



Analysis of critical criminology theory in the death penalty case of narcotics convicts in Indonesia

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ABSTRACT

Background: This study examines the application of fair trial principles in death penalty cases involving narcotics convicts in Indonesia from a critical criminology perspective. Critical criminology highlights the power imbalances that criminalize vulnerable groups, often leading to their disproportionate punishment. In narcotics crimes, low-level couriers—typically from poor and marginalized backgrounds—are at the greatest risk of receiving the death penalty. This research focuses on identifying whether fair trial principles are upheld in such cases, where vulnerable individuals are often exploited by narcotics networks. **Methods:** The study utilizes secondary data from 10 death penalty cases involving narcotics convicts over the past 20 years. A coding system was applied to analyze demographic variables and the adherence to fair trial principles in each case. The analysis focuses on violations of core fair trial principles, such as equality before the law, presumption of innocence, access to legal representation, and the right to a fair and timely trial. **Findings:** The research found that most narcotics convicts sentenced to death were foreign nationals, predominantly male, and served as couriers. In many cases, fair trial principles were violated, including failure to ensure equality before the law, presumption of innocence, timely notification of charges, adequate time to prepare a defense, the right to legal assistance, examination of witnesses, and the right not to self-incriminate. These violations reflect systemic flaws in Indonesia's criminal justice system, allowing for human rights abuses that can be seen as state crime. **Conclusion:** The study concludes that the criminal justice system in Indonesia often fails to ensure fair trials for narcotics convicts, particularly for vulnerable groups such as couriers. Many of these individuals are coerced or deceived into their roles by narcotics organizations, making them victims rather than fully responsible offenders. Alternatives to the death penalty should be prioritized to provide these vulnerable individuals a second chance and to correct the systemic inequities in the justice process. **Novelty/Originality of This Study:** This research contributes to the discourse on capital punishment by combining critical criminology with the analysis of fair trial principles in narcotics-related death penalty cases. It sheds light on the intersection of power imbalances, criminal justice flaws, and human rights violations, offering a fresh perspective on how vulnerable individuals are criminalized and sentenced to death in Indonesia's narcotics cases.

KEYWORDS: critical criminology; death penalty; drug crime; state crime.

1. Introduction

The application of the death penalty for narcotics crimes in Indonesia remains a critical issue, particularly in relation to the fulfillment of fair trial principles for convicts from vulnerable groups in society. Despite the global trend towards abolition of capital punishment, with 144 countries having abolished the death penalty according to Amnesty International (2022), 55 countries still retain it in their legal systems, including Indonesia.

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Among these 55 countries, 33 still apply the death penalty for narcotics crimes, and Indonesia is notable for its high number of death sentences handed down to narcotics offenders. Between 2021-2022, it was reported that out of 186 death row inmates, 90% were from narcotics cases (Budiman et al., 2022).

The theoretical basis for this research lies in critical criminology, which views crime and the criminal justice system through the lens of power inequalities in society. As explained by Vold (1998), critical criminology sees power inequality as causally related to crime problems. Those criminalized and imprisoned tend to come from disadvantaged groups in society (Quinney, 2010). In the context of narcotics crime, there is a class divide between high-level leaders of narcotics organizations and low-level members like couriers or dealers (Panjamanond, 2019). The unequal distribution of power allows dominant groups to protect and advance their interests over others (Miller, 2009).

Previous research has highlighted several key issues related to the application of the death penalty for narcotics crimes in Indonesia. Studies by Girelli (2021) and Leechaianan & Longmire (2013) found that the death penalty is not proven to have a deterrent effect or effectively reduce narcotics crime rates. Sander, Girelli & Fernandez (2020) also reported that the number of narcotics couriers arrested does not appear to decrease in retentionist countries that apply the death penalty for narcotics crimes.

Furthermore, the application of the death penalty for narcotics couriers is often biased against their role. Narcotics crime involves organized operations with hierarchical structures, and couriers are only low-level players without important roles, yet face high risks of being caught (Abidin, et al., 2019). Couriers can be considered mere pawns exploited or forced into narcotics crime due to poverty and lack of alternatives, without inherent malice in their actions.

The due process model in the criminal justice system emphasizes the protection of defendant rights, especially the right to a fair trial (Barkan & Bryjak, 2011). However, from a critical criminology perspective, the due process model does not function optimally in the current legal system. Garrett (2019) critiques the due process model, stating that the criminal justice system has harmed the lower class. His research found that the poor who face the law suffer serious impacts and consequences from arbitrary decision-making, limited access in the law, and unfair outcomes. The due process model's upholding of the presumption of innocence is also criticized in its application to narcotics cases, because in reality the judicial system treats narcotics offenders as guilty parties (Sudaryono, 2020). Through critical criminology, this condition is seen as a result of class inequality that causes harm to weak groups before the law.

