

## The Effectiveness of Restorative Justice in Overcoming Overcrowding in Correctional Institutions According to Law Number 22 of 2022 Concerning Corrections

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**Abstract.** *This study aims to determine and analyze the situation, causes and impacts of overcrowding that occurs in prisons/detention centers in Indonesia, to determine and analyze the effectiveness of the implementation of restorative justice in overcoming overcrowding in prisons/detention centers in Indonesia according to Law Number 22 of 2022 concerning Corrections. To determine and analyze alternative solutions and strategies for implementing restorative justice in overcoming overcrowding in prisons/detention centers in Indonesia in the future. The resolution of violations of the law through the criminal justice system tends to be very prison-oriented. Every criminal violation always ends in imprisonment. The concept of prison as ultimum remedium (last resort) shifts to premium remedium (main resort) and of course the final result is that prisons face a latent problem called overcrowded or overcapacity. The specifications of this study are included in the analytical descriptive research environment, with a normative approach method, with the type and source of primary data from interviews with informants and secondary data covering various kinds of literature and laws and regulations in Indonesia. The results of the study show that the overcrowded situation has placed Indonesia at an extreme point with an excess of 188%. The overcrowded situation has an impact on the emergence of human rights, security and health problems for its residents. In addition, the overcrowded situation also has an impact on the families of suspects/convicts, society and the State. The effectiveness of the implementation of restorative justice in overcoming overcrowding in prisons/prisons in Indonesia according to Law Number 22 of 2022 concerning Corrections has not shown a significant impact. alternative solutions and future strategies, namely reorientation of criminal punishment, making non-prison criminal policies more effective, revising regulations that hinder outflows.*

**Keywords:** Overcapacity; Overcrowded; Corrections; Restorative Justice.

## 1. Introduction

The renewal and development of criminal law cannot be carried out in an ad-hoc (partial) manner but must be fundamental, comprehensive and systemic in the form of recodification that covers 3 (three) main issues of criminal law, namely the formulation of unlawful acts (criminal act), criminal responsibility (criminal responsibility) both from the perpetrator in the form of a natural person (natural person) and a corporation (corporate criminal responsibility) and the punishment and actions that can be applied. Punishment should be a means or tool of social control that has three functions, namely as: A means of crime prevention; A means of sustaining the morale of conformists; and A means of reforming offenders. True crime prevention, namely prioritizing the principles of improving lawbreakers in order to reduce elements of crime rather than simply distancing them from society by temporarily revoking their freedom.<sup>1</sup>

After 22 (twenty two) years of the enactment of Law Number 12 of 1995 concerning Corrections, the implementation of corrections has developed considerably. Corrections whose scope of role was originally limited to the adjudication phase have now developed to the pre-adjudication phase and post-adjudication phase which are manifested in state detention centers (RUTAN), state confiscated goods storage houses (RUPBASAN), correctional centers (bapas) and correctional institutions (LAPAS). Corrections are present not only as a guarantee of protection for individuals but also encompass the objects attached to them. However, the various developments in the intended role in terms of regulation are regulated separately so that they have not been integrated. Overcrowded (crisis situation due to prison overcrowding) began to be recorded since 1859. The first overcrowded situation occurred in Bangkalan Prison which was established with a capacity of 5 people. However, there was an addition of a warehouse used as a prison which should have been occupied by 60 people, but was occupied by 360 people. In addition to the situation reported by Pokrol above, the overcrowded conditions of this prison also contributed to a rebellion where 76 prisoners attacked the guards and then escaped.<sup>2</sup>

On Monday, March 10, 2025, Class II B Kutacane Penitentiary, Southeast Aceh Regency, Aceh Province experienced an escape incident of several prisoners. The incident occurred when it was approaching breaking the fast, it was known that 50 prisoners escaped. They broke through the security door layer, and damaged the roof of the prison building. According to the Head of Class II B Kutacane Penitentiary, Southeast Aceh Regency, Andi Hasyim at the time of the incident, there were only 6 (six) security officers.<sup>3</sup>

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<sup>1</sup> Muladi and Diah Sulistyani, *Corporate Criminal Liability* (PT Alumni Bandung, 2013).

<sup>2</sup> Minister of Law and Human Rights of the Republic of Indonesia, "National Symposium 'Towards a New Paradigm of Indonesian Criminal Procedure' in the Context of the 59th Correctional Service Day in 2023."

<sup>3</sup> Sanusi Has, *Introduction to Penology: The Science of Special Corrections for Convicts*, 1976.

Based on the Public Correctional Database System (SDP) of the Directorate General of Corrections (DITJENPAS), the capacity of Class II B Kutacane Penitentiary should only be able to accommodate 100 people. However, this Penitentiary is inhabited by 370 people with the majority of narcotics cases. This data shows that the ratio of security officers to prison inmates is 3:185, so that excess capacity like this is very likely to trigger various problems, including security risks, making it very difficult to anticipate prisoners who escape. One of the impacts of overcapacity is the suboptimal coaching process in correctional institutions, as is the case at Class I Penitentiary in Semarang. Class I Penitentiary in Kedungpane Semarang is experiencing overcapacity (insufficient capacity compared to the number of inmates). The penitentiary has a capacity of 510 people, while the number of inmates at Class I Penitentiary in Kedungpane Semarang is currently 1,337 people. As a result of the inmates exceeding the capacity at the Penitentiary, there is a juvenile Penitentiary, half of which is used to accommodate adult prisoners. In fact, there is also a Penitentiary that also accommodates male adult prisoners, female adult prisoners, detainees, and child prisoners.<sup>4</sup>

## 2. Research Methods

This study uses a normative research method to analyze the implementation of restorative justice as an effort to reduce overcapacity in correctional institutions (LAPAS) in Indonesia. The normative method was chosen because it is appropriate for studying and evaluating policies, regulations, and theories related to the criminal justice system and restorative justice. This approach focuses on literature studies from relevant journals, books, and websites to gain a comprehensive understanding of the research topic. The use of normative methods allows researchers to build strong arguments supported by extensive empirical and theoretical evidence.<sup>5</sup>

## 3. Results and Discussion

### 3.1. Situation, Causes and Impacts of Overcrowding in Prisons/Detention Centers in Indonesia

Crime prevention is one of the main tasks of the State to be able to provide protection for the community, everything that is done to deal with crime is often referred to as criminal policy which also aims to improve the welfare of the community in the state. Criminal policy can be categorized into two parts, the first is penal and the second is non-penal. Where the most frequent approach taken by countries, including Indonesia, is the penal policy, Sudarto explained that what is meant by the penal policy (criminal law policy) can be interpreted as holding a selection to achieve the best criminal legislation results in the sense of fulfilling the requirements of justice and utility. Due to its harsh nature, criminal law policy is expected to protect society appropriately and is considered the most effective method compared to other methods.

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<sup>4</sup> AdminICJR, "50 Inmates Escape From Kutacane Prison: ICJR Highlights Overcrowding And Urges Criminal Policy Reform," <https://icjr.or.id/50-Narapidana-Kabur-Dari-Lapas-Kutacane-Icjr-Soroti-Overcrowding-Dan-Desak-Reformasi-Kebijakan-Pidana/> (Jakarta, February 11, 2025).

<sup>5</sup> Abdul Kadir Muhammad, *Law and Legal Research* (Bandung: PT Rineka Grafika, 2004).

Stuart Green provides several criteria in which criminal law is used excessively, namely "outrageously broad conspiracy laws; the increased use of strict liability; newly minted drug, juvenile, white collar, and intellectual property offenses; and plea bargaining regime that favors the prosecution at every turn" The existence of overcriminalization This immediately causes overpunishment, because the use of criminal law policies increases the imposition of criminal sanctions by the courts. This increases the application of imprisonment as a consequence of the imposition of criminal sanctions in the form of deprivation of liberty. This overpunishment has an impact on the increasing number of inmates and creates new problems in correctional institutions, namely overcrowded.

