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Correctional Institution's Construction In The Death-Convicted Supervision

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Abstract

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The death row inmate becomes one of the members of the Correctional Institution or Lembaga Pemasyarakatan (Lapas) when the convict is waiting for the execution time or if the convict is still making a legal effort. This raises problems from the aspect of the rules, which form the basis of prisons' authority in the guidance of death row inmates because the provisions on the development of capital punishment do not have specific regulations. The problem in this research is the urgency of guiding death convicts in prison; how it is implemented, and is there any difference in the guidance for death row inmates in prison; construction or ideal model of guidance for death row inmates in prison; as a result of the law, guidance on death row inmates is carried out in Lapas. This study uses a normative and empirical juridical approach with data collection methods using literature and field studies. The study results show that the prison's guidance is essential considering that the person concerned will be executed, so assistance and supervision are needed to prevent unwanted things, for



example, committing a crime, suicide, or experiencing depression. Death row convicts follow other prisoners' proper guidance, provide useful activities to death convicts, and provide the death convicts with the rights. The superior construction for the development of capital punishment is contained in the Criminal Code Draft or Rancangan Kitab Undang-Undang Hukum Pidana (RKUHP), which makes capital punishment an alternative punishment, provides a probation period of 10 years for the death row inmates, the superior construction of both the place and the material for its guidance must be distinguished from those sentenced to other types of crimes. As a result of the law, there is no certainty of guidance for death row inmates in prison because there are no specific regulations regarding death penalty services.

A. Introduction

Law is the result of a dynamic social relationship with people's life. Law is a social symptom of society. Therefore legal changes (change, emergence, disappearance) adjust to the development of society. The rule of law in Indonesia has characteristics and characteristics based on the spirit and spirit of the nation (volkgeits) of Indonesia, namely Pancasila. Even though the identity and the formulation of the Indonesian state's characteristics based on Pancasila have been formulated, the concept of the constitutional state of Pancasila has not been adequately implemented and institutionalized. Legal development is a reflection of community development.¹ The development of law follows every human need, along with the times, for the realization of the national goal of law always undergoing changes and reforms in various aspects of human life, but still guided by the Indonesian state's philosophy Pancasila. Included in the prison system in Indonesia. The prison system that is prioritized is only the imposition of sorrow and elements of revenge. The human rights of prisoners are not needed. Therefore because it is considered incompatible with the prison system based on Pancasila and the 1945 Constitution, the prison system has changed. In this context, the values of Pancasila become very relevant in the context of building an Indonesian national identity that reflects the values, norms, and philosophy of the Indonesian nation.

Law has undergone changes and developments. The law functions as a tool to fight crime, tracing a long history ranging from initially retaliating against people who commit crimes until it finally turns into a protective tool for society from criminal disturbances or protecting

¹ Riduan Syahrini, 1999, *Rangkuman Intisari Hukum*, (Bandung:Citra Aditya Bakti), pg.51

individuals from other individual disorders.² Based on this, even though the meaning, nature, form, and purpose are always changing, the presence of crime to eradicate crime is still needed by the community. Criminal law is still considered the only final answer in eradicating crime, which is still adhered to today.³ Correctional Institutions or *Lembaga Pemasyarakatan* (Lapas) are places for implementing the development of prisoners and correctional students. This is stated in Law Number 12 of 1995 concerning Corrections. Guidance means that any action or effort is not intended to apply suffering but intends to heal, correct and educate the prisoner to protect the community.⁴ The death row inmate is one of the Penitentiary members' members, while the convict is waiting for the execution time. The imposition of capital punishment is intended as retaliation for a criminal act committed and a lesson for society not to commit a criminal act.⁵ The problems that arise are from the regulation aspect because based on the Correctional Institutions' authority in coaching death row inmates. No specific regulations govern the development of death row inmates. The Regulation of the Minister of Justice of the Republic of Indonesia No.M.04.UM.01.06 of 1983 only regulates the Regulations Method of Placement, Care of Prisoners, and Rules of State Prisoners.

The debate regarding the Death Penalty is given to provide a deterrent effect as if it is no longer appropriate.⁶ Indonesia, which has the necessary foundation of the national philosophy of Pancasila values, until now, this problem still raises pros and cons.⁷ Some death row inmates also spend their time in prisons with limited health facilities and low food quality. A person who is sentenced to death may not be immediately executed because he still has legal remedies to be made, namely legal remedies for appeal, cassation, or reconsideration, or part of the waiting period if the death row inmate is filing a clemency application and is waiting for an answer from the clemency application to the President. The occurrence of legal uncertainty in the death penalty's imposition will ultimately lead to public distrust of the law. Likewise, the confusion experienced in the implementation of the correctional institutions' functions and powers regarding the placement of death row inmates who are under the guidance of the correctional institution.⁸ Regarding the importance of this guidance for death convicts and how it is implemented and differences in the implementation of guidance for convicts sentenced to ordinary crimes, sentenced to death who still have legal remedies, and death row inmates are awaiting execution.

