

## A Comparative Study of the Laws of Execution of the Death Penalty Against Australian and French Citizens in Narcotics Crimes

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**Abstrak:** *This work analyzes the differences behind the protracted delay in the Serge Areski Atlaoui case which is compared to the case of the two defendants Bali Nine, namely Myuran Sukumaran and Andrew Chan, in the case of the same narcotics crime there is a very clear difference at the time of the inkraht criminal verdict. The purpose of this work is to analyze the urgency behind the moratorium on the verdict of Serge Areski Atlaoui which is different from the verdict on the two defendants Bali Nine. Through this work, two major findings were obtained, the first of which was that the moratorium on the death penalty was motivated by changes in criminal law policy through Law Number 1 of 2023 concerning the Criminal Code which provides a probation period of 10 years for defendants on death row, this was not obtained by the two defendants in the Bali Nine case because they had been executed after the PTUN decision on the lawsuit against the rejection of clemency by the President. The second finding is in the form of major implications after the reharmonization of criminal law provisions in the form of the application of the principles of legal certainty, legal justice and legal usefulness. The findings then gave a conclusion that the enforcement of criminal law against narcotics crimes has been updated by looking at the human aspect.*

**Keywords :** *Andrew Chan, Death Penalty, Moratorium, Narcotics,*

### INTRODUCTION

Transnational crime still dominates the high crime rate in various countries.

Indonesia is one of the countries that is often the destination country for this transnational crime.<sup>1</sup> This type of crime

<sup>1</sup>Sineri, T. A. N. (2023). Pengawasan Keimigrasian Dalam Meminimalisir Kejahatan Transnasional Terhadap Wilayah Perbatasan

Tradisional Skouw. *Ancaman Kejahatan Transnasional*, 132.

always involves many people from various ethnicities, tribes and even nationalities. One type of crime that is often committed is narcotics crimes. In the last 20 years, there have been many arrests and eradication of narcotics crimes, including in April 2005, there was an arrest of two Bali Nine gangsters for smuggling narcotics in the type of Heroin from Indonesia into the jurisdiction of Australia.<sup>2</sup> In the incident, two of the nine defendants are Andrew Chan, a foreign citizen from Australia, and Myuran Sukumaran, who is also from the same country.<sup>3</sup> In the previous month, March 2005, there was an arrest of Serge Areski Atlaoui, a French citizen, in the case of producing or using in the production process of psychotropics class I at a factory of PT. Sumaco Jaya Abadi which is under the jurisdiction of Indonesia.

In the Bali Nine case and the psychotropic production case, the Australian defendants Andrew Chan and Myuran Sukumaran and the defendant Serge Areski Atlaoui have been examined before a panel of judges in different case numbers for each. However, from the three defendants, they received the same verdict, namely the death penalty for their respective actions. Myuran Sukumaran in his case was sentenced to death in the Denpasar District Court Decision No. 626/Pid. B/2005/PN. DPS, then the Denpasar High Court Decision No. 22/Pid.B/2006/PT. DPS which upheld the

death sentence for Myuran Sukumaran, then the defendant filed an appeal and was decided in the Decision of the Supreme Court of the Republic of Indonesia No. 1693 K/Pid/2006 which rejected the appeal from the defendant Myuran Sukumaran. Until to postpone the implementation, Myuran still filed an extraordinary legal process in the form of a review, but in the Supreme Court Decision No. 38 PK/Pid.Sus/2011 rejected the application for review of the Myuran Sukumaran case and at this stage the judge's decision has really had permanent legal force or *inkracht*.

