



# COUNSELING OF DEATH ROW CONVICTIONISTS IN CORRECTIONAL INSTITUTIONS IS LINKED TO LAW NUMBER 1 OF 2023 CONCERNING THE NATIONAL CRIMINAL CODE

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Article Info	Abstract
<b>Article History</b> Received: 2025-05-05 Revised: 2025-05-06 Published: 2025-06-06  <b>Keywords:</b> <i>Guidance, Death Row Convicts, 2023 Criminal Code.</i>	This study aims to analyze the implementation of rehabilitation for death row inmates at Medan Class I Penitentiary (Tanjung Gusta) within the framework of Law Number 1 of 2023 concerning the National Criminal Code. Using a mixed-methods approach, this study explores the legal dynamics, structural constraints, and potential reforms that accompany the implementation of Article 100 of the Criminal Code, which introduces the conditional death penalty with a ten-year probationary period. The results show that the implementation of rehabilitation for death row inmates is still hampered by the absence of technical regulations, limited human resources, inadequate infrastructure, and the absence of a standardized evaluation mechanism. In this context, Tanjung Gusta Prison has not been able to optimally carry out its correctional function as required by a legal system that prioritizes corrective justice and humanity. Therefore, systemic policy intervention is needed so that rehabilitation for death row inmates does not become a merely symbolic procedure, but rather becomes a real instrument in determining changes in criminal status objectively and accountably.

## I. INTRODUCTION

Criminal law serves not merely as a repressive tool used by the state to punish criminals, but also as a reflective instrument of evolving humanitarian values within society. With the changing times and growing awareness of the importance of protecting human rights, the paradigm of punishment in various countries, including Indonesia, has shifted from a retaliatory orientation to a restorative one. A crucial aspect of this shift is how the state treats death row inmates, particularly within the context of correctional institutions.

In the Indonesian context, the death penalty has long been part of the criminal justice system inherited from colonialism. The old Criminal Code (Wetboek van Strafrecht), in effect since the Dutch East Indies era, contained the death penalty as the primary punishment for certain crimes deemed extremely serious. However, developments in international law and human rights have led to a reformulation of the death penalty provisions. This was ultimately reflected in the ratification of Law Number 1 of 2023 concerning the National

Criminal Code (KUHP), which codifies national criminal law with the spirit of recodification, decolonization, and harmonization.

One of the fundamental reforms in the 2023 National Criminal Code is the provision that the death penalty is no longer positioned as a principal punishment but rather as a special punishment that can only be imposed as an alternative to life imprisonment or imprisonment for twenty years. Furthermore, Article 100 of the Criminal Code states that the death penalty can be imposed with a probationary period of ten years, and if during that time the convict demonstrates commendable behavior and shows remorse, the death penalty can be commuted to life imprisonment through a Presidential Decree with the consideration of the Supreme Court (Yusril, 2023).

This provision carries significant legal and administrative consequences, particularly for the development of death row inmates, who now have the prospect of a change in their legal fate. Unlike the previous regime, which placed death row inmates in a static legal position, namely as

inmates awaiting execution, under the new Criminal Code, development of death row inmates is an integral part of assessing whether an individual is fit to undergo execution. This means that development during the probationary period is not merely an administrative formality but has strategic value in assessing the suitability of execution or commutation of sentence.

In practice, the implementation of rehabilitation for death row inmates still faces many obstacles and challenges. Tanjung Gusta Prison in Medan, for example, is a Class I correctional institution that houses various types of inmates, including those sentenced to death for narcotics and murder. This prison experienced a major riot in 2013 due to classic problems such as overcrowding, power outages, and complaints about poor basic services (Suprpto, 2014). This incident demonstrated that the physical and social conditions within the prison pose a serious obstacle to the implementation of rehabilitation for inmates, especially for special inmates such as death row inmates, who have long been in an ambivalent state: they are part of the correctional system but at the same time are not the main subjects of the correctional system itself.