The problem in this research is the urgency of guiding death convicts in prison; how it is implemented and is there any difference in the guidance for death row prisoners in prison, the construction / ideal model of guidance for death row inmates in prisons; due to the law, guidance on death row inmates is carried out in prisons. This research uses a normative and empirical juridical approach, which means that normative research is seen from the regulations and books related to this research, often referred to as secondary data. In contrast,

² Soedjono Dirdjosisworo, 1984, *Sejarah Dan Azas Penologi*, (Bandung : Ctk. Pertama), pg.115

³ J.E. Sahetapy, 1979, *Ancaman Pidana Mati Terhadap Pembunuhan Berencana*, (Bandung:Alumni), pg.137

⁴ Tim Peneliti BPHN dan FISIP UI, *Aspek-aspek yang Mempengaruhi Penerimaan Bekas Narapidana dalam Masyarakat*. Laporan Penelitian, (Jakarta: Badan Pembinaan Hukum Nasional Departemen Kehakiman), 1988, pg. 16

⁵ Yon Artiono Arba'i, 2015, *Aku Menolak Pidana Mati Telaah Atas Penerapan Pidana Mati*, (Jakarta: Kepustakaan Populer Gramedia), pg.67

⁶ Amelia Arief, "Problematika Penjatuhannya Pidana Mati Dalam Perspektif Hak Asasi Manusia Dan Hukum Pidana," *Kosmik Hukum* 19, no. 1 (February 22, 2019), <https://doi.org/10.30595/kosmikhukum.v19i1.4086>.

⁷ Atet Sumanto, "Kontradiksi Hukuman Mati Di Indonesia Dipandang Dari Aspek Hak Asasi Manusia, Agama Dan Para Ahli Hukum," *Perspektif* 9, no. 3 (2004): 192, <https://doi.org/10.30742/perspektif.v9i3.347>.

⁸ Ihwan Zaini, "Pelaksanaan Eksekusi Hukuman Mati Dalam Sistem Peradilan Pidana (Upaya Pencarian Kepastian Hukum)," *Jurnal Nestor Magister Hukum*, vol. 2 (Tanjungpura University, 2013), <https://www.neliti.com/publications/10543/>.

the empirical research method is carried out by direct observation or observation. In this case, the data used is primary data because this method assesses a law in its application to the community. The data collection method uses literature studies and field studies. The data analysis used is qualitative.

B. Discussion

1. The Urgency Death Convicts Supervision in Correctional Institutions

Guidance is all activities or businesses directly related to the development of development, formation, planning, arrangement, use, and operation of something effectively and efficiently.⁹ Because the target of guidance is individual prisoners, coaching can also be understood as a specific effort intended to modify the social-psychological characteristics of prisoners who are the target of guidance, or in other words, coaching is part of explicit activities planned to change prisoners from conditions that affect them committing a criminal act.¹⁰ The purpose of placing and serving the prison inmates before the death row inmates is to be executed very important because before the death row inmates are executed, he is a living person who naturally still has rights that must be protected, such as the right to receive treatment facilities. Physical and health until the person concerned is executed.¹¹ Prisons are not just places to convict someone, but prisons are also places for convicted persons to be better educated,¹² And also so that prisoners have an everyday life in society.¹³

According to Lukmanul Hakim, it can be seen that there is no specific guidance for death row inmates. However, as the function of which prison is the place of guidance, related to death row inmates, actually, prison only provides assistance, where the primary purpose is to prepare death row inmates. In waiting for the execution time, assistance is carried out in various aspects such as mental and physical health and spirituality. Based on the data obtained at the Class 1A Correctional Institution in Bandar Lampung, there are currently five death convicts, three general crimes, and two narcotics crimes. Their processes have been of various kinds, for example, in the process of appeal, cassation, and reconsideration (PK). His status is in the entrusted prison because the death row inmates legally belong to the Attorney General's Office. Before execution, they need prison support in terms of care and supervision. The execution of the death penalty will be postponed if the death convict is ill. This is what allows prisons to ensure that death row inmates remain in good health every day.¹⁴

Based on the results of an interview with the Head of the Correctional Division, Farid Junaedi, at the Regional Office of the Ministry of Law and Human Rights, Lampung Province, the placement of the death row inmates in the correctional facility refers to Article 7 paragraph (1) in conjunction with Article 9 jo Article 11 Perkapolri Number 12 of 2010 concerning Procedures for the Implementation of Death Penalty. This is stated in Perkapolri No. 12/2010, which includes the classification of the death penalty implementation into two teams, namely carried out by the support team and the firing squad. The support team itself is

⁹ Tim Peneliti BPHN dan FISIP UI, *Loc.Cit*

¹⁰ Diah Gustiniati Maulani, S.H.,M.Hum, Rini Fatonah, S.H.,M.H, Dona Raisa Monica, S.H.,M.H, 2013, *Hukum Penitensia dan Sistem Pemasyarakatan*, (Bandar Lampung: PKKPUU FH Unila), pg.56

¹¹ Lucky Nurhadiyanto, "Replacement Discourse Daftar Tunggu Terpidana Mati (Death Row) Dalam Perspektif Penologi Konstitutif Di Indonesia," *Deviance Jurnal Kriminologi* 2, no. 2 (December 1, 2018): 117–38, <http://journal.budiluhur.ac.id/index.php/deviance/article/view/914>.

¹² Haryono Haryono, "Optimalisasi Pelaksanaan Tugas Dan Fungsi Lapas Terbuka Dalam Proses Asimilasi Narapidana," *Jurnal Ilmiah Kebijakan Hukum* 12, no. 3 (November 23, 2018): 295, <https://doi.org/10.30641/kebijakan.2018.v12.295-311>.

