

# Strengthening Supervisory Judges and Observers Role in Assessing Death Row Inmates Under the National Criminal Code

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## Abstract

The enactment own specific criminal law product, Indonesia has its Penal Code Law Number 1, 2023, known as Nusantara Code. Pros and cons are both seen as to the authority and ratification of the Nusantara Criminal Code, For example, the one-time major crime of killing no longer exists and its current punishment requires a ten-year probation period Whereas the death penalty is concerned, this means surveillance licensee should payout each year to judge on a case by case basis with clear definite rules in place. The officers and conduct of death row inmates during the operational process of the death penalty are each specifically set up by law. In addition to the burden of hearing and adjudicating a case at the trial stage the judges perform a second function; that is watching over a permanent decision of law, whether it is against convicts sentenced to death or not. For this reason, In the Nusantara Criminal Code the Death Penalty is an especially set offence and surveillance observation must also be handled specially so as to make the judgement of it by Supervision and Observation Judge both accurate questions can be settled once and for all.

## KEYWORDS

Death Penalty, Judge, Supervision, Observation



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## Introduction

In a state of (*Rechtstaat*) such as Indonesia, judicial power is mainly exercised by this institution Without observing one's subjectivity or personality preconditions (objective principle of law).<sup>1</sup> n other words mean a piece of rock could depend on the era its old creatures lived in that makes him so sore; human beings however, although it doesn't change their essence find what is good or bad more trying than stones. Jurisdiction sometimes also appears as judging at trial to evaluate offensive conduct's true worth and for the umpteenth time using law be a benchmarks of justice required impartially sitting on those who live concrete situations. <sup>2</sup>

The judges, as one of the APH (law enforcement officers), have a very important role in the operation of a unified criminal justice system in Indonesia. It is up to them to rule independently of external pressures. The legislation provides just such a section of its content. Judicial Power Law Number 48 of 2009 provides in Article 3, that judicial power is the power of an independent state to have its judiciary enforce law and justice according to Pancasila and The Constitution of The Republic Indonesia 1945, with statutory law of The Republic Indonesia.

To the errands and elements of an adjudicator. He must make a decision in all situations or questions referred to him, settle any such which are legally capable, such as the legal status and responsibilities of human beings, what constitutes somebody felonious behavior and where people stand on cases; to disputes or controversies objectively according as is laid down in question under law then the adjudicator must typically be unfettered and independent from any party s influence, especially when making a decision.

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<sup>1</sup> Rustam HS Akili, "The Role Of The Legislature, In Maintaining The Balance Of Power In The Constitutional Legal System," *Jurnal Multidisiplin Sahombu* 3, no. 01 (2023): 77–85, <https://doi.org/10.58471/jms.v3i01.1791>.

<sup>2</sup> Virginia Garcia, "The Enforcement of Restorative Justice in Indonesian Criminal Law," *Legality : Jurnal Ilmiah Hukum* 28, no. 1 (2020): 22–35, <https://doi.org/10.22219/ljih.v28i1.10680>.

The main duty enjoyed by a judge in judicial work is to, *inter alia*, receive, investigate, decide and resolve any case that comes before him. With such a job, we can say that judges are central actors in law-enforcement state. This judicial power could be described as just one of the instruments owned by a country which also has its police and prosecutor's office. Nonetheless, in terms of where and from what its nature derives under (constitutional) Law, that power is different from these two organs. It lies within the judicial sector under rules set forth in the Law.<sup>3</sup>

Judges, in addition to their judicial duties above, have one kind of other duty as well. They act to be Supervisory and Observer Judges (Kimwasmat) in charge, after the case is completed or *inkracht*.<sup>4</sup> In view of this, administrative supervision holds a certain significance: it is an issue related not just to the inmates who have been sentenced to termination of their liberty but also of those with time served and even to those given a conditional discharge. Nonetheless, when they observe death row convicts, this article indeed refers to those who die under such legal sanctions. The Corrective Institution's director commented that supervision of implementation of court decisions in the final analysis aims to make sure that each and every decision made by judges is carried out properly. However, this is not to say that the judge must immediately take over as director of the prison. Ministry of Justice leaders Andi Hamzah, Iridan Dahlan and Iman Shizech mentioned something similar in that legal supervision applies to correctional officers as well. The prosecutor acts as an executor of the judge's decision and will be monitored by supervising judges and observers if the sense is only to ensure that the verdict is lawfully executed on his instructions for those who need to carry it out: by correctional staff administering this punishment under orders from him or

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<sup>3</sup> Susanto Susanto, "E-Court As the Prevention Efforts Against the Indonesia Judicial Corruption," *Yustisia Jurnal Hukum* 9, no. 1 (2020): 116, <https://doi.org/10.20961/yustisia.v9i1.41127>.

