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The Principle of Proportionality in Drug Control Policy in the Philippines and Indonesia

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Article	Abstract
<p>Keywords:</p> <p>Drug Law Enforcement; Human Rights; Indonesia; Philippines; Principle of Proportionality.</p> <p>Article History Received: May 10, 2025; Reviewed: Jun 17, 2025; Accepted: Jul 17, 2025; Published: Jul 31, 2025.</p> <p>DOI: 10.28946/slrev.v9i2.4896</p>	<p>The war on drugs has become a global concern, particularly in Southeast Asia, where drug-related crimes are considered a serious threat to national and international security. Two cases that will be discussed relate to the anti-drug campaigns in the Philippines and Indonesia, both of which have attracted attention due to their controversial law enforcement methods. This study aims to compare the application of the principle of proportionality in drug law enforcement in both countries, focusing on whether the actions taken align with international human rights standards. This research employs a juridical-comparative method, analysing legal policies, government policies, and human rights-related case facts from both countries. In the Philippines, the campaign under President Duterte's administration raised significant concerns regarding extrajudicial killings and the excessive use of power, which deviates from the principle of proportional enforcement. In contrast, Indonesia adopts a more judicial approach, although it still faces criticism for harsh verdicts and the implementation of the death penalty. The findings will reveal significant differences in how the principle of proportionality is interpreted and applied, influenced by political will, law, and institutional accountability. While both countries claim to uphold the rule of law, the level of adherence to the principle of proportionality varies greatly. This study concludes that a balanced and human rights-based approach is essential for sustainable and ethical enforcement of drug policy in Southeast Asia.</p>

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INTRODUCTION

Drug-related crime is a global threat that not only damages individual health but also impacts social stability and public order.¹ Countries in Southeast Asia, particularly Indonesia and the Philippines, have faced significant challenges in combating drug trafficking and abuse. Both have implemented aggressive anti-drug policies, albeit with different approaches. While the goal is to ensure security and public order, the actions taken by the countries often spark debates, particularly regarding whether these policies have been implemented fairly and in accordance with the fundamental principle of criminal law, namely the principle of proportionality.

The main difference between the drug control policies in the Philippines and Indonesia lies in the approaches taken by both countries. In the Philippines, under President Rodrigo Duterte's administration, the drug control policy, known as the “*War on Drugs*”, primarily emphasises a harsh, aggressive approach, including extreme measures in enforcement actions that have sometimes led to human rights violations and international controversy.² This policy targets drug dealers and users indiscriminately, including extrajudicial killings of suspected drug offenders without clear legal processes.³

In contrast to Indonesia, which also maintains a stringent stance on drugs, it places greater emphasis on rehabilitation and prevention in certain cases. Indonesia's policy allows for the rehabilitation of drug abuse victims as part of its overall strategy, although it also enforces the death penalty for major drug traffickers in specific cases. While Indonesia's policy is also tough, it tends to focus on legal enforcement through clear judicial processes. However, it has faced ongoing debates about the alignment of these practices with human rights and legal fairness.⁴

This research will examine the significant differences between these two policies, investigating whether these actions effectively uphold the principle of proportionality—a fundamental tenet of criminal law—and their impact on social justice in both countries. A comparison between the Philippines' more extreme approach and Indonesia's combination of law enforcement with rehabilitation offers critical insights into the effectiveness of drug control policies that do not compromise human rights and justice principles.

The principle of proportionality in criminal law is a principle that dictates that the punishment imposed on a criminal must be commensurate with the level of guilt and the impact

¹ Emily Greberman and Colleen M. Berryessa, ‘Drug Policy, Drug War, and Disparate Sentencing’, in *Oxford Research Encyclopedia of Criminology and Criminal Justice* (Oxford University Press, 2024), doi:10.1093/acrefore/9780190264079.013.884.

² Matthew C. Go and Maria Corazon A. De Ungria, ‘Forensic Sciences and the Philippines’ War on Drugs’, *Forensic Science International: Synergy*, 1 (2019), pp. 288–89, doi:10.1016/j.fsisyn.2019.05.003.

³ Dyah Mutiarin, Queenie Pearl V. Tomaro, and David N. Almarez, ‘The War on Drugs of Philippines and Indonesia: A Literature Review’, *Journal of Public Administration and Governance*, 9.1 (2019), p. 41, doi:10.5296/jpag.v9i1.14355.

⁴ Qanszelir GB Pandjaitan XIV and Selly Stefany Novelina, ‘Perbandingan Pembuatan Dan Implementasi Kebijakan Indonesia Dalam Menghadapi Status Darurat Narkotika Dengan Filipina Dan Portugal [The Making and Implementation of Indonesia’s Policy in Facing the Narcotics Emergency Status in Comparison with the Philipp]’, *Verity: Jurnal Ilmiah Hubungan Internasional (International Relations Journal)*, 14.28 (2023), pp. 41–54, doi:10.19166/verity.v14i28.6572.

of their actions.⁵ This principle prevents the state from exercising excessive or arbitrary power over individuals who have committed offences. In this context, the principle of proportionality serves as a bridge between the need to maintain public security and the state's obligation to protect the fundamental rights of its citizens.⁶ This principle has its roots in several classical and modern theories of criminal law. One such theory is the Retributive Theory, which emphasises that punishment should be a form of just retribution for the crime committed. According to this theory, the primary goal of punishment is not merely deterrence, but justice. From this perspective, if a person commits a minor crime, the state should not impose a severe punishment, as it would exceed the bounds of justice. Immanuel Kant stated that justice can only be achieved if the punishment is based on the principle of desert or “just deserts”.⁷

On the other hand, the Utilitarian Theory developed by Jeremy Bentham views punishment as something that should benefit society as a whole. However, even in the utilitarian theory, which focuses on the deterrent effects, the principle of proportionality remains important. Excessive punishment would lose its deterrent effect and instead create public distrust in the law.⁸ Therefore, despite their different approaches, both theories consider the principle of proportionality as a central element in the formulation and application of criminal law. In the context of human rights, the principle of proportionality is also reflected in various international instruments, such as the International Covenant on Civil and Political Rights (ICCPR), which emphasises the need for limitations on state authority in law enforcement, in order to avoid violations of the right to life, the right to a fair trial, and protection from cruel and inhuman treatment.⁹ This principle has become an integral part of the due process of law and the rule of law in modern democratic legal systems.

The Philippines employs a harsh approach to drug-related crime, especially during President Rodrigo Duterte's administration, which has raised international concerns. The "War on Drugs" campaign launched by the government led to thousands of deaths in law enforcement operations, widely criticised for a lack of fair legal procedures.¹⁰ In many cases, offenders or even those suspected of wrongdoing were not allowed to defend themselves in court. This raises serious questions about violations of the principle of proportionality. In contrast to the Philippines, Indonesia takes a judicial approach in handling drug-related cases. Law enforcement is carried out through formal mechanisms, including investigations, prosecutions, and trials. However, Indonesia is not immune to criticism. One of the criticisms is the practice of imposing the death penalty on drug offenders, which is considered too severe,

⁵ Mitchell N. Berman, ‘Proportionality, Constraint, and Culpability’, *Criminal Law and Philosophy*, 15.3 (2021), pp. 373–91, doi:10.1007/s11572-021-09589-2.

⁶ Marie Manikis, ‘The Evolution of Proportionality in Sentencing’, in *Sentencing, Public Opinion, and Criminal Justice* (Oxford University Press, Oxford, 2025), pp. 53–68, doi:10.1093/9780191991936.003.0006.