- a. Come and provide life provisions so that they can carry out their roles as good and useful citizens. Life provisions are not only financial and material, but more importantly mental, physical (health), expertise, skills to people who have the potential and effective ability to become good citizens who no longer violate the law and are useful for national development.
- b. Sentencing is not an act of revenge by the state. The only suffering experienced by prisoners is the loss of their freedom.
- c. Repentance cannot be achieved by torture, but by guidance. Therefore, prisoners must be instilled with order regarding the norms of life and living, and given the opportunity to reflect on their past actions. Prisoners can be involved in social activities to foster a sense of community life.
- d. The state has no right to make someone worse/more evil than before he/she entered the institution. Therefore, there must be a separation between: those who are recidivists and those who are not; those who commit serious crimes and those who commit minor crimes; the type of crime committed; adults, young adults, and children; men and women; convicts and detainees/detentions.
- e. During the loss (restriction) of freedom of movement, prisoners must not be isolated from society. This means that they are not "geographically" or "physically" isolated, until they are not alienated from society and their community life. The correctional system is based on "community-centered" guidance, as well as based on inter-activity and interdisciplinary approaches between elements of guards, society and prisoners.
- f. The work given to prisoners should not be for the purpose of filling time, or only for the benefit of the State at any time. The work potential in the prison must be considered as an integral potential with the potential for national development.
- g. Coaching and guidance must be based on Pancasila.
- h. Every person is human and should be treated as a human, even if they have gone astray.
- i. Prisoners are only sentenced to punishment in the form of limiting their freedom for a certain time. Therefore, efforts need to be made so that prisoners can get a livelihood for the survival of their dependent families by being provided with work or being able to work and being paid for their work. Meanwhile, youth and children should be provided with the necessary educational institutions (schools) or given the opportunity to possibly receive education outside.

- j. For the development and guidance of prisoners, the necessary facilities are provided. It is necessary to establish new prisons that are in accordance with the needs of implementing the development program.<sup>6</sup>

### 1. Overcrowding Situation In Prisons/Detention Centers In Indonesia

The number of prisons and detention centers (RUTAN) in Indonesia continues to increase over time. In 2023, there will be around 526 prisons and detention centers spread throughout Indonesia with a total capacity of 140,424 people. This number has increased from 2019, which was only around 492 LAPAS and RUTAN with a total capacity of 130,446 people. The number of LAPAS and RUTAN residents is currently 265,897 people, so it is still experiencing an overcapacity of 89.35%.

The latest data presented by the Minister of Law and Human Rights Yasonna H. Laoly said at the National Symposium "Towards a New Paradigm of Indonesian Criminalization in 2023" the occupancy rate in Correctional Institutions or State Detention Centers (LAPAS/RUTAN) reached 265,707 with an available capacity of only 137,031 which means it is 94% overcrowded.

The current problem due to the orientation of the implementation of criminal law that is oriented towards prisons has resulted in an overcrowded situation that has placed Indonesia at an extreme point with an excess of 188% of residents. If the benchmark for the density of prisons/State Detention Centers (RUTAN) in Indonesia is described using the occupancy rate (number of prisoners per official prison capacity) as used by various other countries in reporting the situation and conditions of prisons, then the situation of prisons/RUTAN in Indonesia is included in the extreme overcrowded category (occupancy rate above 150%).

The following is data on the capacity and occupants of prisons and detention centers in Indonesia (data as of April 17, 2025):<sup>7</sup>

Plus Indonesia is struggling against the COVID-19 Pandemic outbreak that has spread globally. From the data collected by the author from (covid19.go.id, 2021) the Covid 19 Handling Task Force on August 18, 2021, globally COVID-19 has spread to 223 countries with a confirmed number of 208,470,375, deaths 4,377,979, while in Indonesia, it is positive 3,908,247, recovered 3,443,903, died 121,141.

One of them is also happening in Class II A Penitentiary in Gorontalo, making it vulnerable to the spread of COVID-19. The latest data dated October 17, 2020, the number of Class II A Penitentiary inmates was recorded at 571 while the capacity of the Penitentiary is only 330 inmates, this condition is certainly a new problem in the midst of a pandemic that requires following health protocols such as social distancing which is impossible to do.

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<sup>6</sup> Angkasa. "Over Capacity of Prisoners in Prisons, Causal Factors, Negative Implications and Solutions in Efforts to Optimize Prisoner Guidance." *Journal of Legal Dynamics* 10 (2010): 214.

<sup>7</sup> Public Relations Bureau. "Industrial Prisons Change the Paradigm of Consumptive Institutions into Productive Institutions." <http://www.kemenkumham.go.id/berita/1148-lapas-industri-ubah-paradigma-lembaga-konsumtif-menjadi-produktif>, 2017.



PERMENKUMHAM No. 10 of 2020 and Kepmenkumham No. 19 of 2020 as a means to reduce the number of prison inmates during the pandemic while simultaneously reducing overcapacity in prisons/detention centers only regulate the provision of assimilation requirements and integration rights for prisoners who commit crimes other than crimes, terrorism, narcotics and narcotic precursors, psychotropics, corruption, crimes against state security, serious human rights crimes, organized transnational crimes and foreigners. So that by optimizing the provision of assimilation and integration rights for prisoners, it can save prisoners from the threat of the spread of the corona virus as well as an effort to prevent overcapacity in Class IIA Gorontalo Prison.

## 2. Causes of Overcrowding in Prisons/Detention Centers in Indonesia

The criminal justice system in Indonesia has undergone a conceptual transformation from the concept of retribution to the concept of rehabilitation. This can be seen from the emergence of the idea of changing the prison institution (historically referred to as a prison house) to a Correctional Institution (Lapas) since 1963. Prison sentences with a correctional system are more oriented towards the idea of protecting/guidance and improving prisoners to be returned to society, which is based on the rationale of development (treatment, rehabilitation, correction). Prisons are expected not only as a place to merely punish people, but also as a place to develop or educate prisoners, so that after completing their sentences they have the ability to adjust to life outside of prison as good citizens who obey the applicable laws.<sup>8</sup>

The increase in the number of inmates of prisons and detention centers resulting in overcrowding is not accompanied by an increase in the number of adequate facilities and infrastructure. This condition is far from expectations to be able to meet the demands of the standard minimum rules (SMR). One of the requirements of SMR is one cell for each prisoner or at least a place that provides adequate space for them to move around when they sleep. Along with the overcrowded conditions, a number of prisons and detention centers are experiencing problems with the guidance of prisoners. The greater the number of prisoners, the greater the potential for conflict so that officers will be more concentrated on the security approach with the consequence that the guidance or rehabilitation approach to prisoners receives less attention. Moreover, the main and first thing that greatly influences the high rate of overcrowding in Indonesia is the will of the state which is still immediately oriented towards imprisonment in every political process of making laws that contain criminal provisions.

### a. Indonesian Criminal Politics and Policies Influencing Overcrowding

The politics of punishment to the perspective of law enforcement in making efforts justified by law for those who violate the law become a collection of causes for various problems of Prisons/Detention Centers. The efforts in question such as carrying out detention during investigations with subjective reasons from law enforcement, the perception of the success of a case by criminalizing someone with a long prison sentence, which is currently more

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<sup>8</sup> Jazuli, Ahmad. "Formation of New Correctional Work Unit as an Alternative Solution to Overcome Overcrowding." *Scientific Journal of Legal Policy* 15, no. 1 (March 26, 2021): 1.

worrying is the high number of prison sentences for drug users who are very likely to be given other efforts such as rehabilitation.