<sup>4</sup> Anis Widyawati et al., "Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions," *Lex Scientia Law Review* 6, no. 2 (2022): 339, <https://doi.org/10.15294/lesrev.v6i2.58131>.

her. Where surveillance is done by supervising judges and observers it does not mean there is a top-down or bottom-up vertical view of things, but rather on the other hand a lateral perspective.<sup>5</sup>

Whilst supervision in Indonesian means "Awat", there is only one sense to it: supervising an activity (e.g. looking at something very carefully). In addition to this there is not another activity outside of that, except for or going off from the results of one's supervisory activities. In the United Kingdom it is called "controlling" or, for short, supervision and control; thus controlling a meaning more comprehensive than supervision. However, among experts, controlling has been equated with supervision. And along with supervision comes control.<sup>6</sup>

It is one masterwork in Indonesia when it received agreement of Law No 1/2023 on the Criminal Code (the Penal Code of the Republic of Indonesia), which is also called and at long last fully published as the National Criminal Code: henceforth here make we one more country independent, not only from the point of view spiritual style but especially in terms of material criminal law enforcement. At least we no longer have to use things like that Criminal Code (*Wetboek van Strafrecht voor Nederlandsche Indie*). Of course this is also something both flame and stamp for our Indonesian country.<sup>7</sup>

As a result of the passage of this Act, the National Criminal Code is characterized by paradigm shifts, such as the death penalty. Yet considering the principal point of thought, which stresses the protection of the larger community's interests, later it naturally will uphold types of harsh criminal sanctions like the death penalty and life imprisonment. At

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<sup>5</sup>Supriyono Supriyono, M. Arief Amrullah, and I Gede Widhiana Suarda, "Pretrial In Indonesian Criminal Law," *International Journal of Educational Research & Social Sciences* 4, no. 3 (2023): 562–65, <https://doi.org/10.51601/ijersc.v4i3.664>.

<sup>6</sup>Stephanie Schweitzer Dixon, "Law Enforcement Suicide: The Depth of the Problem and Best Practices for Suicide Prevention Strategies," *Aggression and Violent Behavior* 61, no. August (2021): 2, <https://doi.org/10.1016/j.avb.2021.101649>.

<sup>7</sup>Rena Yulia, Aliyih Prakarsa, and Mohammad Reevany Bustami, "Harmonizing Adat Obligations and State Law: A Case Study of Murder and Rape Cases in Baduy's Indonesia," *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 803–54, <https://doi.org/10.15294/jils.v8i2.72283>.

the same time, the death penalty was included in the list of "network crimes," and as such a special or exceptional class of imprisonment. The basic rationale leading to this change in the idea of the death penalty is that with changing thought, having examined punishment's purpose of modification and use of the criminal law which (as one aspect in a "criminal policy" and "policy for society") methods in essence the death penalty is not the most important method for regulatory, management and development. In this case, the death penalty is only an exception.<sup>8</sup>

The formulation of the implementation of the death penalty that is preceded by a probation period in the national criminal code is welcomed with pros and cons, because psychologically and mentally, convicts sentenced to the death penalty must have changes in attitudes and behaviors either intentionally or unintentionally but carried out consistently so that the probation period to assess the change in attitude is very necessary objective assessment indicators and strengthening the function of judges supervision and observation in assessing this.<sup>9</sup>

This means that only the judge entrusted with oversight and observation may oversee and observe how implementation of a decision handed down by judges effects the case.<sup>10</sup> It turned out that there were no technical rules that expressly regulated the issue. The discussion in this study is only related to the function of supervisory judges and observers, so according to the author, it is important to conduct a research entitled "Strengthening Supervisory Judges and Observers Role in Assessing Death Row Inmates Under the National Criminal Code".

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<sup>8</sup> Naskah Akademik RUU KUHP hlm. 36.

<sup>9</sup> Suteki Florencia Magnis, Butar-butur, "Exemptions from Liability in Indonesian Criminal Law Reform," *Annals of R.S.C.B* 25, no. 5 (2021): 5528–33.