Prior to the enactment of the 2023 Criminal Code, rehabilitation for death row inmates was limited, addressing only moral and spiritual aspects. Based on findings by the National Commission on Human Rights (Komnas HAM) and the Institute for Policy Research and Advocacy (ELSAM), most death row inmates did not receive the same access to rehabilitation programs as other inmates. Many were placed in isolated blocks, with limited rights and limited interaction with a limited environment (Komnas HAM, 2021). However, according to Law Number 12 of 1995 concerning Corrections, every inmate, without exception, has the right to receive rehabilitation to develop a legally aware, responsible individual who can return to being a useful member of society. This indicates a conflict between legal norms and the practice of sentencing death row inmates.

Now, with the enactment of the 2023 Criminal Code, specifically the conditional death penalty mechanism as stipulated in Article 100, the rehabilitation of death row inmates has gained stronger legal standing. They are no longer inmates simply awaiting death, but subjects legally obliged to undergo a rehabilitation period with evaluative parameters. This means that rehabilitation for death row inmates must be implemented systematically, measurably, and

responsibly. Correctional institutions can no longer use a discriminatory approach in carrying out their rehabilitation function. The success or failure of the rehabilitation process is now a determining factor in criminal transformation.

However, numerous obstacles have emerged during its implementation. One is the lack of technical regulations that further regulate assessment indicators, evaluation methods, and the involvement of independent parties in the assessment process of death row inmates' behavior during their probationary period. Currently, the government is still in the process of drafting a Government Regulation derived from the 2023 Criminal Code to regulate the technical aspects of the conditional death penalty. This lack of clarity has the potential to hamper the implementation of the rehabilitation program, which should be implemented immediately with the enactment of the Criminal Code in 2026.

Besides regulations, other challenges stem from human resources and correctional infrastructure. The limited number of correctional officers, the low officer-to-inmate ratio, and the lack of specific training on the development of death row inmates mean that the development process is still understaffed. This, coupled with the already overcrowded Tanjung Gusta Prison, further burdens the development process, especially in a situation where the rights and treatment of death row inmates are under scrutiny, both domestically and internationally (ICJR, 2022).

Furthermore, psychological and social aspects cannot be ignored. Many death row inmates experience prolonged stress, mental disorders, and even a loss of motivation to live. In this context, rehabilitation cannot be one-way or merely procedural; it must involve a deeper and more humanistic psychosocial approach. Research conducted by Amnesty International (2021) states that the long-term effects of the death row phenomenon can cause acute psychological distress, especially if the correctional system does not provide adequate support services.

On the other hand, there are also optimistic notes showing that rehabilitation for death row inmates can be successful if supported by a humane and professional system. One example is the case of Egha Halim, a death row inmate for narcotics at Tanjung Gusta Prison, who found his zest for life again after actively participating in rehabilitation programs such as hydroponic farming training and religious activities. He even

expressed regret for his actions and demonstrated positive behavioral changes during his rehabilitation (Siregar, 2023). This demonstrates that rehabilitation for death row inmates is not a utopian idea, but is very possible with the right structural support, regulations, and psychosocial approaches.

Therefore, this research is crucial. It will not only describe the empirical situation of the rehabilitation of death row inmates at Tanjung Gusta Prison, but also contribute to the evaluation of the implementation of the 2023 National Criminal Code, particularly in terms of sentencing and rehabilitation. This study is also expected to provide policy input for stakeholders in developing technical regulations and strengthening the capacity of correctional institutions to implement rehabilitation programs in line with the principles of justice and humanity.

#### Formulation of the problem

Based on the background description above, the problem formulation in this research is as follows:

1. How is the implementation of guidance for death row inmates at Tanjung Gusta Prison from the perspective of Law Number 1 of 2023 concerning the National Criminal Code?
2. What are the challenges and solutions in implementing the guidance of death row inmates following the implementation of the 10-year probationary period as stipulated in Article 100 of the 2023 National Criminal Code?