Moreover, the 'war on drugs' policy has also played a role in increasing violations of the presumption of innocence, because the judicial system often treats narcotics offenders as guilty parties (Fleetwood & Seal, 2017). This is marked by findings that judges in narcotics cases often stigmatize defendants based on possession of evidence referring to the type and weight of narcotics, even though most narcotics death row inmates are couriers who are involved due to coercion and are not directly involved in narcotics organizations (Mustafa, et al., 2020). Therefore, subjective judgment by judges in imposing the death penalty is considered a form of injustice for vulnerable groups, making them victims of narcotics trafficking itself.

These findings explain not only that discrimination still occurs in the judicial process as described by Garrett (2019), but also confirm that the due process model does not function optimally in the current legal system. Furthermore, to increase the precautionary principle and fairness in imposing the death penalty for narcotics crimes as mandated by the International Covenant on Civil and Political Rights (ICCPR), law enforcement is expected to be able to further consider aspects of the role and position of the defendant in narcotics organizations in imposing sentences (Lines, 2010). Because, through a critical criminology perspective, vulnerable groups who are trapped in narcotics distribution deserve a second chance to live a better life (Muehlmann, 2018).

The application of the death penalty for drug offenses in Indonesia raises concerns about violations of fair trial principles and human rights. Studies have found that many

death penalty cases for drug crimes fail to meet international standards of justice, including violations of the right to life, the right to a fair trial, and freedom from cruel, inhuman and degrading treatment or punishment (Harm Reduction International, 2020). This situation is exacerbated by the fact that judicial processes tend to violate the presumption of innocence, so that drug dealers who are arrested tend to be considered guilty and must be held responsible for the chain of drug distribution in society (Abidin, et al., 2019).

Critical criminology views the inequality of power as causally related to crime problems (Vold, 1998). In drug crimes, narcotics distribution operations are carried out in an organized manner and have a hierarchical structure. This condition allows for differences and inequality between leaders at the top of the hierarchical drug organization, and low-level members such as couriers or dealers (Panjamanond, 2019). Referring to Miller (2009), the unequal distribution of power can also create conditions where some groups are positioned as superior to others to protect advancing the interests of the ruling group.

This study aims to analyze the application of fair trial principles in death penalty cases of narcotics convicts in Indonesia, using a critical criminology perspective. It will examine how the socioeconomic backgrounds of most narcotics convicts sentenced to death, who tend to come from poor and vulnerable groups in society, relate to violations of their rights in the criminal justice process. The research employs a due process model focused on fulfilling the rights of death row inmates, and applies critical criminology and state crime concepts to interrogate class inequalities that lead to discrimination in the judicial process. The results are expected to provide a critical evaluation of the narcotics death penalty in Indonesia and offer recommendations for reform.

2. Literature Review

2.1 Critical criminology theory

Critical criminology emerged as a theoretical perspective that examines crime and criminal justice through the lens of power, inequality, and social conflict. It views crime as a product of oppression and critiques traditional criminological approaches for neglecting the role of social, political and economic factors (DeKeseredy & Dragiewicz, 2018). A key tenet is that laws and criminal justice systems tend to protect the interests of the powerful while criminalizing the actions of marginalized groups (Quinney, 2010). In the context of drug crimes, critical criminology highlights how prohibition policies disproportionately impact poor and minority communities. Bourgois (2003) argues that the "war on drugs" criminalizes poverty and reinforces racial hierarchies. Drug laws are seen as instruments of social control that allow elites to maintain power over subordinate groups (Reinarman & Levine, 1997).

Critical scholars contend that harsh punishments like the death penalty for drug offenses serve political and ideological functions rather than effectively reducing drug-related harms (Girelli, 2019). The hierarchical nature of drug trafficking organizations creates conditions of inequality that critical criminology seeks to analyze. Leaders at the top of drug syndicates wield significant power and resources, while low-level couriers and dealers face the greatest risks of arrest and punishment (Fleetwood, 2014). This power differential is reflected in how the criminal justice system treats different actors in the drug trade.

2.2 Fair trial principles

Fair trial rights are fundamental human rights enshrined in international law. The International Covenant on Civil and Political Rights (ICCPR) outlines key fair trial guarantees

in Article 14, including the presumption of innocence, right to legal counsel, right against self-incrimination, and right to appeal (United Nations, 1966). These principles aim to ensure equality before the law and protect against arbitrary detention or punishment. For death penalty cases, international standards require even stricter adherence to fair trial norms given the irreversible nature of the punishment. The UN Economic and Social Council (1984) resolution on Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty emphasizes that capital punishment must only be carried out after legal process which gives all possible safeguards to ensure a fair trial. However, studies have found widespread violations of fair trial rights in drug-related death penalty cases globally. Common issues include lack of access to legal representation, coerced confessions, and denial of the right to appeal (Girelli, 2019). Language barriers and inadequate translation services also impede fair trials for foreign nationals facing drug charges (Liu et al., 2018). The presumption of innocence is often undermined, with defendants treated as guilty from the outset (Lines, 2007).