<sup>10</sup> Carolyn McKay, "Predicting Risk in Criminal Procedure: Actuarial Tools, Algorithms, AI and Judicial Decision-Making," *Current Issues in Criminal Justice* 32, no. 1 (2020): 22, <https://doi.org/10.1080/10345329.2019.1658694>.

## Methods

This study uses normative research methods. As a normative research, which is carried out by researching secondary data materials.<sup>11</sup> Other references are also taken from several views of legal experts, namely in order to add sharpness and depth to this study.<sup>12</sup> The use of philosophical and juridical approaches in this study will observe the function of supervisory judges and observers on the assessment of death row inmates in the National Criminal Code.

## Result and Discussion

### 1. The Legal Basis of the Supervisory and Observer Judges (Wasmat)

The presence of Supervisory Judges or anyone acting as Observers serves a significant function in Indonesia's criminal justice system, which is formulated by the rules that make it all clear what specialized status these individuals hold: first there are Laws like Judicial Authority Law Number 50 Of 2009 (On Law Making) and so on down through many such documents; then at last there is SEMA. Originally, it was under Article 33 Paragraph (2) of the Main Law of the Judiciary of 1970. This was later adjusted to Article 55 Paragraph (1) & (2) Law Number 48 Year 2009 on Judicial Authority for this particular need describes the supervisory job as the monitoring and carrying out of decisions by Courts.<sup>13</sup>

- (1) The implementation of court decisions in criminal cases is carried out by the prosecutor;
- (2) Supervision of the implementation of the court decision paragraph (1) by the Chief Justice of the Court concerned based on the Law.

The Central Equity should complete oversight and perception

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<sup>11</sup> Irwansyah Irwansyah, *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2021), 20.

<sup>12</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2005), 133.

<sup>13</sup> Pasal 55 Ayat (1) & (2) Undang-Undang RI No 48 Tahun 2009.

activities to guarantee that the court's choice is carried out accurately. The arrangements set forward in Regulation No. 8 of 1981 In regards to the Criminal Method Code (KUHAP) in Section XX With respect to Management and Perception of Execution of Court Choices, Articles 277 to 283, talk about additional oversight and perception activities. Part XX accommodates the power of the Main Equity of the Area Court as specified in Article 55 Passage (2) of Regulation No. 48/2009 on Legal Power. Article 277 states: <sup>14</sup>

- (1) In each court, there must be a judge who is given a special task to assist the chairman in supervising and observing court decisions that impose the crime of deprivation of independence;
- (2) Judges as referred to in paragraph (1) referred to as supervisory judges and observers, are appointed by the chairman of the court for a maximum of two years.

The above article emphasizes that Supervision and Observation must be delegated to the Supervisory Judge and Observer who is given a special task to assist the chairman in supervising and observing the court decision that imposes the crime of deprivation of independence, and the Supervisory and Observer Judge is appointed by the chairman of the court for a maximum of two years.

Article 280 further regulates regards:<sup>15</sup>

- (1) Supervisory judges and observers conduct supervision to obtain certainty that court decisions are implemented as they should;
- (2) Supervisory judges and observers conduct observations for research materials for the sake of provisions that are beneficial to the punishment, obtained from the behavior of the convict or the development of the correctional institution as well as the reciprocal influence on the criminal during his or her sentence;
- (3) Observation as referred to in paragraph (2) shall continue to be carried out after the convict has completed serving his sentence;

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<sup>14</sup> Pasal 277 KUHAP.

<sup>15</sup> Pasal 280 KUHAP.



- (4) Supervision and observation as intended in Article 277 also apply to conditional punishment.

As per SEMA (Round Letter of the High Court) of the Republic of Indonesia Number 7 of 1985 concerning Rules for the Execution of the Obligations of Administrative and Spectator Judges, the quantity of wasmat judges can be more than one individual in one Region Court, contingent upon the quantity of detainees inside the extent of the obligations of the Area Court concerned. For instance, if in a PN purview there is more than one Restorative Foundation or there is just a single Remedial Establishment with an exceptionally huge haven limit, then, at that point, more than one Administrative Appointed authority and Eyewitness is required. The number of Supervisory Judges and Observers is left up to the Chief Justice of the District Court because the aforementioned SEMA No. 7 of 1985 does not specify the exact number.