¹³ Ismail Ramadan, "PROBLEM LEMBAGA PEMASYARAKATAN DI INDONESIA DAN REORIENTASI TUJUAN PEMIDANAAN," *Jurnal Hukum Dan Peradilan* 2, no. 2 (July 31, 2013): 263, <https://doi.org/10.25216/jhp.2.2.2013.263-276>.

¹⁴Results of an interview with Lukmanul Hakim, King Basa Class 1A Correctional Manager, 7 April 2020.

divided into five teams. Team 2 as a support team consisting of 10 people with the task of escorting and securing death row inmates from the isolation location to the execution location, after that from the place of execution of the death penalty to the hospital. The place of isolation mentioned earlier is a penitentiary, a place for death row inmates to undergo a waiting period for execution because their status is a deposit from the prosecutor's office. The Ministry of Law and Human Rights recorded hundreds of people convicted with death sentences in Indonesia. Until now, the prison has carried out supervision and assistance for mental preparation. Death convicts are trained like other prisoners so that there are useful activities so that death row inmates do not experience boredom in lapas.¹⁵

The need for supervision for death row inmates is significant to prevent unwanted things from happening, for example committing crimes against others, injuring themselves, or experiencing mental stress that causes stress and depression. The correctional facility has a function as a place of isolation while waiting for the execution time. As stated in Article 5 of Presidential Decree (Penpres) No. 2 of 1964 concerning the Implementation of the Death Penalty which is carried out by courts within the General and Military Courts which state that while waiting for the execution time in the execution of the death penalty, the convict is detained in prison or at another place that is specifically appointed by order of the prosecutor who is responsible for its implementation.

Erna Dewi said that, from the term penitentiary, in principle, it is to humanize humans with the hope of achieving resocialization. However, for those subject to capital punishment, this goal is less relevant because, for those waiting to be executed, the guidance is in vain because they will not return to society. However, for those sentenced to death who are still in legal action, this is necessary to hope that they will receive a lighter sentence, namely imprisonment for a certain period, still have hope of returning to society.¹⁶

Chandra Muliawan said that talking about the urgency of coaching is related to its importance. For example, the importance of something is regulated. The importance of something is fixed in the sense that it already exists but wants to be changed. If asked whether or not the development of a death row inmate in a correctional facility is essential, but what matters is the authority or not. The person who is sentenced to death when a decision is made by the judge who executes the verdict is the prosecutor, allowing for the delay. For example, in capital punishment, there is a waiting period for execution. The process is not immediately executed because they still have legal remedies, and during this waiting period, their rights must be fulfilled. For this reason, a period is given. This is related to the implementation of the crime.¹⁷

Guidance carried out by the correctional institution is a form of protection for the perpetrator or convict. The death row inmates naturally still have the rights to be protected. Activities in prison will undoubtedly make a positive contribution to death row inmates. Religious activities will provide opportunities for death row inmates to prepare themselves for execution. Work training activities aim to fill the time sentenced to death while in prison because if it is not filled with positive activities, the death row inmate will think in various ways and become an additional burden for himself to affect his psyche. The holding of job training activities contributes to reducing the psychological pressure felt by death convicts.

¹⁵ Results of Interview with Farid Junaedi, Head of the Correctional Division of the Regional Office of the Ministry of Law and Human Rights, Lampung Province, 7 July 2020.

¹⁶ Results of Interview with Dr. Erna Dewi, Academic Department of Criminal Law, Faculty of Law, University of Lampung, 17 April 2020.

¹⁷ Results of Interview with Chandra Muliawan, Director of LBH Bandar Lampung, 8 July 2020.

The Correctional Institution is not authorized to carry out guidance but can only provide assistance, security, and supervision.¹⁸ The guidance carried out by the Penitentiary is a form of protection for the perpetrator or convict, in which case the death row inmates who naturally still have rights to be protected, while the death convict is waiting for the execution time to arrive while in prison, of course, the death convict follows the rules of who is in prison. Prison officers need to routinely provide guidance and evaluation of various activities carried out by death row inmates while in Lapas. The coaching program is intended to provide positive participation to relieve the psychological pressure experienced by death convicts. However, the coaching program is also expected to make a positive contribution to changes in the attitudes and behavior of death convicts while in Lapas.

The death row inmate who initially had criminal behavior due to committing a crime in the form of a criminal act, but after following the guidance program properly and in an orderly manner was able to improve his quality of life for the better by becoming a human being who realized his mistake, would no longer repeat crimes or criminal acts while in prison, as well as providing a positive influence on other prison inmates. The urgency to carry out coaching is not only due to supervision and assistance, namely because someone who has been sentenced to the death penalty may not be immediately executed because they still have legal remedies that can be taken.

2. Implementation of Death Conviction Supervision in Correctional Institution or Lembaga Perasyarakatan (Lapas)

In principle, the correctional institution is a place to carry out training for prisoners.¹⁹ Pelaksanaan pemidanaan berupa pidana penjara di Indonesia menggunakan sistem pemasyarakatan dengan cara melakukan pembinaan.²⁰ Correctional Institutions have the primary task and function to carry out personality development and independence supported by security.²¹ Besides, the correctional institution's main task also has service and care duties, namely related to the service of health facilities and food.²² Guidance is carried out with a penitentiary system. The aim of guiding prisoners is to gain awareness in a person, so he must know himself to change to be better, more advanced, and more positive. Guidance for prisoners can be carried out through a spiritual approach. The formation of prisoners, which is stipulated by a Decree of the Minister of Justice, stipulates four stages of the process of guiding prisoners, which can be divided into two areas: personality and independence.²³

¹⁸ Heru Prabowo Adi Sastro, "ANALISIS HUKUM PEMBERIAN REMISI TERHADAP NARAPIDANA DI LEMBAGA PEMASYARAKATAN KLAS II A BINJAI," *JURNAL MERCATORIA* 10, no. 1 (August 28, 2017): 45, <https://doi.org/10.31289/mercatoria.v10i1.621>.

