

Rehabilitation of Death Row Inmates in Correctional Facilities in Connection with Law Number 1 of 2023 on the National Penal Code of Indonesia

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ABSTRACT

There has been a shift in the position of the capital punishment in Indonesia from previously being a principal punishment to an alternative punishment as per Law No. 1 of 2023 concerning the National Penal Code (called *KUHP*). The new Indonesian Penal Code positions the capital punishment as an alternative with a probation period of 10 (ten) years, which will impact the role of Correctional Institutions as referred to in Law No. 22 of 2022. The methodology of this research employs a normative legal approach, primarily drawing from the National Penal Code and related regulations, as well as court decisions.

The 10-year probation period for death row inmates aims to encourage good behavior among them, thus opening the possibility of changing the form of punishment from the capital punishment to life imprisonment. Data from 2022 shows that death row inmates in Indonesia are distributed across several correctional institutions, with the highest numbers at the correctional facilities in Medan and Nusakambangan, predominantly for drug-related offenses. The shift of the capital punishment to an alternative places central importance on correctional institutions during the 10-year probation period to rehabilitate death row inmates. This rehabilitation process is crucial

in determining the execution of the capital punishment, necessitating an effective formulation of rehabilitation to ensure the probation period in correctional institutions is not in vain.

Keywords: Rehabilitation, Death Row Inmates, Correctional Institutions

INTRODUCTION

Hans Kelsen (Hakim, 2018) explains that law serves as an instrument to enforce human behavior in order to create justice in society. One crucial branch of law in regulating public interest is criminal law, which according to Van Hamel, functions as the foundation and rule adopted by the state to exercise its authority to impose sanctions on unlawful actions (Siswanto & Maroni, 2022). Muladi (Gunarto, 2009) articulates that within the framework of criminal law, the imposition of sanctions or suffering is carried out to protect the public interest, encompassing both the state and society.

In the context of the capital punishment, this concept becomes significantly important in sentencing. As explained by Satochid Kartanegara (Muntafa & Mahmud, 2023), the capital punishment is the ultimate punishment imposed by taking someone's life for a legal violation. This punishment is seen as a crucial social defense tool, especially in preventing crimes that pose a

high risk to the security and order of society, religion, and state (Amrani & Ayu, 2017). In Indonesia, the capital punishment is still applicable to several serious criminal offenses, such as premeditated murder as regulated in Article 340 of the Penal Code (Santoso, 2023).

However, with the enactment of Law Number 1 of 2023 on the National Penal Code (hereinafter referred to as the New Indonesian Penal Code), a fundamental change related to the capital punishment occurred. The capital punishment, previously considered as a principal punishment, has now changed to a special punishment with a probation period of ten years (Susanto et al., 2024), as regulated in Article 64 of the New Indonesian Penal Code and Article 100 paragraph (1) of the New Indonesian Penal Code. This change has a significant impact on the implementation of rehabilitation for death row inmates in correctional facilities, in line with the objectives of correctional goals outlined in Article 2 letter b of Law of the Republic of Indonesia Number 22 of 2022 on Corrections (hereinafter referred to as Law No. 22/2022).

Within the framework of Indonesian criminal law, the implementation of rehabilitation for death row inmates in correctional facilities must be viewed through the prism of Law No. 22/2022, which states that only the freedom of the imprisoned is restricted, not their basic human rights (BPHN, 2023). Law No. 22/2022 emphasizes that even though an individual has been convicted and is under institutional supervision, the dignity and basic human rights of the convict must still be respected and protected.

This understanding has direct relevance to the condition of death row inmates, who, despite facing the most extreme punishment, remain legal subjects with rights guaranteed by law. This research focuses on how these rights are implemented in the context of rehabilitation for death row inmates, especially after the enactment of the New Indonesian Penal Code. The New Indonesian Penal Code introduces significant changes in

the handling of the capital punishment, which not only impacts the legal process but also the implementation of rehabilitation in correctional facilities.

The New Indonesian Penal Code reflects the forgiving socio-cultural values of Indonesia, influenced by Eastern culture, and depicts Indonesia's characteristic high level of sociality. The assessment of the capital punishment in this law is regulated as a last resort, with very specific provisions for its execution, including the rejection of clemency by the President and provisions that executions are not carried out in public. This law also provides an opportunity for death row inmates to have their sentence changed to life imprisonment if, during a ten-year probation period, the convict shows improvement and commendable behavior, with this decision made by the President based on considerations from the Supreme Court. If the convict does not show a positive change in attitude, the capital punishment can be carried out on the order of the Attorney General.

