



Quo Vadis: Regulating Independence Coaching for Death Row Inmates in Indonesian Correctional System

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Abstract

The death penalty, one of the punishment types regulated in the Indonesian Criminal Code, continues to be imposed despite conflicts between abolitionists and retentionists. The existence of the death penalty in Indonesia has a legal consequence, which is the need for legal certainty regarding the status of death convicts, who are often entrusted to a Correctional Facility during the waiting period for execution. The enactment of Law Number 22 of 2022 classifying death row inmates as prisoners, along with their rights and obligations. This research uses legal research supported by data from interviews with experts. Data obtained from literature research was analyzed descriptive-qualitatively. The result showed that death row inmates must participate in coaching programs like other prisoners. The coaching program was divided into two parts: character and independence coaching. From the aspect of practicality, character coaching is more beneficial for death row inmates compared to independence coaching, as death row inmates would not return to society and would be waiting for their execution time unless their clemency request was granted.

I. Introduction

Discussions about death penalty still raise polemics in society. Conflicts still exist between abolitionist and retentionist groups. The abolitionist group follows the idea that the right to life as a human right is inherent since conception and cannot be taken away or contested by anything except God. Based on that view, the abolitionist group opposes death penalty in the Indonesian Criminal Code (KUHP) ([Putra & Susanti, 2020](#)). While for the retentionist group, death penalty is a reflection and manifestation of the crime

which disrupts the balance of legal order and violates the rights of others. The retentionist group believes that death penalty must be utilized and there is no justification to abolish death penalty. ([Rukman, 2016](#))

Regardless of the pros and cons of death penalty, Indonesia is one of the countries that impose death penalty in its positive law, as stated in Article 10 of the Criminal Code. Article 10 of the Criminal Code states that Principal Punishment consists of death penalty, imprisonment, confinement, and fine. Polemics regarding the imposition of the death penalty goes hand in hand with the implementation of the punishment. It is emphasized that death penalty is a last resort punishment (*ultimum remedium*) in preventing criminal offenses as stated in Article 98 Law Number 1 of 2023 on Criminal Code (New Criminal Code). Real evidence of the ongoing polemic is the amendment regarding death penalty in Article 64 jo. Article 67 of the New Criminal Code. In the New Criminal Code which takes 'Indonesian Ways', the implementation of death penalty is by imposing it along with the possibility of probation for death convicts. Death penalty is no longer classified as a principal punishment, but it is still recognized as a special principal punishment and will always be imposed as an alternative to other punishments, like lifetime imprisonment or maximum period imprisonment (20 years) ([Widayati, 2016](#)).

Amendments regarding death penalty as a principal punishment have logical consequences on the mechanism of its implementation which also changes because death penalty becomes specialized. The provision that became the highlight of the amendment of the death penalty mechanism in the new Criminal Code is the provision under Article 100 which regulates that death penalty can be imposed along with a probation period of 10 years. The implementation of the probation period is in accordance with section (1) can be carried out under the following conditions: the defendant shows regret and there is still hope for improvement, the defendant's role in criminal offense is not too significant, or there are other mitigating factors. Evaluation during the 10-year probation period is required to decide whether or not death penalty can be amended to lifetime imprisonment through Presidential Decree after obtaining the consideration of the Supreme Court, or death penalty remain carried out under the order of the Attorney General. The amendment of death penalty to lifetime imprisonment is based on the attitude and behavior of the defendant during the probation period, whether they show commendable attitude and behavior or not. Furthermore, Article 101 of the New Criminal Code states that if the death convict's clemency request is rejected and death penalty is not executed within 10 years after the rejection not because the convict is escaping, the death penalty can be amended to lifetime imprisonment through Presidential Decree. Although this provision raises unclear hopes, this Article is expected to be an alternative solution to create legal certainty for death convicts that are on death row for many years.