2.3 Death penalty for drug offenses

The use of capital punishment for drug crimes has been widely criticized by human rights organizations and UN bodies as violating international law. The UN Human Rights Committee (2018) has stated that drug offenses do not meet the threshold of "most serious crimes" for which the death penalty may be applied under Article 6 of the ICCPR. Despite this, 35 countries worldwide retain the death penalty for drug offenses in law or practice (Harm Reduction International, 2020).

Research indicates that the death penalty is not an effective deterrent against drug trafficking and fails to address the root causes of the drug trade (Gallahue & Lines, 2015). Instead, it tends to impact low-level offenders and vulnerable groups rather than high-level traffickers (Girelli, 2019). The application of the death penalty for drugs has been linked to systemic fair trial violations and torture to extract confessions (Harm Reduction International, 2015). In Indonesia specifically, the death penalty remains actively used for drug offenses as part of a hardline "war on drugs" approach. However, studies have highlighted issues with unfair trials, racial bias, and wrongful convictions in Indonesian death penalty cases (Amnesty International, 2015; Pascoe, 2019). Foreign nationals are disproportionately sentenced to death for drug crimes, raising concerns about discrimination (Nugroho et al., 2021).

3. Methods

This study was conducted by processing secondary data from 10 death penalty cases of narcotics convicts within the last 20 years. The 10 cases were identified by searching the keywords "death penalty", "narcotics", and "fair trial" in two sources: 1) online news media portals such as kompas.com, cnnindonesia.com, bbc.com, dw.com, nasional.tempo.co, medcom.id, metro.tempo.co, and liputan6.com; and 2) research reports on fair trial assessments for death row inmates from various human rights advocacy organizations such as Institute for Criminal Justice Reform (ICJR), LBH Masyarakat, Amnesty International, Imparsial, and KontraS. The 10 narcotics death penalty cases were then categorized using a coding system consisting of the following dimensions and variables, as seen in table 1.

Table 1. Research dimensions and variables

No	Research Dimensions	Variables
1.	Demographic characteristics of narcotics crime perpetrators	1. Sex; 2. Citizenship; 3. Role in the narcotics trade; 4. Type of narcotics; 5. Weight of narcotics

2. Judicial process based on fair trial principle indicators according to Article 14 of the ICCPR	1. Equality before the law; 2. Presumption of innocence; 3. Prompt and detailed notice of charges; 4. Adequate time and facilities to prepare a defense; 5. Trial without undue delay; 6. Defend oneself or have legal assistance; 7. Examine witnesses; 8. Free assistance of an interpreter; 9. Not to be compelled to testify against oneself or confess guilt; 10. Length of time on death row
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(Data processed by researchers, 2023)

The indicators used as the basis for categorizing the judicial process dimension are the 9 fair trial principles based on Article 14 of the ICCPR. The assessment was conducted by identifying forms of violations and neglect of fair trial principles present in each narcotics death penalty case. After being identified, a frequency table was created showing the number of cases in which violations or neglect of fair trial principles were found through the attitudes and behaviors identified in Table 4.5.

Cross-tabulation and chi-square tests were then performed to examine the relationship between demographic variables and the application of fair trial principles. The chi-square test has a provision for the α (alpha) value which is the maximum error to show that the data is significant (Bryman, 2012), and is said to be contingent by looking at whether the category of one variable depends on or is contingent upon the category of the other variable (Neuman, 2014). In this study, the chi-square value used is <0.05 , so the data will be said to be significant if the result of the two relationships shows an α value <0.05 .

Limitations of this study include the scarcity of data that can explain the detailed application of fair trial principles in specific narcotics death penalty cases. Although the number of death sentences handed down is detected to be quite high, data on the case process is limited or even tends to be unknown or engineered in practice (Abidin, et al., 2019). This lack of transparency makes it difficult to thoroughly assess the fulfillment of fair trial rights in these cases. Another limitation is the small sample size of only 10 cases, constrained by limited access to case information. While the results provide important insights, they may not be fully generalizable to all narcotics death penalty cases in Indonesia. Further research with a larger sample would help validate and expand on these findings.

4. Results and Discussion

4.1 Overview of narcotics convicts sentenced to death

The Based on the case descriptions provided in Table 4.1, it can be identified that narcotics convicts sentenced to death in Indonesia tend to have low educational and economic backgrounds. This background is also identified as being closely related to their reasons for becoming involved in narcotics crime in the first place. Many of them were trapped or deceived into carrying illicit drugs due to economic pressures and lack of alternatives.