The next defendant, Andrew Chan, also experienced the same thing as Myuran Sukumaran, in the Denpasar District Court Decision No. 624/Pid.B/2005/PN. Dps has sentenced Andrew Chan to death, this decision was then confirmed by the Denpasar High Court Decision No. 18/Pid.B/2006/PT. The DPS that upheld the previous decision, as well as at the Cassation stage through the Supreme Court Decision No. 1690K/Pid/2006 which rejected the cassation application from Andrew Chan until there was only one final stage left before the execution of the decision, namely Review or PK, in the PK decision Number 37 PK/Pid.Sus/2011 the PK application from Andrew Chan was rejected and continued to enforce the previous decision. So that these two defendants from Australia in 2015 were

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<sup>2</sup> Sopiana, M. (2019). *Kedudukan International Criminal Court (ICC) Dalam Mekanisme Hukum Humaniter Internasional Menurut Statuta Roma 1998 Tentang Mahkamah Pidana Internasional* (Doctoral dissertation, Universitas Islam Riau).

<sup>3</sup> Sitamala, A. (2020). *Trial of Foreign Nationals: Distinction between Consular and Diplomatic Assistance toward Capital Punishment, A Case Study of Australian Nationals Facing Capital Punishment in Indonesia*. *A Case Study of Australian Nationals Facing Capital Punishment in Indonesia* (June 20, 2020).

executed at the Nusakambangan Correctional Institution.

This is different from the defendant Serge Areski Atlaoui who can still escape the snares of execution, this began with the Tangerang District Court Decision No. 893/Pid.B/2006/PN. TNG, which sentenced Serge Areski Atlaoui to life imprisonment, then in the decision of the Banten High Court No. 95/Pid/2006/PT.Btn still upheld the life sentence. However, in Supreme Court Decision No. 772K/Pid/2007 the life sentence was canceled and changed to the death penalty until the application for review, in the Supreme Court Decision No. 67 PK/Pid.Sus/2015 rejected the application for review from Serge Areski Atlaoui and strengthened the death sentence for Serge Areski Atlaoui.

However, from the verdict that should have been enforced, Serge Areski Atlaoui has still not been executed until 2024. In this case, this delay event is referred to as a moratorium. The moratorium that caused the delay in this decision lies in the ongoing legal efforts at the State Administrative Court regarding the lawsuit against clemency by President Jokowi. Which means that there are other efforts that can delay the implementation of the death sentence.

In the previous case, namely Andrew Chan and Myuran Sukumaran, there was a similar lawsuit, namely the refusal of clemency to President Jokowi but this ran aground so that there was something strange, the first oddity was that there was another attempt to delay the verdict that already had permanent legal force and the second oddity why there was

a difference from the case of Andrew Chan and Myuran Sukumaran who had been executed with Serge Areski Atlaoui who could still escape the verdict that both already have permanent legal force.

As a sample of research, several studies can be presented, the first of which is from Edy Lestari with the title "Postponement of the Execution of Death Row Inmates of Foreign Citizens Who Commit Narcotics Crimes in Indonesian Jurisdiction". The similarity with this study is the study of other elements outside the law that can delay the implementation of the death penalty. The difference is that the researcher focuses on comparing the legal system using a sample of real cases of execution of death row inmates in Indonesia. The next research is a study from Diani Indramayu with the title "Pros and Cons of the Death Penalty in Drug Cases Reviewed from the Perspective of Human Rights". With the similarity of writing sources based on the ICCPR as a reference. The difference is that Diani Indramayu focuses on the pros and cons of the death penalty in narcotics cases, while the researcher focuses on the study of legal reasoning and legal argumentation of the moratorium on the death penalty.

With this study, it will be examined about the concrete reasons for the difference in the execution of the verdict between Andrew Chan and Myuran Sukumaran who are Australian citizens and Serge Areski Atlaoui who is a French citizen who is blocked by the moratorium in the implementation of the verdict. Referring to the opinion of expert Gustav Radbruch, that the law must have legal certainty, legal justice and legal benefits as

well as the dignity of the Indonesian judiciary which is pro-Justicia, namely Justice based on the One Godhead, the existence of this difference in treatment can provide the potential for the decline of the dignity of the national court in the global arena. So based on this background, the focus of this research study is how to analyze the comparative law of the implementation of the inkracht verdict against Andrew Chan and Myuran Sukumaran with Serge Areski Atlaoui?, and what are the implications on the national legal system on the moratorium on the execution of the death penalty?