⁷ Luís Miguel Rechiki Meirelles, ‘O Retributivismo Da Punição Na Doutrina Do Direito’, *Revista Ágora Filosófica*, 24.2 (2024), pp. 265–82, doi:10.25247/P1982-999X.2024.v24n2.p265-282.

⁸ Mahmoud Alghali, ‘Regulations and Limitations of Utilitarian Function of Criminal Penalty’, *Pakistan Journal of Criminology*, 17.2 (2025), pp. 21–32, doi:10.62271/pjc.172.21.32.

⁹ A. A. Zavgorodniaia, ‘Pragmatism of the Proportionality Method in Legal Argumentation in the Contact of Interests’, *Courier of Kutafin Moscow State Law University (MSAL)*, 9, 2022, pp. 179–87, doi:10.17803/2311-5998.2022.97.9.179-187.

¹⁰ Go and De Ungria, ‘Forensic Sciences and the Philippines’ War on Drugs’.

especially for users or couriers with minor roles.¹¹ Many cases show that offenders with minor roles in the network are given the harshest sentences, reflecting an imbalance in the application of the principle of proportionality.

According to Muladi, the principle of proportionality encompasses not only the severity of the punishment but also the social context, the offender's motivation, and the possibility of rehabilitation. He emphasises that without a proportional approach, the criminal justice system can become a legal means for the state to carry out state-sanctioned violence. This is also supported by Prof. Andi Hamzah, who states that proportionality is the heart of justice in criminal law, as it ensures that the law remains humane.¹²

This study uses a juridical-comparative method, which compares the legal policies and practices of drug law enforcement in the Philippines and Indonesia. This approach allows the researcher to assess how the principle of proportionality is understood, implemented, and its impact on human rights. The study also analyses relevant national and international legal norms, as well as the views of human rights protection agencies monitoring law enforcement practices in both countries. The primary issue in this study is the comparison of the application of the principle of proportionality in drug law enforcement between the Philippines and Indonesia, and the extent to which both align with the principles of criminal law and international human rights. This study aims to provide a deeper understanding of the importance of the principle of proportionality in the criminal justice system and to offer recommendations for the formulation of more just, humane, and constitutionally based legal policies

RESEARCH METHODS

This study uses a normative juridical method with a comparative juridical approach.¹³ The primary focus of the research is on comparing legal norms in the Philippines and Indonesia regarding the application of the principle of proportionality in drug law enforcement. The data used are secondary data, consisting of primary legal sources (legislation and court decisions), secondary legal sources (legal literature and academic journals), and tertiary legal sources (legal dictionaries and encyclopedias). The analysis is conducted qualitatively, using content analysis to examine and interpret legal provisions and drug enforcement policies in both countries. The purpose of this method is to identify the similarities and differences in the application of the principle of proportionality, and to assess its alignment with the principles of criminal law and human rights.

¹¹ Tantri Kartika and Affila, 'Implementation Of The Death Penalty In Narcotic Criminal Cases (Case Study Of Decision Number 203/PID.SUS/2019/PN.BLS.)', *Awang Long Law Review*, 5.1 (2022), pp. 335–41, doi:10.56301/awl.v5i1.576.

¹² Helen Brown Coverdale, 'Putting Proportional Punishment into Perspective', *Criminal Law and Philosophy*, 2024, doi:10.1007/s11572-024-09736-5.

¹³ Pablo Luis Manili, 'Decree With Legislative Content in Comparative Constitutional Law', *As-Siyasi*, 4.1 (2024), p. 33, doi:10.24042/as-siyasi.v4i1.22711.

ANALYSIS AND DISCUSSION

Application of the Principle of Proportionality in the “War on Drugs” Policy in the Philippines

The “War on Drugs” policy launched by President Rodrigo Duterte in 2016 aimed to combat the drug problem, which is considered one of the biggest threats in the Philippines.¹⁴ Drugs have long been a serious issue, undermining social stability, public health, and national security. Duterte viewed drug abuse as the main cause of organised crime, the decline of societal morals, and the destruction of the youth generation. Therefore, this policy aimed to drastically reduce drug abuse through swift and firm actions and restore order in a country facing high levels of drug-related crime.¹⁵

The “War on Drugs” policy implemented by Duterte is significantly different from conventional law enforcement approaches. This policy prioritises harsh and repressive actions against individuals suspected of being involved in drugs.¹⁶ One of the most controversial elements of this policy is the use of extrajudicial killings as a means to eradicate drug networks. The Philippine government granted security forces and the police the authority to take strict action against drug dealers and users who are considered a threat to society. In many cases, suspected drug offenders were executed without going through a legal trial process, raising significant concerns regarding violations of human rights and procedural justice.¹⁷ This action contradicts the principle of due process of law, which guarantees every individual the right to a fair trial. While the Philippine government claims that this policy is necessary to combat drug crime swiftly, many both domestically and internationally argue that the policy fosters a culture of violence and impunity in the country.

The repressive actions in the “War on Drugs” policy in the Philippines are highly striking, where law enforcement officials use extreme violence to tackle drug offenders. One key aspect is the operations carried out by the police, where they are authorised to use lethal force without considering clear legal procedures. In many cases, extrajudicial killings occur when the police claim they were acting in self-defence or responding to a threat from suspects.¹⁸ However, evidence is often not provided, and the investigation process is not carried out transparently, resulting in uncertainty within law enforcement. A series of nighttime operations carried out by authorities target drug suspects, particularly those involved in drug distribution networks or those suspected of drug use. However, many reports indicate that drug users or individuals with

¹⁴ Bama Andika Putra and Darwis, ‘The Paradoxical Security Implications of Duterte’s War on Drugs: Emergence of a Domestic Security Dilemma’, *Journal of Humanities and Social Sciences Studies*, 4.3 (2022), pp. 01–07, doi:10.32996/jhss.2022.4.3.1.

¹⁵ Jayson S. Lamchek and Teresa Jopson, ‘Confronting the Philippines’ War on Drugs: A Literature Review’, *Sociology Compass*, 18.5 (2024), doi:10.1111/soc4.13209.

¹⁶ Putra and Darwis, ‘The Paradoxical Security Implications of Duterte’s War on Drugs: Emergence of a Domestic Security Dilemma’.

¹⁷ Jaziel M. Fabro, ‘Lost Lives: Extrajudicial Killings and the Breakdown of Justice in the Philippines’, *Journal of Arts, Humanities and Social Science*, 1.3 (2024), pp. 14–17, doi:10.69739/jahss.v1i3.128.

¹⁸ Fabro, ‘Lost Lives: Extrajudicial Killings and the Breakdown of Justice in the Philippines’.

minor roles in drug networks are often the main targets in these operations, frequently ending in death, without an opportunity to defend themselves in court.¹⁹

This policy has a significant social impact in the Philippines, especially for marginalised and vulnerable groups such as low-income families, underprivileged communities, and those involved in minor drug use. Many of them become victims of extrajudicial killings because they are in a position to be more easily targeted by authorities without proper legal defence. Another social impact is the increased fear within society, where people feel threatened by the potential violence perpetrated by the police or individuals suspected of collaborating with the authorities. Furthermore, this policy has also eroded public trust in the judicial system in the Philippines, as many people feel that the law is not applied fairly and that certain groups are consistently targeted, while others can commit crimes with impunity without fear of punishment. The legal uncertainty caused by this policy has also led to mass migration and citizens fleeing to safer places, both within and outside the Philippines. Many feel that they cannot seek justice in their own country, and the killings without due process create an atmosphere of fear that limits freedom of expression and the ability to act freely.²⁰

The principle of proportionality in criminal law requires that the punishment imposed on an offender must be commensurate with the crime committed, taking into account the severity of the crime, the offender's role in the crime, and the possibility of the offender's rehabilitation. This principle is crucial in ensuring that the criminal justice system not only administers punishment as a form of retribution but also as a means to restore justice and support the rehabilitation of the individual and society. The application of this principle is strongly grounded in two major theories in criminal law: the retributive theory and the utilitarian theory.²¹

The retributive theory, pioneered by Immanuel Kant, emphasises that punishment should be a proportionate response to the crime committed. According to this theory, justice in the criminal justice system is achieved when the offender receives a punishment that is commensurate with the severity of the wrongdoing they have committed.²² In the context of the Philippines' "War on Drugs" policy, extrajudicial killings carried out against drug suspects violate the retributive principle because there is no fair and legitimate judicial process to assess the severity of the crime committed by the offender. Moreover, this theory also asserts that retributive justice must consider the humanity of the offender, meaning that the offender should not only be punished but also allowed to defend themselves through due legal procedures. In other words, the punishment should be proportional to the crime committed, not based on assumptions or emotional retribution.