Although the discourse on changing death penalty mechanism continues to be raised, currently death penalty in Indonesia is still considered as principal punishment. Amendment in sentences for death convicts after the end of ordinary legal remedies

can only be done through filing Judicial Review (PK) and requesting clemency from the President ([Udiyani et al., 2019](#)). Provision regarding Judicial Review is regulated under the Constitutional Court Decision Number 34/PUU-XI/2013 which amends the provisions of Article 268 paragraph (3) of the Criminal Procedure Code. While clemency is regulated under Article 2 paragraph (2) Law No. 5 of 2010 on the Amendment of Law No. 22 of 2002 on Clemency. The submission of Judicial Review and Clemency in each of the provisions postpones the execution of the death penalty. Convicts that already go through these extraordinary legal remedies, Judicial Review and Clemency, but both are rejected and have no amendment in sentences will serve the death penalty as previously sentenced. During death row, death convicts are placed in the Correctional Facility as stipulated in Article 7 paragraph (1) jo. Article 11 of the Regulation of the Chief of the Indonesian National Police (Perkapolri) Number 12 of 2010 on Procedures for the Implementation of the Death Penalty. Although not explicitly stated on death convicts' placement, Article 11 paragraph (2) limitedly implies that Correctional Facilities have the function as a place to await execution and a place of isolation ([Budiman & Rahmawati, 2020](#)). The placement of death convicts on death row in the Correctional Facility creates the impression that the convicts have to go through double punishment.

In response to the issue that the death convicts are under the impression of having to go through double punishment, there is a need for a policy that fulfills legal progressivism. Indonesia is already passed the Law No. 22 of 2022 on Corrections which aims to fulfill the rights of death convicts and provide legal certainty for the status of death convicts entrusted in correctional facilities, as prisoners. This is a breath of fresh air in policy direction or a form of government legal politics to improve the correctional system. Mahfud MD in his writings states that legal politics is a legal policy or official line (policy) regarding law that will be enforced whether by making new laws or by replacing the old laws ([Mahfud, 2010](#)). Not only regarding legal certainty, other legal objectives which are legal expediency, need to be reviewed in Correctional Law that are just newly enacted. One of the existing issues in this context is regarding the obligations of coaching program that consists of character coaching and independence coaching for prisoners, including death row inmates, considering they are only waiting for execution and will not return to society unless their clemency is granted or provisions of Articles 100 and 101 of the New Criminal Code are applicable to them. Based on the explanations above, there are a few problems that became the main topics of this research. First, how is the position of death convicts in carrying out coaching programs according to the *ius constitutum* (positive law) in Indonesia? Second, how is the expediency of the coaching regulation for death row inmates in Indonesia?

This research is normative research that analyzes the position of death row inmates in carrying out coaching programs and expediency of coaching regulation for death convicts under Correctional Law and is linked to the rules regarding the conditional death penalty in the New Criminal Code. This research is supported by data from interviews with informants. Data obtained from literature research is analyzed descriptive-qualitatively.

II. Status of Death Convicts in Undergoing Coaching Program

The Correctional Law has only recently been passed, therefore making Law Number 15 of 1995 no longer valid. On August 3 of 2022, The Correctional Law was enacted, which also brought clarity on the status of the death row inmates. Article 1 number 6 in the previously mentioned bill defines prisoners as convicts who are serving imprisonment for a certain period of time and lifetime imprisonment, or death convicts who are on death row, that are going through coaching in the Correctional Facility. The status of death row inmates as prisoners brought implications that the rights of death row inmates are just the same as the rights of prisoners. Article 9 of Correction Law regulates the rights of prisoners, which are:

1. to practice worship in accordance with their religion and belief;
2. to receive care, both physically and spiritually;
3. to receive education, teaching/training, and recreational activities as well as opportunities to pursue their potential;
4. to receive health care and adequate food that meets their nutritional needs;
5. to receive information services;
6. to receive legal counseling and legal aid/assistance;
7. to submit complaints and/or grievances;
8. to receive access to reading materials and mass media broadcasts that are not prohibited;
9. to receive humane treatment and be protected from acts of torture, exploitation, neglect, violence, and any acts that endanger them physically and mentally;
10. to receive a guarantee for occupational safety and health, wages, or work premium;
11. to receive social services;
12. to may accept or refuse visits from family, lawyer, caseworker, and public;

In addition to having the aforementioned rights, prisoners have several obligations, one of which is to participate in the coaching program as regulated in Article 11 of the Correctional Law. Then based on the result of the Social Study Report (Litmas), Prisoners are given coaching in the form of character and independence coaching.