#### 1) Criminal Law Policies Contributing to Overcrowding

Indonesian criminal policy is closely related to the criminal policy designed by the government and the House of Representatives (DPR). The government and DPR until now have the desire to create and make products of legislation that regulate provisions on criminal threats that are often no longer relevant. The existence of so many laws and regulations that contain and include the substance of criminal provisions seems to be a tool to force that every lawbreaker must be placed in a state detention center (Rutan) or correctional institution (Lapas).

According to data collected by the BPHN Team, imprisonment in the Criminal Code has been used as a criminal threat 485 times, with the following details:

- a) The position of the criminal sanction of imprisonment as a principal punishment, as an alternative or as a temporary punishment or as a substitute punishment.
- b) The sentence of imprisonment of years as the main criminal penalty was used 274 times.
- c) Imprisonment sentences of either years or life were used 292 times.
- d) Imprisonment is threatened as an alternative criminal threat to other criminal threats and is used 26 times.

In addition, based on the Academic Manuscript of the Draft Law on the Criminal Code, currently there are 145 regulations containing criminal provisions outside the Criminal Code, which are inventoried based on 30 areas of law.

The criminal law policy in Indonesia is still strongly based on the values of imprisonment, which causes the lack of integration of the conditions of laws and regulations in Indonesia in the context of law enforcement and criminal sentencing as well as the many articles that are overcriminalizing. In fact, this is the main cause of why detention centers and prisons in Indonesia are in an overcrowded condition that always increases every year.

With the minimal adoption of alternative punishments other than deprivation of liberty in the Draft Criminal Code, the problem of overcrowding in detention centers and prisons in Indonesia will continue to occur for years to come.

#### 2) Future Criminal Law Policies That Could Potentially Cause Overcrowding

In the attachment of Permenkumham No. 11 of 2017 concerning the Grand Design for Handling Overcrowded in State Detention Centers and Correctional Institutions, it is clearly stated that one of the causes of overcrowded conditions in Prisons and Detention Centers is because the Criminal Regulations for perpetrators of criminal acts have not been updated. The importance of efforts to update regulations that prioritize ultimum remedium efforts in the criminal justice system so that the objectives of legal reform in realizing "social defense" and "social welfare" can be realized.

Through this Regulation of the Minister of Law and Human Rights, the Ministry of Law and Human Rights also criticizes the thinking of the community who still consider that criminal law aims to provide a deterrent effect (still adheres to the theory of retribution). In addition, the Ministry of Law and Human Rights also criticizes the current reality where judges decide cases only on the pretext of the law.

#### b. The Impact of Pre-Trial Detention on Overcrowding in Prisons/Detention Centers

Detention as regulated in Article 20-31 of the Criminal Procedure Code grants detention authority to several law enforcement agencies, namely detention by investigators as part of the investigation, detention by the public prosecutor as part of the prosecution, and

detention by the District Court, High Court and Supreme Court as part of the trial process. Pre-trial detention in Indonesia includes detention at the investigation and prosecution stages.

At the investigation stage, a detention order can be issued for a period of up to 20 days and can be extended for an additional 40 days. After the file is submitted to the Prosecutor (prosecution stage), detention based on the interests of the prosecution can be carried out for a maximum of 50 days. So when combined, pre-trial detention of a suspect can reach 110 days.

Pre-trial detention can have a detrimental effect on a defendant's ability to prepare for trial. Inhumane prison conditions mean that defendants concentrate on surviving their time in pre-trial detention or considering plea bargains, rather than preparing their defense. Access to lawyers and information about their cases is often much more limited while defendants are in custody.

In Indonesia, pre-trial detention (PTD) is increasingly perceived as a major problem, especially in the area of correctional issues. Pre-trial detention is one of the factors causing high prison overcrowding, as well as poor conditions of detention facilities. Pre-trial detention is also one of the key indicators of how the state and society treat criminal suspects based on the principles of "fair and proper legal process", "presumption of innocence", and the application of other important legal principles.

Pre-trial detention in Indonesia is one of the sources of problems that creates the problem of density and overcrowding in prisons/detention centers, the prison population has exploded two-fold from 71,500 to 14,000 in 2004 to 2011, even though prison capacity has only increased by less than 2%.<sup>74</sup> One of the causes of the increase in the prison population is the number of prisoners which continues to increase from year to year, the following is a description of the increase in detention efforts carried out in the criminal justice process:

Picture III.3 Comparison Chart of the Number of Prisoners and Inmates in Prisons/Detention Centers 2015-2025

Source: Data [sdppublik.ditjenpas.go.id](http://sdppublik.ditjenpas.go.id) Correctional Database System (SDP), Directorate General of Corrections, Ministry of Immigration and Corrections, 2025 accessed on May 25, 2025.<sup>9</sup>

From the table above, it can be seen the contribution of pre-trial detainees to the capacity of detention centers/prisons, in 2020 pre-trial detainees contributed 32.10% of the total capacity, the following year in 2021 it was 33.83%, in 2022 it was 34.79%, in 2023 it was 36.59% and in 2024 it was 38.78%. The figures in the table above do not include the number of detainees in police custody. Efforts to increase the number of occupants in detention centers/prisons are also carried out every year, but the contribution of pre-trial detainees to the capacity of the total existing capacity occupies more than half of the available capacity.

The increasing number of detainees is certainly closely related to the increasing number of crimes that occur, including detention efforts by law enforcement which are considered an easy way to ensure that someone suspected of committing a crime does not escape and destroy evidence, although sometimes detention of suspects/defendants for certain crimes

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<sup>9</sup> Lidya Suryani Widayati. "Rehabilitation of Prisoners in Overcrowded Correctional Institutions." *Journal of State Law FH UII* 3, no. 2 (December 2012): 212.



is not required and the person has been confirmed to meet the criteria required in the detention process, although the Criminal Procedure Code (KUHP) has recognized and regulated important principles of the supremacy of law, for example suspects or pre-trial detainees have the right to the principle of presumption of innocence and a proper trial process.

1) Law Enforcement Paradigm That Detention Is a Necessity

In principle, a person suspected of committing a crime has the right not to be detained while awaiting trial, unless the authorized official can show relevant and sufficient reasons to justify the detention. In other words, detention is accessory to the examination of a criminal case. A suspect "can" (not must) be detained by the investigator if the interests of the examination require it objectively, for example, taking statements to be included in the Examination Report (BAP).

2) Pre-trial Detention Rules in Criminal Procedure Code Still Weak

Based on the Criminal Procedure Code, there are two requirements that must be met by investigators/public prosecutors to be able to carry out pre-trial detention, namely legal requirements and conditions (necessity). If the legal requirements in the Criminal Procedure Code have a clear benchmark, the necessity requirements depend on the subjective assessment of law enforcement officers. If law enforcement officers are of the opinion that the perpetrator will flee, repeat the crime or damage and eliminate evidence, then detention can be carried out. Moreover, there is no mechanism to test whether the legal and necessity requirements have been met in carrying out detention. The pre-trial institution in the Criminal Procedure Code only tests administratively, meaning that if there has been a detention order for the suspect and a copy of the detention order has been given to his family, then the detention is valid.