This confirms that the capital punishment is not the first choice in the criminal justice system, but an extreme step only taken to prevent serious crimes and protect the wider public interest. Articles 99 and 100 of the New Indonesian Penal Code provide further insight into the implementation of the capital punishment and the specific conditions affecting it. Article 99 explains that the execution of the capital punishment can only be carried out after a clemency petition is rejected by the President, and it is not performed in public. This article also provides provisions related to the postponement of execution for certain groups such as pregnant women, breastfeeding women, or individuals with mental illness, showing that there is humanitarian consideration in the execution of the capital punishment.

The key point in this analysis is Article 100 of the New Indonesian Penal Code, which regulates the provision of a ten-year probation period before the execution of the

capital punishment. During this period, the convict is given the opportunity to show remorse and the possibility of self-improvement. If during the probation period the convict demonstrates commendable behavior, the capital punishment can be changed to life imprisonment by Presidential Decree, after obtaining considerations from the Supreme Court. This provision reflects the principle that even death row inmates are given a chance to live and improve themselves, which substantially respects human rights, especially the right to life.

There is a notion that although Indonesia applies the capital punishment, its legal system does not absolutely infringe on the basic human right to life (Saragih, 2020b; Saragih, 2020a). Through the provisions regulated in Law No. 1 of 2023 on the Penal Code, especially Articles 98, 99, and 100, the New Indonesian Penal Code provides space for death row inmates to have an opportunity to improve themselves and the potential for sentence reduction, reflecting an approach more oriented towards restoration and human rights in the criminal justice system.

The provisions of the capital punishment regulated in the New Indonesian Penal Code bring certain dilemmas, especially in the context of law enforcement against serious crimes such as corruption or premeditated murder. One dilemma that arises is the potential misuse of this legal loophole by high-profile convicts, such as corruptors or other serious criminals. Cases like Ferdy Sambo or corruption of social funds, which under Indonesian law are potentially eligible for the capital punishment, show the complexity of applying this punishment.

Proper implementation of these provisions requires an objective and transparent assessment mechanism during the probation period (Saragih & Zarzani, 2023). This includes strict monitoring of the convict's behavior, consistent assessment of indicators of self-improvement, and a decision-making process free from external intervention. To ensure that the law is not misused, decisions regarding the change of the capital

punishment must be based on clear criteria and strong evidence of the convict's self-improvement.

Moreover, law enforcement and the justice system must reinforce the principles of justice and equality before the law (Abdullah, 2023). This means that every convict, regardless of status or influence, should be treated equally in the legal process, including in the application of the capital punishment. Transparency and accountability in the legal process are also essential to maintain public trust and the integrity of the justice system.

In this context, applying socio-legal theory helps in understanding the complexities and social consequences of the provisions of the capital punishment. This research highlights the need for a holistic approach in law enforcement that not only considers legal aspects but also social dynamics and ethical implications of criminal law policy.

LITERATURE REVIEW

1. Implementation

In this study, implementation refers to how the capital punishment, as regulated by the new Indonesian Penal Code (KUHP), is executed and how the rehabilitation of death row inmates is carried out in correctional practices. It involves a series of actions that ensure the rule of law is effectively applied (Ramadhan et al., 2023), including legal interpretation, procedural administration, and interactions between inmates and officers, to facilitate rehabilitation and psychological well-being of death row inmates in accordance with prevailing legal principles.

2. Death Row Inmate

A death row inmate refers to an individual who has been sentenced by a court to undergo the capital punishment for committing a very serious legal violation. The capital punishment is considered the most extreme punishment in the criminal justice system, applied to the most severe crimes such as premeditated murder, terrorism, or other major crimes. This

punishment involves the execution of a sentence that results in the inmate's death (Fitrianto et al., 2021). This study focuses on the analysis of the rehabilitation of death row inmates within the Indonesian correctional system, particularly based on the provisions of the new Indonesian Penal Code, examining the process and quality of rehabilitation received by the inmates during their detention.

3. Correctional Institution

A correctional institution serves not only as a detention facility for inmates but also as a center for rehabilitation and reintegration of inmates into society. This research investigates how correctional institutions implement rehabilitation for death row inmates, in accordance with the regulations of the new Indonesian Penal Code.