Categorizing death row inmates as prisoners in the Correctional Law is an effort to provide legal certainty on the status of death convicts who are entrusted to correctional facilities during their death row, including certainty regarding their rights and obligations, as stated in Articles 9 and 11 of the Correctional Law. This step is a response to one of the main problems regarding death penalty execution in Indonesia, with the phenomenon of 'waitlist' or death convicts that are on death row and placed in Correctional Facilities. According to data from Institute for Criminal Justice Reform (ICJR) as of November 2021, there are 440 death row inmates, in which 79 of them are on death row for more

than 10 years. These death row inmates are convicts of different criminal offenses, such as terrorism, first-degree murder, rape, robbery, and assault, and the largest number is narcotics ([Budiman et al., 2022](#))

Two known terminologies in the phenomenon of 'waitlist' in death row, namely death row phenomenon and death row syndrome. Hudson explained that the death row phenomenon is prolonged delay under the harsh conditions of death row ([Hudson, 2000](#)). The length of the delay can occur for years or even decades after the death penalty verdict is sentenced. The harsh conditions mentioned above can refer to the inadequate/improper conditions experienced by death convicts in prison. First, overcrowding in prisons creates lack of proper space to rest, combined with humid cells, lack of sunlight, and poor air circulation, affecting the health conditions of prisoners, including death row inmates ([Napitulu, 2019](#)). Moreover, correctional facilities' health care services often do not meet the minimum standard. These conditions in correctional facilities not only adversely affect the health of death row inmates physically, but also psychologically. There were 9 death row inmates in 2019 who asked for execution to be done soon because they were being quarantined in small cells without lighting which caused mental distress to these inmates ([Budiman & Rahmawati, 2020](#)). Second, there is different treatment for death row inmates regarding visiting rules. For example, Batu Class I Correctional Facility regulates the visiting time only once in a month with a visit duration of 30 minutes maximum. This treatment is being unfairly given to death row inmates, as other prisoners are not constrained by this rule ([Napitulu, 2019](#)). While death row inmates need mental support from family and friends near their execution time. Apart from visiting time and duration, there are still challenges in access for family members to visit the Correctional Institute, especially for death row inmates that have already transferred to Nusakambangan Correctional Facility, which is costly for family members to do visitation ([Napitulu, 2019](#)). This condition is worsened by the provision in Article 10 paragraph (4) jo. paragraph (1) Correctional Law that excludes death row inmates from several rights entitled to prisoners, one of which is the right to visiting leave or being visited by family. Third, the number of available psychologists is insufficient. According to the Decree of the Director General of Corrections of the Ministry of Law and Human Rights of the Republic of Indonesia Number Pas-32.Pk.01.07.01 of 2016 concerning Basic Service Standards for Health Care in Correctional Facilities (Lapas), Detention Centers (Rutan), Correction Bureau (Bapas), Specialized Fostering Institutions for Juvenile (LPKA), and Temporary Juvenile Placement Institutions (LPAS), each Correctional Facilities must provide at least 1 psychologist ([Budiman & Rahmawati, 2020](#)). Several Correctional Facilities that have death row inmates, like Tangerang Correctional Facility, Batu Correctional Facility, Besi Correctional Facility, Kembang Kuning Correctional Facility, and Correctional Facility for Narcotics, do not have permanent psychologists ([Budiman & Rahmawati, 2020](#)). Even though these services are important to death row inmates considering the number of death row inmates experiencing death row syndrome is not small.

The second terminology, death row syndrome, is explained by Smith as one of many psychological harms experienced by inmates on death row ([Smith, 2008](#)). Quite a few led to stress, anxiety disorder, mental disorder, and even death. Psychological effects on death row inmates who have received the spotlight, which is the case of Mary Jane, a death convict of narcotics cases, often hit her head on the cell's wall and have a hard time falling asleep every time she heard the sound of the key ([Steffanie, 2015](#)). In another case, Myuran Sukumaran and Andrew Chan, who were also death convicts in a narcotics case, cried hysterically when separated from their children ([Yulika, 2019](#)). Relocating a death row inmate to an isolation room 72 hours before the execution is also one of the causes for trauma for death row inmates, it is not uncommon for them to fight back and refuse to be moved.

