



## Conditional Release Policy to Resolve Overcapacity in Correctional Institution

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*As a place to rehabilitate convicts, correctional institutions foster convicts to become better person with a good character, independence, skill, discipline and awareness of the law. This is in accordance with the function of the correctional system which is a system of treatment of convicts, which follows the renewal of prison sentences based on Pancasila and the principles of humanity. The problem is, currently the majority of correctional institutions in Indonesia have over capacity problems. This over capacity has the potential to become various problems. An example is the monitoring and rehabilitation of convicts that doesn't work properly, and even spends a lot of budget on operational costs. The problem of overcapacity which certainly has an impact on various aspects of life in prisons or detention centers which tends to be dysfunctional towards the achievement of correctional goals. The conditional release policy for convicts who prioritizes the principles of rehabilitating can be used as a solution in solving various problems and accommodating legal needs in society.*

### 1. Introduction

Humans are social beings who need other people in their lives, sometimes even by violating the law they always try to fulfill their needs. As a result, they have to serve their sentence in a penitentiary. The treatment system for perpetrators in Indonesia has moved from the prison system to the correctional system, from arrest in correctional institutions, imprisonment, and further treatment to return to society.

The Republic of Indonesia has the intention of being a rule of law state with a democratic system based on Pancasila and the 1945 Constitution, continuing to uphold human rights, and being able to guarantee all citizens and residents in the law and system of government and which is implemented without exception. as well as what is implemented in Correctional Institutions in which there are lawbreakers who are treated

equally and do not discriminate between others. lawbreakers must be seen from the point of view of the subject and not as legal objects.

The concept of correctional itself has the ultimate goal of returning convicts to society intact and eliminating the stigma attached to them as lawbreakers. The modernization of the prison system has become a correctional concept with the aim of providing provisions for convicts before returning to society (Panjaitan & Simorangkir, 1995). The change from the concept of retaliation to rehabilitation was based on the change in prison institutions to correctional institutions in 1964 (Hamzah, 1993). The concept of correctional is based on treatment, rehabilitation, correction which aims to return prisoners back to normal life in carrying out their lives in society (Lamintang & Lamintang, 1984).

However, that goal can't be achieved if you see that the majority of correctional institutions in Indonesia are currently experiencing over capacity. In the implementation of prison sentences, prison overcapacity is a serious problem, because it can have an impact on the failure of coaching prisoners. Even though this is the main instrument in realizing the goals of penitentiary and at the same time the goals of criminal justice, namely in the short term it carries out the mission of resocializing convicts (Muladi, 1995).

Previous research has shown that prison overcapacity can also result in prisonization (prisonization), which is negative in nature such as extortion between inmates, cell theft, hazing of new convicts, homosexuality and a code of ethics to protect fellow inmates (Angkasa, 2010). Maxsasai Indra said that prison overcapacity had an impact on the weak fulfillment of convicts' rights and security (Indra, 2016). According to Riyan Firmansyah, et al. Factors that are very influential in fulfilling the rights of convicts to health and food services in correctional institution include over-capacity that occurs in correctional institution (Firmansyah, Rani, & Adwani, 2019).

Bambang Ludiro as Head of Development, Guidance, and Information Technology of Ministry of Law and Human Rights Lampung Region stated that currently the majority of correctional institutions in Indonesia are experiencing over capacity or the accumulation of inmates. The capacity of the inmates that can be accommodated by the penitentiary currently amounts to 125,000 inmates, while the fact that is happening on the ground is that currently the inmates in prisons number 270,000.

Overcapacity will certainly complicate supervision, care for correctional institutions, up to the rapid evacuation process in the event of a disaster such as a fire. In addition, leaving prisons in bad conditions is in essence a violation of human rights. The problem of overcapacity of prisons coupled

with the lack of facilities can cause psychological pressures for prisoners which in turn can endanger the level of security in the prison itself. All of this happened because the penal system was not integrated and there was no goal to be achieved from the penal system in Indonesia. The imposition of sanctions that merely impose prison sentences is deemed irrelevant and ineffective. To overcome the problem of overcapacity in prisons today can be done in various ways. Such as prioritizing restorative justice in solving problems, providing alternative punishments that are not merely imposing prison sanctions on perpetrators of minor crimes. It can also be given conditional release to convicts who have fulfilled the requirements set out in the law.

The problem of overcapacity that exists in many correctional institutions, will potentially result in the process of coaching convicts not working and weakening the performance of correctional institutions that are not in accordance with the goals to be achieved by correctional institutions regulated in Law Number 22 Year 2022 concerning Corrections.

One way to solve the problem of overcapacity in correctional institutions is to grant convicts the right to conditional release. The granting of conditional release rights to convicts is regulated in Law Number 22 Year 2022. Based on Article 10 Section (1) of Law Number 22 Year 2022, convicts who have met certain requirements are without exception entitled to the right to conditional release. Then the conditions for obtaining the right to conditional release are regulated in Article 10 Section (3), for convicts who will be given leave prior to release or parole as referred to in paragraph (1) letter e and letter f must also have served a criminal period of at least  $\frac{2}{3}$  provided that  $\frac{2}{3}$  of the criminal term is at least 9 months.