## METODOLOGI

The research method chosen is sui generic normative legal research, which is research focused on examining the application of positive legal rules or norms. Furthermore, this study uses a comparative approach, a case approach, and a conceptual approach. In this study, legal materials are classified into several types, primary legal materials consisting of the following:

- a. Constitution of the Republic of Indonesia 1945
- b. Law No.1 of 2023 concerning the Criminal Code
- c. Law Number 2 of the National Program for the Determination of Standards (PNPS) of the President of the Republic of Indonesia in 1964 concerning Procedures for the Implementation of the Death Penalty Imposed by Courts in the General and Military Courts

d. Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights

e. Law Number 30 of 2014 concerning Government Administration

f. Law Number 5 of 2004 concerning the Supreme Court

g. Law Number 48 of 2009 concerning Judicial Power

h. Regulation of the Chief of the National Police of the Republic of Indonesia Number 12 concerning Death Penalty Procedures

Meanwhile, secondary legal materials are legal materials obtained from textbooks, journals, opinions of scholars, legal cases, and symposiums conducted by relevant experts.

This research is then analyzed using a qualitative descriptive analysis method, which aims to understand and explain phenomena or events in a detailed and in-depth way. Qualitative descriptive analysis emphasizes a deep understanding of the characteristics of an event without changing or quantitatively measuring it.

## RESULT AND DISCUSSION

### **A Comparative Analysis of the Law on the Implementation of the Inkrecht Judgment Against Andrew Chan and Myuran Sukumaran with Serge Areski Atlaoui**

Criminal law is essentially an ultimum remedium which means the last remedy in law enforcement efforts so that it allows for more preventive enforcement than coercive enforcement, but this nature is limited only to general criminal acts. As

for special criminal acts that are characterized by the existence of regulations that contain the principle of *lex specialist derogate legi generalis* (special rules that override general rules) such as narcotics crimes, then criminal law is the opposite, namely *premium remedium* which means that criminal law is a preferred means for law enforcement.<sup>4</sup> In the narcotics crimes that have been committed by Andrew Chan, Myuran Sukumaran and Serge Areski Atlaoui, criminal law enforcement cannot be underestimated, criminal law needs to show the principle of deterrence or deterrence effect for the defendants.<sup>5</sup> This was then marked by the death sentence for the defendants even though they had carried out a series of legal remedies until the review in the cases of Andrew Chan, Myuran Sukumaran and Serge Areski Atlaoui, but the law should be the highest norm so that the decision of the panel of judges needed to be implemented immediately.

From the perspective of human rights, the concept of the death penalty has had legal force both in terms of national and international regulations, although many countries in mainland Europe have

currently eliminated the concept of the death penalty,<sup>6</sup> for example the Australian legal jurisdiction that has eliminated the concept of the death penalty in its criminal law, as well as the French jurisdiction which has eliminated the concept of a similar penalty (the death penalty).<sup>7</sup>

As a country of law regulated in Article 1 paragraph 3 of the 1945 Constitution, Indonesia has a strong ideology in maintaining the death penalty in national criminal law regulations, this is because Indonesia refers to the provisions of the International Covenant on Civil and Political Rights or hereinafter referred to as the ICCPR, especially in Article 6 paragraph 2 which reads "In Countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present covenant and to the convention on the prevention and punishment of the crime of genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court."<sup>8</sup>

This provision then became a reference for the Constitutional Court in

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<sup>4</sup> A. T. Hakim, "The Application of the Death Penalty for Foreign Nationals in Indonesian Jurisdiction Reviewed from International Human Rights Law," *Journal of Legal Dimensions*, vol. 6, no. 2, no. 297–316, 2022.

<sup>5</sup> M. Kuntag, "The Death Penalty for Narcotics Crimes in Indonesia," *Lex Privatum*, vol. 1, no. 1, h. 1–16, 2018.