¹⁹ Head of Indonesian Police Regulation no.12 of 2012 concerning Procedures for the Implementation of Death Penalty

²⁰ Galih Puji Mulyono and Barda Nawawi Arief, "UPAYA MENGURANGI KEPADATAN NARAPIDANA DALAM LEMBAGA PEMASYARAKATAN DI INDONESIA," *LAW REFORM* 12, no. 1 (March 31, 2016): 1, <https://doi.org/10.14710/lr.v12i1.15838>.

²¹ Maryanto Maryanto, Diah Rahmawati, and Indrati Rini, "PELAKSANAAN PEMBINAAN YANG BERSIFAT KEMANDIRIAN TERHADAP NARAPIDANA DI LEMBAGA PEMASYARAKATAN KELAS II B SLAWI," *Jurnal Pembaharuan Hukum* 1, no. 1 (2014): 66–72, <https://doi.org/10.26532/JPH.V1I1.1472>.

²² Muchamad Sulton et al., "PERKEMBANGAN LEMBAGA PEMASYARAKATAN PULAU NUSAKAMBANGAN KABUPATEN CILACAP," *Journal of Indonesian History*, vol. 7, August 31, 2018, <http://jurnal.unnes.ac.id/sju/index.php/jih>.

²³ Nys Arfa, Syofyan Nur, and Yulia Monita, "Pola Pembinaan Terhadap Narapidana Seumur Hidup Dalam Kebijakan Implementasinya," *Jurnal Sains Sosio Humaniora* 3, no. 2 (November 25, 2019): 250–60, <https://doi.org/10.22437/jssh.v3i2.8428>.

Secara teoritis hakikat sistem pemasyarakatan melalui pola pembinaan itu, ditujukan pada pencapaian terjadinya proses perubahan perilaku narapidana agar menjurus pada kehidupan yang positif. Pelaksanaan pembinaan yang dilakukan bukan sekedar untuk mengisi waktu yang luang saja tetapi pembinaan berupa pekerjaan yang berada di masyarakat demi menunjang pembangunan negara.²⁴

According to Lukmanul Hakim, the death row inmate's status in the correctional facility is only as a deposit while waiting for the execution time to arrive. A death row inmate is a deposit from the prosecutor placed in prison for supervision and assistance. Assistance for death row inmates is not only physical but also mental and spiritual. Provide directions for a better life, provide useful activities for death convicts, so they don't feel bored, leading to harming themselves or others. There are no differences in treatment, as long as there are no mistakes made while undergoing assistance. What is clear is that the death penalty is more concerned with psychological and physical health and terms of food. It must be ensured that it is healthy every day. In essence, this prison is only a place to wait until the execution is carried out or a change/reduction in punishment.²⁵

Based on the interview results with Farid Junaedi, death row inmates are given the development of independence and personality. The implementation of coaching is carried out by providing various activities, supervision in terms of health is very concerned. Some organizations are authorized to operate in Indonesian prisons. The only external organizations that can enter the prisons visited are religious organizations that lead prayers and provide spiritual or religious guidance to prisoners and universities that work in partnership with prisons to provide support regularly. Psychosocial. In prison, there is no differentiation between detention cells and methods of guidance.

Erna Dewi said that the implementation of coaching for death row inmates at the Penitentiary is learning new norms, values, attitudes, and behaviors or what is known as resocialization efforts. To re-socialize, a person/group of people are provided with facilities to obtain psychological recovery services.²⁶

Chandra Muliawan said, in the implementation of coaching death row inmates, according to Chandra Muliawan, there is no guidance in Indonesia, the concept is that there is no guidance because the death row inmate is not a convicted member, the death penalty is different from imprisonment. In Indonesia, the death penalty is not imprisoned. However, it is deprived of his life. However, in its implementation, due to delay, the status is entrusted by the prosecutor because the prosecutor who will be executed Death convicts do not need to be fostered but given their rights if their rights already exist. Some rights they add must fulfill their rights is the correctional institution.²⁷

The purpose of punishment is expected to be useful as a means of protection for the community, witnesses in the form of resocialization, rehabilitation are increasingly considered necessary because they are considered more humane.²⁸ Indonesia bases the combined theory

²⁴ Decree of the Minister of 1990 on the Pattern of Development of Prisoners/Detainees, <http://icjr.or.id/government-regulations>, downloaded 15 September 2016, Pg 6.

²⁵ Results of an interview with Lukmanul Hakim, King Basa Class 1A Correctional Manager, 7 April 2020, *Loc. Cit*, Pg.73.

²⁶ Results of Interview with Dr. Erna Dewi, Academic Criminal Law Department Faculty of Law, Universitas Lampung, 17 April 2020, *Loc. cit*, Pg.75

²⁷ Results of Interview with Chandra Muliawan, Director of LBH Bandar Lampung, 8 July 2020, *Loc. Cit*, Pg.76.