The motivation behind the foundation of administrative appointed authorities and spectators in the law enforcement framework is that criminalization possesses a vital position since it has broad results, both for the culprit and the local area. An improper decision will cause a "questionable" response on the grounds that truly relative, contingent upon your perspective. This issue is exceptionally perplexing and contains extremely profound implications, both juridical, humanistic, and philosophical.<sup>16</sup>

The following is an example of an attachment to the supervision and observation form at the District Court:

Form L1-B7
Dear Sir,
Chief Justice of the District Court.....
Report on the Implementation of the Duties of the Supervisory Judge and Observer

<sup>16</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Bandung: Citra Aditya Bakti, 2002), 35.



(KIMWASWAT).....
District Court Semester....
Class ..... Correctional Institution.....
Name of Judge Wasmat : .....

Supervision and observation were also carried out directly by conducting interviews with 3 (three) inmates consisting of:

1. Convict's Name :
- Place of Birth :
- Age/Date of Birth :
- Gender :
- Nationality :
- Residence :
- Religion :
- Occupation :
- Education :

The defendant has committed the following criminal acts

- Sentenced to imprisonment :
- Date of Detention :
- Prisoner Registration Number :
- Length of sentence :
- Date of the PN Decision :
- Date of Decision of PT :
- Date of Supreme Court's Decision :
- Date of commencement of serving the Sentence :

**Table 1. Supervision and observation**

No	Types of Activities	Evaluation	Things to find	Solving
1	2	3	4	5
	<b>SUPERVISION</b>			
1.	Inspection and Signing of the Wasmat Register.			
2.	Examination of the Truth			

	of the BA Execution of the Verdict to Class ..... Prison			
3.	Observation of Physical Conditions in Class ..... Prisons			
4.	Interview with Class ..... Prison Officer About the behavior and results of inmate coaching.			
5.	Interviews with inmates/inmates about their treatment, relationships between fellow inmates and Class ..... prison officers			
6.	Coordinating relationship with the Head of the Prison and DPP as well as the Regional Office in terms of problem solving, treatment of inmates who are technical inside and outside the Class ..... prison			
7.	Checking the accuracy of the handover of convicts by the Public Prosecutor to Class ..... Prisons			
8.	Examining the implementation of the criminal term by the KPN or the Wasmat team to the Class ..... Prison			
9.	Remission, Leave, Conditional Release, Integration, and others.			
	<b>OBSERVATION</b>			
1.	Observation of Prisoner Behavior.			
2.	Collect data on the behavior of inmates according to the type of crime.			
3.	Evaluation of the			

	relationship between the behavior of inmates and the crimes imposed.			
4.	Evaluation of the Relationship Between the Length of Punishment for Self-Development While in Class ..... Prison Those who if released later will be able to become good members of the community/obey the law.			

## 2. Death Penalty in the National Criminal Code

Capital punishment will not be forced in the fundamental sort of wrongdoing. Capital punishment ought to be bound to a different article, which shows indisputably that this sort of wrongdoing is really extraordinary. It addresses the final retreat for society's endurance. Capital punishment is the most terrible wrongdoing and will be utilized negligently. It ought to continuously be joined by a day to day existence detainment sentence or jail sentence of up to 20 (twenty) years. As a result, there is a probation period in addition to the death penalty. It is trusted that during drug avoidance the denounced man will remold himself so capital punishment is superfluous and can be supplanted by a day to day existence detainment sentence or a most extreme jail term of 20 (twenty) years.

It should be pointed out that while the retention of the death penalty is in today 's society more in line with hopes for collective protection, in applying it we are cautious to be judicious, just and individual oriented. We are expected to give consideration to the individual circumstances of those who commit criminal acts). Therefore, there should be a provision for delaying the execution of the death penalty or giving a probation period of capital punishment with ten years. Under this thinking we can try to maintain a balance between the abolitionists who occupy one extreme in their opposition to the death penalty and who still number quite a few; including a certain asymmetry in attitudes toward the death penalty at the

international level.

In the National Criminal Code, the actual carrying out of the sentence for a death penalty has been changed: if no longer allowed to kill him, then give the prisoner a term of probation, such as ten years; and if the later-found convict's conduct has improved according to Department standards that have been set down then his original death penalty can be reduced into life imprisonment.<sup>17</sup>

Keeping the death penalty (also known as capital punishment) outside from the main scrutiny of criminal law is very good indeed, for it represents a way out between two dogmatic groups. This ruling establishes the death penalty as an anomaly among crimes. The judge has to apply careful consideration to the case before imposing the death penalty. The debate over the death penalty is one about the reasons. For the sake of measures, it revolves around: public protection and the structure of criminal law institution, crime prevention, the discriminatory and cruel nature of the death penalty, thriftiness in cost, grading by levity but greater by fallout, life-pro and anti-death penalty opinions, irreversibility and other grounds for arguing against.