¹⁹ Yordan Gunawan and Vensky Ghaniyyu Putri Permana, 'Extrajudicial Killings over the Drug War in the Philippines under the ICC Jurisdiction', *Jurnal Suara Hukum*, 6.1 (2024), pp. 31–47, doi:10.26740/jsh.v6n1.p31-47.

²⁰ Muhammad Anugrah Utama, 'Securitisation in the Philippines' Drug War', *Indonesian Journal of International Relations*, 5.1 (2021), pp. 41–61, doi:10.32787/ijir.v5i1.146.

²¹ Jesper Ryberg, 'Retributivism and the (Lack of) Justification of Proportionality', *Criminal Law and Philosophy*, 15.3 (2021), pp. 447–62, doi:10.1007/s11572-021-09579-4.

²² Joachim Renzikowski, 'Pena e Direito Penal Em Kant: Nove Teses', *Revista Do Instituto de Ciências Penais*, 2022, pp. 1–23, doi:10.46274/1809-192XRICP2022v7n1p1-23.

Additionally, the utilitarian theory proposed by Jeremy Bentham and John Stuart Mill focuses on the social benefits of punishment. Bentham argued that the primary goal of law is to promote the welfare of society, achieved through crime prevention and the rehabilitation of offenders. In this theory, punishment is not only for retribution but should also have a deterrent and rehabilitative effect.²³ In the Philippines' "War on Drugs" policy, the application of extrajudicial violence contradicts the utilitarian principle because it does not provide the offender with an opportunity for rehabilitation or recovery. This policy focuses solely on administering severe punishment without achieving long-term deterrence. The death penalty or extrajudicial killings may provide a temporary sense of justice, but they do not address the underlying issues related to drug abuse and fail to offer an opportunity for the offender to reform, which should be the main goal of crime prevention.

One of the most serious violations of the principle of proportionality committed by the Philippine government in its "War on Drugs" policy is the application of extrajudicial killings against drug suspects.²⁴ This extrajudicial policy allows law enforcement officials to execute individuals suspected of being involved in drugs without giving them the opportunity for a fair trial or the right to defend themselves. Killing without due judicial process not only violates the principle of proportionality but also deviates from the principles of justice that should be upheld in the criminal justice system. This action contradicts the right to a fair trial, which is protected by the International Covenant on Civil and Political Rights (ICCPR) and the Philippine Constitution. Without a clear investigation and legitimate legal process, it is impossible to determine whether the actions taken by the offenders truly correspond to the severity of the crime they committed.

Furthermore, regarding a healthy judicial system, the right to defend oneself is an integral part of the due process of law. Extrajudicial killings disregard this fundamental right, which should guarantee that every individual is entitled to a fair trial and not become a victim of unjust retaliation, as has been done to drug users. The Philippines' "War on Drugs" policy also fails to differentiate between drug users and drug traffickers when applying punishment. Drug users, who are often involved in personal drug consumption on a smaller scale, are frequently given severe punishments, including the death penalty. This contradicts the principle of proportionality because it fails to consider the offender's role in the crime and the extent of their impact on society.²⁵

Drug users, particularly those struggling with addiction, should receive more rehabilitative treatment rather than facing the death penalty or extrajudicial killings. In many cases, drug users do not have full control over their dependence. Therefore, more humane law enforcement aligned with the principle of proportionality would be more appropriate, offering opportunities for rehabilitation rather than punishment that disregards the possibility of recovery. The principle of proportionality demands that the punishment imposed must consider the degree of the offender's culpability, the possibility of rehabilitation, and their role in the crime. Therefore,

²³ Melanie Romero A. Javier Treviño, 'Jeremy Bentham', in *Criminology* (Oxford University Press, 2022), doi:10.1093/obo/9780195396607-0319.

²⁴ Fabro, 'Lost Lives: Extrajudicial Killings and the Breakdown of Justice in the Philippines'.

²⁵ Sophie Cousins, 'Five Thousand Dead and Counting: The Philippines' Bloody War on Drugs', *BMJ*, 2016, p. i6177, doi:10.1136/bmj.i6177.

drug users who are involved in minor criminal activities should not be punished the same way as major drug dealers. Lighter punishments and a rehabilitative approach would better align with this principle, creating opportunities for offender recovery and reducing the likelihood of reoffending.²⁶

From the analysis above, it is clear that the "War on Drugs" policy in the Philippines has violated the principle of proportionality in criminal law. Extrajudicial killings of drug offenders, conducted without a legitimate judicial process, contradict the principle of due process of law and the fundamental principles of justice. Furthermore, the application of the death penalty to drug users with minor roles in the drug trade also violates the principle of proportionality because the punishment imposed does not correspond to the degree of wrongdoing or the role of the offender in the crime. The Philippines needs to undertake major reforms in its drug eradication policy by prioritising fair legal processes, rehabilitation, and recovery, while avoiding extrajudicial violence that violates human rights and the principle of proportionality. This is crucial to ensure that drug eradication policies are not only effective but also just, humane, and in line with international human rights standards.²⁷

The "War on Drugs" policy implemented by Philippine President Rodrigo Duterte since 2016 has faced widespread criticism from various international human rights organisations. Institutions such as Human Rights Watch, Amnesty International, and the United Nations have condemned this policy, which is perceived as disregarding fundamental human rights, particularly the right to life and the right to a fair trial.²⁸ Human Rights Watch has referred to Duterte's policy as a "massacre," noting that it has led to thousands of extrajudicial deaths. Extrajudicial killings, carried out by law enforcement officials and other groups allegedly linked to the government, severely violate the right to life, which is protected by international law. Amnesty International also emphasises that this policy violates the Philippines' international obligations under the ICCPR (International Covenant on Civil and Political Rights), which states that the right to life is the most fundamental and can only be deprived in very limited circumstances that require a legitimate legal process.²⁹ They stress that killing individuals suspected of being involved in drugs without a proper trial is a major violation of human rights that must be stopped.

In addition to directly violating human rights, this policy also risks worsening the Philippines' human rights record internationally. Strong criticism from various countries and international organisations could undermine global trust in the Philippines as a nation that upholds the principles of law and human rights. The Philippine government, known for its repressive policies, risks isolating itself on the international stage, with more countries condemning its actions and even cutting diplomatic or economic ties.³⁰ Furthermore, this could

²⁶ Molly K Webster, 'Alternative Courts and Drug Treatment: Finding a Rehabilitative Solution for Addicts in a Retributive System', *SSRN Electronic Journal*, 2015, doi:10.2139/ssrn.2685361.