MATERIALS & METHODS

The research methodology designed to evaluate the implementation of rehabilitation for death row inmates in correctional institutions emphasizes a normative legal approach. Primary data is sourced from the latest National Penal Code and related correctional regulations, as well as court rulings. Data collection methods through documentary studies and data analysis will be conducted using content analysis and comparative techniques to interpret the regulations. This study focuses on legal documentation, without involving field studies, to understand the legal implications of the provisions regulated in the National Penal Code concerning the rehabilitation of death row inmates.

RESULT AND DISCUSSION

Legal Framework on the Capital punishment in the New Indonesian Penal Code

The capital punishment represents one of the most severe forms of punishment within the judicial system, found not only in Indonesia but also globally. This execution is carried out as a last resort by the state against criminals who have been definitively found guilty by a final and binding court decision.

Over time, the implementation of the capital punishment in Indonesia has undergone changes within the framework of positive law. Nonetheless, the issue of the capital punishment remains unresolved and frequently becomes a heated discussion topic. Occasionally, the capital punishment also emerges as a political issue crossing international boundaries, often triggered by protests from other countries against its implementation in a country (Muhamad, 2023).

The lack of data and research supporting the effectiveness of the capital punishment in deterring crime, along with its irreversible nature, provides a strong argument for its abolition. Many countries have abolished the capital punishment, considering it cruel and degrading to human dignity. In Indonesia, the capital punishment is still enforced for serious crimes such as premeditated murder, drug offenses, and terrorism. However, the Constitutional Court of Indonesia's material review of the capital punishment in 2007 through its decisions Number 2/PUU-V/2007 and Number 3/PUU-V/2007 rejected its abolition, stating that the 1945 Constitution does not recognize human rights as absolute (Suhariyanto, 2014). Proponents of the capital punishment argue for the necessity of protecting victims' rights. Despite pressures for abolition, there remain laws allowing its use, albeit as a last and not exclusive resort, enabling the prosecution to opt not to seek the capital punishment (Manoppo, 2023).

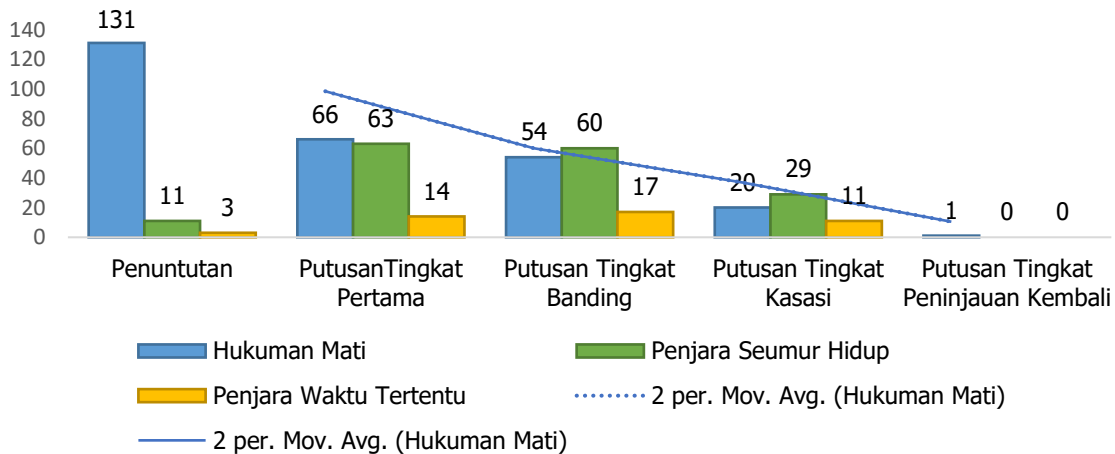
Before the enactment of the new Penal Code through Law No. 1 of 2023, Indonesia applied a Penal Code that was a legacy of the Dutch colonial era, known as the "Wetboek van Strafrecht voor Nederlandsch-Indie" (Santoso, 2023). After independence, this Penal Code was officially adopted through Law No. 1 of 1946 and initially applied only to Java and Madura until it was expanded to all of Indonesia on September 20, 1958, through Law No. 73 of 1958 (Dewanto & Susanti, 2023).