Table 2. Case Overview

Convict Name	Year	Case Description
Mary Jane Veloso (MJV)	2010	Mary Jane, a Filipino citizen, was arrested by police at Adisutjipto Airport, Yogyakarta on April 25, 2010. She was caught smuggling 2.6 kilograms of heroin. Despite Mary Jane claiming she was only being used to carry the illicit goods, she was still included in the list of death row convicts to be executed in April 2015 at Nusakambangan. However, the execution was later postponed on the grounds that Mary Jane's testimony was needed in the criminal case against her recruiter, Maria Kristina Sergio, alias Mary Christine Gules

Zainal (ZA)	Abidin	2000	<p>Pasadilla. During the trial held in the Philippines, suspicions arose that Mary Jane was a victim of human trafficking in the drug smuggling case.</p> <p>Zainal Abidin was the only Indonesian citizen executed on April 29, 2015. He was arrested on December 21, 2000, for possession of 58.7 kilograms of marijuana. It was discovered that the dried marijuana was entrusted to him by his acquaintance, Aldo, who was also sentenced to 20 years in prison. Initially, Zainal was sentenced to 18 years in prison, but feeling innocent, he then filed an appeal which resulted in his sentence being increased to the death penalty, with the consideration that the country was carrying out a "war on drugs" effort. Moreover, the request for judicial review (PK) that was submitted was also rejected by the Supreme Court after being "misplaced" for 10 years.</p>
Merry (MU)	Utami	2001	<p>Merry Utami is a former migrant worker who was allegedly a victim of human trafficking through her involvement in narcotics trafficking. When caught in Jakarta, Merry was found carrying 1.1 kilograms of heroin in her bag. According to her confession, the bag belonged to her Nepalese boyfriend. Through this information, Merry was then categorized as a narcotics courier, and ultimately the judge did not delve into her background which could have referred to the potential of human trafficking.</p>
Zulfikar Ali (ZUL)		2004	<p>Zulfikar Ali is a Pakistani citizen. His involvement began with the arrest of Gurdip Singh, who was caught carrying 300 grams of heroin. At that time, Gurdip was forced to name Zulfikar Ali, even though the police found nothing when they searched his house. However, Zulfikar was still found guilty and sentenced to death. Furthermore, Zulfikar also claimed to have experienced torture and violence from police officers.</p>
Michael Igweh (MTI)	Titus	2002	<p>Titus is a Nigerian citizen who was sentenced to death for possessing 5.8 kilograms of heroin. He filed a judicial review in 2011 but was rejected. During his trial, Titus perceived several irregularities, such as incriminating statements obtained from two suspects in other cases who had died during the investigation process. Additionally, another defendant named Hillary was given a lighter sentence than Titus.</p>
Rodrigo (RG)	Gularte	2004	<p>Rodrigo Gularte was a Brazilian citizen who was arrested for smuggling 19 kilograms of cocaine hidden inside a surfboard. Rodrigo was sentenced to death in 2005 and executed on April 29, 2015. According to health reports, Rodrigo had suffered from mental disorders since his teenage years until the time of his execution. The mental disorders experienced by Rodrigo caused him to be manipulated and exploited by drug cartels to smuggle narcotics into Indonesia. Moreover, this fact should have provided a mitigating reason and prevented Rodrigo from being punished.</p>
Namaona (ND)	Denis	2001	<p>Namaona Denis is better known to the public than his real name, Solomon Okafor. Solomon was arrested for carrying 73 capsules of heroin, equivalent to 1 kilogram, which he had swallowed. Solomon is a Nigerian citizen. Solomon experienced injustice during the legal process, primarily due to mistaken identity. This identity issue led to a misinterpretation of events and was detrimental to Solomon's position. In fact, Solomon was merely a courier who agreed to carry drugs because he was in a dire economic situation.</p>

Obtained from various news media (with processing by the author, 2023)

Table 3. Gender and nationality

Gender	Female		Male		Total	
Variable	N	%	N	%	N	%
Nationality of people sentenced to death for narcotics Indonesian Citizen (Indonesia)	2	20	1	10	3	30

	Foreigner	1	10	6	60	7	70
Total		3	30	7	70		

Obtained from various news media (with processing by the author, 2023)

Tabel 4. Role in drug trafficking

Variable	Female		Male		Total	
	N	%	N	%	N	%
Role in drug trafficking						
Courier	3	30	4	40	7	70
Dealer	0	0	3	30	3	30
Total	3	30	7	70		

Obtained from various news media (with processing by the author, 2023)

Table 5. Type and weight of narcotics

Variable	Heroin		Marijuana		Total	
	N	%	N	%	N	%
Weight of narcotics (kilogram)						
Unit	9	90	0	0	9	90
Dozens	0	0	0	0	0	0
Tens	0	0	1	10	1	10
Total	9	90	1	10		

Obtained from various news media (with processing by the author, 2023)

The demographic data in Tables 3 to 5 shows that most narcotics convicts sentenced to death are male (70%) and foreign nationals from various countries including Nigeria, the Philippines, Brazil, and Pakistan (70%). These findings prove that a low socioeconomic background makes the poor more vulnerable to involvement in narcotics crime, especially to act as low-level couriers with very high risks, namely the potential to face the death penalty (Sander, Girelli & Fernández, 2020). In line with this, the study found that most narcotics convicts sentenced to death (70%) acted as narcotics couriers rather than kingpins or bosses.