In practice, pretrial judges will simply accept that concerns (necessity requirements) are subjective assessments of law enforcement officers. The weakness of the detention rules in the Criminal Procedure Code which gives law enforcement officers very broad authority results in suspects being easily detained and ultimately contributes to overcrowding in prisons/detention centers.<sup>10</sup>

c. The Influence of the Punitive Approach in Drug Crimes

Since the issuance of Law No. 9 of 1976 concerning Narcotics, the government has imposed criminal sanctions on drug users. The criminal penalties imposed on drug users continued to increase until the issuance of Law No. 35 of 2009 concerning Narcotics. However, the imposition of criminal sanctions on drug users did not have an impact on reducing the number of illegal drug trades, but instead caused new problems. Because there is no clear separation between drug dealers and drug users, the government has lost its focus in overcoming and handling drug problems in Indonesia. The policy that uses a punitive approach to drug users has not in fact resolved the drug problem. One of the problems that arises as a result of this is the overcrowding of detention centers and correctional institutions, where drug cases contribute greatly to the overcrowding situation.

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<sup>10</sup> M. Zulfa Aulia. "Progressive Law from Satjipto Rahardjo, Urgency and Relevance." *Journal of Law* 1, no. 1 (2018): 164.

In addition, Article 55 paragraph (2) of Law No. 35 of 2009 concerning Narcotics states that Narcotics Addicts and Victims of Narcotics Abuse are required to undergo medical rehabilitation and social rehabilitation. Mandatory rehabilitation which is a series of mandatory reporting, as well as the threat of criminal penalties if you do not report yourself, has the potential to violate the right to health. The right to health is a guarantee provided by the state regarding information on the type of service that will be provided to narcotics users and the provision of medical services or actions must be based on the consent of the person being treated.<sup>11</sup>

It should be noted that handling drug abusers in prisons/detention centers requires special treatment. There should have been a change in the approach to handling drug users, namely from a criminal approach to a public health approach. The reason is simple, by suppressing the number of users and addicts, it will significantly damage the illicit trafficking of narcotics. However, this can only happen with public health, not with harsh punishments. But what happened? The government through law enforcement officers still sends drug users and addicts to prison so that it floods prisons. In fact, according to Law No. 35 of 2009, both users and addicts should be more appropriately rehabilitated or given treatment with a health perspective.

d. Lack of Availability of Residential Space in State Prisons and Correctional Institutions  
The problem of overcrowding of prisoners and convicts in detention centers and correctional institutions is a serious problem currently faced by correctional institutions. The reason is that the overcrowded condition of a state detention center and correctional institution can trigger many other problems. Starting from disturbances of security and order, human rights violations to health problems. One of the main causes of this overcrowded condition is due to the limited living space and infrastructure owned by state detention centers and correctional institutions. According to data from the Directorate General of Corrections in 2016, the available living space capacity was intended for 119,797 prisoners and convicts. However, in reality, the number of available living space capacity is not sufficient to optimally accommodate 204,551 prisoners and convicts throughout Indonesia. If we look at the data, it can be concluded that there has been an overcrowding of 84,757 people or 71% in state detention centers and correctional institutions.

Nevertheless, the Ministry of Law and Human Rights in this case the Directorate General of Corrections has attempted to increase the capacity of housing through the construction and establishment of new state detention centers and correctional institutions, the construction and addition of housing blocks or the rehabilitation of existing housing blocks. Based on the Correctional Database System owned by the Directorate General of Corrections, since 2013-2015, capacity has been increased through the construction of housing space for 15,338 people.<sup>12</sup>

Meanwhile, for 2016, the Directorate General of Corrections is targeting an increase in residential capacity by building 4 (four) new state detention centers and correctional

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<sup>11</sup> Saharuddin, Saharuddin, Mawardi De La Cruz, Haritsah Haritsah, Rahmawati Rahmawati, and Rommi Y Hiola. "The Assimilation and Integration Rights for Prisoners as Over Capacity Prevention Effort in the Covid-19 Pandemic." *Jurnal Daulat Hukum* 5, no. 3 (October 16, 2022): 227.

<sup>12</sup> Wikipedia. "Overcrowding." <https://En.Wikipedia.Org/Wiki/Overcrowding>.

institutions as well as increasing capacity through the construction and rehabilitation of residential blocks in 57 (fifty-seven) state detention centers and correctional institutions with a projected increase in the number of residential capacities of 15,000 people. However, basically, increasing residential capacity through the construction of state detention centers and correctional institutions is not a top priority to overcome the current overcrowded problem. The large amount of funds needed to build state detention centers and correctional institutions and the limited state budget available are considerations that there must be other alternatives that can be carried out by the Directorate General of Corrections in order to overcome the current overcrowded conditions in state detention centers and correctional institutions.

e. **Institutions and Working Relationship Patterns of State Detention Centers and Correctional Institutions Do Not Match Legal Developments and Correctional Needs**

Until now, there are several regulations, both from the formal level to the implementing regulations that regulate the organization and work procedures within the Ministry of Law and Human Rights, including the Correctional Technical Implementation Unit. State prisons and correctional institutions as part of the Correctional Technical Implementation Unit are units and work units that have and carry out technical operational tasks in the field of Corrections. In carrying out their duties, state detention centers and correctional institutions are based on regulations and laws, including the Decree of the Minister of Justice Number M.04-PR.07.03 of 1985 concerning the Organization and Work Procedures of State Detention Centers and State Confiscated Goods Storage Houses and the Regulation of the Minister of Justice Number M.01.PR.07.03 of 1985 concerning the Organization and Work Procedures of Correctional Institutions as amended by the Regulation of the Minister of Law and Human Rights Number M.HH-05.OT.01.01 of 2011 concerning Amendments to the Decree of the Minister of Justice Number M.01-PR.07.03 of 1985 concerning the Organization and Work Procedures of Correctional Institutions. These laws and regulations are the basis for the establishment of state detention centers and correctional institutions. According to data as of December 31, 2016, there were 219 State Detention Centers and 269 Correctional Institutions spread across various districts/cities throughout Indonesia. Along with the development and dynamics of current law, it demands many changes to several regulations of laws and regulations that have an impact on the pattern of hierarchical relations and working procedures of state detention centers and correctional institutions. Based on the mandate of Presidential Regulation Number 44 of 2015 concerning the Ministry of Law and Human Rights Article 65, state detention centers and correctional institutions in terms of hierarchy and working relationship patterns are one of the Correctional Technical Implementation Units whose existence is under the guidance of the Directorate General of Corrections:<sup>13</sup>

"The development of organizational units within the Vertical Agency and Technical Implementation Units that handle tasks and functions that are in accordance with the tasks and functions of the Directorate General, the development is carried out by the Directorate General concerned"

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<sup>13</sup> Yanto Sufriadi. "Implementation of Progressive Law in Law Enforcement in the Midst of Democracy Crisis." *Journal of Law, Faculty of Law, Hazairin University* 17, no. 2 (April 17, 2010): 233–248.

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The provisions set out above are reinforced by the mandate of the Regulation of the Minister of Law and Human Rights Number 28 of 2014 concerning the Organization and Work Procedures of the Regional Offices of the Ministry of Law and Human Rights, Article 27 paragraph (3), which states that:

"The Head of the Technical Implementation Unit is under and responsible to the Directorate General or Head of the Agency through the Head of the relevant Division"

As well as several other reasons, such as the Neglect of Prisoners' Rights in the International Standardization of Pre-Trial Detention, Indonesia's Misunderstanding of the Three UN Conventions on Narcotics and Their Contribution to Overcrowding, Problems in Handling Narcotics Addicts in PP No. 99 of 2012 concerning the Requirements and Procedures for the Implementation of the Rights of Correctional Inmates, the Influence of Assimilation and Reintegration Administrative Procedures on Overcrowding, and the Lack of Access for Suspects/Convicts to Advocates that Causes Overcrowding.