After more than a century of using the Dutch colonial-era Penal Code, the Indonesian

government and the legislature decided to revise and ultimately pass a new Penal Code through Law No. 1 of 2023, which will come into effect three years after its promulgation (Dewanto & Susanti, 2023). A significant change in the new Penal Code is the approach to the capital punishment, which is now considered a last resort and can be converted to life imprisonment if the convicted person

shows good behavior during a ten-year probation period. Additionally, Article 99 of this law regulates the procedure for executing the capital punishment, including exceptions for pregnant or nursing women and individuals with mental disorders, delaying execution until certain conditions are met (Manoppo, 2023).

Chart 1. Comparison of the Number of Prosecutions and Capital Punishment Sentences with Other Types of Criminal Threats by Level of Judicial Review Throughout 2022



Source: Adhigama Andre Budiman, dkk. 2023. *Laporan Situasi Kebijakan Pidana Mati di Indonesia 2022: Tak Ada yang Terlindungi*. Jakarta: Institute for Criminal Justice Reform.

Based on the data, an interesting pattern has emerged. On one hand, the prosecution of capital punishment cases reached a total of 131. However, only about half of these cases, precisely 50.38%, ultimately resulted in a death sentence. Meanwhile, the figures for life imprisonment show a different trend; out of 11 prosecutions, there was a sharp increase in the sentences handed down, at 572.73%. This means that the number of life sentences imposed was more than five times the number of prosecutions.

For the category of fixed-term imprisonment, a similar situation occurred, where there were only 3 prosecutions but 14 sentences were handed down, or in other words, 466.67% of the number of prosecutions. This figure indicates that the number of sentences for fixed-term imprisonment far exceeds the number prosecuted. The last category is that of acquittal, which in this case has no

prosecution data, thus a percentage comparison cannot be performed.

The data suggests a tendency for harsher sentences than prosecutions, especially for life imprisonment and fixed-term cases. This may reflect a dynamic in court where judges impose harsher sentences than what is sought by prosecutors, or it may indicate other influencing factors during the trial process that are not reflected in prosecution numbers alone.

The reform of the capital punishment in Indonesia's new Penal Code seeks a compromise between supporters and opponents, transforming it into an alternative punishment that can be converted to life imprisonment if the convict behaves well during a 10-year probation period. This reform also allows for a moratorium on the execution of the capital punishment and takes into account the interests of individuals with provisions for delaying execution for

pregnant women and those with mental disorders (Dewanto & Susanti, 2023). According to Prof. Dr. Barda Nawawi, a member of the Drafting Team of Penal Code Law No. 1 of 2023, the capital punishment is now seen as a last resort, similar to amputation in medicine, and not as a primary remedy. The new Penal Code supports a balance between public interest and individual protection, aiming to avoid retaliatory reactions or extrajudicial executions, making the capital punishment a highly restricted and controlled option (Muhamad, 2023).

In Indonesia's new Penal Code (Law No. 1 of 2023), the capital punishment can be converted to life imprisonment based on considerations by the Supreme Court and Presidential Decree, if the convict demonstrates commendable attitude and behavior during a 10-year probation period (Rifai, 2017). However, if the convict does not show the expected behavior or there is no chance for change during the probation period, the Attorney General has the authority to proceed with the execution of the capital punishment (Rasad, 2021). Article 101 of the 2023 Penal Code also stipulates that the capital punishment can be converted to life imprisonment if a clemency request is denied and execution does not occur within 10 years after the denial of clemency, assuming the convict does not escape. Additionally, Article 102 states that the procedures for implementing the capital punishment will be further regulated in law, taking into account factors such as the defendant's remorse and potential for self-improvement as a basis for enabling a change in the sentence. The probation period set out in Article 100 of the new Penal Code is part of the government's effort to provide legal certainty and give death row inmates a chance to prove their ability to reform (Susanto et al., 2024), which if successful, can change the death sentence to life imprisonment (Ruchiat, 2023).

Implementation of Guidance for Death Row Inmates in Penitentiary Institutions

Linked to Law No. 1 of 2023 on National Penal Code

The penitentiary system is regulated to rehabilitate prisoners in a humane manner, upholding the dignity and esteem of the condemned as human beings, with the ultimate goal being resocialization, so that the condemned can return to society as good and useful individuals (Prisiliya, 2024). This process involves categorizing prisoners based on age, gender, or other factors as per risk assessments and needs, regulated under Article 36 of the Law No. 22 of 2022 on Penitentiaries (Hersusetiokartiko, 2023). This rehabilitation is divided into three stages (Nigro, n.d.): an initial phase focused on observation and planning for personality development and independence; an advanced phase continuing the rehabilitation programs and assimilation; and a final phase oriented towards integrating the prisoner back into society (Aldaus & Pamungkas, 2021).