The conception of the Indonesian correctional system which its purpose is not as a place for imprisonment that is torturous physically or mentally, but instead as a place meant for rehabilitation. Rehabilitation is carried out as a preparation to return back to society in a normal and responsible manner. The purpose of imprisonment is to inflict suffering on convicts by taking away their freedom, and also to create a deterrent effect, and rehabilitate them to be able to function normally as members of society ([Gunakarya, 1998](#)). Article 1 paragraph (1) of Government Regulation No. 31/1999 states that Coaching is an activity to improve convicts' and juveniles' religiosity, intellectual, attitude, and professional behavior.

Coaching for convicts is essentially a system. As a system, coaching for convicts has several interrelated components that work together to achieve a certain purpose. At least there are 14 components, which are: philosophy, legal basis, purpose, system approach, classification, classification approach, treatment for prisoners, coaching orientation, type of coaching, remission, building structure, prisoners, family of prisoners, and counselor/government ([Harsono, 1995](#)). As stated in Article 2 of Government Regulation No. 31/1999 on the Coaching and Guidance of Prisoners, hereinafter referred to as Government Regulation No. 31 of 1999, Coaching programs in Correctional Facilities include character coaching and independence coaching programs. This also affirmed under Article 37 of Law No. 22 of 2022 on Corrections, that prisoners were obligated to join coaching in the form of character coaching and independence coaching.

Correctional Law, even though currently does not have to implement regulations that regulate prisoner coaching programs in detail, the program was previously regulated by Government Regulation No. 31 of 1999. Referring to the bills that become the reference of that regulation, which is Law No. 12 of 1999 on Corrections, or the old Correction Law, death row inmates were not considered prisoners, yet in practice, they still receive the same coaching program as other prisoners based on aforementioned government regulation ([Sitanggang, 2018](#)). According to Government Regulation No. 31 of 1999, coaching programs for prisoners are carried out in 3 stages, which are the initial stage, advanced stage, and final stage.

a. Initial Stage

The initial Stages are the admission and orientation period, from their early times as prisoners to 1/3 of their sentence length. This stage consists of: observation, introduction, and surrounding assessment for up to a month; planning character and independence coaching program; conducting character and independence coaching program; assessing initial stage program implementation.

b. Advanced Stage

The advanced stage is divided into 2, which are the first advanced stage and the second advanced stage. The first advanced stage period is after the initial 1/3 of a sentence until halfway through the sentence period. While the second advanced period is from the second half up to 2/3 of the sentence period. The first advanced stage is a continuation of the initial character coaching program and also the independence coaching program. While the second advanced stage is reintroducing prisoners through an assimilation program, whether in an open correctional facility or inside the correctional facility.

c. Final Stage

This stage has a period from 2/3 of the sentence time until prisoners are released. The final stage is rehabilitating prisoners by putting them in a community to reintegrate through several programs, like parole, pre-release leave, and conditional leave.

The enactment of the Correction Law creates a new paradigm that affirms the status of death row inmates as prisoners. This categorization strengthens the argument that death row inmates are obligated to join coaching programs. It creates the consequence that it is mandatory for every prisoner to join the coaching program, and if they are unwilling to join the coaching program in an orderly manner, the following prisoners can be categorized as failed to fulfill substantives requirement to continue to the next stage of coaching, or in another word, this program is an obligation to follow ([Marshudi & Wibowo, 2018](#))

According to Article 11 paragraph (1) of Correction Law, prisoners have several obligations, one of which is participating in the coaching program. Referring to Article 1 point 10, coaching is a program to improve the character and independence quality of prisoners and juvenile detainees. Article 38 then explicitly divides the coaching program into two, which are character coaching and independence coaching. The elucidation of Article 38 then details that character coaching includes religious awareness, attitude and morals, nationalism, bela negara, improving intellectual ability, legal awareness, self-integrating into the community, and deradicalization. Furthermore, independence coaching includes skills training for independent business and industry, job training, and skill and interest development.