²⁸ Djernih Sitanggang, Efa Laela Fakhriah, and Sigid Suseno, "PERLAKUAN TERHADAP TERPIDANA MATI DI LEMBAGA PEMASYARAKATAN DALAM PERSPEKTIF HAK ASASI MANUSIA," *Jurnal Media Hukum* 25, no. 1 (October 12, 2018): 102–110, <https://doi.org/10.18196/jmh.2018.0106.102-110>.

as a conception of correctional direction, which means that punishment also contains elements that are not only in the form of suffering but also guidance and efforts to publish people's lives. These efforts are visible in the implementation of the development of prisoners in correctional institutions.

3. Construction/Ideal Model for Death Convicts' Supervision in Correctional Institutions

One part of the criminal justice system, which includes the police, prosecutors, judiciary, and prisons, criminal law enforcement is enforced using the criminal justice system process, starting with the stipulation of prohibited million (material criminal law), criminal law enforcement (formal criminal law criminal procedure) and the law of criminal implementation, one of which is correctional. Criminal law's construction or structure, which is derived from the values of belief and faith, has a solid foundation in the Indonesian legal system. In the Indonesian legal system, there are at least 13 (thirteen) laws and regulations that still place the death penalty as a threat of punishment outside the provisions stipulated in the Criminal Code or *Kitab Undang-Undang Hukum Pidana* (KUHP). These sanctions are given for crimes regulated in the Criminal Code or those regulated in several special laws.

Execution of the death penalty is a problem that reveals the urgency of a need for legislation on the imposition of the death penalty and institutional reforms regarding the death penalty sentence and execution. This can be seen as a solution before Indonesia carries out a comprehensive abolition of the death penalty.²⁹ The RKUHP stipulates that the death penalty does not fall into a basic crime category but as an alternative punishment.³⁰ This provision is in line with the Constitutional Court's recommendation notes in the decision on the norms of capital punishment. Based on academic texts and the RKUHP, RKUHP the death penalty, which is a form of punishment, contains about 15 articles regarding the death penalty, although in the RKUHP death penalty becomes more limited and selective. So what has changed from the provisions of the Death Penalty in the RKUHP is that the death penalty is used as a special punishment.³¹

According to Erna Dewi, the superior construction of guidance for capital punishment, both in terms of location and material of guidance, must be distinguished from those convicted of other types of crimes. Especially for those sentenced to death, guidance will be more beneficial in terms of psychological readiness and faith (strengthening mental-spiritual).³²

According to the Head of the Correctional Division, Farid Junaedi said the government should change the death penalty rules: "Do not let it be after years of waiting in prison there is no certainty, have good behavior but are not evaluated and continue to be 'executed'. It should be a consideration that they have already paid the debt." The ideal construction regarding death row inmates should rethink the type of punishment if a person sentenced to death has been imprisoned for more than ten years. There is a certainty for the death convict and prison officers in supervising and accompanying them. Regarding the waiting time for

²⁹ Ricky Gunawan dan Raynov Tumorang Pamintori, *New Hope for the Abolition of the Death Penalty?, Indonesia at Melbourne*, 2 Mei 2017, pg.5

³⁰ Samuel Agustinus and Eko Soponyono, "PELAKASAAN PIDANA MATI DI INDONESIA PASCA REFORMASI DARI PERSPEKTIF HAK ASASI MANUSIA," *DIPONEGORO LAW JOURNAL*, vol. 5 (Program Studi S1 Ilmu Hukum, Fakultas Hukum, Universitas Diponegoro, October 11, 2016), <https://ejournal3.undip.ac.id/index.php/dlr/article/view/13735>.

³¹ Mei Susanto and Ajie Ramdan, "KEBIJAKAN MODERASI PIDANA MATI," *Jurnal Yudisial* 10, no. 2 (2017): 193–215, <https://doi.org/http://dx.doi.org/10.29123/jy.v10i2>.

³² Results of Interview with Dr. Erna Dewi, Academic of the Criminal Law Department, Faculty of Law, Universitas Lampung, 17 April 2020, *Loc. cit*, Pg.87

death row inmates in prison, it is not only a matter of time. However, it is also related to the treatment and service of death row inmates while waiting for the execution time to arrive at the correctional facility, including issues regarding the fulfillment of the rights of those sentenced to death before being executed.³³

Chandra Muliawan said that he is one of the people who reject regulation on the death penalty because the death penalty does not abolish anything. The death penalty does not reverse the circumstances of the incident that the person did. If sentenced to life does not matter. If the debate is the construction of the death penalty, what should be done is without pain (zero pain), while shooting to death is still a few seconds feeling pain because it violates human rights. Regarding the ideal model of coaching, death row inmates should be given the rights to death convicts. For example: before being executed, they are given mental and religious guidance. The concept is not guidance but supervision by giving their rights. His authority is not to provide guidance but to provide clergy, provide family visits, seek medical treatment if he is sick. The convict still has rights, which are legal rights to take legal action in fulfilling rights. So the construction is more about fulfilling rights.³⁴

The death penalty has a waiting period of 10 years. After that, the death penalty can be changed to life imprisonment or 20 years imprisonment due to particular circumstances. This is contained in the proposed RKUHP with provisions:

- 1) There is no substantial public reaction against inmates;
- 2) The prisoner shows remorse, and there is hope for his rehabilitation;
- 3) The role of prisoners is not essential in committing crimes.