In narcotics crime, both men and women have the same vulnerability to involvement in the narcotics trade as long as they are within the cycle of poverty. Narcotics organizations tend to recruit or exploit the vulnerabilities of people in poor and minority groups to be involved in narcotics crime (Sander, Girelli & Fernández, 2020). Even so, the involvement of women as death row inmates, especially in narcotics crimes, cannot be ignored. A study on the death penalty found that 18 out of 22 women involved in death penalty cases were due to involvement in narcotics trafficking (Sander, Girelli & Fernández, 2020). Therefore, the modus operandi involving women in narcotics trafficking is a major concern, because the recruitment process is very vulnerable to pressure and deception (Irianto, et al., 2006).

Furthermore, the role in narcotics trafficking, especially as a courier, has been discussed in various studies. Most studies view narcotics couriers as representing some of the poorest and most vulnerable people in society (Sander, Girelli & Fernández, 2020). Amnesty International's report (2019; in Kananatu, 2022) also conveyed a significant number in the involvement of minority groups such as women and foreign nationals in death penalty cases. Ironically, their involvement at the low level of narcotics distribution causes them to face the death penalty. This then shows a serious problem, because a number of narcotics cases that end with the death penalty are known to fail to clearly ascertain the role of the perpetrators in narcotics trafficking. Therefore, narcotics couriers are often victims and more targeted in the practice of the war on drugs due to their vulnerability, compared to the role of big bosses or kingpins in narcotics trafficking (Fleetwood & Seal, 2017).

Table 5 identified that in almost all cases there was trafficking of heroin in amounts exceeding the minimum threshold for possession of Group I narcotics according to Law Number 35 of 2009 concerning Narcotics. Thus, through this provision, narcotics dealers

are no longer seen based on their background, but their malicious nature is assessed as attached to the type and amount of narcotics that become evidence at the time of arrest.

However, on the other hand, it should be noted that the Indonesian legal system is still weak in terms of ensuring that a person caught carrying narcotics is indeed the owner or possessor of the narcotics. Because this study also found that in most narcotics death penalty cases, perpetrators were often trapped or deceived into carrying evidence, or even threatened to admit ownership of the narcotics. As in the case of Zulfikar Ali documented by Araf (2020), it is known that the real owner of the heroin, Gurdip Singh, had withdrawn his confession before the court and stated that Zulfikar was innocent, he was only framed and forced because he could not bear the torture he received. In fact, the role of courier or dealer identified in the news is only court speculation, without considering the facts that entrapment and torture are often found in narcotics cases (Abidin, et al., 2019). This shows the dangers of presuming guilt based on drug possession alone, without fully investigating the circumstances.

Reiman and Leighton's (2015) concept of 'the rich get richer and the poor get prison' is reflected in these findings. The criminal justice system is biased against the poor from the start in how crimes are defined. The poor are more easily arrested, prosecuted and punished, because the nature of their crimes is framed as easier to prove. Meanwhile, the powerful can more readily avoid arrest because their criminal behaviors are harder to prove or not even defined as illegal (Reiman & Leighton, 2015). In narcotics cases, this means couriers, who are mostly poor, face the harshest punishments while those at the top of drug syndicates remain out of reach.

Weber (2018) argues that couriers' position of carrying large quantities of drugs does not mean they have high status in the organization or possess valuable information for law enforcement. Targeting couriers is ultimately ineffective for bringing down drug kingpins or stemming the drug trade. Instead, the 'war on drugs' approach only increases the vulnerability of the poor, who are already targeted by drug syndicates in the first place (Weber, 2018). A critical criminology lens reveals how this amounts to the criminalization of poverty, with the might of the law coming down hardest on society's most disadvantaged members.

4.2 Application of fair trial principles to narcotics death row inmates in Indonesia

The findings on the application of fair trial principles for narcotics death row inmates are then divided into 3 categories: low, medium, and high. Low category application was found in 5 fair trial principles with a violation frequency of 80-90% of the cases studied. The low application fair trial principles include: 1) equality before the law; 2) adequate time and facilities to prepare a defense; 3) presumption of innocence; 4) defend oneself or have legal assistance; 5) not to be compelled to testify against oneself or confess guilt. The low application of these five principles indicates that narcotics death row inmates often experience violations of the presumption of innocence and have difficulty defending themselves. This is marked by elements of racism and discrimination from law enforcement officials, and minimal access to legal assistance during the criminal justice process (Abidin, et al., 2019). Defendants face prejudice and are considered guilty from the start, making it difficult to obtain a fair trial.