For this situation, it is fascinating to feature what occurred in The 6th Joined Countries Congress on the Avoidance of wrongdoing one the Treatment of Guilty parties, 1980 in Caracas.<sup>18</sup> Report from various representatives across nations in matters such as this, from practical and legal standpoint. Those who approve of capital punishment form an important group in which there are also those that oppose it.<sup>19</sup> When discussing this matter, it should be noted that many countries have also stated that they will maintain the death penalty for the time being and so on eventually abolish it. One study of 74 countries noted that while most of

<sup>17</sup> Anis Widyawati, "Regulations of Penitentiary Law in Indonesia," *International Journal of Business, Economics and Law* 18, no. 4 (2019): 54.

<sup>18</sup> Mahmud Mulyadi, "Penanggulangan Tindak Pidana Korupsi Dalam Perspektif Criminal Policy (Corruption Reduction in Criminal Policy Perspective)," *Jurnal Legislasi Indonesia* 8, no. 2 (2011): 217–38.

<sup>19</sup> Anis Widyawati, "Criminal Policy of Adultery in Indonesia," *Journal of Indonesian Legal Studies* 5, no. 1 (2020): 176, <https://doi.org/10.15294/jils.v5i1.36786>.

them still have in place a death penalty, various legal tools are being regulated to humanize the execution: for example, postponing executions until the consignment can be changed or compounded with unbearable good fortune as a condition of death; reserving execution only for those who some judges believe are of inhuman physical strength. Jurying Whether the Fault Can Passalute There are juridical requirements in nearly all countries that retain the death penalty, providing for the convict's right to request a review, pardon, modification of sentence and reprieve from death sentence. This was then strengthened, namely by issue of UN General Assembly Resolution No. 35/172 (United Nations, Crime and Criminal Justice Branch Newsletter in the Academy Manuscript of the Criminal Code Bill)

Table 2. Attitudes and Responses to the Death Penalty in the Law

Answer	PH	WM	AP	Daily	Total	
					N	%
Agree	27	88	10	-	125	81.70
Disagree	2	20	-	3	25	16.34
Others	1	2	-	-	3	1.96
Sum	30	110	10	3	153	100%

The death penalty of the National Criminal Code is regulated in Articles 98 to 102, each of which reads:

Article 67:

A special crime as referred to in Article 64 letter c is a death penalty that is always threatened alternatively.

Article 98:

The death penalty is threatened as an alternative as a last resort to prevent the commission of crimes and protect the community.

Article 99:

- (1) The death penalty may be carried out after the President's application for clemency for convicts is rejected;
- (2) The death penalty as intended in paragraph (1) is not carried out in public;
- (3) The death penalty is carried out by shooting the convict to death by a firing squad or by other means specified in the Law.

- (4) The execution of the death penalty against pregnant women, women who are breastfeeding their babies, or mentally ill persons is postponed until the woman gives birth, the woman no longer breastfeeds her babies, or the mentally ill person recovers.

Article 100:

- (1) The judge imposes the death penalty with a probation period of 10 (ten) years by taking into account:
  - a. the defendant's remorse and hope to improve himself; or
  - b. the role of the defendant in the Criminal Act.
- (2) The death penalty with a probation period as intended in paragraph (1) shall be included in the court decision.
- (3) The grace period of 10 (ten) years begins 1 (one) day after the court decision obtains permanent legal force.
- (4) If the convict during the probation period as intended in paragraph (1) shows commendable attitudes and deeds, the death penalty may be changed to life imprisonment by Presidential Decree after obtaining the consideration of the Supreme Court.
- (5) The penalty of life imprisonment as intended in paragraph (4) shall be calculated from the time the Presidential Decree is enacted.
- (6) If the convict during the probation period as intended in paragraph (1) does not show commendable attitudes and deeds and there is no hope for improvement, the death penalty may be carried out on the order of the Attorney General.

Article 101:

If the death row inmate's application for clemency is rejected and the death penalty is not carried out for 10 (ten) years since the clemency was refused and not because the convict escaped, the death penalty can be changed to life imprisonment by Presidential Decree.