Making capital punishment an alternative punishment in the RKUHP is the first step in the ideal construction of capital punishment in Indonesia so that capital punishment can also be imposed on the condition that it provides a probation period of 10 years, the death row inmate is expected to be able to improve himself during the given time. The trial, so that the death penalty's execution does not need to be carried out so that there is hope for the death row inmates to improve themselves and return to society to live a better life. The formulation is a middle ground policy for death penalty polemic, if the government is genuinely committed to its legal politics through the RKUHP, then death convicts who have been in a waiting period of more than ten years must be given certainty, death convicts who have served a ten-year sentence must be re-evaluated. , with the paradigm of punishment in Indonesia as guidance, there is nothing wrong with a death row inmate being evaluated if he is of good behavior. Although many contra parties want the death penalty abolition, at least with the existence of the RKUHP, the government provides a solution for those who are waiting to be executed. Legal construction in coaching death row inmates needs improvement in various aspects, for example, regarding the guidance program, from its facilities, from prison officers, and from the regulations that govern it. The things that need to be considered as follows:

- a. Investigate any acts of violence, torture, or other exaggerated treatment of the person sentenced to death; because of the interest of the convict's mental readiness.
- b. Separation of places for death convicts, there should be a particular cell for death convicts. Because if there is no separation, it is feared that it will harm other inmates.
- c. Train prison officers on the treatment of prisoners, especially those sentenced to death;
- d. Ensure that prisons must have clear regulations regarding death row inmates' treatment in conducting supervision and assistance concerning facilities and activity programs provided for death row prisoners.

³³ Results of an interview with Farid Junaedi, Head of the Correctional Division of the Regional Office of the Ministry of Law and Human Rights, Lampung Province, 7 July 2020, *Loc. cit*, Pg.87

³⁴ Results of Interview with Chandra Muliawan, Director of LBH Bandar Lampung, 8 July 2020, *Loc. cit*, Pg.90

- e. Permit religious, social, cultural, educational and sporting activities for all prisoners, especially those sentenced to death; Memberikan fasilitas layanan konseling sebagai bentuk pendampingan psikologis, dilakukan oleh orang yang profesional dan terqualifikasi, untuk terpidana mati;
- f. Ensure that prisons provide family meeting time with longer visiting hours per week;
- g. Providing medical service facilities to provide drugs needed by inmates. Provide them with medicines suitable for their medical conditions;
- h. Provide access to non-governmental organizations and humanitarian organizations to all prisons where death row inmates are so that they can see the appropriateness of prison conditions and provide assistance or support to death row prisoners in prison

4. Legal Consequences for Death Convicts Supervisions in Correctional Institutions

The explanation regarding the placement of death row inmates in a correctional facility refers to Article 7 paragraph (1) in conjunction with Article 9 in conjunction with Article 11 Head of Indonesian Police Regulation or *Peraturan Kepala Polisi RI* (Perkapolri) No. 12 of 2010 concerning Procedures for the Implementation of Death Penalty. It is explained in the article that prisons have a function as a place of isolation and a place to wait for execution time. This means a double sentence in the form of imprisonment and the death penalty against the death row inmates because the death row inmates also underwent coaching like other inmates in prison. Meanwhile, based on Article 28D of the 1945 Constitution of the Republic of Indonesia in conjunction with Article 3 of Law No.39 of 1999 concerning Human Rights, every citizen has the right to legal certainty.

According to Erna Dewi, due to the death penalty's legal consequences, which has a long waiting period for execution, there is no certainty so that the convicted person carries out sanctions, namely imprisonment (loss of independence) and the death penalty.³⁵

Chandra Muliawan said the legal consequences of coaching a death row inmate in a correctional facility exist. However, the context is not because of coaching but because of other reasons, for example, if the right to guidance is not fulfilled, in coaching, some actions are allowed, and some actions are not allowed/not regulated (a gray area), for example, the expansion of illegal acts by the authorities, can be sued civilly. If a person is not given guidance in the sense that his rights are adequately fulfilled, he has the right to sue, but not in the context of criminal law but in civil law, which is against the law. If the punishment for action against the law must be in the form of an act of him committing or not acting which is regulated by the offense, for example, while in prison when coaching, there is violence by the prison officer, which means that it is a criminal act, not towards a legal consequence of the implementation of guidance but the abuse of power.³⁶

Based on literature searches, no specific regulations governing the implementation of coaching death row inmates, laws, and regulations regarding services for death row inmates are placed in prisons. In other words, there is still a legal vacuum, that death row inmates should be placed in a particular place outside the prison and have necessary regulations regarding services such as the placement of detainees who are placed in a particular place called the State Detention Center or *Rumah Tahanan* (Rutan). Because there are no special rules for coaching death row inmates placed in prisons, if there is a violation of discipline in prison by death convicts or prison officers, they cannot impose disciplinary sanctions, both

³⁵ Results of Interview with Erna Dewi, Academic Department of Criminal Law, Faculty of Law, Universitas Lampung.

³⁶ Results of Interview with Chandra Muliawan, Director of LBH Bandar Lampung, 8 July 2020, *Loc. cit*, Pg.98

internal and external.³⁷ Law Number 2/Penpres/1964 concerning Procedures for the Implementation of Death Penalty, in which it does not regulate the waiting limit/period of execution. Placing the death row inmates in prison makes the death convicts have no clarity regarding their services and guidance, resulting in disparities in the waiting period for the execution of one death row inmate. In practice, death row inmates who have met the requirements for execution are still faced with the problem of waiting time for execution. The absence of a legal basis regulated regarding the implementation of guidance for death row inmates in a correctional facility does not reflect a just legal certainty.