### 3. The Impact of Overcrowding in Prisons/Detention Centers in Indonesia

#### a. The Impact of Overcrowding on State Finances in Social and Economic Terms

One of the worst conditions of the criminal justice system in Indonesia can be seen in prisons, where the principle of "due process of law" is often not met. The cost of over-exploitation of prison sentences, which is a fundamental reason for prison overcrowding in countries around the world, can significantly increase poverty and socio-economic marginalization of certain groups of people and reduce funds available for other areas of government spending. This is one aspect of how prisons contribute to community poverty. The combined effects of several factors such as: prison overcrowding, understaffing, very broad detention powers, budgetary issues, ongoing corruption, high levels of group violence, poor water and sanitation quality, and poor quality of health and education in detention facilities indicate that prison overcrowding does not only persist within prison walls. It also has social, economic and detrimental impacts on public health. Imprisoning large segments of society places a significant burden on state budgets. In developing countries where budgets rarely meet the needs of all citizens, the additional burden of a large prison population further reduces funds available for health, social services, housing and education. So, when considering the cost of imprisonment, the cost must be taken not only from the actual funds spent on the maintenance of each prisoner, which is usually much higher than what is spent on a non-custodial sentence convict, but also from collateral costs, such as the impact of these costs on social, economic and health services, which are not only easy to measure, but require very large and long-term allocations of funds. In Indonesia, prison overcrowding also has an impact on the State due to the fairly high budget burden. For example, the burden of the special correctional budget for food and drink (BAMA) and Non BAMA. BAMA is the budget used for the expenditure of food and drink for prisoners and inmates, including rice and side dishes managed by each UPT, both detention centers and prisons, while NON BAMA is the budget or costs incurred for UPT operations such as health costs, hygiene, clothing, and other costs arising from the management and fulfillment of the rights of prisoners and inmates.<sup>14</sup>

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<sup>14</sup> JDIH BPK. "Minister of Law and Human Rights Regulation Number 11 of 2017 Grand Design for Handling Overcrowded in State Detention Centers and Correctional Institutions." JDIH BPK.

In the Working Meeting of Commission III and the Ministry of Law and Human Rights, the Ministry of Law and Human Rights stated that the prison capacity currently needed is a prison that can accommodate a load of 83,745 prisoners. If the assumption is that the investment of 1 inmate is worth Rp. 150,000,000, - (One Hundred and Fifty Million Rupiah) then a budget of Rp. 12,561,750,000,000 (Twelve Trillion Five Hundred Sixty One Billion Seven Hundred and Fifty Million Rupiah) is needed. If 1 prison is built with a capacity of 2000 people, then a budget of Rp. 300,000,000,000 (Three Hundred Billion Rupiah) is needed.

The addition of prisons has the potential to increase the number of prisoners, which will result in an increase in prison operational costs. The state annually provides more than Rp. 560 billion for the consumption of BAMA for these prisoners. The total operational costs, which currently reach Rp. 2.8 trillion, will also continue to increase if more people are detained and imprisoned. That amount of state money can be used for much more useful things such as education, health, and creating a crime-free environment.

So, when considering the costs of imprisonment, for both prisoners and inmates, the costs must be taken into account not only the actual costs spent on each prisoner or inmate, but also the collateral costs, such as the impact of these costs on social, economic and health services, which are not always easy to measure, but which are very large and long-term. Furthermore, every dollar the government spends on imprisonment or detention is a dollar that cannot be spent on health or education services. The same goes for money spent by prisoners or inmates, their families and the community.<sup>15</sup>

#### 1) Human Rights Issues

Overcrowding is a growing problem in a number of countries and is of course a very serious humanitarian concern, as it automatically leads to substandard and often inhumane conditions of detention. Tens of thousands of people are forced to live for long periods in cramped conditions, with little room to move, sit or sleep. Being confined to small spaces, often in poor hygiene and with no privacy, makes the experience of being deprived of liberty (already stressful under normal circumstances) much worse. This situation erodes human dignity and damages the physical and mental health of detainees, as well as their prospects for reintegration.

#### 2) Health Issues

There are a number of serious consequences of prison overcrowding in Indonesia that can be felt directly by prisoners or detainees. First, high levels of overcrowding worsen the poor health conditions of prisoners in detention centers and prisons. The health budget has experienced significant cuts in recent years due to the state budget deficit. Even the health service budget for prisoners was eliminated in the 2014 budget year. This condition further worsens prisoners' access to proper health services. In addition, if we look further, tuberculosis and respiratory diseases, which have always been the most dominant in the past 6 years and are infectious diseases, have contributed significantly to the death rate of prisoners and detainees in detention centers and prisons.

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<sup>15</sup> "Law (UU) Number 22 of 2022 on Corrections." <https://Peraturan.Bpk.Go.Id/Details/218804/Uu-No-22-Tahun-2022>.



In addition, there is still a phenomenon of suicide committed by prisoners or convicts. The occurrence of suicide in prison is evidence that life in prison causes a lot of depression/psychological pressure for prisoners. In 1981, Bartol conducted a study on suicide in prison and found 3 reasons why prisoners commit suicide, namely:

1. Ashamed of the disgrace he had committed and of having led his family to the mistakes he had made;
2. The feeling of helplessness and tight control over the lives of prisoners.
3. Using suicidal behavior in order to manipulate others with no real intention of actually ending their life.

Suicide may also be committed to relieve suffering that is exacerbated by prison conditions, one of which is detention centers or prisons in Indonesia which are in a state of extreme overcrowding (188%).

Prisons are often referred to as disease incubators because the detrimental effects of prisons on health are not limited to prison walls that will attack prisoners and convicts. Prisoners and convicts have the potential to spread diseases to the outside community through staff, family and visitors. Most prisoners and convicts who are eventually released tend to have the potential to spread various diseases they acquired while in prison to the community.

Health conditions in prisons/detention centers can be divided into two classifications, the first is diseases that were previously suffered by inmates and diseases suffered after inmates were in prison/detention centers. The mechanism for handling the condition of prisoners or detainees who already suffer from a disease is considered important to stem its spread, especially in the case of infectious diseases such as HIV, TB or hepatitis and other infectious diseases. The process of stemming the spread of infectious diseases must of course be supported by facilities and infrastructure, from health rooms, equipment, medicines and professional health workers in their fields to help recover or cure prisoners so that it does not have an impact on other prisoners/detainees.

Although there is currently a government program in prisons/detention centers to conduct TB and HIV screening on new prisoners, this has not been implemented optimally. This is certainly closely related to other supporting health conditions such as health care rooms, the number of health workers and other supporting treatments. This is also closely related to the condition of the suitability of the housing space where prisoners/detainees spend a lot of time in that place.<sup>16</sup>

The graphic health care data does not include the number of prisoners/detainees undergoing drug addiction rehabilitation. From these data, it can be seen that the number of health workers and the number of residents receiving health care is not ideal. Although these data do not describe the distribution of health care, when compared to the number of existing UPTs, the number of health workers cannot be said to be sufficient. This is one of the factors that has not been optimally handled for the health impacts or diseases that have been or are

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<sup>16</sup> Tribatanews.sulut.polri.go.id. "100 Working Days of the Chief of Police, 1,864 Cases Resolved with Restorative Justice." Tribatanews.Sulut.Polri.Go.Id.

being suffered by prisoners/detainees. Where untreated diseases can cause death to prisoners who experience them.

Based on a letter from the Director of Health Workforce Development and Supervision of the Ministry of Health to the Human Resources Bureau of the Ministry of Law and Human Rights Number PT.01.02/F.VI/1079/2024 dated March 5, 2024 concerning Recommendations for Health Functional Position Formations within the Ministry of Law and Human Rights, the results of verification and validation of the proposed formation needs show that there are 1,373 recommendations for Health Functional Position formations within the Directorate General of Corrections.