<sup>6</sup> Rosmawati, T. (2023). *Analisis Yuridis Penerapan Pidana Mati Di Indonesia Dalam Perspektif Hukum Islam Dan Hak Asasi*

*Manusia* (Doctoral dissertation, Fakultas Magister Hukum, Universitas Islam Sumatera Utara).

<sup>7</sup> Seftrianto, D. (2024). *Dinamika Penerapan Pidana Mati Oleh Kejaksaan Dalam Perkara Tindak Pidana Narkotika* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).

<sup>8</sup> O. A. Havas, "Law of the Republic of Indonesia Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights/ICCPR," *Indonesian Journal of International Law*, vol. 4, no. 1, no. 24, 2021.

legalizing the death penalty in the ius constitution which applies through Decision Number 2-3/PUU-V/2007 stating a phrase "The most serious crime in Article 6 paragraph 2 of the ICCPR shall not be read separately from the next phrase, which is in accordance with the law in force at the time the crime was committed".<sup>9</sup> This decision then refers to the provisions of the Narcotics Law which regulates the provisions of the death penalty as a law that cannot be applied retroactively (exceptions) to anyone.<sup>10</sup>

So in principle, after the death penalty verdict, the President will issue a Presidential Decree as soon as possible which basically contains an execution order marked by the preparation of a firing squad by the Attorney General. However, from these provisions there is a contradiction that occurs not because of the disparity of the decision, but because there is a difference in when the execution of the judgment that has been inkracht because it has achieved the last extraordinary legal remedy, namely review. This is the case in the case of Andrew Chan and Myuran Sukumaran and the case of Serge Areski Atlaoui.

In the tempus delicti sitting the case that occurred, the two cases of narcotics crimes were not much different so that the two cases should have ended after the execution of the verdict. However, in the case of Serge Areski Atlaoui, there is a moratorium that causes him to escape the death penalty, this is different from what

was experienced by Andrew Chan and Myuran Sukumaran who are Australian citizens who have been executed first.

If traced, in the case of Serge Areski Atlaoui, it was not motivated by practical political interests between Indonesia and France, but there was a lawsuit against the President's decision by Serge Areski Atlaoui. This is slightly different from the case of the defendant Bali Nine, which in his application has been rejected by the President and the Presidential Decree regarding the rejection of the clemency application has received permanent legal force from the State Administrative Court.

However, in this case, the question arises about the difference in deadlines that should each have a threshold. In the case of Serge Areski Atlaoui, his legal team took advantage of the deadline for registration of the lawsuit at the State Administrative Court based on the decision to refuse clemency by the President. According to Article 55 of the PTUN Law, the phrase is determined 90 days after the issuance of the state administrative decision, so based on this, on Thursday, April 23, 2015 at 16.00 WIB, Serge Areski Atlaoui's legal team officially registered his lawsuit at the PTUN, this of course gives the implication that there is a delay in the execution of the verdict that must be respected by the Attorney General's Office for the rights of the defendant.

Then through the Decision of the Jakarta State Administrative Court Number

<sup>9</sup>Jastisia, M. (2023). The Effectiveness of Implementation and Compliance with ICCPR in the Case of Violations of the Right to Life and the Right to be Free from Tortured in Syria. *Tirtayasa Journal of International Law*, 1(2), 89-113.

<sup>10</sup> N. Boster, "Transnational Criminal Law," *EJIL*, vol. 14, no. 5, no. 54, 2003.

71/PLW/2015/PTUN-JKT, Serge Areski Atlaoui received a verdict in the form of a rejection of the lawsuit with the consideration of the panel of judges of the State Administrative Court of Jakarta which was submitted by the chairman of the Jakarta State Administrative Court, Hendro Puspito as follows: "In testing the validity of the object of the lawsuit, the Jakarta State Administrative Court does not have the authority to test in terms of substance or procedure because the Jakarta State Administrative Court also supports the existence of a eradication of narcotics crimes".