C. Conclusion

The urgency of conducting guidance for death row inmates in a correctional facility because prisons' assistance is critical to be carried out considering that the person concerned will be executed, so there is a need for assistance and supervision. The need for supervision of death row inmates is vital to be carried out to avoid unwanted things, such as committing crimes against others, hurting/injuring themselves, or experiencing mental stress and depression. Approaching the day of the Death Penalty execution, there will also be more intense physical and mental spiritual assistance to provide energy for the convict to get total surrender in facing the creator. Activities in prison will undoubtedly make a positive contribution to death row inmates. In Class 1 A Raja Basa Lapas Bandar Lampung, the implementation of coaching is carried out under the Republic of Indonesia Law Number 12 of 1995 concerning correctional facilities and the Decree of the Minister of Justice of 1990 concerning the Pattern of Development of prisoners. Death row convicts carry out activities like other prisoners, give rights to death row inmates, provide useful activities to death row inmates so that they do not suffer boredom, which can lead to dangerous actions for themselves or others. There is no difference in the coaching carried out as long as there are no mistakes made while undergoing assistance.

What is clear is that the death penalty is given more attention in terms of psychological and physical health and food, it must be ensured that every day is healthy. There is also no required cell separation for death row inmates in the Raja Basa Class IA Prison in Bandar Lampung. The ideal construction/model for the implementation of guidance for death row inmates in a Penitentiary makes capital punishment an alternative punishment in the RKUHP is an ideal initial construction step regarding the death penalty in Indonesia so that the death penalty can also be imposed conditionally, the death penalty does not need to be implemented if it is for ten years. During the trial, within the grace period, the convict is expected to improve himself so that there is hope for the death row inmates to improve themselves and return to society with a better life. In the supervision of death row, an enhancement is needed to regulate the death row's implementation. As a result of the law, there is no certainty for the coaching of death row inmates at the correctional facility because there are no specific regulations regarding the financing of death row inmates. However, legal consequences can arise if there is an expansion of acts against the law by the authorities so that they can be sued civilly. If there is violence in prison, for example, while in prison, when there is guidance, prison officials' violence means that a criminal act has occurred. In that case, the legal consequence is criminal responsibility.

The author suggests that there should be special regulations governing the guidance of death row inmates and the place and material of their guidance to be distinguished from those convicted of other types of crimes. Especially for those sentenced to death, guidance will be

³⁷ Budiyono Budiyono, "FUNGSI LEMBAGA PEMASYARAKATAN SEBAGAI TEMPAT UNTUK MELAKSANAKAN PEMBINAAN DAN PELAYANAN TERPIDANA MATI SEBELUM DIEKSEKUSI," *Jurnal Dinamika Hukum* 9, no. 3 (September 30, 2009): 260–67, <https://doi.org/10.20884/1.jdh.2009.9.3.233>.

more beneficial in terms of psychological readiness and faith. Also, there is a need for a regulation that explicitly regulates the waiting period/time limit for execution. The death row inmate does not carry out two crimes at once, namely imprisonment and the death penalty.

Bibliography

A. Book

- Arba'i.Yon Artiono,2015, *Aku Menolak Pidana Mati Telaah Atas Penerapan Pidana Mati*, penerbit KPG, Kepustakaan Populer Gramedia, Jakarta
- Dirdjosisworo. Soedjono, 1984, *Sejarah Dan Azaz Penologi*, Ctk. Pertama ,Bandung
- Maulani. Diah Gustiniati Rini Fatonah, Dona Raisa Monica, 2013, *Hukum Penitensia dan Sistem Pemasyarakatan*, PKKPUU FH Unila , Bandar Lampung
- Sahetapy.J.E, 1979, *Ancaman Pidana Mati Terhadap Pembunuhan Berencana*, Alumni , Bandung
- Syahrini .Riduan, 1999, *Rangkuman Intisari Hukum*, Citra Aditya Bakti, Bandung
- Zaini. Ihwan, 2013, *Pelaksanaan Eksekusi Pidana Mati Dalam Sistem Peradilan Pidana (Upaya Pencarian Kepastian Hukum)*, Publikasi Ilmiah
- Tim Peneliti BPHN dan FISIP UI, 1988, *Aspek-aspek yang Mempengaruhi Penerimaan Bekas Narapidana dalam Masyarakat*. Laporan Penelitian, Badan Pembinaan Hukum Nasional Departemen Kehakiman, Jakarta.

