

A New Paradigm of Corrections: Open Prisons and the Aims of Punishment Under the New Indonesian Criminal Code

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ABSTRACT: Overcrowding in Indonesian correctional institutions is a chronic problem that has serious impacts on the effectiveness of prisoner development and human rights protection. This article aims to analyze overcrowding in relation to the implementation of the Open Correctional Institution (open prison) system and its relevance to the objectives of punishment as regulated in the new Criminal Code, namely Law Number 1 of 2023. This study uses a normative legal method with a statutory and conceptual approach. The results of the study indicate that the implementation of punishment through open prisons is in line with the spirit of criminal law reform which emphasizes rehabilitative and restorative punishment. Open prisons are not only an alternative solution to the overcrowding crisis, but also a strategic means to realize the objectives of punishment in the new Criminal Code, including empowering perpetrators, resolving conflicts, and social reintegration. Therefore, it is necessary to strengthen regulations, resources, and change the paradigm in law enforcement so that the open correctional system can be implemented optimally and sustainably in the Indonesian legal system.

KEYWORDS: Overcrowding, open prison, new criminal code, correctional system, the aims of punishment

I. INTRODUCTION

Investigation The phenomenon of overcrowding is a long-standing problem in the Indonesian penal system that has yet to be resolved. Data published up to early May 2025 by the Directorate General of Corrections of the Ministry of Law and Human Rights recorded a total of 192,056 inmates in Correctional Institutions (Lapas) while the capacity of the prison is 100,021 inmates. The data is spread across various prisons in Indonesia. One example of the largest overcrowding occurred in North Sumatra Province, based on published data there were 32,284 inmates in a prison with a capacity of only 14,755. This condition can have a serious impact on basic facilities for prisoners, namely related to health services for prisoners, sanitation, nutritious food and guidance for prisoners. This overcrowding also tends to place a heavy burden of supervision on prison officers. This situation not only causes various technical and social problems in the prison, but also hinders the achievement of the main objectives of the prisoner development process (Nethan dkk. 2023).

The main cause of overcrowding is the dominant retributive approach in the criminal justice system that has been regulated in the Criminal Code (KUHP WvS). In this approach, retaliation and deterrence are the most important things, where society assumes that people who have committed a crime must be punished. So far, imprisonment is the type of criminal sanction that is most often stipulated in criminal legislation so far. More than 90 percent of criminal acts contained in legislation are threatened with imprisonment, and the formulation system is imperative. The formulation of criminal sanctions like this is a conducive factor (driver) for judges to impose imprisonment on perpetrators of crimes, the figure reaching 85 percent of the total sentences imposed (Luthan 1995).

The retributive approach in the WvS Criminal Code is also reinforced by the absence of the purpose of the punishment itself. The criminal justice system in Indonesia has so far adhered to the principle of formal legality that is oriented towards actions and legal certainty. This legal certainty has resulted in judges only thinking positively and only looking at the fulfillment of the elements of the crime. This seems to be inconsistent with the objectives of Law Number 22 of 2022 concerning Corrections (Corrections Law), where corrections are organized for the purpose of providing protection for prisoners and children, improving the quality of personality and independence of inmates so that they can realize their mistakes and not repeat them and can live normally again in society. Corrections themselves are part of the integrated criminal justice system organized by the government as part of the law enforcement process in the context of services, as well as coaching and guidance in the context of social reintegration.

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Social reintegration is defined as the process of forming new norms or values as a form of adjustment to institutions or organizations that have undergone changes. Reintegration can also be interpreted as an effort to build social trust or form new norms that aim to improve several things as the main causes of conflict in the community (Wulandari 2023). Social reintegration is very important, because in social reintegration, prisoners have the right to have their position restored in society through the coaching process carried out by the prison. One strategic approach to support social reintegration and overcome overcrowding is to optimize and develop Open Correctional Institutions (Open Prisons).