It can be known that Serge Areski Atlaoui as explained in the introduction that he was proven to be involved in narcotics trafficking so that the Chairman of the Jakarta State Administrative Court was reluctant to examine the object of the case because it was a form of support for the eradication of narcotics crimes.

However, after the trial at the Jakarta State Court, Serge Areski Atlaoui has still not been executed by the Prosecutor's Office until 2024. In 2018 there was previously a national legal tension in the global attention scene, this is because the two executions carried out by Indonesia against all death row defendants triggered global attention, this is slightly different from the global attention to the concept of the death penalty which is similar to that carried out in Singapore, but it is different from Indonesia which seems to be under pressure.

Regarding the status quo, then there was a change in the direction of national criminal law policy which also had an impact on the postponement of the

execution of the death penalty for Serge Areski Atlaoui, through the Criminal Code Bill which has currently been promulgated into Law Number 1 of 2023, Indonesia is trying to improve legal procedures because there is a contact between criminal law and state administrative law as has happened before, namely in the case of the Bali Nine trial with the case experienced by Serge Areski Atlaoui, where the criminal verdict that already has the force of law inkracht experienced a different response to the case of Myuran Sukumaran and Andrew Chan with Serge Areski Atlaoui, the gap in both cases clearly lies in the existence of a moratorium in the form of contact between criminal law and state administrative law that has a different attitude in both cases. On the one hand, for Myuran Sukumaran and Andrew Chan, the death penalty has been carried out, while for Serge Areski Atlaoui, it has not yet been carried out by the attorney general's office.

This problem begins with the habit of proceeding in court where if there is an intersection between criminal law and state administrative law, the first thing is the settlement of criminal cases, this is theoretically unusual because it intersects with the principle of *lex specialist derogate legi generalis*, but behind this there is an intention for no abuse of authority by state administrative officials, This is adopted in the handling of white collar crime cases in the form of corruption crimes.

This provision is normatively slightly different from the provisions of the intersection of criminal law with civil law where through Supreme Court Decision No. 628/K/Pid/1984 it is explained that the

decision on a criminal case must be suspended first after the existence of a civil decision that has the force of inkraht law, this is considered a prejudicial provision of geschil through the Supreme Court Circular Letter No. 4 of 1980.

Ideally, according to W. F. Prins "every regulation is based on an administrative provision ending with a criminal provision (incauda venenum) or poison at the end." Based on this, the position of state administrative law is between criminal law and civil law.

When connected with the case of Serge Areski Atlaoui, this case has received a point of enlightenment, with the postponement of the execution of the third volume by the Attorney General's Office due to the inconsistency of the implementation of the previous inkraht ruling, making improvements that need to be made first not because of the exhalation of practical political interests between countries but for the improvement of legal procedures, learning from previous events shows the disharmony of legal branches and feelings Injustice.

So through the existence of a new policy in Law Number 1 of 2023 can provide a good concept of law enforcement, regarding the concept of the death penalty will be more specific by being given a probation period, this of course also applies to Serge Areski Atlaoui, if in 10 (ten) years

of good behavior, the concept of the death penalty can be changed to life.<sup>11</sup>

This is also emphasized to the President that the President can intervene in the inkraht decision by providing leniency in the form of clemency or changing the TUN decision that previously rejected clemency for death row inmates. So that Serge Areski Atlaoui, who is currently on probation since the inkraht verdict, will still be reviewed during the probation period whether it is feasible to be granted a request for clemency again or to carry out the execution after participating in a probation period of 10 years. Implications for the National Legal System on the Moratorium on the Execution of the Death Penalty.

