

CHAPTER ONE

INTRODUCTION

A. Background

Every day, people are executed and sentenced to death by the state as a punishment for a variety of crimes, such as drug-related offenses, terrorism-related acts, and murder.¹ Some countries use the death penalty against people with mental and intellectual disabilities. It is discussed a lot in every platform, starting from a national level like in the government institutions, journalism, and the international world and also in society.

Iran, Saudi Arabia, and Iraq were listed as the three highest countries which held executions.² In general, these three countries accounted for 84 percent of all executions in the world. Iran became the top with 507 people sentenced to death executed, with most of them being convicts of drug cases and convicts of drug cases experienced 264 executions in the Middle East and North Africa.³

While in Saudi Arabia, 40 percent of the death sentences were handed down to suspects with similar cases. According to Amnesty International researcher Oluwatosin Popoola, the death penalty carried out in the Middle

¹ Amnesty International, 2016, "Out of Sight, Out of Mind Executive Summary", taken from <https://www.amnesty.ca/outofsight> accessed on January 10th, 2019 at 7 pm.

² *Ibid.*

³ Amnesty International, 2017, "Indonesia: At Least Ten Facing Imminent Execution", taken from <https://www.amnesty.org/en/documents/asa21/1124/2015/en/> accessed on January 10th, 2019 at 8 pm.

East and North Africa does not meet international standards and is classified as arbitrary.⁴

There are a lot of cases about the death penalty, which involved many people. According to Migrant Care records, 72% of migrant workers who faced the death penalty were women. The data of the Ministry of Foreign Affairs in 2011- 2018 collected 188 cases of Indonesian citizens threatened with the death penalty in the process of handling, and 392 instances completed with a free sentence.⁵

The consular notification is essential for Indonesia, considering that many foreign nationals are in trouble and face the death penalty. For example, from January 1 to October 2014, the Directorate of PWNI and BHI received 13,780 case reports received from the public. The case is divided into several issues, namely Indonesian citizens who are threatened with the death penalty of several countries for murder crimes (31.38%), drug smuggling (61.09%), adultery (3.77%), and others.⁶

⁴ Dylan Aprialdo Rachman, 2018, “Secara Global Tren Eksekusi Mati Tahun 2017 Mengalami Penurunan”, taken from <https://nasional.kompas.com/read/2018/04/13/08033781/secara-global-tren-eksekusi-mati-tahun-2017-mengalami-penurunan> accessed on January 12th, 2019 at 9 pm.

⁵ Moh Nadlir, 2018, “188 WNI Terancam Hukuman Mati di Luar Negeri karena Kasus Narkoba”, taken from <https://nasional.kompas.com/read/2018/03/20/09420871/188-wni-terancam-hukuman-mati-di-luar-negeri-mayoritas-karena-kasus-narkoba?page=all> accessed on January 14th, 2019 at 9 pm.

⁶ Husin Sukanda, 2006, “Perlindungan Hukum Tenaga Kerja Indonesia (TKI) di Luar Negeri”, Paper Seminar Sosialisasi Perlindungan Hukum WNI dan BHI di Luar Negeri, p. 80.

**Table 1.1 Types and Number of Cases Experienced by Indonesian
Migrant Worker in 2014**

CASES	PERCENTAGE	TOTAL CASES
Drug Construction	61,09 %	8.418 cases
Murder	31,38 %	4.324 cases
Adultery	3,77 %	520 cases
Other cases	3.76 %	518 cases
TOTAL	100 %	13.780 cases

While throughout 2015, the National Agency for the Placement and Protection of Indonesian Workers (from now on referred to as BNP2TKI) received complaints totaling 18,420 cases from migrant workers in various foreign countries. The case is divided into the following table:⁷

**Table 1.2 Types and Number of Cases Experienced by Indonesian
Migrant Worker in 2015**

Cases	Number of complaints that be accepted	Number of successful cases handled
Indonesian workers wanted to be repatriated	3.205 cases	1.850 cases
Indonesian labor was not paid by the employer	3.189 cases	2.061 cases
Indonesian workers dropped out of communication relations	2.676 cases	1.846 cases
Indonesian laborers did not work according to the contract	1.633 cases	1.119 cases

⁷ Fahmi Iman Fauzy, 2017, "Indonesia's Responses on Human Rights Violations Against Indonesian Migrant Workers in Hong Kong", *Advances in Social Science & Education and Humanities Research (ASSEHR)*, Paris, Atlantis Press, p. 129.