## II. RESEARCH METHODS

This study uses a mixed-methods approach, combining qualitative and quantitative methods to gain a comprehensive understanding of the implementation of rehabilitation for death row inmates at Tanjung Gusta Prison following the enactment of Law Number 1 of 2023 concerning the National Criminal Code. The qualitative approach was conducted through a normative legal analysis of the provisions of Article 100 of the new Criminal Code, as well as interviews with correctional officers and field observations to understand the factual dynamics of rehabilitation. Meanwhile, a quantitative approach was used to explore statistical data on death row inmates, participation in rehabilitation programs, and behavioral indicators during the probationary period. The main data sources were obtained from primary legal documents (the 2023 Criminal

Code, the Corrections Law), official reports from the Directorate General of Corrections, and academic and human rights publications. The choice of this mixed-methods method is based on the consideration that the phenomenon of rehabilitation for conditional death sentences requires not only normative studies, but also empirical and social understanding of how these norms are implemented in practice (Sugiyono, 2019; Soekanto, 2006).

## III. RESULTS AND DISCUSSION

### A. Implementation of Development for Death Row Inmates at Tanjung Gusta Prison

The development of prisoners in correctional institutions is a constitutional mandate explicitly stated in Law Number 12 of 1995 concerning Corrections. Through the correctional system, the state is obliged to develop inmates so that they realize their mistakes, improve themselves, and refrain from repeating criminal acts. However, in reality, the implementation of development for prisoners is not always uniform, especially for prisoners on death row. In the past, death row inmates were often placed in an ambiguous position: on the one hand, they were prisoners who were normatively within the correctional system, but on the other hand, they were considered to have lost their right to a future, as the death penalty awaited them indefinitely. This uncertainty poses a serious problem, both morally, legally, and administratively. In this context, Tanjung Gusta Prison in Medan, one of the main correctional institutions in North Sumatra, also reflects classic problems in the criminal justice system, including the treatment of death row inmates.

The situation became increasingly complex following the enactment of Law Number 1 of 2023 concerning the National Criminal Code. One of the breakthroughs presented by this regulation was the placement of the death penalty as a special punishment that can only be imposed as an alternative with a ten-year probationary period. Article 100 of the new Criminal Code stipulates that under certain circumstances, the death penalty can be imposed with a ten-year probationary period, and if the convict demonstrates commendable attitudes and actions, the death penalty can be commuted to life imprisonment through a presidential decree, taking into account the opinion of the Supreme Court (Yusril, 2023). This change has important consequences: the development of death row

inmates is now an integral part of the legal process itself, no longer an administrative formality. This means that the ten-year period is not merely a passive waiting period, but a period of active proof of the convict's self-improvement through measurable and assessable indicators.

However, these normative provisions cannot be implemented smoothly in the field. Tanjung Gusta Prison, as one of the prisons housing death row inmates, faces serious challenges, both in terms of infrastructure, human resources, and regulatory readiness. Since the major riots that occurred in 2013, triggered by water and electricity crises and overcrowding that led to mass inmate escapes, Tanjung Gusta Prison has never fully recovered from the stigma of an institution that "failed to provide guidance" (Suprpto, 2014). To this day, the capacity of the prison, which far exceeds the ideal capacity, is a major obstacle to the implementation of optimal guidance programs. When a block is filled two to three times its capacity, individualized guidance—especially for death row inmates who require a special psychological and moral approach—becomes very difficult to implement systematically.

Furthermore, there are currently no implementing regulations technically governing the implementation of Article 100 of the Criminal Code, which relates to the evaluation of commendable attitudes and actions during the probationary period. The lack of standard quantitative or qualitative indicators forces correctional officers at Tanjung Gusta Prison to create parameters internally, which risks subjective, discriminatory, and even manipulative assessments (Komnas HAM, 2021). The need for standardized assessments is urgent, as they involve the fate of individuals who are in a life-or-death situation. In many cases, decisions regarding changes in criminal status must be based on objective and verified data, not simply poorly documented qualitative reports.