In essence, the death penalty is the main punishment intended for defendants of extraordinary crimes such as narcotics, terrorism, genocide, and others. However, the concept of the death penalty itself gets two sides of the coin, some agree and disagree.<sup>12</sup>

Regarding the case experienced by Serge Areski Atlaoui with Myuran Sukumaran and Andrew Chan, some people support efforts to eradicate narcotics by applying the death penalty, but for others do not agree with the pretext of prioritizing the human aspect.<sup>13</sup> In a survey conducted by the Ministry of Law and Human Rights, in 2015-2016 by conducting a sampling study

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<sup>11</sup>M. Rosyid, "The Impact of the Consistency of the Death Penalty on Bilateral Relations in Narcotics Cases," *Judisia: Journal of Legal Thought and Islamic Law*, vol. 8, no. 2, no. 256–280, 2017.

<sup>12</sup>F. L. Cahyanai, "Handling Illicit Narcotics Trade in International and National

Legal Perspectives," *Semarang Law Review*, vol. 4, no. 2, h. 101–108, 2023.

<sup>13</sup> I. Rukmana, "Narcotics Trafficking in the Perspective of International Criminal Law," *Journal of Legal Opinion*, vol. 1, no. 2, h. 1–8, 2014.

of 100 respondents, 80% confirmed that there was approval for the death penalty.

However, the other 20% tried to maintain the enforcement of human rights for the defendant to still have the right to life because it is part of the non-derogable right (rights inherent through God's gift). In addition, the consideration of social, religious and political aspects also provides another alternative why the death penalty was rejected by the 20% of the respondents.

Based on the human rights aspect as mandated in Article 28 of the 1945 Constitution, it does not eliminate the death penalty, but the concept of the death penalty is more selective with the regulation of Law Number 1 of 2023 concerning the Criminal Code. In the previous sub-chapter, it has been explained that there is a probation period of 10 years calculated from the death sentence, this is different from the case of Myuran Sukumaran and Andrew Chan after the decision to refuse clemency by the President at the State Administrative Court, the death penalty will be carried out as soon as possible.

The concept of this probation period provides an opportunity for Indonesia to improve the quality of the applicable criminal law so that it will provide two things for the defendant on death row, namely the first side that the defendant will undergo various changes such as not repeating and regret because the criminal law is premium remedium, the second side that the defendant will still be in his stance

of regulating narcotics transactions through prison cells like Freddy Budiman.

In essence, the moratorium on the implementation of the death penalty can have very deep and broad implications for the national legal system of a country. [14] When a country decides to introduce such a moratorium, various legal, political, social, and even cultural consequences can arise. These implications can affect all aspects from the judicial process to the public's view of justice and human rights. In national law, such a moratorium can have a significant impact.

Legally, a moratorium on the execution of the death penalty can cause substantial changes in a country's criminal justice system. <sup>14</sup>First of all, this could have an impact on the development of the principles of criminal law, especially in terms of punishment and rehabilitation. Countries that implement moratoriums can strengthen or even change their approach to criminal punishment as a whole, including a reduction in the death penalty in their criminal law or even the abolition of the death penalty altogether<sup>15</sup>

The moratorium on the death penalty could also trigger changes in the judicial process. <sup>16</sup>The country may choose to review its justice system, including court proceedings, criminal investigations, law enforcement, and the rights of suspects and defendants. This could mean strengthening the system to ensure that errors or abuses of

<sup>14</sup> Izad, R. (2019). Pidana Hukuman Mati Di Indonesia Dalam Perspektif Etika Deontologi. *Al-Syakhsyiyah: Journal of Law & Family Studies*, 1(1).

<sup>15</sup> Watch, I. C. (2024). Policy Paper Implementasi dan Pengaturan Valuasi Kerugian Ekologis dalam

Perhitungan Kerugian Negara di Perkara Korupsi Sektor Industri Ekstraktif.