Indicators of unfair treatment found in the cases include experiencing torture during the investigation process, racism in judges' sentencing considerations, disregard for defendants' psychological conditions, fabrication of evidence by investigators, irregularities in execution procedures, discrimination in document submission by court institutions, and lack of clarity in clemency standards (see Table 6). These violations reflect a presumption of guilt rather than innocence, and create barriers for defendants to properly defend themselves with adequate legal representation.

The prevalence of torture and forced confessions is particularly alarming, as it not only violates defendants' rights but also undermines the reliability of evidence used to convict them (Irianto, et al., 2006). Coerced self-incrimination and false admissions of guilt make a

mockery of due process. When judges then rely on such tainted evidence to hand down death sentences, the entire criminal justice process is called into question.

Second, medium category application was found in 3 fair trial principles with a violation frequency of 50-60% of the cases studied. The medium application fair trial principles include: 1) prompt and detailed notice of charges; 2) examine witnesses; 3) free assistance of an interpreter. These three principles that show a medium category indicate problems of language limitations and understanding that put death row inmates in difficulty to obtain information, and often unwittingly provide incriminating testimony or are even forced to confess guilt (Rahmawati, 2021).

The finding that most narcotics offenders did not receive interpreter assistance is also related to the findings in Table 6. This showed a significant relationship between foreign citizenship and the violation of the right to free assistance from an interpreter, where data shows that there were violations of this right in 50% of cases, all of which involved foreign nationals. Through this result, it can be concluded that there is a tendency for foreign nationals facing the death penalty for narcotics crimes to often face difficulties in obtaining proper assistance from interpreters while undergoing the legal process (Rahmawati, 2021). This lack of language access hinders their ability to understand the charges against them, participate meaningfully in their own defense, and have their side fairly considered by the court.

The barriers faced by foreign defendants are compounded by their vulnerable status, often as migrant workers, who may have limited understanding of the Indonesian legal system and no local support network (Mustafa, et al., 2020). Without adequate interpretation and legal assistance, they are left at the mercy of a system already prejudiced against them. The disparity in treatment between Indonesian and foreign nationals facing the death penalty raises serious questions of equality before the law.

Finally, high category application was found in one fair trial principle with a violation frequency of 30% of the cases studied. This principle is the right to be tried without delay. Although this study also discusses the waiting period for executions that causes double punishment conditions for narcotics death row inmates (Abidin, et al., 2019), violations of the right to be tried without delay are limited to only referring to allegations of arbitrary detention and delays or inconsistencies in the legal process that occur due to administrative problems. The long years spent on death row, sometimes over a decade constitute a form of psychological torture. However, undue delays in the actual trial process occurred less frequently than violations of other fair trial principles.

Overall, the consistently high rates of fair trial violations across multiple principles paint a disturbing picture of a system stacked against defendants. When those facing the death penalty - the ultimate cruel, inhuman and irreversible punishment - cannot even rely on basic guarantees of fairness and due process, it profoundly undermines the legitimacy of the drug enforcement regime (Sander, 2021).

The 'war on drugs' approach, combined with socioeconomic vulnerabilities, has created a perfect storm for miscarriages of justice. Poor and marginalized communities bear the brunt of heavy-handed drug law enforcement, while the wealthy and powerful remain relatively untouched (Fleetwood & Seal, 2017). This selective application of the law entrenches social inequalities and erodes trust in the justice system itself.

From a critical criminology perspective, the erosion of fair trial rights for narcotics defendants facing execution represents not just procedural failings, but an indictment of the entire foundation of the 'war on drugs' and its disproportionate targeting of vulnerable groups. When the state metes out its harshest punishments through a flawed and discriminatory process, this constitutes a form of institutionalized violence (Muehlmann, 2018).

These fair trial violations then become more than isolated miscarriages of justice - they reflect structural biases and systemic disregard for the rights of the marginalized. The inconsistent application of due process protections for capital drug defendants mirrors the unequal social relations that critical criminologists argue underpin the drug war and the criminal justice system more broadly (Sudaryono, 2020). Meaningful change will require

not just procedural reforms, but a fundamental rethinking of drug policy priorities and a move away from the overly punitive approach that has enabled these injustices.

Medium category application was found in 3 fair trial principles with a violation frequency of 50-60% of the cases studied. The medium application fair trial principles include: 1) prompt and detailed notice of charges; 2) examine witnesses; 3) free assistance of an interpreter. These three principles that show a medium category indicate problems of language limitations and understanding that put death row inmates in difficulty to obtain information, and often unwittingly provide incriminating testimony or are even forced to confess guilt (Rahmawati, 2021).