Open prisons are a form of correctional institution with minimal supervision of prisoners. Open prisons are intended for low-risk prisoners and prisoners who have met certain criteria to be fostered in a more productive system and closer to social reintegration. Prisoners are encouraged to be more active in social activities to prepare them to return to society. The transfer of prisoners from Closed Prisons to Open Prisons can reduce overcrowding that occurs in Closed Prisons. Although this Open Prison was first formed in Nusakamabangan in 1970, currently there are only 7 Open Prisons.

On the other hand, the renewal of criminal law in Indonesia has occurred, marked by the formation of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code). In this New Criminal Code, there has been a change in the paradigm of punishment that is more directed towards rehabilitation and in line with the Corrections Law. This renewal opens space for a more progressive approach, including in the application of the principle of restorative justice and there are several alternative sentences that can be imposed by judges. Thus, it is important to examine how the formation of open prisons is related to the renewal of criminal law to overcome overcrowding in prisons in Indonesia.

II. METHODS

This research is a type of doctrinal legal research. Doctrinal research is research that provides a systematic explanation of the rules governing a particular legal category, analyzes the relationship between regulations, explains areas of difficulty, and may predict future development (Marzuki 2007). Therefore, the approach in this research is carried out by examining the legal provisions governing the correctional system in relation to the new criminal law to overcome overcrowding.

The approaches used are the conceptual approach and the comparative approach. The conceptual approach starts from the views and doctrines that develop in legal science. This comparative approach is carried out by comparing the laws of a country with the laws of one or more other countries regarding the same thing. There are two sources of legal research used, namely primary legal materials consisting of laws and regulations, secondary in the form of writings on law, both books and journals (Marzuki 2007).

III. RESULTS AND DISCUSSION

A. Overcrowding in the Correctional System and the Urgency of Reform

The correctional system is a system regarding the direction, boundaries and methods of implementing the correctional function in an integrated manner. The correctional system is organized in order to provide protection guarantees for the rights of Prisoners and Children and to 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 by the community, can live normally as good citizens, obey the law, are responsible, and can actively play a role in development and at the same time provide protection to the community from repeating criminal acts ("Undang Undang Nomor 22 Tahun 2022 Tentang Pemasyarakatan," t.t.). This correctional system is organized by the Ministry/institution, one of which is the Prison. So far, in carrying out its role and function, the Prison has experienced an obstacle which has become a chronic problem that has not been resolved until now, namely, overcrowding.

The number of prisoners occupying prisons is inversely proportional to the capacity of the available prisons. From the data of the Correctional Database System (SDP Publik), the density in prisons on average in Indonesia has reached 2 times the capacity of existing prisons. This causes conditions that are not comparable between community officers and prison inmates, causing various problems to arise, such as suboptimal development programs, problems in the quality of service, human rights violations and the potential for security disturbances. Conditions in detention centers and correctional institutions that are crowded or are facing overcrowding cases will certainly have a negative impact on all aspects, especially those related to the standard of living of prisoners. The low capacity of detention centers and correctional institutions to meet the minimum standard of living for prisoners will lead to the low capability of detention centers and correctional institutions to fulfill the basic rights of prisoners such as the right to get decent food, the right to get a decent and comfortable place to rest, the right to get training and fair assimilation opportunities. As we know, the impact of overcrowding makes the management of detention centers and correctional institutions in Indonesia very expensive and the results of the coaching carried out are far from optimal. Many cases were found where the wardens felt overwhelmed in organizing or managing prisoners in detention centers and correctional institutions because the ratio of wardens to prisoners was very unbalanced (Hamja 2022).

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The impact of overcrowding causes prisons to have difficulty in fulfilling basic rights for prisoners, so that it is not significant enough in providing maximum improvement impacts on prisoners. Prisoners will tend to lose self-confidence and feel less protected by the state, as a result prisoners will tend to feel abandoned or alienated so that it will be difficult for them to follow the coaching and rehabilitation program in prison. This will also make it difficult for prisoners to grow feelings internally to foster an attitude of responsibility and regret for the criminal acts that have been committed so that the process of reintegration into society becomes something that is difficult to achieve.