²⁷ Gunawan and Permana, 'Extrajudicial Killings over the Drug War in the Philippines under the ICC Jurisdiction'.

²⁸ Gideon Lasco, 'Political Constructions of People Who Use Drugs in the Philippines: A Qualitative Content Analysis', *International Journal of Drug Policy*, 130 (2024), p. 104518, doi:10.1016/j.drugpo.2024.104518.

²⁹ Dahlia Simangan, 'Is the Philippine "War on Drugs" an Act of Genocide?', *Journal of Genocide Research*, 20.1 (2018), pp. 68–89, doi:10.1080/14623528.2017.1379939.

³⁰ Aisyah Jasmine Yogaswara, 'Impact of Philippines' Withdrawal From International Criminal Court On Crime Against Humanity Investigation In Philippines', *Padjadjaran Journal of International Law*, 4.2 (2021), pp. 226–46, doi:10.23920/pjil.v4i2.413.

potentially hinder international aid and bilateral relations with countries committed to human rights. On the other hand, international criticism could jeopardise the Philippines' diplomatic relations, particularly with countries that strongly prioritise human rights. The European Union, the United States, and several other major countries have expressed their disapproval of Duterte's policy and have threatened to suspend aid or international cooperation if the policy continues.³¹

In this context, on March 11, 2025, the ICC issued an arrest warrant for former President Duterte, marking a significant step in enforcing international law regarding actions considered crimes against humanity.³² This arrest warrant is based on allegations of Duterte's involvement in extrajudicial killings that violate human rights. Despite the Philippines' withdrawal from the Rome Statute in 2018, the ICC argues that its jurisdiction remains valid because the actions occurred during the period when the Philippines was still a party to the Statute (2011-2019).³³ This arrest warrant, involving the retroactive principle in international law, underscores the ICC's commitment to ensuring accountability for international criminals, including former heads of state. In this case, Duterte can still be prosecuted despite no longer holding office, as his actions are seen as violations of universal international legal principles. This arrest is expected to be an important step in delivering justice to the victims of the "War on Drugs". It affirms that no individual, including national leaders, is immune from international legal processes.³⁴

Professor Raul C. Pangalangan, a former judge of the International Criminal Court from the Philippines, is one of the legal figures who strongly oppose the "War on Drugs" policy implemented by the Duterte administration.³⁵ Pangalangan emphasises that law enforcement must not exceed its mandate and that every individual has the right to be treated fairly before the law. He highlights that policies granting unchecked power to authorities to carry out extrajudicial killings clearly violate the due process of law, which must be upheld in the criminal justice system. According to Pangalangan, the judicial system should function to uphold justice, not to enact revenge or arbitrary retaliation. For Pangalangan, justice in the criminal justice system must involve a legitimate, transparent process based on accountable evidence. Extrajudicial killings not only undermine public trust in the justice system but also lead to systematic violations of fundamental individual rights, particularly the right to life.³⁶

Dr. Tony La Viña has also strongly criticised the "War on Drugs" policy implemented by Duterte. La Viña described the policy as "excessive and a violation of human rights."³⁷ According to him, while the drug problem is a serious threat that must be addressed, repressive actions that are not based on the principles of justice and human rights will undermine public

³¹ Neni Rakhmawati, 'International Criminal Court Jurisdiction Against Human Rights Violations by Philippine President After Withdrawal from Rome Statute', *Semarang State University Undergraduate Law and Society Review*, 3.1 (2023), pp. 91–108, doi:10.15294/lsr.v3i1.57091.

³² Gunawan and Permana, 'Extrajudicial Killings over the Drug War in the Philippines under the ICC Jurisdiction'.

³³ Rakhmawati, 'International Criminal Court Jurisdiction Against Human Rights Violations by Philippine President After Withdrawal from Rome Statute'.

³⁴ Vicente L. Rafael, 'Duterte Unbound', *Dissent*, 64.2 (2017), pp. 102–5, doi:10.1353/dss.2017.0044.

³⁵ Fabro, 'Lost Lives: Extrajudicial Killings and the Breakdown of Justice in the Philippines'.

³⁶ Go and De Ungria, 'Forensic Sciences and the Philippines' War on Drugs'.

³⁷ Lena Muhs, 'Duterte's "War on Drugs" Rhetoric', *Journal for the Study of Radicalism*, 16.2 (2022), pp. 149–64, doi:10.14321/jstudradi.16.2.0149v.

trust in the law and lead the Philippines into a cycle of violence and ongoing impunity. La Viña emphasised that a more humane approach, focusing on rehabilitation and prevention rather than the death penalty or extrajudicial killings, would be more effective in the long term to reduce the drug trade in the Philippines. He also argued that the Philippine legal system needs to pay more attention to fundamental humanitarian values and uphold balanced principles of justice, rather than relying solely on violent approaches that cause harm.³⁸

Prof. Edna Co stated that justice must be based on the principle of proportionality. According to Co, in the context of drug policy, actions taken against offenders must be proportional to the severity of the crime committed. Co argued that punishment should take into account the individual's role in the crime, the possibility of rehabilitation, and other social factors that influence their actions.³⁹ She suggested that the Philippines reform its drug policy to focus more on rehabilitation rather than the death penalty or extrajudicial killings. Professor Co also recommended that the Philippines develop an approach based more on recovery and education to fight the drug problem, instead of emphasising harsh retribution, which could worsen social issues in the future.⁴⁰

The "War on Drugs" policy in the Philippines has received sharp criticism from the international community and prominent legal experts for violations of human rights, especially the right to life and the right to a fair trial. This policy has damaged public trust in the legal system in the Philippines and risks worsening the country's human rights record in the eyes of the international community. The opinions of legal experts, such as Prof. Raul C. Pangalangan, Dr. Tony La Viña, and Prof. Edna Co, indicate that this policy should focus on balanced justice, with attention to rehabilitation and long-term prevention, rather than harsh punishment that undermines the basic principles of justice. The Philippines needs to reform its drug policy, moving away from violent approaches towards a more moral and recovery-focused policy that prioritises human rights principles that respect the dignity of every individual.⁴¹

The "War on Drugs" policy implemented by Philippine President Rodrigo Duterte has clear and significant implications for human rights, particularly the right to life and the right to a fair trial, as guaranteed by the International Covenant on Civil and Political Rights (ICCPR). Extrajudicial killings carried out by law enforcement officers and other associated parties contradict the principle of due process of law, which mandates that every individual be treated fairly and allowed to defend themselves through a legitimate judicial process. The Philippines, as a country that has ratified the ICCPR, has an international obligation to protect the right to life of its citizens and not impose the death penalty or engage in extrajudicial violence without

³⁸ Jerbert M. Briola, 'Effective and Humane Ways to Manage the Drug Problem in the Philippines, a Human Rights and Public Health Perspective', *Torture Journal*, 27.1 (2017), doi:10.7146/torture.v27i1.26541.

³⁹ Alex Rikardo Siahaan, Hasan Hiawatha Rifai, and Asmak Ul Hosnah, 'Disparity in Sentencing and the Effectiveness of Indonesia's Narcotics Law: A Critical Analysis of Law No. 35 of 2009', *Arkus*, 11.1 (2024), pp. 754–66, doi:10.37275/arkus.v11i1.680.

⁴⁰ Beby Suryani Fithri, 'Disparity in Judicial Decisions in Narcotics Crimes (A Study of Verdict No. 1192/Pid.Sus/2024/PN.Mdn and Verdict No. 1035/Pid.Sus/2024/PN.Mdn)', *JURNAL MERCATORIA*, 17.2 (2024), pp. 143–53, doi:10.31289/mercatoria.v17i2.13145.