For 2025, based on the letter from the Head of the Human Resources Bureau of the Ministry of Immigration and Corrections to the Secretary of the Directorate General of Corrections Number SEK.2-SA.01.03-597 dated April 23, 2025 concerning the Need for Health Functional Positions (JF) within the Ministry of Immigration and Corrections, a refill of the request for Health JF needs has been carried out by the correctional work unit. The results of the needs plan (renbut) have been submitted to the HR Bureau of the Ministry of Immigration and Corrections and will then become the basis for recommendations to the Ministry of Health. The death of 22 inmates of Class IIA Youth Penitentiary and Class I Adult Penitentiary in Tangerang from February to early April 2007 is an example of a reality that can be a footnote in handling health problems in Penitentiaries/Detention Centers. The overcrowded condition of Penitentiaries/Detention Centers has an impact on the poor health conditions of inmates, where the greater the number of inmates in Penitentiary/Detention Centers, the greater the likelihood that their health will be worse. The main reason is that with a large number of inmates, the sanitation and environmental support capacity will decrease and become worse, thus reducing the quality of life of inmates in Penitentiary/Detention Centers. This in turn can facilitate the spread of various diseases. Meanwhile, on the other hand, the availability of facilities and infrastructure is still minimal, resulting in Penitentiaries/Detention Centers being unable to provide adequate health services. In such conditions, inmates are vulnerable to health problems, such as very easy infection/transmission of disease, mental/psychological disorders, and psychiatric crises.<sup>17</sup>

### 3) Security and Order Issues for Officers and Inmates

This overcrowding condition encourages the formation of prison life dynamics related to the social organization of prisoners, especially the creation of groups or gangs. Symptoms of the emergence of gangs and the power of certain prisoners encourage violence in prison, either in the form of gang fights or torture and harassment. In addition, it is also common knowledge that there is a kind of feudal hierarchy in detention cells or prisons, between old and new residents. Where old residents will dominate new residents. However, the grouping of this hierarchy can also be based on the level and what crimes were committed. Such conditions reduce or eliminate the prospects for helping prisoners or convicts with their rehabilitation. Overcrowding in prison/detention center living spaces will have an impact on the culture of its residents, in addition to causing security disturbances, it will also form a pattern of life

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<sup>17</sup> Nur Soleh. "Restorative Justice in Islamic Criminal Law and Its Contribution to the Reform of Material Criminal Law in Indonesia." *Journal of Islamic Law Studies* 2, no. 2 (2015): 127.

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lived by prisoners who try to group together in one sense as people who experience deprivation of freedom, problems after problems that occur in prisons/detention centers including security disturbances, one of the causes is weak supervision and in a situation of weak supervision for a group in prison/detention centers will have an impact on the level of crime that will occur in prison.

In theory, it can be explained that overcrowding can cause a pattern of imprisonment, Sykes with the "pains of imprisonment theory" said that in essence imprisonment is formed as a response to adjustment problems that arise as a result of imprisonment itself with all forms of deprivation. Adjustment here is meant as easing the pain of deprivation. The deprivation in question is the loss of something that is usually owned by free people. Which then causes suffering including having to be crowded in prisons/detention centers as a result of overcrowding.

In essence, a new prisoner is part of a triangle, in the first corner is the organization or official representatives of the officers' norms, in the second corner stands the group of prisoners who stand to offer solutions to various problems, including overcoming the deprivation of freedom which is suffering.

If this group moves in an antagonistic direction, it will have a negative impact on the condition of the main prison/detention center for the rehabilitation program implemented by the institution. Some forms of imprisonment include theft between inmates, robbery between inmates, group fights, hazing specifically for newly admitted inmates, grouping based on region, and a code of ethics to protect each other's treatment or violations committed by fellow inmates, which of course has an impact on irregularities and patterns of guidance for inmates. On the other hand, this group will strengthen its members in recognizing criminal matters, exchanging knowledge and methods or modus operandi of a crime that will affect the inmate until they are free.

Imprisonment certainly has a negative impact, especially for casual criminals, or newcomers to the world of crime. This is reflected in the statement of Bernes and Teeters who said that prisons have grown into places of pollution that in fact are precisely what prison advocates try to avoid, because in this place accidental offenders are damaged through their experiences as chronic criminals. Even good officers have failed to eliminate the enormous evils of prison. This gives rise to mutual learning efforts among prisoners because criminal behavior is learned behavior and the best place to learn about crime is a prison/detention center in an overcrowded situation.

In addition to the security of the prisoners themselves, overcrowding also has a major impact on the safety and security of prisoners and staff, where the ratio of prisoners to staff increases, tensions can be high and prisoners become angry and frustrated with the conditions in which they are held. Experience in many countries has shown that the risk of violence, prisoner protests and other disturbances in overcrowded prisons is exacerbated. First, there are serious security risks caused by high levels of prison overcrowding. The ratio between guards and prisoners at the national level, which is 1:21, is quite low when compared to the international standard, which is 1:15. Meanwhile, in certain prisons that are overcrowded such as the East Kalimantan Regional Office, the ratio can be much more

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worrying, namely at 1:24. This figure has not been divided again by the number of shifts/rotations of officers which are usually done 2-3 times a day. If this is implemented, it is possible that this ratio will increase to 2-3 times the calculation made.

In 2016, Salemba Prison must ensure the prison conditions are safe with a guard ratio of 1:161 people. It should be noted, the worse the density level, the worse the level of guard and security. In 2014, like Banjarmasin Prison, the ratio could be much more worrying, namely at 1:450.

This situation makes prison management extremely difficult, given that the low ratio of guards to inmates can increase levels of violence (or threats of violence) and the risk of other criminal acts such as the circulation of illicit materials, fights over cigarette butts,<sup>20</sup> and the formation of gangs or informal groups of inmates.

In some prisons/detention centers that are overcrowded, inmates cannot sleep together in one cell due to lack of space. As a result, at night only blocks or part of the block can be locked, because the cells cannot be locked. This raises a major security risk both among inmates and between inmates and officers, the risk of crime in detention centers or prisons increases and the possibility of escape/running away is high.

Violence in prison can be categorized into three types, namely: individual violence (prisoners with prisoners, prisoners with guards), collective violence (riots, commotion and disturbances in prison), and violence related to regulation (due to unhealthy interactions between guards and prisoners).

Condition Extreme overcrowding of prisons or detention centers is one of the factors that causes riots to easily occur in prisons or detention centers in various regions in Indonesia. This situation makes prison management very difficult considering the low ratio of guards to inmates. In such conditions, the inability of prison personnel to stem the number of inmates who escape or create riots in prisons feels quite rational.

Overcrowding in prisons in Indonesia has a direct impact on the practice of prison commodification. In addition, there is the issue of the corrupt nature of individuals seeking profit. Overcrowding clearly results in inadequate services and facilities for inmates. Decent conditions can only occur when prisons accommodate inmates according to capacity.

How can eligibility be achieved when the overload of one UPT Cabang Rutan Bagan Siapi-api with the worst overcrowding level in Indonesia reaches 824% almost 8 times the normal condition? This overcrowding also causes the minimum standard service for prisons to decline to an increasingly worrying level. Basic services such as drinking water, food, communication, sleeping space including health will be directly impacted.

This situation forces inmates to seek alternatives to support the minimum standard of living in prison because the state has proven to have difficulty financing prison expenses to meet this minimum standard. This situation also ultimately drives support for life from outside parties, namely the families and friends of inmates. The problem is, this family support will certainly depend on the economic conditions of each, some are rich and many are poor.