Overcrowding also has a significant impact on the internal situation in correctional institutions. The minimal space for prisoners to move around in correctional institutions is one of the main factors causing damage and unhealthy physical and mental conditions of prisoners (Farrington dan Nuttall 1980). It is not uncommon for prisoners and convicts who inhabit a few detention centers and correctional institutions to express their dissatisfaction. However, it turns out that the complaints of these prisoners and convicts have not been accommodated or even in some extreme cases, ignored at all. The stigma that prisoners and convicts as perpetrators of crimes do not deserve to be treated as human beings has also been unconsciously rooted in the minds of managers of detention centers and correctional institutions in Indonesia (Hamja 2022).

The consequences of overcrowding make the correctional function regulated in Article 4 of the Correctional Law, namely the function of service, guidance, community guidance, care, security, and observation not optimally implemented, thus affecting the correctional goals to be achieved. On the other hand, in carrying out its function, the Prison must also pay attention to the rights of prisoners that must be fulfilled.

If we look objectively at the cause of overcrowding in prisons, it is not solely triggered by the lack of prison buildings or the increasing trend of crime, but rather because of errors in the substance of criminal law. In the correctional system, which is part of the substance of the criminal justice system, it is likened to a form of final disposal site. For example, prisons cannot reject perpetrators who have been sentenced by the court to be placed in Prison A. Basically, prisons are the ones affected by the execution carried out by law enforcement, and prisons are the ones that have never been involved in judicial policies. So that prisons cannot intervene in the criminal justice system from the start and added to the habit of law enforcement in imposing prison sentences because they assume that criminal law is a suitable space as a form of revenge for the perpetrator's actions (Saputra dan Isnawati 2022). The Indonesian criminal law system adheres to the classical criminal school which prioritizes the principle of retributive. The WvS Criminal Code which is still in effect today prioritizes punishment in the form of imprisonment. According to data collected by the BPHN team, imprisonment in the Criminal Code was used as a criminal threat 485 times with the following details: a) the position of the prison sentence as the main punishment, as an alternative or as a temporary punishment or as a substitute punishment, b) imprisonment with a calculation of years as the main criminal threat was used 274 times, c) imprisonment with a calculation of years or life was used 292 times, d) imprisonment was threatened as an alternative criminal threat from other criminal threats used 26 times (BPHN 2008).

This paradigm not only limits the space for innovation in the provision of alternative sanctions, but also fails to adapt to a more humanistic and functional contemporary criminalization approach. So it is important to address overcrowding which has become a chronic problem in Indonesia so that Corrections can carry out its functions optimally and the objectives of the Corrections Law can be achieved.

B. Open Prisons and Their Relevance to the Purpose of Punishment in the New Criminal Code

Open prisons in English are known as halfway houses or residential centers. According to Louis P. Carney, a residential center is a facility established to facilitate prisoners or lawbreakers approaching their release date or approaching probation (conditional sentence) or parole (conditional release) (Carney 1980). In Indonesia, this Open Prison was officially established based on the Decree of the Minister of Justice Number: M.03.PR.07.03. Year 2003 dated April 16, 2003 concerning the Establishment of Open Penitentiary Institutions in Pasaman, Jakarta, Kendal, Nusakambangan, Mataram, and Waikabubak. Where each prison in running the development program is adjusted to the needs and regional potential to maximize the social reintegration of inmates and provide a good impact on the surrounding community.