<sup>16</sup> Siregar, R. E. (2022). Kepastian Hukum Masa Tunggu Eksekusi Pidana Mati. *Locus Journal of Academic Literature Review*, 373-385.

power do not occur, as well as ensuring that the judicial process is fair and transparent.<sup>17</sup>

Another implication of the death penalty moratorium in national law is its impact on legal structures. Countries that implement moratoriums may need to revise or update their laws related to the death penalty, both in the context of criminal and administrative law. This could include a review of laws relating to the use of the death penalty, criteria for establishing the death penalty, as well as appeal procedures or review of cases involving the death penalty.<sup>18</sup>

Not only the legal aspect, but the moratorium on the death penalty also has significant political implications. The decision to introduce such a moratorium could spark intense political debate at the national level. This can involve a wide range of stakeholders, including political parties, advocacy groups, government agencies, and the general public. This debate may revolve around issues such as human rights, justice, the effectiveness of the death penalty as a crime deterrent, and the moral and ethical values that underlie the legal system.

The moratorium on the death penalty can also affect a country's international relations. The decision to temporarily halt the execution of the death penalty could create an opportunity to strengthen diplomatic relations with countries or international organizations that

oppose the death penalty. The country may gain further support or recognition for their steps towards the abolition of the death penalty.

The social implications of the moratorium on the death penalty should also not be ignored. The decision to temporarily halt the death penalty could reflect a change in public views on justice, punishment, and human rights. This could affect people's perception of their authority and trust in the justice system, as well as create greater awareness of the importance of fair and human rights-based law enforcement.

A moratorium on the death penalty can also have significant cultural implications. The decision to temporarily halt the death penalty may reflect a change in a country's cultural values, including their views on violence, rehabilitation, and reconciliation. This could affect the national narrative of justice and security, as well as affect how society responds to issues of crime and crime.<sup>19</sup>

## CONCLUSION

As a conclusion in this work, two important common threads are presented as a conclusion, which are as follows: The comparison of the implementation of the verdict that has been inkraht in the case of Andrew Chan and Myuran Sukumaran with Serge Areski Atlaoui has a different course of legal remedies, in the case of Andrew

<sup>17</sup> Cahyaningati, S. D. (2024). *Tinjauan Hukum Dan Etika Pemanfaatan Teknologi Dna (Deoxyribo Nucleic Acid) Dalam Penegakan Hukum Di Indonesia* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).

<sup>18</sup> Yanuarta, B. (2023). *Kebijakan Hukum Pidana Tentang Sanksi Pidana Mati Tindak Pidana Korupsi*

*Dalam Pembaruan Hukum Pidana Indonesia* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).

<sup>19</sup> Nurdin, I. (2019). *Konflik dan Kolaborasi: Peran Negara Dalam Integrasi Bangsa*.

Chan and Myuran Sukumaran as Australian citizens, after the State Administrative decision regarding the lawsuit against the rejection of clemency by the President, the moratorium has ended and is marked by the execution of the two defendants. This is different from Serge Areski Atlaoui who in detail is still in the cell of the Nusakambangan Correctional Institution, one thing that then shows the difference with the previous case that Serge together with his lawyer have just registered a lawsuit against the President's decision containing the refusal of clemency at the end of the TUN lawsuit filing period after the TUN decision. At the same time, there is a discourse on the reharmonization of criminal law provisions because they intersect with state administrative law. So through the new rules in Law Number 1 of 2023 concerning the Criminal Code, Serge Areski Atlaoui can still get a moratorium because there is a probation period of 10 years, which will then be determined whether to carry out the execution or get clemency again from the President. The implications of the national legal system on the existence of a moratorium on the death penalty provide several certainty values, the first is that the death row inmate will have a period of contemplation and regret because of criminal sanctions as a premium remedium, the second is that there is no practical conflict of political interests, so that during the probation period, the convict is really in the supervision period. The third is the aspect of legal benefits for convicts to improve their behavior and eliminate malicious intentions in them, on the other hand there are several other aspects in the

form of global attention to Indonesia's criminal law getting better.

Based on this, the recommendation offered by the author is that there needs to be a gradual improvement in criminal law policies, because many developed countries have eliminated the death penalty in their criminal laws.

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