⁴¹ Mary Gail L. Lalic - and others, 'An Analysis of Media Coverage, Judicial Sentencing, and Law Enforcement Perceptions of Drug Trafficking Cases in the Philippines: Implications for Fairness, Effectiveness, and Public Discourse', *International Journal For Multidisciplinary Research*, 7.1 (2025), doi:10.36948/ijfmr.2025.v07i01.34842.

following proper legal procedures. This policy violates the principle of proportionality, as the actions taken are disproportionate to the severity of the crimes alleged to have been committed by the drug offenders. The unchecked use of violence against suspects, without considering justice through a legitimate judicial process, results in the country losing legitimacy in enforcing laws that are fair and humane.

The Philippine government needs to reform its drug policy to focus more on legitimate legal processes and the enforcement of individual rights. A policy that relies on extrajudicial killings or the death penalty will only exacerbate human rights violations and foster a culture of violence. The Philippines should consider shifting to a more rehabilitative approach, focusing on prevention and the recovery of drug offenders, especially those struggling with addiction. This policy should include drug rehabilitation programs that give individuals the opportunity to rehabilitate themselves while still maintaining public safety. In this way, the application of the principle of proportionality can better align with human rights and principles of balanced justice.

The repressive policies enforced by the Philippine government have damaged the country's legal legitimacy both domestically and internationally. The extrajudicial killings carried out under this policy have eroded public trust in the Philippine legal system, as many citizens feel unsafe and lose confidence in law enforcement. When law enforcement officials act arbitrarily without clear oversight mechanisms, it damages the justice system and erodes public trust in the justice that the law is intended to provide. Internationally, the Philippines faces pressure from various human rights organisations, Western countries, and international institutions that criticise this policy. A policy that disregards fundamental human rights can lead to diplomatic isolation, where other countries may decide to suspend cooperation with the Philippines. This could affect the country's economy, international aid, and political stability.

The "War on Drugs" policy implemented by the Philippine government is in direct conflict with the principle of proportionality, which should ensure a balance between punishment and the crime committed. This policy disregards the principle of human rights, particularly the right to life and the right to a fair trial, which are protected under the ICCPR and the Philippine Constitution. The application of extrajudicial killings and the death penalty for drug users with minor roles in drug networks is disproportionate to the severity of the crimes committed, and thus violates the principle of proportionality. Therefore, this policy not only creates injustice for the offenders but also damages the Philippines' image in the eyes of the international community.

Application of the Principle of Proportionality in the Drug Judicial System in Indonesia

Indonesia has a legal system that prioritises formal judicial processes in handling drug-related cases. This system focuses on investigation, prosecution, and trial to ensure that every individual involved in drug cases receives a legitimate judicial process.⁴² In this context, Indonesia does not use an extrajudicial approach as applied in the Philippines' "War on Drugs" policy. As a country that upholds the rule of law, Indonesia is committed to ensuring that every

⁴² Bahtiyar Efendi and Widhi Handoko, 'Implementation of Criminal Law in Handling Narcotics Cases in Indonesia', *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 21.2 (2022), doi:10.31941/pj.v21i2.2678.

drug suspect is given the opportunity to undergo a transparent and fair legal process.⁴³ Therefore, every individual accused of involvement in drugs must go through legal procedures that involve investigation by the police, prosecution by the public prosecutor, and trial in court, where they can present a defence and uphold their rights. This formal legal process reflects the fundamental principles of a rule-of-law state, adhering to the principle of due process of law, which ensures that human rights are respected even as the state strives to combat the harmful effects of drug-related crimes.⁴⁴ While this system provides a clear legal process, there are challenges in the application of the principle of proportionality, particularly in sentencing, which is sometimes considered disproportionate to the role and impact of the drug offender.

In Indonesia's legal system, every drug suspect must undergo a formal judicial process that includes several stages: investigation, prosecution, and trial. During the investigation stage, law enforcement officers gather evidence and question the suspect. The process then moves to the prosecution stage, where the prosecutor files charges against the suspect in court. If the case proceeds to trial, the judge leads the proceedings and provides the defendant the opportunity to defend themselves through a designated attorney. This process ensures that every suspect has the right to a defence. This principle is not always guaranteed in more repressive or extrajudicial policies like those implemented in the Philippines. The system ensures that legal decisions are made based on facts gathered during the trial process, rather than on assumptions or unilateral policies. Therefore, Indonesia emphasises the importance of access to justice, allowing defendants to undergo a transparent legal process, even in drug cases that often involve severe penalties.⁴⁵

The primary goal of Indonesia's drug eradication policy is to create a fair and transparent judicial system, where each drug offender is sentenced in accordance with their role and the severity of their crime. Although there are challenges in applying the principle of proportionality in Indonesia, particularly regarding the imposition of the death penalty for drug traffickers or those involved on a smaller scale, the policy aims to protect society from the negative impacts of drugs while still respecting human rights. However, the application of the principle of proportionality in Indonesia's legal system is sometimes problematic, particularly in sentencing, which does not always reflect substantive justice. For example, many drug offenders are sentenced to death even though they played a minor role in drug distribution networks. In contrast, those who have more significant roles in the organisation do not always receive commensurate sentences.⁴⁶ Therefore, although this policy aims to create a just judicial

⁴³ Talya Ucaryilmaz, 'The Principle of Proportionality in Modern Ius Gentium', *Utrecht Journal of International and European Law*, 36.1 (2021), pp. 14–32, doi:10.5334/ujiel.529.

⁴⁴ Novarolina Pulukadang, Rafika Nur, and Sumiaty Sumiaty, 'Application of the Principle of Due Process of Law Regarding Narcotics Crimes', *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)*, 7.4 (2023), p. 3316, doi:10.58258/jisip.v7i4.5708.

⁴⁵ Moh. Shofi Anan, Ade Maman Suherman, and Tri Setiady, 'Justice and Human Rights: A Study of Legal Protection for Victims of Fabricated Arrests in Narcotics Cases', *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam*, 16.2 (2024), pp. 512–29, doi:10.32505/jurisprudensi.v16i2.9842.

⁴⁶ Gunawan Widjaja and Ririn Nurhidayanti, 'Analysis of the Abolition of the Death Penalty for Drug Trafficking Crimes in Indonesia the Case Study: SERANG District Court Decision Number 837/Pid.Sus/2020/PN Srg', *International Journal of Research and Innovation in Applied Science*, IX.V (2024), pp. 496–508, doi:10.51584/IJRIAS.2024.905044.

system, the application of the principle of proportionality in drug sentencing still requires reform to make it more balanced and fair for all parties.

One major issue faced by Indonesia in applying the principle of proportionality is the imbalance between the punishment imposed and the offender's role in the drug crime. In Indonesia, the judicial system tends to prioritise harsh sentences for drug offenders, without much consideration for the specific role of the offender within the drug network or the severity of the crime they committed. This creates an imbalance, especially when drug users with minor roles in drug distribution networks are sentenced the same as major drug dealers who have a larger influence in drug operations.⁴⁷

The imposition of the death penalty in drug cases in Indonesia illustrates the imperfection in the application of the principle of proportionality in the legal system. The death penalty is often imposed not only on major drug traffickers but also on drug users or those involved in drug networks with minor roles, such as couriers or low-level dealers. In this context, the death penalty imposed on offenders with minor roles can be seen as disproportionate, as it does not fairly consider the level of involvement or the impact of the offender's actions on society. The application of such extreme punishment without distinguishing the role or individual contribution to the drug network creates a clear injustice, which could be avoided with a more proportional approach.⁴⁸ The imposition of very harsh sentences on drug offenders with minor roles shows a misalignment with the principle of justice, which should be the foundation of Indonesia's criminal justice system. The principle of justice, which requires that the punishment imposed must be proportionate to the level of fault and the offender's role in the crime, cannot be realised when drug users who are only involved in personal consumption or small-scale distribution are sentenced to death. This indicates that the principle of proportionality has not been fully applied, as there is no differentiation in sentencing between offenders with minor and major roles in the drug network, which deviates from the principle of balanced justice.⁴⁹

As previously discussed, the principle of proportionality is supported by both retributive and utilitarian theories. Regarding the retributive theory, it emphasises that the punishment imposed must be proportionate to the crime committed by the offender. In the context of drug-related cases, this theory requires that the offender's role and the severity of the crime be carefully considered when imposing a sentence. If an offender is only involved in a minor role, the law applied should not be equivalent to the punishment imposed on major drug traffickers or key figures in the network. In Indonesia's legal system, the retributive theory needs to be applied more strictly to ensure that each offender receives a fair and proportionate punishment based on their level of involvement in drug-related crimes.