Coaching obligations become an issue when death row inmates are considered prisoners according to Article 1 point 6 of Correction Law. Death row inmates are

unlikely to gain any benefit from the independence coaching program, as they will not return to the community and continue to live their life (socially reintegrate), only awaiting their execution, unless their clemency is granted, provisions of Articles 100 and 101 of New Criminal Code applied to death convicts. Death row inmates essentially need more character coaching, especially related to preparing themselves for execution. Death row inmates by being given character coaching can create space for them to be at peace by being busy in focus demanding activities. However, if further examined from another perspective, independence coaching still can be beneficial for death row inmates, even though the benefits are not fully experienced, which is that death row inmates can have works that can be of additional value both in material and immaterial. However, independence coaching benefits can be immensely helpful in the case where death convicts' sentence is amended from death penalty to lifetime imprisonment. This change in the sentence is an attempt in bridging the conflict between abolitionists and retentionists.

III. Legal Expediency of Coaching Regulations for Death Row Inmates in Indonesia

After The doctrine of 'concept of law' (*idee des recht*) stated that there are 3 aspects of 'concept of law' that must be implemented proportionally, which are legal certainty (*rechtssicherheit*), justice (*gerechtigkei*t), and expediency (*zweckmasigkeit*) ([Mochtar & Hiraej, 2021](#)). Expediency in law enforcement is inseparable from measuring the success of law enforcement in Indonesia. According to the school of utilitarianism, law enforcement by imposing punishment on criminal offenders is intended to bring certain benefits (benefit theory or goal theory), and not just to retaliate their criminal offenses or reciprocate to criminal offenders, but having a certain beneficial purpose ([Moho, 2019](#)). In the context of a judge's given verdict, legal expediency is seen from whether or not the verdict brought benefit or utility to every party, both litigants and the public in general ([Wantu, 2012](#)). Legal expediency is oftentimes juxtaposed with utilitarianism or utilitarian theory which states that the purpose of law is to ensure the greatest possible amount of human happiness ([Ridwansyah, 2016](#)).

Before analyzing the expediency of coaching regulation for death row inmates as prisoners, it is important to review the concept of correctional first. The emergence of correctional as a philosophy of punishment has formally shown Indonesian commitment to implementing humane punishment and protecting human rights in conceptual order. It is an immense opportunity to actualize the rights of prisoners in accordance with the current standard, as well as an opportunity to reform the current system and instruments, such as formalization of treatment guidelines and specific rights fulfillment that have not been regulated previously ([Sulhin, 2010](#)). The Preface of the Regulation of the Minister of Law and Human Rights Number 53 of 2016 concerning the Management and Utilization of the Results of Industrial Activities in Correctional Facilities stated that the whole prisoners coaching carried out continuously, systematically, and targeted is aimed to

gain character and skills knowledge as provision for living independently and actively participating in national development. Character coaching and independence coaching are interconnected as one, working together to achieve the purpose of corrections. Independence coaching is work assimilation that is given to prisoners that already serve half of their sentence period to gain work knowledge and skills. It is one of the ways to make prisoners independent. Therefore, participation and communication are needed from both parties, both prison guards and the prisoners themselves ([Equatora, 2018](#)).

Classification of death row inmates as prisoners as stipulated in Correctional Law has consequences, in which they have to perform the same rights and obligations as other prisoners, one of them being character coaching and independence coaching. The expediency of this coaching is supported by the conception of a nomenclature where death convicts have the possibility to get their sentence amended to lifetime imprisonment. Moreover, as stated in the elucidation of the New Criminal Code, the death penalty can be sentenced conditionally by giving a probation period. The probation period in New Criminal Code stipulates that death convicts during the probation period are expected to rehabilitate and self-improve themselves so that the death penalty does not have to be carried out and can be amended with imprisonment. Therefore, the coaching concept given to prisoners will be more beneficial if convicts have room to accept verdict amendment.

ICJR Researcher in hukumonline coverage stated that the phenomenon of death row 'waitlist' is a form of torture. Such exhibitions of mental and physical suffering that are faced by death row inmates are caused by fear and anxiety. Starting from indictment, and prosecution, to the time leading up to execution with long waiting times and uncertainty. Then, it is exacerbated by minimal healthcare facilities, including inadequate nutritional intake ([Hidayat, 2022](#)). Adequate facilities conditions in Correctional Facilities are more likely to encourage death row inmates to participate in coaching programs properly, with the hope that the sentence can be amended to lifetime imprisonment. However, the situation will be different if the possibility of sentence amendment is not applicable to the convicts, then the coaching given will not give many benefits because in the end they will still be executed.