This open prison has the task and responsibility as a further development institution which is part of the criminal justice subsystem. In its basic concept, the Open Prison aims to provide further development for prisoners who have gone through the initial development process in conventional prisons and are deemed worthy of serving their sentences in a more open and productive environment (Pemasyarakatan 2021). Open prisons have minimal supervision, in contrast to closed prisons which have strict supervision of prisoners. This is regulated in Article 1 of Government Regulation Number 32 of 1999 concerning the Requirements and Procedures for the Implementation of the Rights of Correctional Inmates, which explains that Open Prisons are Correctional Institutions where prisoners and correctional students are trained in an open state without being surrounded or fenced by walls. The conditions of this open prison were created to facilitate prisoners in terms of developing practical skills and preparing

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prisoners to return to society through social interaction both psychologically and emotionally after serving their sentence. On the other hand, the community is also gradually introduced to prisoners who are undergoing a transition period, so that the reintegration process is not too surprising or full of rejection. In this way, the Open Prison approach not only prepares individual prisoners, but also prepares the social ecosystem that they will enter after release (Athallah dan Subroto 2022).

The mechanism for placing inmates in open prisons is carried out through a strict selection process (Sulhin 2016). Regulation of the Minister of Law and Human Rights Number 35 of 2018 concerning Revitalization of Correctional Services stipulates that inmate development is carried out through risk and needs assessments, which include disciplinary evaluations, participation in development activities such as skills training or education, and remaining sentences which are generally less than one to two years. Inmates who are considered low risk, based on psychological evaluations, interviews, and behavioral history analysis during their sentence, can be placed in an open correctional environment to support social reintegration. Government Regulation Number 32 of 1999 concerning the Requirements and Procedures for the Implementation of the Rights of Inmates, as amended by Government Regulation Number 28 of 2006 and Government Regulation Number 99 of 2012, also stipulates the requirements for good behaviour and low risk for granting conditional rights such as assimilation or parole, which are often implemented in the Open Prison program. This legal framework ensures that the selection of inmates is carried out in a professional and structured manner, ensuring that only psychologically and socially ready individuals are placed in these facilities.

Open prisons are not intended for every perpetrator of a crime considering the scale of crimes that disrupt public order and threaten the stability of the state receive special attention in the realization of human rights as inmates (Bangun 2022). Inmates who commit crimes that are dangerous to the interests of society are placed in closed prisons with maximum security.

The coaching pattern carried out in the program is independence coaching and personality coaching. Supervision in the implementation of coaching in open prisons emphasizes a family approach to eliminate the gap between inmates and officers. The supervision and coaching pattern are oriented towards the active role of the community which is naturally able to foster the confidence of prisoners to return to being active in society as citizens who can change to obey the law. However, the effectiveness of open prisons is still not optimal. The occupancy rate of open prisons is not in accordance with the targeted capacity considering that not all prisoners are entitled to assimilation and are placed in open prisons (Bangun 2022). In addition, there is no explicit regulation regarding this open prison as part of the criminal enforcement system, making this open prison unable to be used optimally. In its implementation, this open prison still depends on technical regulations and the availability of resources, although the Corrections Law has opened opportunities for the implementation of coaching outside of closed prisons. The stigma from the community also has quite an influence on the implementation of this open prison, because it is considered a form of leniency towards the implementation of criminal punishment, and it is "not enough punishment" for convicts.

From the perspective of criminal law reform itself, the implementation of punishment through open prisons is a concrete form of the principle of individualization of punishment. The main idea of individualization of punishment does not only mean that the punishment to be imposed must be oriented towards individual considerations but must be able to be modified or changed and adjusted to changes and developments in the prisoners concerned. In the reform of criminal law, the New Criminal Code has been ratified in which the purpose of punishment has changed from initially prioritizing retributive to restorative. This regulation can be seen from the inclusion of the purpose of punishment in Article 51 of the New Criminal Code, which stipulates that the purpose of punishment includes 1) preventing crime through law enforcement, 2) providing guidance to prisoners to become good people, 3) resolving conflicts and restoring balance in society, 4) fostering a sense of regret and freeing perpetrators from guilt. The purpose of this punishment is like the purpose in Article 2 of the Corrections Law.