The utilitarian theory, as presented by Jeremy Bentham, posits that the primary goal of punishment is to benefit society by deterring crime and protecting individuals from further

⁴⁷ Kartika and Affila, 'Implementation Of The Death Penalty In Narcotic Criminal Cases (Case Study Of Decision Number 203/PID.SUS/2019/PN.BLS.)'.

⁴⁸ Kartika and Affila, 'Implementation Of The Death Penalty In Narcotic Criminal Cases (Case Study Of Decision Number 203/PID.SUS/2019/PN.BLS.)'.

⁴⁹ Ferisa Dian Fitria, Muchamad Ali Safa'at, and Abdul Madjid, 'Sentencing Under The Special Minimum Threat For Small-Scale Drug Traffickers: Challenges And Implications For Justice And Drug Eradication Policy', *International Journal Of Humanities Education and Social Sciences (IJHESS)*, 4.3 (2024), doi:10.55227/ijhess.v4i3.1336.

harm. Punishment should have a deterrent effect without sacrificing justice and balance. In the context of Indonesia's drug policy, the death penalty for drug users with minor roles contradicts this utilitarian principle.⁵⁰ The death penalty does not provide an opportunity for rehabilitation or a chance for the offender to reintegrate into society after rehabilitation, which clearly goes against the long-term goals of deterrence and rehabilitation in utilitarian theory. Therefore, a rehabilitation and prevention-based approach would be more consistent with the utilitarian principle, as it provides opportunities to reduce crime rates without compromising justice.⁵¹

Additionally, this study is also supported by restorative theory, which focuses on the recovery and rehabilitation of offenders, rather than just punishment or retribution. This approach suggests that the penalties imposed on offenders should consider not only the sanctions but also how they can make amends for their wrongs and reintegrate into society. By considering rehabilitation and counselling, the restorative approach would be more suitable for drug users, who are often trapped in addiction. In the context of Indonesia, policies that only emphasise the death penalty or other severe punishments for drug users neglect this principle of recovery. Rehabilitation programs, medical approaches, and social support should be more focused on those involved in minor drug consumption, as this would provide them with an opportunity to improve and avoid repeating their mistakes in the future.⁵²

Overall, the application of the principle of proportionality in drug sentencing in Indonesia still faces significant challenges, particularly regarding the imbalance in sentences imposed on offenders with minor roles in drug networks. The death penalty imposed on drug users involved in minor roles demonstrates a misalignment with the principle of justice upheld in Indonesia's criminal justice system. The application of retributive, utilitarian, and restorative theories can help create a more just, humane, and proportionate sentencing system, which not only punishes offenders but also provides them with the opportunity to change through rehabilitation and recovery. Indonesia needs to reform its drug sentencing policy, prioritising the principle of proportionality that considers the offender's role, the possibility of rehabilitation, and substantive justice in each drug case. This will ensure that Indonesia's legal system operates more justly and in accordance with internationally recognised human rights standards.

As outlined above, the opinions expressed by Muladi highlight the importance of applying the principle of proportionality in Indonesia's criminal justice system, particularly in sentencing. According to Muladi, the principle of proportionality refers not only to the severity of the punishment imposed but also to deeper factors, such as the offender's intent, their role in the crime, and the possibility of rehabilitation. For Muladi, sentencing that focuses solely on retributive sanctions, or punishment merely for the sake of revenge, without considering the

⁵⁰ Kunti Tri Pertiwi and Deddy Roemansyah, 'Hukum Sebagai Penyokong Kebahagiaan: Konsep Utilitarianisme Jeremy Bentham Dalam Konteks Modern', *Al-Balad : Jurnal Hukum Tata Negara Dan Politik Islam*, 4.2 (2024), Pp. 63–74, Doi:10.59259/Ab.V4i2.190.

⁵¹ Ony Rafsanjani and Aminuddin Mustaffa, 'Why Should The Death Penalty Not Be Abolished For Narcotics Crimes? A Case Study In Indonesia', *JiIP - Jurnal Ilmiah Ilmu Pendidikan*, 5.8 (2022), pp. 3104–10, doi:10.54371/jiip.v5i8.813.

⁵² Malsal Jajuli Haerudin Hermawan and Catharina Dewi Wulansari, 'Sociological Analysis of Restorative Justice in Rehabilitative Law Enforcement for Drug Abuse Cases', *Ius Poenale*, 5.1 (2024), pp. 1–14, doi:10.25041/ip.v5i1.3283.

social and psychological aspects of the offender, would create an imbalance in the legal system and injustice for offenders, especially those involved in drug cases with minor roles.

Based on the explanation above, as stated by Muladi, it is essential to emphasise the application of the principle of proportionality in the Indonesian criminal justice system, particularly in sentencing. According to Muladi, the principle of proportionality should not only refer to the severity of the punishment imposed but must also consider deeper factors, such as the offender's intent, their role in the crime, and the potential for rehabilitation. For Muladi, sentencing that solely focuses on retributive sanctions, or punishment purely to retaliate against the offence, without considering the social and psychological aspects of the offender, creates an imbalance in the legal system and results in injustice, especially for individuals involved in narcotics cases with minor roles. Muladi also argues that disproportionate sentencing exacerbates social problems and increases the social costs caused by such policies. For instance, drug users, who often struggle with addiction, should receive more attention in the context of rehabilitation rather than being subjected to the death penalty or severe punishment without regard for their potential recovery.⁵³

Additionally, the view expressed by Andi Hamzah, who has a profound understanding of the principle of proportionality, supports this perspective. He asserts that proportionality is a fundamental pillar in a fair criminal justice system. Hamzah explains that, in any sentencing system, it is crucial to maintain a balance between the crime committed and the punishment imposed. According to him, imposing either excessively harsh or overly lenient penalties does not reflect justice. In the context of narcotics, Hamzah emphasises that the imposition of the death penalty on drug users with minor roles in drug distribution networks contradicts the principle of proportionality.⁵⁴ Drug users with minor involvement should be given the opportunity to change through rehabilitation, rather than facing the death penalty, which fails to consider their potential for recovery. Furthermore, he emphasises that the criminal justice system should prioritise the rehabilitation and recovery of offenders, rather than solely focusing on retribution. Therefore, policies that prioritise a retributive approach in narcotics cases, without considering rehabilitation efforts, contradict the very spirit of the principle of proportionality.