Article 102:

Further provisions regarding the procedures for the implementation of the death penalty are regulated by law.

### 3. Strengthening the Function of Supervisory Judges and Observers at the Level of *Ius Constituendum*

Looking back at the exposition of the first sentence in this article, carrying out a death penalty is more governed by statute. I don't yet know if I'll turn for anything, and maybe stakeholders are still no nearer to finding an appropriate expression for what is involved in carrying out the death penalty. It is even possible that the supervisory judges and the observers who at present have a dual function may be separated out and made stronger in appraising attitudes and actions of convicts on death row.<sup>20</sup>

Thus changes its way of life to begin with. Peace Justice is of comparison. Sometimes, they call it "penal policy" and where one penal code is changed, the other may be left behind. Therefore, the political method for constructing criminal law changes according to when societies like what laws were articulated under which headings. Under these circumstances, law and order adapts by migrating from foreign lands through legal institutions. It also adapts to different times or eras, and their spirit; this is a transfer of natural rights to posterity. Therefore, seen from the perspective of "the Politics of Law" it shall follow that "the Politics of Criminal Law" is a means whereby a country seeks out, or makes and formulates good criminal laws convenient for its contemporary state as well as future generations. In Western legal classics, Policing Criminal Law Practice is impliedish The question whether statistics can help to solve told students that forty percent of rapes and attempts rapes happened typically within two hours but usually Diagrammatic breakdowns & Heptarchal Political Method brush past philosophical knowledge magazine booklets, endeared to solons who chuckled that one copy sat on the bathroom windowsill even as another lay underneath their bed this is both a job

**Supervision Aspect**

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<sup>20</sup>Tedy Nopriandi and Risky Fany Ardhiyansyah, "Paradigm of Death Penalty (Comparative Study in Indonesia, Saudi Arabia and China)," *Lampung Journal of International Law* 2, no. 1 (2020): 57–68, <https://doi.org/10.25041/lajil.v2i1.2032>.



Supervision is more aimed at Prosecutors and Correctional Institution Officers. In carrying out supervision duties, Judge Wasmat should supervise among others

- a. Prosecutor is required to bring a criminal suspect to trial within a reasonable period of time in front the designated judicial organs.
- b. But did the judge who sentenced him to a prison term really make sure that this was carried out.
- c. If strict communication principles are observed, is the instruction given prisoners substantially illogical in nature.

To ensure that the court choices that have become legitimately viable are genuinely executed by regulation. (Article 280 of the Criminal Code, To accomplish this point, the wasmat judge supervises the execution of court choices in cases of:

- a. The convict executed judgment according to sounds made by all judges however voice However I would still gallop on horseback through this putrescent yesterday of the Judicial system. Especially as verdict involves deprivation him and supra was well received.
- b. The result follows rules already made including:

That Do Not Start Shipping Under Technical Conditions Can 1) The Regulation on Procedural Administration of Court Law issued by the Supreme People's Court in January 1985 for Implementing Silt Removal Policy in The Positans. Under this regulation, as a convict ich drawn by and sentenced to sentence others may be released before he is called ashore back from prison( stipulated in Articles 270 to 276 of the Criminal Procedure Code an example here is seen in question. The third case concerns a crime which lacerating flesh on one's face is punished according The Law Article 271 para (2) Chapter Eleven itself establishes the absence of entry into office for life imprisonment- therefore there can be no warrant either given to general staff or any kind released by the military High Command

## **2. Observation Aspect**

Note how the correctional institutions develop or how the behavior of convicts is affected by it has an important impact on the specific problems of criminals serving their sentences Article 280 Paragraph (2) of the Criminal Procedure Regulations ). Judicial observations are a reflection of how well the court does its job and who it does then. This is certainly different from supervision aimed at parties outside the court, in this case the prosecutor's office and the Correctional Institution. Observations are made for research materials for future crimes in order to provide more benefits, especially for convicts. Therefore, research in the context of carrying out observation tasks is intended to:

- a. Obtain and collect data on the behavior of prisoners;
- b. Conduct an evaluation of the relationship between the prisoner's behavior and the sentence imposed.

Andi Hamzah, too proposes that with the judges administering decisions they also must oversee how those decisions come to bear it was in a tragic obfuscation of what the adjudicator had said and here we find reality criminal operations amidst medical establishments Once convicts are employed outside of prisons The judge should thus be able to follow changes in condition of the convict well, and penetrate these processes, which means he may now play an active role in commenting upon his view on parole. This should also be extended to the situation in which he finds in the National Criminal Law that statement about capital punishment.