Indonesian Workers died	1.574 cases	1.095 cases
Indonesian Workers were sick	776 cases	519 cases
Indonesian Workers experienced violence	718 cases	504 cases
Indonesian Workers were terminated	458 cases	330 cases
Indonesian Workers failed to leave	401 cases	297 cases
Indonesian Workers experienced an accident	326 cases	185 cases
Indonesian Workers were in detention	307 cases	185 cases
Undocumented Indonesian Workers	258 cases	203 cases
Detention of Indonesian Workers passports	236 cases	178 cases
Indonesian Workers run away from employers	212 cases	148 cases
Indonesian Workers were sexually harassed	201 cases	143 cases
Other Cases	2.250 cases	1.591 cases
TOTAL	18.420 cases	12.254 cases

Again, the Government of Saudi Arabia executed Indonesian Workers (TKI). The migrant worker who was sentenced to death on Monday, October 29th, 2018 in Thaif was Tuti Tursilawati; She is from Majalengka West Java.⁸ Tuti Tursilawati was arrested by the Saudi Police on charges of murdering Suud Mulhaq Al-Utaibi, father of her boss. She is known to have worked for eight months with the remaining salary not paid for six months.⁹

⁸ Pandasurya Wijaya, 2018, “Kronologi TKI Tuti Tursilawati Dieksekusi Mati”, taken from <https://www.liputan6.com/news/read/3681393/kronologi-tki-tuti-tursilawati-dieksekusi-mati> accessed on February 13th, 2019 at 2 am.

⁹ Konradus Epa, 2018, “Saudi Arabia executes Indonesian migrant worker”, taken from <https://www.ucanews.com/news/saudi-arabia-executes-indonesian-migrant-worker/83761> accessed on February 13th, 2019 at 3:24 am.

After killing the victim, Tuti fled to Makkah carrying jewelry and money.¹⁰ However, on the way to escape to Makkah, she was raped by nine Saudi youth who, then, took all of her stolen goods. The nine young men were arrested and have been punished by Saudi legal provisions.¹¹ During the investigation process, Tuti Tursilawati admitted that she had killed her father boss because of frequent sexual harassment.

The large number of Indonesia Migrant Worker cases that do not have consular access is one proof that Indonesia's diplomatic efforts in Saudi Arabia are not an easy matter. So far there are two kinds of theories of state treatment of foreigners, namely the International Minimum Standard and National Minimum Standard. Starting from the importance of protecting foreigners, some developed countries such as the United States want an international minimum standard in the treatment of foreigners and the interest. According to this theory, standards do not only include law but also enforcers.

On the other hand, each developing country has its own minimum standards regarding the treatment of foreigners who are then referred to as the National Minimum Standard. This principle is based on Article 9 of the 1933 Montevideo Convention which states that: Nationals and foreigners are under the same protection of the law and the national authorities, and are more

¹⁰ Sri Juliati, 2018, "Kronologi Kasus TKI Tuti Tursilawati yang Dieksekusi Mati di Arab Saudi Tanpa Pemberitahuan ke RI", taken from <http://www.tribunnews.com/nasional/2018/10/30/kronologi-kasus-tki-tuti-tursilawati-yang-dieksekusi-mati-di-arab-saudi-tanpa-pemberitahuan-ke-ri> accessed on February 13th, 2019 at 3 am.

¹¹ Friski Riana, 2018, "Kronologi Kasus TKI Tuti Tursilawati hingga Dieksekusi Mati", taken from <https://nasional.tempo.co/read/1141430/kronologi-kasus-tki-tuti-tursilawati-hingga-dieksekusi-mati> accessed on February 13th, 2019 at 2:30 am.

extensive than those of the nationals. So according to this principle, the state will have the same treatment for foreigners and their citizens. Generally, this understanding is used to avoid undesirable interventions from stronger countries. Based on the explanation above, it can be seen that there are conflicts between developed countries and developing countries regarding the treatment of foreigners.¹² For this reason, Gracia Anador summarizes that the minimum standard of a country is the protection of human rights as also stated in Universal Declaration of Human Rights. H. Waldock mentions that what is meant by Human Rights here is the rights which are attached to all human beings equally, regardless of their nationality.

Saudi Arabia possibly defends their decision by using Territorial Principle, in which this principle means that every State has their own authority to execute any crimes committed in its own territory. However, Indonesia also has a right to protect the citizens no matter where they live as known as Nationality Principle.

Protecting citizens who face problems abroad is one of the country's obligations. Meeting these special obligations is not an easy task for the State. Therefore, all countries must prioritize this task, including Indonesia as one of the countries, which has many citizens who live and work abroad. On the Preamble of the 1945 and Article 19 (b) Law No. 37 of 1999 concerning

¹² Ademola Abass, 2014, *International Law: Text, Cases, and Materials 2nd Edition*, United Kingdom, Oxford University Press, p. 8.