Moreover, generally, prisoner rehabilitation aims to restore the convicted as whole human beings, with approaches that emphasize the importance of faith and religious values as the primary foundation (Joon Jang & Johnson, 2023). Rehabilitation also includes vital physical and disciplinary aspects to prepare prisoners with the skills needed for reacceptance into society (Yuliyanto et al., 2021). These rehabilitation programs encompass various aspects, such as religious awareness tailored for terrorism prisoners, this program aims to alter the behavior of the convicted (O'Connor & Perreyclear, 2013), allowing transitions from maximum security prisons to lower security facilities, and facilitating more communal placement models (Clear et al., 2000).

Nation and State Awareness Rehabilitation: This program aims to develop values of national defense and enhance the active role of prisoners in national development, shaping them into responsible and productive citizens (Yuliyanto et al., 2021). **Legal Awareness Rehabilitation:** Through legal counseling in high-risk prisons, this program aims to reduce legal offenses by prisoners once they return to society (Hamsir et al.,

2019). The program faces challenges such as a shortage of trained officers to provide legal counseling (Yuliyanto et al., 2021). Psychological Counseling Rehabilitation: Established by the Ministerial Decree of Justice and Human Rights, counseling is conducted routinely and also upon prisoner request, with considerations from the Head of the Correctional Facility and the observation team, aimed at supporting the psychological rehabilitation of high-risk prisoners (Yuliyanto et al., 2021).

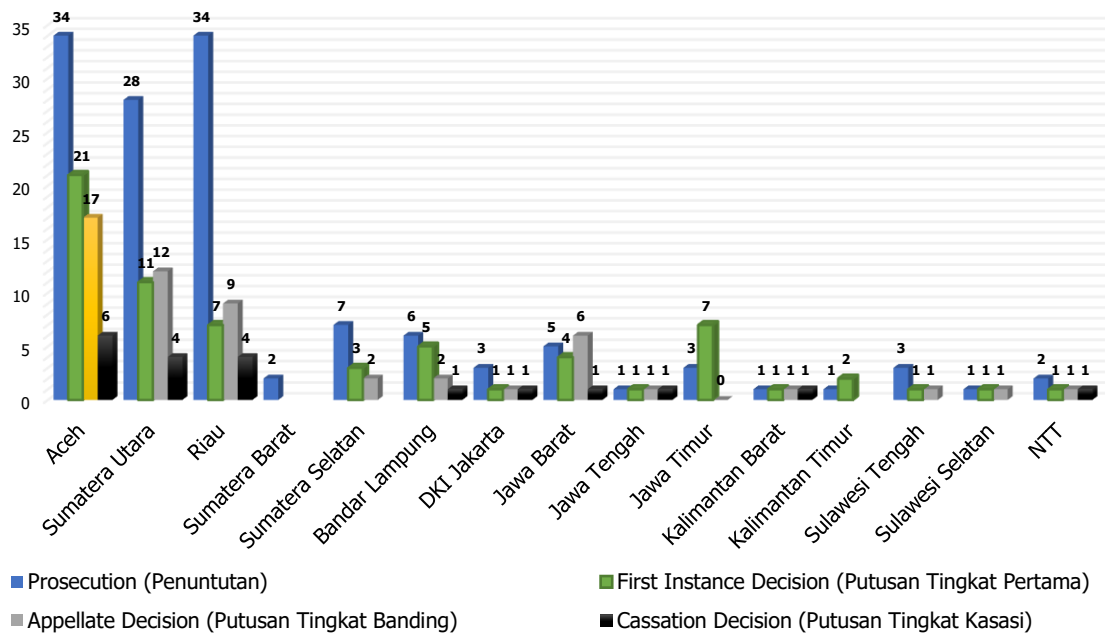
Post Penitentiary Act 2022 emphasizes that the Indonesian incarceration system is designed to both punish and rehabilitate individuals proven guilty of criminal acts (Hersusetiokartiko, 2023). The primary goal of imprisonment is not only to protect society from crime but also to support the resocialization efforts of prisoners, upholding their dignity as human beings and treating them as active subjects in the rehabilitation process (Prisiliya, 2024). As part of the reform, the penitentiary system is regulated to involve categorizing prisoners based on individual characteristics and implementing a three-phase rehabilitation (Nigro, n.d.): observation and planning, assimilation, and integration into society, all aiming to restore prisoners as good and useful individuals (Aldaus & Pamungkas, 2021).