Overcrowding will also lead to the growth of drug trafficking and a culture of corruption. This can be seen from several times when prisons were exposed as narcotics control rooms and prisons are the most concrete markets in terms of buying and selling narcotics. Related to corruption, this can be seen from the fact that there are still several acts of extortion or bribes given by prisoners to officers to get more comfort in prison. This situation makes prison management very difficult considering the low ratio of guards to inmates. In these conditions, the inability of prison personnel to stem the number of inmates who escape becomes quite rational. Third, the high number of prison and detention center riots that occur due to major friction between inmates, fighting over food, beds, bathrooms, and many other things.

From the description of the formulation of the problem of the situation, causes and impacts of overcrowding that occurs in prisons/detention centers in Indonesia above, the author can analyze the following using the theory that has been established by the author in the theoretical framework as in chapter I, namely the theory of effectiveness:

The theory of effectiveness in this study refers to the extent to which the correctional system in Indonesia is able to achieve its stated goals, namely the development, rehabilitation, and reintegration of prisoners into society, as well as maintaining security and order. This theory evaluates effectiveness based on input, process, output, and outcome, taking into account the organizational context and external environment.

a. Input

Inputs in the correctional system include resources such as facilities, budget, personnel, and regulations. Overcrowding indicates an imbalance in inputs, where the capacity of facilities and the number of officers are inadequate to handle the number of inmates. For example, an imbalanced ratio of officers to inmates forces officers to focus on security rather than coaching. In addition, regulations such as the Narcotics Law that focus on imprisonment rather than rehabilitation are counterproductive inputs.

b. Process

The correctional process includes coaching, health services, and security management. Overcrowding disrupts this process because limited resources cannot support optimal implementation. The process of granting rights such as remission is also hampered by bureaucracy and corruption, which reduces the effectiveness of prisoner outflow.

c. Output

The expected output is prisoners who are well-mannered, law-abiding, and ready for reintegration. However, overcrowding produces poor output, such as high rates of repeat crime, prison escapes, and riots. ICJR data recorded 26 cases of prison escapes until June 2017, indicating a failure in maintaining security.

d. Outcome

The long-term outcome is a reduction in crime and successful reintegration of prisoners. Overcrowding hinders this outcome because prisoners do not receive adequate guidance, increasing the potential for re-crime. In addition, human rights violations due to overcrowding tarnish the reputation of Indonesia's criminal justice system in the eyes of the international community.

4. Article 2

The Correctional System is organized for the following purposes:



1. provide guarantees for the protection of the rights of prisoners and children;
2. improve the quality of personality and independence of inmates so that they realize their mistakes, improve themselves, and do not repeat criminal acts, so that they can be accepted back into society, can live normally as good, law-abiding, responsible citizens, and can play an active role in development; and
3. provide protection to the community from repeating criminal acts.

5. Article 9

Prisoners have the right to:

- a. carry out worship in accordance with their religion or beliefs;
- b. receive treatment, both physical and spiritual;
- c. get education, teaching, and recreational activities potential; as well as the opportunity to develop
- d. receive adequate health services and food according to nutritional needs;
- e. obtain information services;
- f. receive legal counseling and legal assistance;
- g. submit complaints and/or grievances;
- h. obtain reading materials and follow mass media broadcasts that are not prohibited;
- i. receive humane treatment and be protected from acts of torture, exploitation, neglect, violence and all acts that endanger physical and mental health;
- j. receive guarantees of work safety, wages, or work bonus;
- k. receive social services; and
- l. accept or reject visits from family, advocates, companions and the community.

6. Article 10

In addition to the rights referred to in Article 9, prisoners who have fulfilled certain requirements without exception are also entitled to:

- a. remission;
- b. assimilation;
- c. leave to visit or be visited by family;
- d. conditional leave;
- e. leave before release;
- f. conditional release; and
- g. other rights in accordance with the provisions of laws and regulations.

7. Articles 35, 36 and 38

Article 35

(1) Guidance for prisoners is provided by the prison.

(2) The prisons referred to in paragraph (1) are established in districts/cities.

Article 36

(1) The provision of guidance for prisoners as referred to in Article 35 paragraph (1) includes:

- a. acceptance of prisoners;
- b. placement of prisoners;
- c. implementation of Prisoner Guidance;
- d. release of prisoners; and
- e. release of prisoners.

Article 38

Based on the results of Litmas, the Guidance Prisoners are:

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- a. personality development; and
- b. fostering independence.

From the description of the formulation of the problem of the effectiveness of the implementation of restorative justice in overcoming overcrowding in prisons/detention centers in Indonesia according to Law Number 22 of 2022 concerning Corrections above, the author can analyze the following using the theory that has been established by the author in the theoretical framework as in chapter I, namely the theory of restorative justice:

Restorative justice theory, as developed by scholars such as Howard Zehr and John Braithwaite, emphasizes resolving conflict through dialogue between the offender, victim, and community to achieve the restoration of social relationships and the moral responsibility of the offender. Unlike retributive justice (which focuses on punishment) or corrective justice (which focuses on individual development), restorative justice aims to:

- Restoration: Recovering the losses experienced by the victim, both material and emotional.
- Reconciliation: Encouraging peace between perpetrators and victims through mediation or discussion.
- Reintegration: Helping offenders return to society as productive individuals without stigma.
- Community Participation: Involving communities in conflict resolution processes to strengthen social cohesion.
- In the context of overcrowding, restorative justice plays a role by reducing inmate influx through out-of-court settlements and expediting discharge through mechanisms such as assimilation and parole. Its effectiveness is measured by the extent to which it can:
  - Reducing the number of prison/detention center inmates.
  - Meeting the needs of victims, perpetrators, and the community.
  - Supporting the reintegration of prisoners without increasing the risk of re-offending.<sup>18</sup>

### **3.3. Alternative Solutions and Strategies for Implementing Restorative Justice in Overcoming Overcrowding in Prisons/Detention Centers in Indonesia in the Future**

As explained, the Government has issued a policy on the Grand Design for Handling Overcrowding in State Detention Centers and Correctional Institutions. The policy appears quite complete as a 'roadmap' to handle the problem of overcrowding in Detention Centers and Correctional Institutions, namely through (i) regulatory arrangements; (ii) institutional strengthening; (iii) provision of facilities and infrastructure; and (iv) empowerment of human resources. However, the policy still needs to be completed and improved comprehensively, referring to the identification of the factors causing overcrowding in Indonesia.

#### **a. Criminal Law Reform and Criminal Justice System in Indonesia**

Handling overcrowding requires a comprehensive and simultaneous policy, requiring a new direction for the development of criminal law and the criminal justice system in Indonesia.

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<sup>18</sup> Yanto Sufriadi. "Implementation of Progressive Law in Law Enforcement in the Midst of Democracy Crisis." *Journal of Law, Faculty of Law, Hazairin University* 17, no. 2 (April 17, 2010): 233–248.

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Changes in the orientation of criminal law in Indonesia must be directed to address various problems of criminal law enforcement and ensure the protection of human rights. Various efforts to handle overcrowding will be maximally successful if there is a change in the orientation of criminal law in Indonesia.

For example, decriminalization of drug users can be one way to overcome overcrowding in Indonesia. Based on the Correctional System Database as of December 2017, 35% or around 34,448 special prison inmates are drug convicts. If drug users were rehabilitated instead of sentenced to prison, Indonesia could reduce the prison population by around 14%.

In addition, law enforcement officers must also begin to understand the criminal acts that can be subject to non-prison sentences if the RKUHP is later ratified. There are 5 types of principal crimes in the RKUHP as stated in article 71 of RKUHP203, namely:

- a. Imprisonment,
- b. Cover-up criminal penalties,
- c. Criminal supervision,
- d. Criminal fines,
- e. Community service penalties.