Paisol Burlan, in his Legal System in Indonesia, usefully encapsulates the legal system as a synthetic whole, in which various components are interrelated and coordinate or function together in a single direction. The legal goals are justice, order and usefulness to people's lives. Lawrence M. Friedman presents a "legal system" in his American Law An Introduction. He maintains this was in fact the law of the United States from start to finish:

An effective legal system is, in reality, a complex entity shaped by the interplay of its structure, substance, and culture. It consists of a mix of "primary rules" and "secondary rules." Primary rules dictate norms of

behavior, while secondary rules govern the norms themselves—determining their validity, how they can be modified, and more.

This theory states that the legal system consists of elements of legal structure, legal substance, and legal culture.<sup>21</sup> Judging from the aspect of legal substance as this article, Lawrence M. Friedman stated that:

“The substance is composed of substantive rules and rules about how institutions should behave. Structure and substance are real components of a legal system, but they are at best a blueprint or design, not a working machine.”

Without a doubt between society and its guidelines on that they trigger this accompanying changing cooperation that is under general law. Legal substance includes legal principles as well as standards of behavior and legal precedents, according to which matter must be handled. Both the content and form of the law are parts of the general legal system, but either element can provide only a framework or blueprint and not an operating tool in itself. From this perspective, there are three types of laws that make up criminal law as a legal substance: material criminal law, formal criminal law, and criminal enforcement law. In certain areas of content criminal law after the establishment of a public crook rule code, the application and adjustment will most likely become difficult to fulfil underlying this since what should be done is implementing a general regulation upon material as well as form in criminal laws. It will fail to reach its original objectives even when only a single one is off track and cannot be paced. This interconnection is extremely close. The development of the legal material/content can be carried out using three alternatives:

- a) Formulate and establish new legal provisions for matters that have not been regulated at all;
- b) Transforming the provisions of international law into national legal provisions through the instrument of ratification/ratification of relevant international agreements; and

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<sup>21</sup> Anis Widyawati et al., “Application of The Juridic-Scientific Religious Approach Model in Execution of Penal Law Enforcement,” *Pandecta Research Law Journal* 17, no. 1 (2022): 146–57, <https://doi.org/10.15294/pandecta.v17i1.35812>.

- c) Modifying existing legal provisions to keep up with the development of legal awareness and needs that are developing in society

To the best of the author's knowledge, there has been a draft of the Criminal Procedure Code that has not yet been finalized as explained in Chapter XVI Supervision and Observation of the Implementation of Court Decisions, namely:

Article 275:

- (1) In each court, there must be at least 3 (three) judges who are given a special task to assist the chairman in supervising and observing court decisions that impose the crime of deprivation of independence.
- (2) Judges as referred to in paragraph (1) are called supervisory judges and observers, appointed by the chairman of the court for a maximum of 2 (two) years.

Article 278:

- (1) Supervisory judges and observers conduct supervision to obtain certainty that the court's decision is implemented as it should.
- (2) Supervisory judges and observers conduct observations for research materials for the sake of provisions that are useful for the punishment, obtained from the behavior of inmates or the development of correctional institutions and the mutual influence on inmates while serving their sentences.
- (3) Observation as intended in paragraph (2) shall continue to be carried out after the convict has completed serving his sentence.
- (4) Supervision and observation as intended in Article 275 apply to conditional punishment.

Article 279:

At the request of the supervising judge and observers, the Head of the Correctional Institution periodically conveys information about the behavior of certain inmates in the observation of the judge.

Article 280:

If deemed necessary for the use of observation, the supervising judge and observer can discuss with the Head of the Correctional Institution about how to coach certain inmates.

Article 281:

The results of supervision and observation are reported by the supervising judge and observers to the chief justice on a regular basis.

If referring to Article 100 of the National Criminal Code where the death penalty can be changed to life imprisonment if the convict while serving a probation period of 10 (ten) years shows a commendable attitude and deed, this raises new questions, namely, first, what are the aspects or indicators of the convict being declared to behave well, is it the same as the conditions for granting remission for prisoners as stipulated in Article 34 paragraphs (2) and (3) of Government Regulation Number 99 2012 concerning the Second Amendment to Government Regulation Number 32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Correctional Assisted Citizens and Article 5 of Permenkumham 3/2018 or there are special rules that regulate it and secondly, who is authorized by the State to assess the attitude and actions of the convict whether it is given to the Ministry of Law and Human Rights, in this case the Head of the Institution where the convict carries out his sentence or the Supreme Court, in this case the Chairman of the The District Court on the recommendation of Judge Wasmat.