Before the implementation of the Penitentiary Act 2022, death row inmates received similar treatment to other prisoners regarding basic rights such as worship and health services (N. S. B. Utami & Sudiarsana, n.d.), albeit with adjustments due to their death row status (Rasad, 2021), such as not being entitled to remission, assimilation, parole, and leave before release (Rasad, 2021), based on the fact that death row is not a type of punishment that involves temporary deprivation of liberty allowing for rehabilitation and reintegration into society (N. S. B. Utami & Sudiarsana, n.d.). Death row inmates, although housed in correctional facilities, remain under the supervision of the Public Prosecutor until the legal judgment of death row is final or execution is carried out

(Kamaludin, 2021). This shows that, although there are no specific regulations governing the placement of death row inmates, correctional facilities typically function as places awaiting execution, with collaboration between the correctional facilities and police in the isolation process. The Law on Capital punishment as an Alternative Punishment introduces the option to convert a death sentence into temporary imprisonment (Rifai, 2017) after a ten-year waiting period since the first instance court decision (Riyadi, 2023), with the condition that the inmate shows behavioral improvement, emphasizing a shift in focus from mere punishment towards rehabilitation and potential reintegration (Rasad, 2021). This illustrates a change in the supervisory authority from the prosecution to the Penitentiary Institutions (Nugraha & Octora, 2023) in accordance with Article 100 of Law No. 1 of 2023 on the National Penal Code, highlighting the importance of internal evaluation of the rehabilitation process, and paving the way for a more active role of the Penitentiary Institutions in deciding the future of prisoners. Below is the data on the number of prosecutions and capital punishment sentences in Indonesia until 2022.

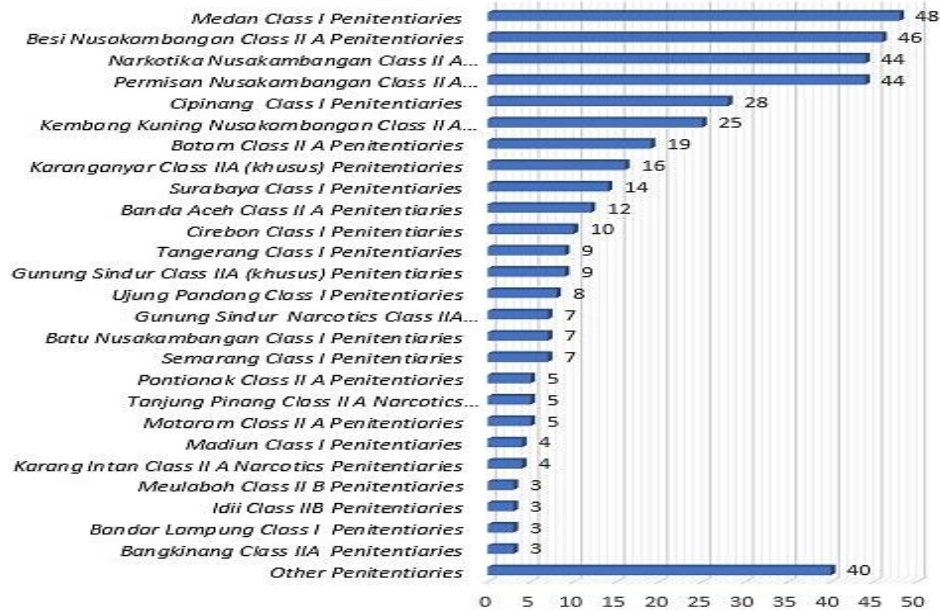
The distribution of capital punishment sentences in Indonesia in 2022 reflects the diversity of handling severe crime cases across various regions. The data indicates that these sentences were imposed in many correctional institutions, with the highest numbers recorded at the Medan Class I Penitentiary. Specifically, prisons involved with narcotics cases, such as those in Nusakambangan, showed higher figures, depicting a stringent approach to drug-related crimes. Although the number of capital punishment sentences in women's correctional facilities is relatively lower, this punishment is still implemented nationally. This data underscores the importance of ongoing dialogue about the practice of the capital punishment in Indonesia, considering its significant impact on human rights and justice.