So, later if there is a criminal act that carries a criminal threat of less than 5 years, the perpetrators can be subject to non-prison principal punishments such as supervision or social work.

There are 294 types of criminal acts in the RKUHP that can be subject to supervisory punishment, such as the crime of theft (Article 550 of the RKUHP), the crime of unfair competition (Article 580 of the RKUHP), the crime of fraud (Article 567 of the RKUHP), the crime of assault (534 paragraph 1).

In the draft of the Criminal Procedure Code, no new alternatives to detention are recognized. 203 Similar to the reform of pretrial detention arrangements in Latin America that emphasize the involvement of judges in pretrial detention (by giving detention authority to judges or through pretrial detention hearings), the draft Criminal Procedure Code introduces a Preliminary Examining Judge (HPP) who can examine the legality of detention carried out by law enforcement. However, the concept of HPP is different, for example from the pretrial detention hearing or custody hearing in Brazil, the draft Criminal Procedure Code does not state that law enforcement officers must bring all arrested or detained persons before the HPP without delay. Since there is no such requirement, a person may be detained for a certain period without being given consideration on the issue of the legality of their detention.

In addition, in the pretrial detention hearing the suspect is presented together with the legal counsel and the public prosecutor in front of the judge, before the judge can decide on the legality of his detention, there is no such provision in the Draft Criminal Procedure Code. As a result, the HPP can make a detention decision based on the information in the BAP. If the suspect expects to be heard, then he must submit his own application to the HPP.

Third, an important reform to be carried out is to reaffirm the function of correctional institutions as a form of guidance for prisoners. The existing correctional system provides space for the guidance process both inside and outside the prison, one of the goals of guidance carried out outside the prison is to prepare a prisoner to be able to adapt to society after he is truly free. In this context, there needs to be strengthening of regulations to maximize the orientation of guidance for correctional inmates, for example by amending Law 12 of 1999 concerning Corrections.

The three aspects of changes in criminal law and the criminal justice system above need to be accompanied by the development of various alternative punishments other than prison. That the settlement of criminal cases needs to be developed to ensure that criminal law is not solely oriented towards retaliation (retributive justice) but also other models of approaches such as the restorative justice approach. The use of restorative justice has been practiced on a limited basis for crimes committed by children and for drug users, but needs to be expanded to be applied to various other crimes.

#### **b. Making Non-Prison Sentencing Policies Effective**

In practice, various non-prison sentencing policies have been taken that need to be improved in their effectiveness. The restorative justice approach based on Law No. 11 of 2012 concerning the Juvenile Criminal Justice System has enabled the process of resolving criminal cases committed by children to be carried out outside the court or children to avoid imprisonment. However, this mechanism needs to be developed so that it truly achieves the goal of using the restorative justice mechanism or maximizes the use of diversion.

Referring to the Grand Design for Handling Overcrowded in State Prisons and Correctional Institutions, the strategy for handling overcrowding also includes limiting the placement of people in prisons by intensifying non-prison criminal sanctions as stated in Article 10 of the Criminal Code. Where there are 3 types of non-prison sanctions, namely: imprisonment, detention and fines. Imprisonment is regulated in Articles 18-29 of the Criminal Code. Fines are regulated in Article 30 of the Criminal Code. While detention is not regulated further apart from Article 10 of the Criminal Code.

In addition, the Criminal Code recognizes conditional punishment or what is commonly known as probation. This probation is regulated in article 14a. Probation is that if a person is sentenced to a maximum of one year in prison or detention, the judge can determine that the sentence is not carried out. Unless, then determined otherwise by the judge, such as if the convict during the probation period commits another crime or does not meet certain requirements, for example not paying compensation to the victim within a certain time.

In its development, several laws also focus more on non-prison/criminal sanctions, but on administrative sanctions. Administrative sanctions are sanctions imposed for violations of administration or provisions of laws that are administrative in nature. Administrative sanctions can be in the form of written warnings, fines, restrictions or freezing of activities, revocation of permits, cancellation of approvals, and cancellation of registration, etc. For

example, Law Number 8 of 1999 concerning Consumer Protection or Law Number 32 of 2009 concerning Environmental Protection and Management.

#### c. Fulfillment of Prisoners' Rights and Effective Development Functions

In addition to implementing the policy of resolving criminal cases outside the courts, the effectiveness of the prisoner guidance mechanism is carried out with the aim of providing their rights (for example, parole, leave before release and remission) in order to accelerate the release of prisoners to reduce overcrowding.

Likewise with Government Regulation Number 99 of 2012 which is the second amendment to Government Regulation Number 32 of 1999 concerning the Requirements and Procedures for the Implementation of the Rights of Correctional Inmates. This regulation creates a strict mechanism for the requirements for granting remission, assimilation and conditional release rights to narcotics case convicts, namely the existence of additional requirements that are required for narcotics / narcotics precursor / psychotropic crimes (with a minimum sentence of 5 [five] years and above).

In fact, prisoners or convicts in these cases are the largest contributors to the prison/detention center population, at least almost 50% (percent) of inmates in correctional institutions (prisons) and detention centers (detention centers) come from drug cases.

#### c. Redistribution of Prisoners

That one of the easiest ways to deal with overcrowding is to build detention centers and prisons according to needs. Although this strategy can be done, the policy is short-term and will not solve the problem of overcrowding to its roots. This happens because the overcrowding control system that is built is partial while the number of prisoners and convicts is always increasing.

The large amount of funds needed to build state detention centers and correctional institutions and the limited state budget available are considerations that there must be other alternatives that can be carried out by the Directorate General of Corrections in order to overcome the overcrowded conditions in state detention centers and correctional institutions at this time. Considering the average allocation of funds needed for one prison with a capacity of 2000 people, an average budget of Rp300,000,000,000 (three hundred billion rupiah) is needed.<sup>19</sup>

## 4. Conclusion

First, the detention centers/prisons in Indonesia are in a worrying situation because they are categorized as extreme overcrowding. The overcrowding situation in detention centers and prisons in Indonesia as of December 2017 reached 188%. Second, the density of prisons experiencing extreme overcrowding tends to have a pattern that is generally caused by many

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<sup>19</sup> Cahyo, Antoni Muhamad Nur, and Achmad Sulchan. "Coaching Process Of Prisoners In Correctional Institution Class I Kedungpane Semarang Viewed From Act No 12 Of 1995 On Concerning The Correctional Institution." *Jurnal Daulat Hukum* 3, no. 1 (April 10, 2020): 1.



interrelated factors. These causal factors include Indonesian criminal policy which is still oriented towards imprisonment, excessive punishment for minor crimes, excessive pre-trial detention, administrative procedures, assimilation and reintegration that are not optimized, institutional problems, human resources, and infrastructure from the Directorate General of Corrections to the Correctional UPT are also driving factors for overcrowding in detention centers/prisons. Third, the overcrowding situation has an impact on the emergence of human rights, security and health issues for its residents. In addition, the overcrowding situation also has an impact on the families of the suspects/convicts, the community and the State. Fourth, referring to the overcrowding situation, the causal factors of the overcrowding problem and its impact in Indonesia, a comprehensive and multi-party strategy and steps to handle overcrowding in Indonesia are carried out with the following efforts: Changes in orientation/reform of criminal law policy and the criminal justice system, Making the implementation of various existing regulations that provide space for non-imprisonment sanctions or punishments more effective; Maximizing the fulfillment of prisoners' rights and making the development function more effective; Redistribution of prisoners; Strengthening institutions, human resources and strengthening facilities and infrastructure at UPT and Ditjenpas.

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