The issue circulating in the midst of the current society is that later there will be a product in the form of a certificate of good behavior for death row inmates which will be used as a consideration to change the death penalty sentence to a life sentence or a certain time imprisonment sentence if the certificates behave well for death row inmates issued by the Head of the Correctional Institution. Then what is the position of the certificate, whether it has a higher position than a court decision that has legal force or is equivalent.

If referring to the statement of the former Deputy Minister of Law

and Human Rights (Wamenkumham) Edward Omar Sharif Hiariej on the page of the digital newspaper detik news, he emphasized that "the assessment of good behavior is not only given by correctional institution officers (prisons) but also must function what is called supervisory judges and observers to ensure whether the court verdict handed down to the convict can be effective or not to improve the convict."

In terms of assessing the attitude and behavior of death row inmates, according to the author, if given authority to the Ministry of Law and Human Rights, in this case, the Head of Prison is not appropriate because the implementation of the judge's decision can only be carried out by the Prosecutor as the executor and supervision and observation of the implementation of the judge's decision can only be carried out by the supervising judge and observer, so that in the context of assessing the attitude and behavior of the convict sentenced to death must be carried out by the supervising judge and observers so that judges and observers can provide recommendations to the Supreme Court to further give consideration to the President as per Article 100 Paragraph (4) of the National Criminal Code. Because in assessing and observing changes in the behavior of death row inmates, there is a process of examining, considering and deciding on the change in the behavior of the convict so that the products issued should be equivalent to the judge's verdict or determination, not just ordinary certificates that are vulnerable to abuse or trade. If there will indeed be a product in the form of a certificate of good behavior for death row inmates that has been discussed in the formulation stage in the legislature, then it must be really considered what kind and how the letter should be issued.

Policies related to the criminal enforcement system that have not been integrated into the Integrated Criminal Justice System reflect the weakness of law enforcement in criminal enforcement in Indonesia. This is where the synergy and coordination function between correctional institutions and supervisory judges and observers is important. Where the

Supervisory Judge and Observer gave their opinion on the supervision and observation of death row inmates which was carried out comprehensively. Comprehensive here means that even though the appointment of Supervisory Judges and Observers was carried out for a period of 2 (two) or up to 3 (three) years ago replaced with new Supervisory Judges and Observers due to mutation circumstances or due to replacement based on the prerogative of the Chief Justice of the District Court, the previous report by the Supervisory Judge and Observer cannot be ignored. It is also necessary to have objective assessment indicators provided by the Law so that Supervisory Judges and Observers in assessing the attitudes and behaviors of convicts sentenced to death can be carried out appropriately. After an assessment is carried out and a supervision and observation report is made by the supervising judge and observer on the death row inmates, then the report is given to the Head of the Correctional Institution as a basis for consideration for the issuance of a certificate of good behavior for death row inmates by the Head of the Correctional Institution which will later be given to the Supreme Court as a consideration for the issuance of a Presidential Decree regarding the change of the death penalty to a criminal life imprisonment. The draft of the National Criminal Code, which is included in the 2024 DPR Prolegnas Bill, is expected to answer this question in addition to the Supreme Court also providing technical rules related to Supervision and Observation for Supervisory Judges and Observers on death row inmates.

## **Conclusion**

Both Supervisory Judge and Observer will supervise the implementation of verdicts by Prison Officers, observe rights for convicts and record how this corrective process impact inmates incarcerated at a Corrective Institution. Therefore, moreover at present their work includes checking sentences on inmates from aspects of human rights in order to correct any problems that might occur. Death row prisoners' attitude and behavior is an obligation the supervisory judge and observer took on. At



the same time this must be the basis for the Head of the Correctional Institution giving death row inmates a good conduct certificate before their sentence is commuted into life imprisonment or a definite prison term. Hence, a comprehensive evaluation which uses objective criteria must have the Supervisory Judge and Observer as an offshoot of the Chief Justice of the District Court, in this case, even more specifically a top court where they will present recommendations to President on whether or not Convict ought be given Death Penalty.

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#### **DECLARATION OF CONFLICTING INTERESTS**

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