Although Indonesia has a more formal and transparent legal system, the application of the principle of proportionality in narcotics sentencing still faces significant challenges. One of the main issues is the imbalance between the punishment imposed and the offender's role in the narcotics crime. Drug users with minor roles in the network are often sentenced to the death penalty, which is clearly disproportionate to the offence committed. In many cases, they are only involved in drug consumption or distribution in very limited capacities; however, the penalties imposed are severe and fail to consider rehabilitation or their potential for change. In comparison with European countries, which prioritise rehabilitation and preventative approaches in narcotics cases, Indonesia still needs to improve its approach. Countries like the Netherlands, Portugal, and Sweden have demonstrated that a rehabilitation-based approach, which includes education and psychological support for drug users, is more effective in

⁵³ Muladi, 'Pemidanaan Dalam Perspektif Asas Proporsionalitas', *Jurnal Hukum Dan Pembangunan*, 44.2 (2015), pp. 237–253.

⁵⁴ Andi Hamzah, *Bunga Rampai Hukum Pidana Dan Hukum Acara Pidana* (Repository Unhas, 1986).

reducing drug abuse rates than retributive or punitive sentences.⁵⁵ Therefore, Indonesia needs to adopt a more humane and rehabilitative approach, focusing on prevention and recovery, rather than solely on retribution or the death penalty.

To improve the application of the principle of proportionality in drug sentencing, Indonesia needs to undertake policy reforms that give more consideration to the individual context of offenders and their potential for rehabilitation. These reforms should include reducing the use of the death penalty, with a stronger emphasis on rehabilitation programs for drug users with minor roles in networks. Rehabilitation programs should be viewed as a more effective alternative to imposing disproportionate punishment.⁵⁶ Additionally, sentencing policies should focus more on substantive justice, where the offender's role in the crime becomes a primary consideration in determining the sentence. The drug judicial system in Indonesia still faces major challenges in applying the principle of proportionality, especially regarding the imposition of the death penalty without considering the offender's role in the crime. Although Indonesia's judicial system follows clear procedures, the imbalance in sentencing for offenders with minor roles remains a major issue that needs to be addressed immediately. A more just, humane, and rehabilitative approach is urgently needed.

Comparison of the Application of the Principle of Proportionality and Its Implications for Human Rights

In discussing the application of the principle of proportionality in drug eradication policies, the Philippines and Indonesia demonstrate vastly different approaches. The Philippines, with its harsh "War on Drugs" policy, adopts repressive measures that often involve extrajudicial killings.⁵⁷ In contrast, Indonesia prioritises formal legal processes that allow offenders to defend themselves through investigation, prosecution, and trial. Both countries share the same goal of eradicating drugs, but their approaches are starkly contrasting in terms of respect for the principle of proportionality and human rights. The Philippines relies on swift and decisive actions, while Indonesia seeks to ensure fair trials despite facing challenges in imposing proportional sentences. These differences significantly affect how each country handles human rights and implements the principle of proportionality, which demands that every punishment be commensurate with the crime committed by the offender. Through its more repressive approach, the Philippines faces international criticism for disregarding the right to life and the right to a fair trial. At the same time, Indonesia, despite its more transparent legal processes, also struggles to ensure that sentences are proportional to the offender's role and responsibility in drug-related crimes.

The purpose of this discussion is to delve deeper into the policy differences between the Philippines, which emphasises repressive actions, and Indonesia, which prioritises formal legal processes in drug eradication. These policy differences have a significant impact on the enforcement of human rights and the application of the principle of proportionality in both

⁵⁵ Hartato Pakpahan and others, 'Reformulating Indonesia's Narcotics Law on Personal Drug Misuse: A Humanist Approach', *Journal of Asian Social Science Research*, 6.2 (2024), pp. 209–32, doi:10.15575/jassr.v6i2.104.

⁵⁶ Anisya Ramdlonaning and Eva Achjani Zulfa, 'Analisis Kebijakan Rehabilitasi Bagi Penyalahguna Narkotika Di Indonesia', *Jurnal Ius Constituendum*, 8.1 (2023), pp. 50–68, doi:10.26623/jic.v8i1.6119.

⁵⁷ Putra and Darwis, 'The Paradoxical Security Implications of Duterte's War on Drugs: Emergence of a Domestic Security Dilemma'.

countries. The Philippines tends to overlook the principle of proportionality in law enforcement. At the same time, Indonesia continues to face challenges in ensuring proportional punishment for offenders, particularly drug users with minor roles in networks. This discussion will also address how the policies of both countries affect public trust in the legal system and their implications for international relations.

In its efforts to combat drugs, the Philippines adopts a policy that heavily emphasises harsh and swift action, sometimes involving extrajudicial killings of drug suspects. This differs from the formal judicial process in Indonesia, where each offender is given the opportunity to undergo a legitimate judicial process. The extrajudicial killings in the Philippines' "War on Drugs" policy are intended to curb drug trafficking quickly. However, these actions instead lead to serious human rights violations, particularly the right to life and the right to a fair trial.

Extrajudicial killings, without a legitimate judicial process, disregard the right to defence and the right to a fair trial, which are protected by international legal instruments such as the ICCPR (International Covenant on Civil and Political Rights). These actions not only violate the right to life but also undermine the fundamental principle of equal justice that should be applied in any legal system. Furthermore, this policy causes many low-income families and those not directly involved in drug trafficking to become victims, exacerbating social inequality in the Philippines. The Philippines' repressive policy also creates an atmosphere of fear within society, where citizens feel threatened by the potential violence carried out by law enforcement without adequate oversight. This leads to a lack of trust in judicial institutions and encourages society to address legal violations through illegal means, which undermines the social structure and national security.

The policy implemented in the Philippines leads to the country's diplomatic isolation on the international stage. Human Rights Watch and Amnesty International have strongly criticised this policy, stating that the Philippines' extrajudicial actions are contrary to international human rights standards. With numerous reports of extrajudicial killings, the Philippines faces pressure from the international community to stop this practice. Moreover, this policy risks diminishing international trust in the Philippine legal system and could affect diplomatic relations with countries that prioritise human rights principles.

In contrast, Indonesia applies a more formal and transparent judicial system in handling drug-related cases. In this context, the principle of proportionality is applied through investigation, prosecution, and trial, which provides offenders with the opportunity to defend themselves in court. This process ensures that every suspect is treated fairly and given the opportunity to present a defence before being sentenced. This process aligns with the principle of due process of law, which protects human rights, including the right to a fair trial.⁵⁸ However, while Indonesia's legal system prioritises legitimate legal processes compared to the more repressive approach in the Philippines, the main challenge in applying the principle of proportionality still lies in sentencing. In Indonesia, the death penalty is often imposed on drug offenders, including those involved in minor roles within drug networks, such as couriers or users. The imposition of the death penalty on drug users with minor roles in drug networks

⁵⁸ Pertiwi and Roemansyah, 'Hukum Sebagai Penyokong Kebahagiaan: Konsep Utilitarianisme Jeremy Bentham Dalam Konteks Modern'.

highlights the imbalance between the punishment and the severity of the crime committed, which contradicts the principle of proportionality.

The main issue faced by Indonesia in applying the principle of proportionality is the imbalance between the punishment imposed and the offender's role in the crime. For example, the application of the death penalty to drug users or those who only act as couriers in drug networks is disproportionate to the severity of the crime committed. In many cases, these offenders are only involved in small-scale drug distribution, yet they are sentenced to death. This punishment should only apply to those with significant roles or those causing substantial harm in the drug trade. The imposition of the death penalty in such cases is often viewed as excessive and inconsistent with the principle of proportionality, which requires that the punishment be proportional to the severity of the crime.