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Table 6. Results of cross tabulation test and chi square test between nationality variables and the implementation of the right to free assistance from an interpreter

Nationality	Right to free assistance from an interpreter				Significance Value (<i>p</i>)
	Not applied		Applied		
	n	%	n	%	
Indonesian citizen (WNI)	0	0	3	30	0,038
Foreign Citizen (WNA)	5	50	2	20	

(SPSS processed results)

The barriers faced by foreign defendants are compounded by their vulnerable status, often as migrant workers, who may have limited understanding of the Indonesian legal system and no local support network (Mustafa, et al., 2020). Without adequate interpretation and legal assistance, they are left at the mercy of a system already prejudiced against them. The disparity in treatment between Indonesian and foreign nationals facing the death penalty raises serious questions of equality before the law.

Finally, high category application was found in one fair trial principle with a violation frequency of 30% of the cases studied. This principle is the right to be tried without delay. Although this study also discusses the waiting period for executions that causes double punishment conditions for narcotics death row inmates (Abidin, et al., 2019), violations of the right to be tried without delay are limited to only referring to allegations of arbitrary detention and delays or inconsistencies in the legal process that occur due to administrative problems. The long years spent on death row, sometimes over a decade as seen in Graph 4.2, constitute a form of psychological torture. However, undue delays in the actual trial process occurred less frequently than violations of other fair trial principles.

Overall, the consistently high rates of fair trial violations across multiple principles paint a disturbing picture of a system stacked against defendants. When those facing the death penalty - the ultimate cruel, inhuman and irreversible punishment - cannot even rely on basic guarantees of fairness and due process, it profoundly undermines the legitimacy of the drug enforcement regime (Sander, 2021). The 'war on drugs' approach, combined with socioeconomic vulnerabilities, has created a perfect storm for miscarriages of justice. Poor and marginalized communities bear the brunt of heavy-handed drug law enforcement, while the wealthy and powerful remain relatively untouched (Fleetwood & Seal, 2017). This selective application of the law entrenches social inequalities and erodes trust in the justice system itself.

From a critical criminology perspective, the erosion of fair trial rights for narcotics defendants facing execution represents not just procedural failings, but an indictment of the entire foundation of the 'war on drugs' and its disproportionate targeting of vulnerable groups. When the state metes out its harshest punishments through a flawed and discriminatory process, this constitutes a form of institutionalized violence (Muehlmann, 2018). These fair trial violations then become more than isolated miscarriages of justice - they reflect structural biases and systemic disregard for the rights of the marginalized. The inconsistent application of due process protections for capital drug defendants mirrors the unequal social relations that critical criminologists argue underpin the drug war and the criminal justice system more broadly (Sudaryono, 2020). Meaningful change will require not just procedural reforms, but a fundamental rethinking of drug policy priorities and a move away from the overly punitive approach that has enabled these injustices.

4.3 Analysis of critical criminology theory in narcotics death penalty cases

This study found that low socioeconomic backgrounds make the poor vulnerable to involvement in narcotics trafficking. Most of them are involved to act as low-level couriers in narcotics organizations. The courier position was found to be the most vulnerable to being exploited and sacrificed by narcotics organizations, because couriers are the group most often arrested and face the death penalty (Fleetwood & Seal, 2017). In considering the death penalty, the court also does not look at and consider their role or position in imposing sentences in narcotics cases. These findings then indicate that the 'war on drugs' narcotics policy by the state is considered to have been biased against the poor (Rahmawati, 2021). This is also marked by the finding that the application of fair trial principles is still low in narcotics cases that lead to the death penalty. Because violations and neglect of fair trial rights are still found in almost every narcotics death penalty case. Thus, the vulnerability of the poor not only causes them to be targeted for involvement in narcotics crime, but also affects how they are disadvantaged by fair trial violations before the law (Mustafa, et al., 2020). Through critical criminology, this condition is considered a form of class inequality that causes the powerful group to be superior and the weak poor group to tend to be sacrificed and criminalized in order to protect the interests of the ruling group (Sudaryono, 2020). The state, which facilitates forms of harm to the poor in repressive narcotics policies, is then considered to be involved in a form of state crime, marked by various attitudes and actions that violate fair trial rights committed by state law enforcement actors (Rahmawati, 2021).