Indonesian Foreign Affairs, it is stated that the State has the responsibility to protect the honour and property of Indonesian citizens living abroad.¹³

Because of it, there are so many countries establish a consular relation with another country around the world.¹⁴ In dealing with this problem, most countries refer to existing international conventions such as the Vienna Convention on Diplomatic Relations 1961 (VCDR) and the Vienna Convention on Consular Relations 1963 (VCCR) ratified by Indonesia in Law Number 1 of 1983.¹⁵

This Vienna Convention guarantees consular assistance and access from each country to their citizens who may need assistance when traveling, working, or living abroad. Consular access is found in Article 36 of the Vienna Convention on Consular Relations 1963.¹⁶ On the other hand, Article 36 of the Vienna Convention on Consular Relations 1963 stipulates that the mechanism of Consul can help the citizens who have been arrested or detained in other countries that have received VCCR 1963.¹⁷

There are still many problems abroad and the citizens still fail to get access for help and protection.¹⁸ Based on the background above, the author

¹³ The preamble of 1945 Constitution and Article 19 (b) Law No. 37 of 1999 on Indonesian Foreign Relations.

¹⁴ B. Sen Barry, 1965, *A Diplomat's Handbook of International Law and Practice*, Netherlands, Springer Netherlands, p. 227-244.

¹⁵ Husin Sukanda, *Op. Cit*, p. 70.

¹⁶ The Vienna Convention on Consular Relations 1963.

¹⁷ Mark J. Kadish, 1997, "Article 36 of the Vienna Convention on Consular Relations: A Search for the Right to Consul", *Michigan Journal of International Law*, Georgia, Georgia State University College of Law, p. 569.

¹⁸ John Cary Sims and Linda E. Carter, 1998, "Representing Foreign Nationals: Emerging Importance of The Vienna Convention on Consular Relations as a Defence Tool", taken from

considers knowing deeply about the Importance of Bilateral Agreement on Mandatory Consular Notification in dealing with Tuti Tursilawati execution.

B. Problem Formulation

Considering the research background above, the author formulates a question to be answered, namely:

What is the Importance of Bilateral Agreement on Mandatory Consular Notification for Indonesia: Tuti Tursilawati Execution?

C. Objectives of Research

The objective of the research is:

To find the Importance of Bilateral Agreement on Mandatory Consular Notification for Indonesia: Tuti Tursilawati Execution.

D. Benefits of the Research

There are some benefits of this research, namely:

1. Theoretical Aspect

The research gives benefits to know deeply about the Importance of Bilateral Agreement on Mandatory Consular Notification for Indonesia: Tuti Tursilawati Execution and

2. Practical Aspect

The research provides a better understanding about the importance of bilateral agreement on Mandatory Consular Notification for those who engaged with a bilateral agreement such as government, lecturers, students and Parties who are involved in a bilateral agreement, etc.

E. Overview of the Chapter

The research consists of five chapters, namely: Chapter One which is an Introduction, Chapter Two which is a Literature Review, Chapter Three which is the Research Method, Chapter Four which is Finding and Analysis, and Chapter Five which is a Conclusion and Recommendation.

Chapter One: In this chapter, the author elaborates general matter, such as Background, Research Question, Research Objective, Research Benefits, and Overview of The Chapter. The background provides the current condition of death penalty in the world and the ways Saudi Arabia government-imposed death penalty to Tuti Tursilawati. The author also addresses the research problem, which will be discussed in the next chapter.

Chapter Two: Literature Review, the chapter discusses related library reviews and theoretical framework regarding Bilateral Agreement, Consular Relations and Sovereignty of the State under International Law.

Chapter Three: The chapter elaborated research method which is used in the research. The discussion is started from the type of research, legal materials, method of collecting data, and method of data analysis. The type of the research

is normative legal research. The research applies statute and case approaches. The data were collected from some literature consisting of primary legal material, secondary legal material, and tertiary legal material. Furthermore, the data were taken through library research and analyzed systematically by using a qualitative and descriptive method.

Chapter Four: Finding and Analysis, the chapter elaborates the finding and discusses the importance of bilateral agreement on Mandatory Consular Notification for Indonesia in dealing with Tuti Tursilawati execution.

Chapter Five: Conclusion and Recommendation, in this chapter, the author summarizes the finding and discussion then concludes the importance of bilateral agreement on Mandatory Consular Notification for Indonesia in dealing with Tuti Tursilawati case. Suggestions are then given for future implementation of Mandatory Consular Notification for Indonesia.