital punishment is positioned as an *ultimum remedium*, a last resort when other forms of punishment are deemed insufficient. This principle is reinforced by the Constitutional Court Decision No. 2-3/PUU-V/2007, which upheld the constitutionality of the death penalty under strict conditions: the possibility of a probationary period, exclusion for juvenile offenders, and postponement for pregnant women or individuals with mental disorders (Hood & Hoyle, 2017).

The controversy surrounding capital punishment is inseparable from debates over the right to life, as guaranteed under Article 28A of the 1945 Constitution and Article 6 of the International Covenant on Civil and Political Rights. Amnesty International (2021) has criticized Indonesia for continuing to apply the death penalty, particularly in narcotics cases, arguing that such practice is inconsistent with the global trend toward abolition. The Indonesian government, however, contends that narcotics offenders violate the fundamental rights of others—specifically, the right of younger generations to live healthily and free from narcotics (Amnesty International, 2021).

The disparity between the South Jakarta District Court's life sentence and the Jakarta High Court's death sentence highlights the persistent inconsistency in the application of law. Judicial subjectivity in weighing aggravating and mitigating circumstances often results in inconsistencies. Studies in Indonesian criminal law

suggest that such disparities undermine legal certainty and create perceptions of injustice, even though judges are normatively granted discretion in interpreting substantive justice (Nasir & Rosadi, 2019)

## CONCLUSION

The findings indicate that the imposition of the death penalty on foreign nationals convicted of narcotics crimes in Indonesia is grounded in the paradigm that narcotics constitute an extraordinary crime. Judges primarily adopt a community protection approach as the central consideration, although this has sparked debates on human rights and sentencing disparities. These findings underscore the need for more consistent sentencing guidelines to ensure a balanced application of justice and legal certainty.

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