Graph 1. Comparison of the Number of Prosecutions and Imposition of Capital Punishment with Other Types of Criminal Threats per Examination Level Throughout 2022



Source: Adhigama Andre Budiman, dkk. 2023. *Laporan Situasi Kebijakan Pidana Mati di Indonesia 2022: Tak Ada yang Terlindungi*. Jakarta: Institute for Criminal Justice Reform

Graph 2: Regional Distribution of Demands and Capital Punishment Sentences Throughout 2022



Source: Adhigama Andre Budiman and others, *Laporan Situasi Kebijakan Pidana Mati Di Indonesia : Tak Ada Yang Terlindungi*, Institute for Criminal Justice Reform (Jakarta Selatan, 2023).

The data on the distribution of capital punishment verdicts in Indonesia in 2022, with the highest numbers recorded in several correctional institutions like in Medan and Nusakambangan, opens an important discussion on how the government fulfills its responsibilities in the protection and

realization of human rights, particularly in the context of law enforcement and correctional institution management. The government, which has set standards of service in the management of correctional institutions as a basis for performance evaluation, faces the challenge of

maintaining a balance between security, justice, and the rights of prisoners.

The increase in operational costs of correctional institutions, reaching IDR 1.391 trillion in 2018, reflects the substantial investment required to operate an effective and humane correctional system, including meeting the basic needs of prisoners (Hersusetiokartiko, 2023). However, with a prisoner population exceeding capacity in 2022, it is evident that there are deficiencies in the system. Overcrowding in correctional facilities indicates that although budgets can be adjusted for needs such as prisoner meals, broader challenges in human rights fulfillment still exist, particularly concerning living conditions within prisons (Hersusetiokartiko, 2023).

The implementation of the capital punishment as an alternative form of punishment in Indonesia's New Penal Code presents other issues, such as the adequacy of facilities and infrastructure, budgetary needs, and the technical arrangement of training for death row inmates during a probation period at the Correctional Institution. This aligns with the views of the Head of the Research and Development Agency for Law and Human Rights at the Ministry of Law and Human Rights, Sri Puguh Budi Utami, who outlines challenges in the implementation of the capital punishment, especially during a 10-year probation period for death row inmates. According to her, training death row inmates during this period is not straightforward, and failures in training can lead to budgetary, time, and energy losses for the state (S. P. B. Utami, 2022).

These challenges are consistent with policies established in the Ministry of Law and Human Rights Regulation No. 35 of 2018 on the Revitalization of Correctional Administration, which places high-risk inmates, including those on death row, in Super Maximum Security Prisons (Fajar, 2020). There, inmates undergo training programs that include religious, national, and civic awareness, legal awareness, and psychological counseling. The aim of these

programs is to monitor and control changes in attitudes and behavior of inmates, as well as to provide the skills necessary for reintegrating inmates back into society. Effective training not only requires well-equipped and professional trainers but also a long-term commitment from the government to support the success of these programs (Arbour et al., 2021). If training fails, especially after a 10-year probation period, it is considered a governmental failure to achieve resocialization goals, as stated in Article 100(1) of the new Penal Code, aimed at providing a chance for improvement to convicts. Furthermore, unsuccessful spiritual training costs are considered a waste, consistent with the right to spiritual care guaranteed by Article 14(1)(b) of Law No. 12 of 1995 (S. P. B. Utami, 2022).

CONCLUSION

The reform of the capital punishment in the new Indonesian Penal Code has modified the capital punishment into an alternative that can be converted to life imprisonment after a 10-year probationary period if the convict exhibits good behavior, and allows for a moratorium and delays execution for specific groups such as pregnant women and individuals with mental disorders. The capital punishment verdicts in Indonesia in 2022 reflect a diverse approach to severe crimes across different regions, with the highest frequency in Medan, especially in prisons handling narcotics cases such as Nusakambangan. Although capital punishment verdicts are lower in women's prisons, the practice is still carried out nationally, indicating the need for further dialogue regarding the capital punishment, considering its impact on human rights and justice. The new law on Capital punishment as an Alternative Punishment also marks a shift from punishment to rehabilitation and reintegration, with the Correctional Institutions playing a more active role in the evaluation and rehabilitation process of the convicts.

Declaration by Authors

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