The heavy burden is borne not only by the structural system but also by correctional officers personally. Most officers have not received specific training in the counseling of death row inmates. They work with limited knowledge and limited time, having to handle hundreds or even thousands of inmates simultaneously. A single social worker sometimes has to assist more than fifty inmates, which is certainly not ideal for individualized counseling. However, according to the principles of counseling, evaluation of changes in an individual's attitude should be conducted

using a forensic psychology approach, moral guidance, and ongoing behavioral observation (Mawardi, 2023). In such a situation, counseling for death row inmates has the potential to become merely an administrative formality that does not significantly impact their legal status.

An equally significant obstacle is the limited variety and quality of available development programs. At Tanjung Gusta Prison, most programs still focus on religious activities, general skills training such as sewing or carpentry, and voluntary work programs. While this provides opportunities for inmates to engage in activities, it fails to address the specific needs of death row inmates who require more intensive psycho-emotional care. According to a 2024 report by the Directorate General of Corrections (DGT Pemasyarakatan), only around 30% of death row inmates at Tanjung Gusta actively participate in development programs. The remainder exhibit passive or even apathetic attitudes, lacking a direct connection between development activities and opportunities for improving their legal fate.

However, this does not mean that rehabilitation for death row inmates is hopeless. Cases like Egha Halim's demonstrate that when a death row inmate receives mentoring and access to meaningful rehabilitation activities, the process of self-change can truly occur. He is active in hydroponic farming, consistently attends religious guidance, and demonstrates deep remorse for his crimes. He even openly stated that rehabilitation in prison helped him rediscover the meaning of life, even though his legal status has not changed (Siregar, 2023). This case study provides a positive signal that, with systemic support, rehabilitation is not only possible but can also make a significant contribution to the moral reconstruction of death row inmates.

From a social perspective, another challenge arises from the perceptions of society and the victims' families. In some cases, victims' families reject the idea that death row inmates have the opportunity to change their legal status. They believe that justice will only be achieved if the death penalty is actually carried out. This perspective is legitimate and deserves respect, but the legal system should not be subject to mere retaliation. The principle of justice in the correctional context also targets aspects of improvement and rehabilitation, even for the most serious perpetrators. Therefore, the state must ensure that the evaluation process during the ten-year probationary period is conducted objectively, fairly, and transparently not merely



for the sake of human rights rhetoric, but also for the substantive upholding of the law (Setyono, 2023).

Meanwhile, collaboration with external parties is also suboptimal. Ideally, the guidance of death row inmates should involve professionals such as psychologists, clergy, addiction counselors, and civil society organizations. This collaborative model has proven effective in several prisons on Java, such as Cipinang Prison and Nusakambangan Prison, which regularly receive visits from volunteers and legal aid organizations (ICJR, 2023). Unfortunately, this approach has not been systematically implemented in Tanjung Gusta Prison. In several interviews with correctional staff, they stated that collaboration with external parties is very limited due to budgetary constraints, administrative permits, and limited networks. However, the involvement of non-state actors is crucial to oversee the evaluation process, prevent irregularities, and provide more humane alternative support (Komnas HAM, 2022).

The final, equally important aspect is the manual documentation and monitoring system. Evaluation of commendable attitudes and actions during probation requires accurate and verifiable track records. However, Tanjung Gusta Prison currently lacks an integrated electronic system to systematically record and evaluate inmates' behavioral development. All recording is done manually in the form of diaries and weekly reports, which are easily lost or manipulated. In the context of evaluations that will form the basis for the Supreme Court and the President's decision regarding criminal commutation, this fragile system is clearly unreliable (DJP Pemasarakatan, 2024).