Not only analysis based on conformity with legal objectives, but more specific analysis, in which according to the objectives of criminal law, also need to be done, considering coaching for death row inmates as prisoners is part of the criminal law politics. The objectives of criminal law are articulated in many theories. First, the absolute theory viewed the objective of punishment is for retaliation. Second, the relative theory viewed the objectives of punishment is to maintain order in society and prevent crimes ([Mohsen, 2022](#)). Third, the combination theory that viewed punishment aims to create suffering but it is not only as retaliation but it is also to maintain order in society. Fourth, contemporary theory is divided into several theories, that mainly comes from 3 (three) theories above but with few modifications ([Hiariej, 2016](#)).

The contemporary theory of punishment's objectives is the following. First, the deterrent theory viewed the objectives of punishment as a deterrence effect so that criminals do not repeat their actions. Second, the education theory viewed the objectives of punishment as educating society about which action is bad or good. Third, the rehabilitation theory that viewed the objectives of punishment as rehabilitating the perpetrators to become better people and accepted by their community once they reintegrate, and not repeating their former actions. Fourth, the social control theory viewed the objectives of punishment as social control, which means the criminal offenders are isolated so that their malicious actions do not harm society. Fifth, the restorative justice theory viewed the objectives of punishment as restoring justice by involving perpetrators, victims, families of victims or perpetrators, and other related parties to find fair solutions by emphasizing restoring what previously was instead of retaliating ([Hiariej, 2016](#); [Hijrani, 2022](#)).

Based on the explanations above, it can be understood that the implementation of coaching for prisoners is carrying out the rehabilitation theory, in which the objective of punishment is to rehabilitate and improve individuals into becoming better people so that when they return to society they can be accepted and not repeat their crimes. Therefore, coaching is given to prisoners to improve themselves before they are released and reintegrated back into society. But if we view it from rehabilitation theory, then questions arise about the position of death convicts. A death convict will not return to their community because they are on death row and their sentences period will not end to return back to society. In such conditions, it can be said that death convicts do not need independence coaching as previously explained, because independence coaching focused more on skills improvement for prisoners for their lives after imprisonment. Appropriate coaching programs for death convicts are character coaching in preparation for their execution mentally and spiritually. But this will be useful if the provision of Articles 100 and 101 of the New Criminal Code sides with the convicts, because of the amendment in sentence to lifetime imprisonment.

The expediency of the coaching also needs to be reviewed from the viewpoint of the purpose of correctional. Correctional purpose is strengthened in the new bill. Article 2 of Law No. 22 of 2022 on Corrections states that the correctional system was created to (a) guarantee the protection of prisoners and juvenile detainee's rights, (b) improve the character and independence quality of prisoners so that they are aware of their wrongdoings, improve themselves, and not repeating their crimes, so they can be accepted by their community, lives normally as a good citizen, law-abiding, responsible, and can actively participate in development, and (c) give protection to society from recurring crimes.

If it is linked with achieving the end goal of the correctional program for death row inmates, it will be meaningless if the death penalty still will be carried out. But it will be different in the case of death penalty that is conceptualized in the New Criminal Code, which is that death penalty is no longer considered a principal punishment, but

instead sentenced along with a probation period. This means death convicts have the opportunity to amend their sentence to lifetime imprisonment. Therefore, if we talk about the purpose of correctional as stipulated in Correctional Law, it cannot be achieved if the concept of death penalty is still applied without a probation period as referred to in New Criminal Code.

Genoveva, ICJR Researcher, believes that Correctional Law should have been enacted after the New Criminal Code came into effect because even though the New Criminal Code have been passed on January 2, 2023, according to Article 624 of the following regulation, its enactment is still 3 years after the passing. Whereas the probation period that is applicable to death row inmates are not yet relevant because of the 3 years enactment waiting time, so for now the provisions in Correctional Law for death convicts are rather difficult to actualize (Genoveva, Interview, 2022).