Furthermore, another issue that arises is that the application of the death penalty often disregards the potential for rehabilitation of the offender. Many drug users involved in drug networks do so due to addiction or deeper social issues, and they should be given the opportunity for rehabilitation. Imposing harsh punishment without considering factors such as rehabilitation, crime prevention, and social context leads to an imbalance between legal justice and social recovery. Although Indonesia has a more formal legal system than the Philippines, the application of the death penalty still violates human rights, particularly the right to life, as guaranteed by Article 6 of the ICCPR (International Covenant on Civil and Political Rights). According to the ICCPR, every individual has the right to life, and the death penalty may only be applied in certain specific cases and with legitimate legal procedures. Therefore, the application of the death penalty to drug offenders with minor roles or those involved in low-level drug distribution is inconsistent with the principle of proportionality and can be viewed as a violation of the right to life. Additionally, the right to a fair defence is often overlooked, as many drug offenders sentenced to death are not given the opportunity to undergo a fully fair legal process or have adequate access to proper legal representation.⁵⁹ This indicates that the application of the death penalty in some cases also violates the right to a fair trial, which is an integral part of a legitimate legal system.

The retributive theory posits that the punishment imposed should be commensurate with the crime committed, aiming to deliver just retribution based on the level of fault committed by the offender. Immanuel Kant, a key figure in this theory, argued that criminal justice requires that every individual who commits a crime be punished with a sentence proportional to their actions. In the context of drug sentencing in Indonesia, the application of the death penalty to drug users with minor roles in drug networks illustrates the application of the retributive theory in an overly rigid and excessive manner. The death penalty for offenders with minor roles in the network does not reflect the basic principle of justice, because the punishment imposed is disproportionate to the crime committed. This punishment does not allow for a proportional assessment of the offender's role in the crime and fails to consider the potential for rehabilitation. As a result, the application of the retributive theory becomes unjust, as it fails to consider the broader context of the individual's role in the crime.

⁵⁹ Simangan, 'Is the Philippine "War on Drugs" an Act of Genocide?'

In contrast, the utilitarian theory developed by Jeremy Bentham states that the primary goal of punishment is to create social benefits, such as crime prevention and offender rehabilitation. Bentham argued that punishment should not be excessive and must have a clear social purpose, namely, reducing crime rates and improving the offender. In this regard, the application of the death penalty to drug users with minor roles contradicts the utilitarian theory because such a punishment does not provide long-term social benefits. The death penalty, as an extreme form of retribution, does not lead to rehabilitation or effective long-term deterrence. On the other hand, a more rehabilitative approach, which focuses on treating addiction and social recovery, would be more aligned with the goals of utilitarian justice. By offering drug offenders the opportunity for rehabilitation, the judicial system would be more effective in reducing crime rates while restoring the lives of individuals caught in drug addiction.

Additionally, the restorative theory offers an approach that focuses more on the recovery of offenders than simply on the imposition of punishment. This theory emphasises the importance of repairing the relationship between the offender and society, as well as how to make amends for the harm caused by the crime. In the context of drug-related crimes, applying more rehabilitative sentences would be more proportional and respectful of human rights. The restorative approach encompasses education, therapy, and counselling for offenders, which can help them avoid reoffending and reintegrate into society as more responsible individuals. Drug users, who are often caught in addiction, should not only be punished but also be allowed to change their behaviour through a more humane, rehabilitation-based approach. Therefore, the restorative theory is more suitable for drug users because they need rehabilitation and counselling that allows them to improve and return to productive lives, rather than being sentenced to death or other harsh punishments that do not consider the potential for change.

Overall, the application of retributive, utilitarian, and restorative theories in Indonesia's criminal justice system demonstrates how the proper application of the principle of proportionality can lead to more just and beneficial sentencing policies. Excessive and disproportionate punishment, such as the death penalty for drug users with minor roles, clearly contradicts the principles of justice found in all three theories. In contrast, the application of more rehabilitative approaches focused on the offender's recovery would be more proportional and better aligned with the goal of creating a safer and fairer society.

The "War on Drugs" policy in the Philippines, which permits extrajudicial killings, is a serious violation of human rights, particularly the right to life. Killings carried out by law enforcement officers or groups allegedly connected to the government, without a legitimate judicial process, disregard the fundamental right of every individual to be treated fairly before the law. This policy undermines the credibility of the Philippine legal system, which should function to deliver justice and protect individual rights. Instead of prioritising a fair legal process, this policy provides room for violence without oversight, creating legal uncertainty and eroding public trust in the judicial institutions. The further impact of this policy is a decline in the Philippines' international credibility, as it is increasingly condemned by international human rights organisations and other countries that demand the protection of human rights. The Philippines risks facing international isolation, both in terms of diplomatic relations and

international cooperation, as this policy contradicts global human rights standards upheld by many countries and international bodies.⁶⁰

Furthermore, while Indonesia prioritises formal legal processes in handling drug cases, the imposition of the death penalty on offenders with minor roles still constitutes a violation of the right to life. Although applied within a more transparent legal context, the death penalty is often disproportionate to the crime committed, particularly in cases involving drug users or couriers who play a small role in drug networks. This creates an imbalance between punishment and crime, undermining the principle of proportionality. This imbalance could compromise the quality of law enforcement in Indonesia, where justice may not be achieved if the punishment is too harsh for those involved in minor roles. This practice threatens the principle of justice within Indonesia's criminal justice system, as the right to life should be more carefully considered before extreme punishments, such as the death penalty, are imposed. It may also worsen public trust in Indonesia's legal system, as the law does not always deliver justice that is proportionate to the actions committed.

To improve the application of the principle of proportionality, the Philippines needs to undertake significant legal reforms by replacing the extrajudicial approach that prioritises violent actions with a policy based on a fair judicial process and legal transparency. The country needs to prioritise human rights in every policy, especially in law enforcement against drugs. Rehabilitation programs for drug users should be an integral part of this policy, where users are given the opportunity to recover and reintegrate into society without facing severe punishment that does not align with their role in the drug network. These reforms will restore public trust in the Philippine legal system and improve the country's international image.

Similarly, Indonesia should reconsider the application of the death penalty in drug-related cases, particularly for drug users or couriers with minor roles in drug distribution networks. The death penalty should be applied with great caution and only in truly extreme cases, while offenders with minor roles should receive more proportional sentences that prioritise rehabilitation and education. Broader drug rehabilitation programs should be introduced for those involved in drugs, focusing on addiction treatment and social recovery, in line with the principles of proportionality and human rights. This policy aims to reduce the sentencing imbalance and provide offenders with opportunities for reform.

CONCLUSION

The application of the principle of proportionality in the Philippines and Indonesia shows significant differences in their approaches to human rights and law enforcement in the fight against drugs. The Philippines violates basic rights through its policy of extrajudicial killings, which creates legal uncertainty and damages international trust in its legal system. On the other hand, although Indonesia strives to prioritise formal legal processes, it still faces challenges in disproportional sentencing, especially regarding the application of the death penalty to drug offenders with minor roles, which constitutes a violation of the right to life. Both countries need to implement policy reforms to ensure that their drug eradication policies remain effective, but also based on principles of justice and human rights. The Philippines must shift

⁶⁰ Widjaja and Nurhidayanti, 'Analysis of the Abolition of the Death Penalty for Drug Trafficking Crimes in Indonesia the Case Study: Serang District Court Decision Number 837/Pid.Sus/2020/PN Srg'.

from an extrajudicial approach to a policy based on a fair judicial process and rehabilitation for drug users. Meanwhile, Indonesia should reconsider the application of the death penalty and focus more on rehabilitation for drug offenders with minor roles, ensuring that the punishment is proportional to the offender's role and level of fault. Through these reforms, both countries can improve their legal systems, reduce injustices, and enhance the protection of human rights.

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