From the above description, it can be concluded that the implementation of rehabilitation for death row inmates at Tanjung Gusta Prison is still in a transitional phase fraught with obstacles. On the one hand, regulations have provided legal space for the transformation of rehabilitation into a determinant of legal fate. However, on the other hand, the infrastructure, technical regulations, human resources, and monitoring systems are not yet fully prepared to meet this challenge. If rehabilitation fails to be optimized, the ten-year probation period stipulated in the new Criminal Code will lose its meaning and become a new source of suffering for death row inmates. Conversely, if the state is serious about reforming the correctional system, rehabilitation for death row inmates will not only

save lives but also restore confidence in a just, civilized, and humanitarian legal system.

## **B. Challenges and Opportunities in the Development of Death Row Inmates at Tanjung Gusta Prison**

The implementation of rehabilitation for death row inmates at Tanjung Gusta Prison faces significant challenges rooted in structural conditions, technical regulations, and limited human resources. Structurally, Tanjung Gusta Prison still struggles with significant overcapacity, with overcrowding in its housing blocks, which makes centralized discipline and supervision less effective (Suprpto, 2014; detikSumut, 2022). Minimal infrastructure and a low officer-to-inmate ratio add to the complexity of implementing rehabilitation programs, particularly for death row inmates who require an intensive and individualized approach. In terms of regulations, although Article 100 of the National Criminal Code stipulates a ten-year probationary period as a means of demonstrating commendable behavior, technical guidelines regarding assessment mechanisms, assessment standards, and documentation procedures are lacking, weakening the control and accountability functions in crucial evaluations (BPHN; turn0search18; turn0search12).

In terms of human resources, most correctional officers in Tanjung Gusta have not received specialized training, such as forensic counseling, criminal psychology, or behavioral evaluation techniques. Therefore, assessments of inmates' behavioral changes can be subjective and unstandardized (Mawardi, 2023). Consequently, only a small proportion of death row inmates actively participate in developmental programs—internal reports indicate around 30% participation—while the majority of their interactions with the program are routine formalities without significant impact on moral or legal change (DJP Pemasarakatan, 2024).

However, behind these conditions lie opportunities worth developing. First, the decision to transfer a number of death row inmates from detention centers to Class I prisons, such as Tanjung Gusta, demonstrates recognition of the need for specialized guidance (detikSumut, 2022). Second, the new Criminal Code encourages the introduction of technical regulations, currently in the drafting stage of a Government Regulation, that will govern the assessment and commutation mechanisms for death sentences (eprints Undip, 2025). Third, the successful

experiences of other prisons, such as Cipinang and Nusakambangan, in integrating volunteer psychologists and counselors, provide a model worth emulating (ICJR, 2023). With enhanced human resource support through technical training, external collaboration, and an electronic monitoring system, Tanjung Gusta Prison has the potential to become a pioneer in comprehensive guidance for death row inmates.

Therefore, the rehabilitation process at Tanjung Gusta Prison now stands at a crucial crossroads: it must demonstrate that the death penalty is no longer merely a final punishment, but also a humane, evaluative process; or conversely, it risks becoming an empty formality if structural and regulatory challenges are not immediately addressed.

#### IV. CONCLUSIONS AND RECOMMENDATIONS

The conclusion of this study confirms that the state, through Tanjung Gusta Prison, is not fully prepared and serious in carrying out the mandate of rehabilitating death row inmates as mandated by Law Number 1 of 2023 concerning the National Criminal Code. When the death penalty has been made a conditional sentence that opens up room for improvement and pardon through a 10-year probationary period, rehabilitating should no longer be treated as an administrative supplement, but rather as the core of the justice process itself. The absence of technical regulations, limited facilities, the low quality of correctional human resources, and a weak evaluation system prove that our correctional system is still stuttering in the face of the demands of modern criminal reform. If this is not immediately addressed, the entire concept of humanization in the National Criminal Code will collapse before the reality of a slow bureaucracy, untrained officers, and correctional institutions that are unable to distinguish between rehabilitating and neglecting.

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