The conditions of death row inmates based on the new Correctional Law create a new problem with the classification of death row inmates as prisoners. The lack of regulation certainty of the waiting period for execution for death convicts makes convicts uncertain and that is a human rights violation for death convicts ([Napitulu, 2019](#)). Such violations include, double punishment as death convicts undergo imprisonment like other prisoners for an undecided amount of time, and death convicts face two principal punishments which are imprisonment and death penalty ([Sitanggang, 2018](#); [Berlian, 2023](#)). The author also considers that the conditions of death convicts that are currently placed in Correctional Facilities are uncertain and tend to result in death convicts facing double punishment, in the other hand there is no legal certainty regarding probation as regulated in New Criminal Code, so death convicts still imposed with old regulation, which means they are only waiting for their execution. This actually creates double burdens, because they are placed in correctional facilities for a long period of time and participate in coaching programs like other prisoners, but in terms of achieving the goals of the correctional program, it cannot be measured as the New Criminal Code is not yet in force even though it has already passed. Therefore the provisions regarding probation period, and coaching for death row inmates in correctional facilities will be in vain until the New Criminal Code can be implemented.

The elucidation of the New Criminal Code affirms that death penalty is not included as principal punishment. However, death penalty is regulated in specific articles to show that this type of punishment is distinctive and as a last resort to protect society. Furthermore, it is explained that death penalty is the most severe punishment and must be imposed alternatively along with lifetime imprisonment or a 20 years period of imprisonment. Deputy Minister of Law and Human Rights, Edward Omar Sharif Hiariej, explained more in *hukumonline* regarding classifying death penalty as a special type of punishment. This is because the prosecution and execution of death penalty must be done selectively. It is required for assessment to be carried out for convicts that are on death row for 10 years are carried by correctional facilities and other counselors. Assessment functions to assess convicts within a 10 years period of time, whether they

have improved or not, to decide the possibility of amendment in sentences ([Hidayat, 2022](#); [Mahardika, 2023](#)). On the other hand, the researcher in ICJR, Iftitah Sari in *hukumonline*, believes that government commitment provides a middle ground that is the 'Indonesian Way' for both pro and opposition groups by making death penalty no longer considered principal punishment, but instead making it special type of punishment. Later, death penalty will be imposed alternatively ([Hidayat, 2022](#); [Kasiyanto, 2022](#)).

In the new Criminal Code, it is explained that death penalty can be imposed conditionally by giving a probation period. Probation period as stipulated in the New Criminal Code, death convicts in probation period are expected to improve themselves so that the sentence does not have to be carried out, and can be amended to imprisonment. Furthermore, Researcher ICJR, Genoveva said that 10 years probation period is too long, supposedly, observing improvement of the convicts' behavior and attitude within 5 year probation period is enough, because a longer probation period tends to result in actions leading to torture (Genoveva, interview, 2022).

Social reintegration became the objective of the correctional program. It aimed to integrate the living-life-livelihood relationship between convicts and the community ([Center for National Legal Development Planning, Ministry of Law and Human Rights, 2013](#)). Therefore, the prisoners' coaching is carried out in an integrated manner between counselors, counseled convicts, and the public. All of these aspects have different positions and roles that support achieving the objectives of the correctional program (Genoveva, Interview, 2022). This will surely be relevant if death convicts got the opportunity to amend their sentence as stipulated in the New Criminal Code. The concept that is constructed in the New Criminal Code is by prioritizing conditional death penalty, creating the possibility of amendment in the sentence, based on convicts' character improvement, eagerness in coaching participation in a correctional facility will enable the possibility of social reintegration to the public.

IV. Conclusion

The Death row inmates, which are considered prisoners according to Article 1 point 6 of Correctional Law, have the same rights and obligations as other prisoners according to Articles 9 and 38. One of the obligations of prisoners is to participate in coaching, which is divided into character coaching and independence coaching, through the initial stage, advanced stage, and final stage. The provision of character coaching is deemed to be more useful to death row inmates compared to independence coaching. This is because independence coaching does not bring the same benefit to death row inmates since they will not return back to their community after the execution is carried out. Independence coaching will be more relevant for death row inmates after the New Criminal Code is come into force, if not, then independence coaching regulation for death row inmates can be considered irrelevant. In order to implement more effective coaching for death row inmates, several suggestions can be applied as follow: First, Legislators in drafting

a legislative regulation needs to analyze the expediency for related stakeholder and paid attention to provisions in other regulation. Second, officials in correctional facilities should take the initiative to prioritize character coaching for death row inmates over independence coaching.

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