Furthermore, in the context of narcotics crimes, referring to Rothe & Kauzlarich (2016), the state through its 'war on drugs' policy is considered to have the power to define narcotics crimes, as well as the structures and judicial systems that can facilitate this policy. The state is also considered to have committed a crime because it has waged war on its citizens, especially those against vulnerable groups. The 'war on drugs' narcotics policy is considered unfair because it imposes the death penalty, only based on the provisions in the policy that regulate the type and weight of narcotics that become evidence, without considering the role and position of the defendant in narcotics trafficking (Mustafa, et al., 2020). Not only that, the state through law enforcement officials also tends to be discriminatory and considers narcotics dealers to be the guilty party responsible for the narcotics circulating in society. In fact, it is necessary to know that this study also found that they are often members of poor and vulnerable groups who have no other choice, and tend to be involved due to economic pressures. Seeing their vulnerability, the state has actually harmed and increased their vulnerability, not only in society but also in the criminal justice system (Fleetwood & Seal, 2017). Therefore, they can be considered victims of state crime and victims of narcotics trafficking itself.

State crime here occurs at both the individual level, through direct acts of violence and rights violations by law enforcement, and at the structural level, through the discriminatory design and implementation of drug laws that functionally target the poor (Aas, 2007). The inconsistent and arbitrary application of fair trial standards, as this study has documented,

represents a form of institutional violence against marginalized groups. By pursuing a harsh criminalization approach, the state has not only failed to address the root social and economic factors driving the drug trade, but has actively exacerbated them. Punitive drug laws, disproportionately enforced against the poor, become a tool for social control that reproduces inequalities rather than delivering justice (Sudaryono, 2020). This cycle of criminalization and incarceration further entrenches poverty and alienation, ironically fueling the very conditions that lead to drug crime in the first place.

The critical criminology paradigm thus illuminates how the drug war, as waged through capital punishment and erosion of due process, reflects the interests of the powerful at the expense of the marginalized (Rothe & Kauzlarich, 2016). Reconceived as a form of state violence, the endemic fair trial violations in capital drug cases are not just isolated legal errors, but a damning indictment of the entire punitive drug control regime. Meaningful change will require a fundamental shift away from the 'war' mentality and towards a more humane, socially conscious approach that addresses the underlying drivers of drug offending.

In practical terms, this could involve redirecting resources from harsh punishment towards community development, education, public health interventions, and poverty alleviation. A more holistic approach to drug policy would prioritize harm reduction and social reintegration over criminalization (Abidin, et al., 2019). This could help break the cycles of poverty and marginalization that make vulnerable groups susceptible to exploitation by drug syndicates in the first place.

For those already ensnared in the criminal justice system on drug charges, reforms to strengthen due process and fair trial rights are essential. This should include more stringent judicial scrutiny of evidence obtained through torture or coercion, greater access to competent legal assistance, and improved safeguards against arbitrariness and discrimination in capital sentencing (Mustafa, et al., 2020). Ultimately, the critical criminology analysis points to the need for a wholesale reconsideration of the merits of capital drug laws, which have proven not only ineffective but actively counterproductive and harmful to society's most vulnerable.

4. Conclusions

This study has shown that in the majority of narcotics crime cases where the death penalty is applied in Indonesia, those convicted tend to be couriers from vulnerable and marginalized segments of society. Their involvement in drug trafficking is often the result of coercion, deception, or desperation driven by socioeconomic pressures, rather than intrinsic criminality (Mustafa, et al., 2020). In this light, a critical criminology analysis suggests that these couriers should be understood not as culpable masterminds, but as victims of both organized drug crime and structural inequalities. Despite this, the application of fair trial principles in capital drug cases remains woefully inadequate, with procedural violations and discrimination occurring at alarming rates. Meaningful realization of fair trial rights is hampered not only by flawed practices, but by the very design of drug laws and enforcement policies, which place a disproportionate burden on the poor (Weber, 2018). This unequal and arbitrary application of the law raises fundamental questions about the legitimacy of the Indonesian drug enforcement regime.

The erosion of due process amounts to a form of state violence against marginalized groups, reproducing social inequalities and cycles of criminalization. In this sense, the human rights violations documented in this study can be understood as a manifestation of state crime, reflecting structural biases embedded in the criminal justice system (Rahmawati, 2021). Redressing these injustices will require more than isolated reforms - it demands a paradigm shift in drug policy, away from the failed 'war on drugs' model and towards a more humane, socially conscious approach. Practically, this means redirecting resources from punitive enforcement to addressing the root socioeconomic drivers of drug

crime. Strengthening fair trial protections and defendants' rights, especially in capital cases, is also crucial. Most fundamentally, the critical analysis suggests that the use of the death penalty for drug offenses should be reconsidered, as it has proven not only ineffective but actively harmful to vulnerable groups (Sander, 2021).

In conclusion, this study's findings underscore the urgent need for a more holistic and equitable approach to drug policy - one that prioritizes harm reduction, social justice, and the inherent human dignity of all individuals, regardless of their socioeconomic status. Only by moving beyond the punitive paradigm can we hope to build a justice system that truly lives up to its name.

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