In addition, Article 3 of the New Criminal Code also states that the punishment is not intended to degrade human dignity which is also in accordance with Article 3 letter g of the Correctional Law where correctional is carried out based on the principle of loss of freedom as the only suffering, namely the state may not make the condition of prisoners worse than before they were deprived of their freedom, because when someone is serving a sentence in the prison, at the time of loss of freedom, the prison must fill it in the form of guidance that can improve and increase the quality of prisoners as members of society.

The basis for formulating the objectives of the criminalization is based on the idea that criminal punishment is essentially only a tool to achieve goals. The identification of the objectives of the criminalization is based on the balance of two main targets, namely "protection of society" including victims of crime and "protection/development of individual perpetrators of criminal acts" ("Draft Naskah Akademik Rancangan Undang-Undang Tentang Kitab Undang-Undang Hukum Pidana (KUHP)," t.t.).

The nature of the purpose of punishment and the meaning of punishment is very important to justify the application of types of punishment and actions (strafsoort) in a criminal code. This will be more appreciated if we pay attention to the opinion of H.L. Packer who stated that: "Punishment is a necessary but lamentable form of social control. It is lamentable because it inflicts suffering in the name of goals whose achievement is a matter of chance" (Packer 1968).

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Judging from the suitability between the objectives of punishment in the New Criminal Code and the Correctional Law, this open prison is considered capable of implementing a correctional program that can cover the objectives of punishment. First, open prisons can encourage prisoners to reform their behaviour through more productive activities and learning to control themselves, so that with this awareness-based guidance it is considered to have a stronger impact on prisoners and can prevent the recurrence of crimes (recidivists). Second, with the process of placing prisoners in open prisons which in its determination goes through a strict process, this shows that prisoners placed in open prisons will not endanger the surrounding community. This is also considered to be able to create prisoners who are ready to return to society. Third, prisoners in this open prison are allowed to be involved in social service programs as a form of moral responsibility to society, so that balance in society is recreated. Fourth, the guidance carried out in open prisons can foster a sense of regret and free the perpetrator from guilt, because this system contains the perception that punishment is not merely a punishment, but rather leads to guidance and selection. This is important in relation to building public trust in a more humane criminal law system that prioritizes justice rather than just legal certainty. The New Criminal Code mandates in Article 53 that if there is a conflict between legal certainty and justice, the judge must prioritize justice.

The paradigm shift of punishment in the New Criminal Code is considered very important for the implementation of correctional institutions in the future, because in addition to being in effect in 2026, this Criminal Code will also be the basis for judges to impose punishments later which do not always have to be in the form of imprisonment. Judges must consider the achievement of the purpose of punishment for the punishment imposed, if the lighter punishment imposed can already fulfill the purpose of the punishment, so that this is expected to reduce the overcrowding that occurs.

IV. CONCLUSION

Overcrowding in Indonesian prisons has long been an unresolved problem that threatens the functioning of the correctional system. Structural failure in the implementation of criminal penalties that focus too much on the principle of retribution that leads to imprisonment is the biggest cause of overcrowding. Conditions like this cause the correctional system to not function properly, such as in terms of coaching for prisoners, which is expected to change prisoners into better individuals when they have finished serving their sentences and are ready to mix in society again. In addition, it is contrary to the principles of justice and protection of prisoners' rights as stated in the Correctional Law or national and international legal instruments.

The new paradigm in the New Criminal Code which prioritizes the purpose of punishment is more oriented towards restorative and rehabilitative, showing something that is in line with the goals to be achieved by the correctional system as stated in the Correctional Law. To realize the goals of punishment, a form of criminal implementation should be needed that can support these goals, one of which is through strengthening the Open Prison system. The model of criminal implementation in this open prison is more based on skills training as well as involvement in the community, so that it can support the process of social reintegration for prisoners. However, even so, the implementation of this open prison has not been optimal because it faces regulatory, cultural, and technical challenges. Therefore, strengthening the strengthening of this open prison system must be carried out so that later there will be more open prisons in Indonesia so that it can reduce overcrowding that occurs in closed prisons and can provide a maximum coaching process for prisoners who will then rejoin society.

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