B. Journal and Article

- Adi Sastro, Heru Prabowo. "ANALISIS HUKUM PEMBERIAN REMISI TERHADAP NARAPIDANA DI LEMBAGA PEMASYARAKATAN KLAS II A BINJAI." *JURNAL MERCATORIA* 10, no. 1 (August 28, 2017): 45. <https://doi.org/10.31289/mercatoria.v10i1.621>.
- Agustinus, Samuel, and Eko Soponyono. "PELAKASAAN PIDANA MATI DI INDONESIA PASCA REFORMASI DARI PERSPEKTIF HAK ASASI MAN USIA." *DIPONEGORO LAW JOURNAL*. Vol. 5. Program Studi S1 Ilmu Hukum, Fakultas Hukum, Universitas Diponegoro, October 11, 2016. <https://ejournal3.undip.ac.id/index.php/dlr/article/view/13735>.
- Arfa, Nys, Syofyan Nur, and Yulia Monita. "Pola Pembinaan Terhadap Narapidana Seumur Hidup Dalam Kebijakan Implementasinya." *Jurnal Sains Sosio Humaniora* 3, no. 2 (November 25, 2019): 250–60. <https://doi.org/10.22437/jssh.v3i2.8428>.
- Arief, Amelia. "Problematika Penjatuhan Hukuman Pidana Mati Dalam Perspektif Hak Asasi Manusia Dan Hukum Pidana." *Kosmik Hukum* 19, no. 1 (February 22, 2019). <https://doi.org/10.30595/kosmikhukum.v19i1.4086>.
- Budiyono, Budiyono. "FUNGSI LEMBAGA PEMASYARAKATAN SEBAGAI TEMPAT UNTUK MELAKSANAKAN PEMBINAAN DAN PELAYANAN TERPIDANA MATI SEBELUM DIEKSEKUSI." *Jurnal Dinamika Hukum* 9, no. 3 (September 30, 2009): 260–67. <https://doi.org/10.20884/1.jdh.2009.9.3.233>.
- Haryono, Haryono. "Optimalisasi Pelaksanaan Tugas Dan Fungsi Lapas Terbuka Dalam Proses Asimilasi Narapidana." *Jurnal Ilmiah Kebijakan Hukum* 12, no. 3 (November 23, 2018): 295. <https://doi.org/10.30641/kebijakan.2018.v12.295-311>.
- Maryanto, Maryanto, Diah Rahmawati, and Indrati Rini. "PELAKSANAAN PEMBINAAN YANG BERSIFAT KEMANDIRIAN TERHADAP NARAPIDANA DI LEMBAGA PEMASYARAKATAN KELAS II B SLAWI." *Jurnal Pembaharuan Hukum* 1, no. 1

- (2014): 66–72. <https://doi.org/10.26532/JPH.VIII.1472>.
- Mulyono, Galih Puji, and Barda Nawawi Arief. “UPAYA MENGURANGI KEPADATAN NARAPIDANA DALAM LEMBAGA PEMASYARAKATAN DI INDONESIA.” *LAW REFORM* 12, no. 1 (March 31, 2016): 1. <https://doi.org/10.14710/lr.v12i1.15838>.
- Nurhadiyanto, Lucky. “Replacement Discourse Daftar Tunggu Terpidana Mati (Death Row) Dalam Perspektif Penologi Konstitutif Di Indonesia.” *Deviance Jurnal Kriminologi* 2, no. 2 (December 1, 2018): 117–38. <http://journal.budiluhur.ac.id/index.php/deviance/article/view/914>.
- Rumadan, Ismail. “PROBLEM LEMBAGA PEMASYARAKATAN DI INDONESIA DAN REORIENTASI TUJUAN PEMIDANAAN.” *Jurnal Hukum Dan Peradilan* 2, no. 2 (July 31, 2013): 263. <https://doi.org/10.25216/jhp.2.2.2013.263-276>.
- Sitanggang, Djernih, Efa Laela Fakhriah, and Sigid Suseno. “PERLAKUAN TERHADAP TERPIDANA MATI DI LEMBAGA PEMASYARAKATAN DALAM PERSPEKTIF HAK ASASI MANUSIA.” *Jurnal Media Hukum* 25, no. 1 (October 12, 2018): 102–10. <https://doi.org/10.18196/jmh.2018.0106.102-110>.
- Sulton, Muchamad, Ibnu Sodiq, Andy Suryadi, and Jurusan Sejarah. “PERKEMBANGAN LEMBAGA PEMASYARAKATAN PULAU NUSAKAMBANGAN KABUPATEN CILACAP.” *Journal of Indonesian History*. Vol. 7, August 31, 2018. <http://journal.unnes.ac.id/sju/index.php/jih>.
- Sumanto, Atet. “Kontradiksi Hukuman Mati Di Indonesia Dipandang Dari Aspek Hak Asasi Manusia, Agama Dan Para Ahli Hukum.” *Perspektif* 9, no. 3 (2004): 192. <https://doi.org/10.30742/perspektif.v9i3.347>.
- Susanto, Mei, and Ajie Ramdan. “KEBIJAKAN MODERASI PIDANA MATI.” *Jurnal Yudisial* 10, no. 2 (2017): 193–215. <https://doi.org/http://dx.doi.org/10.29123/jy.v10i2>.
- Zaini, Ihwan. “Pelaksanaan Eksekusi Hukuman Mati Dalam Sistem Peradilan Pidana (Upaya Pencarian Kepastian Hukum).” *Jurnal Nestor Magister Hukum*. Vol. 2. Tanjungpura University, 2013. <https://www.neliti.com/publications/10543/>.

C. Regulations

The 1945 Constitution of the Republic of Indonesia.

Indonesia, State Gazette of the Republic of Indonesia Number 3614, Law Number 12 of 1995 concerning Corrections.

Regulation of the Chief of Police of the Republic of Indonesia (Perkapolri) No.12 of 2012 concerning Procedures for the Implementation of Death Penalty.

Presidential Decree (Penpres) Number 2 of 1964 concerning the Implementation of Death Penalty.