Conditional release policy is a rehabilitate convicts outside the correctional institution to integrate with their families and communities. Law Number 22 Year 2022 does not specifically regulate the mechanism for granting conditional release rights, but there are important points that distinguish this law from previous correctional laws. Further provisions regarding parole are regulated in.

Conditional release for convicts is fully in the midst of family and society with the aim of providing opportunities for convicts to learn to get along with families and communities with whom they have had disconnected while in prison. The purpose of parole is to make it easier for convicts to return to society (resocialization), as well as to encourage convicts to behave well during their sentence in correctional institution (Ramadhani & Subroto, 2022).

## **2. Method**

The problem approach used in this study is by means of a normative juridical approach. Normative juridical approach is research conducted by studying library materials in the form of literature and laws and regulations related to the issues to be discussed. To complete the data for testing this research, data collection procedures were used consisting of Library Research. The discussion in the article aims to answer the formulation of the problem and research questions, show how the findings were obtained, explain the meaning of the research results, how the research results can solve problems and the possibilities for their development.

## **3. Analysis and Results**

### **3.1. Overcapacity in Correctional Institution**

The Indonesian penitentiary system has experienced a shift in the function of punishment which is no longer just a deterrent, but also an effort to socially rehabilitate and reintegrate convicts. Corrections are directed at returning convicts as good citizens while at the same time protecting society against the possibility of repeating criminal acts by convicts, and is an application and an integral part of the values contained in Pancasila.

Over the time, implementation of penitentiary has grown considerably. Corrections whose scope of role was originally limited to the adjudication phase has now expanded to the pre-adjudication and post-adjudication phases. However, recently penitentiaries have also come under the public scrutiny, due to overcapacity, many cases of escaped convicts, shootings that have resulted in the death of several inmates, riots and rampant drug trafficking in the penitentiaries. It is also felt that the implementation of correctional facilities does not provide guarantees of legal certainty for efforts to protect and fulfill the rights of prisoners in vulnerable groups. This indicates that there are problems in correctional governance, including not yet optimal capacity, facilities and infrastructure, correctional officers and the weak intelligence function.

Every convict has the right to get integration services, one of which is the provision of parole as stated in Law Number 22 Year 2022. Conditional release is a process of fostering convicts by integrating or blending inmates and correctional students in accordance with existing requirements and has been determined so that convicts can interact directly, adapt to the new environment and restore human values that exist in convicts. so that the community can receive it back after carrying out their sentence. In support of Law Number 22 Year 2022, the

Government has issued Regulation of Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 7 Year 2022.

Over capacity of correctional institutions is a complex problem. In an effort to overcome these problems, first understand the various factors that cause these problems. Mathematically, prison overcapacity occurs because the growth rate of penitentiary residents is not proportional to the growth rate of penitentiary institutions. So that the capacity is smaller than the number of prisoners that must be accommodated. However, this is inseparable from the criminal law policies stipulated by the state in the field of material criminal law, formal criminal law and criminal law enforcement.

Based on this concept, the fact is that in criminal law policy in Indonesia, it shows that there is an excess in the formulation of criminal acts (over-criminalization) and an excess in the use of criminal sanctions (over-use) of prisons. This can be seen from the formulation of criminal law in the Criminal Code as well as the development of criminal law outside the Criminal Code. In Book II of the Criminal Code, this advantage can be seen from:

- a) the use of the death penalty 10 times;
- b) Imprisonment of 485 times;
- c) Imprisonment for 37 times;
- d) A fine of 123 times (Mudzakir, 2008).

Sarwono said that overcrowding in penitentiaries causes various health problems such as respiratory problems, abnormal physical development, psychologically causing a person to experience mental stress which interferes with the development of his personality. Thus, the conditions of the inmates experience a lot of disturbances both physically, socially and psychologically in a correctional environment which can be said to be completely limited (Rizaldi, 2020).

The addition of prison inmates creates conditions of overcapacity which are not matched by the addition of acceptable facilities and infrastructure. The condition of over capacity is not in accordance with international regulations that have been ratified by Indonesia, namely the standard minimum rules (SMR). One of the articles in the SMR states that convicts are placed in cells that can provide space for movement when they sleep. In addition to over-capacity conditions, correctional institutions experience problems in providing guidance to inmates. This situation causes a large potential for conflict so that officers will seek a security approach rather than coaching or rehabilitation for convicts (Widayati, 2016).

**Table 1.** Correctional Institution in Indonesia 2022

Status	Amount
Convicts	276.172
Capacity	132.107
Overcapacity	144.065

Source: Directorate General of Corrections, Ministry of Law and Human Rights

There are 262,559 male penitentiary residents and 13,615 are female. Based on age group, 2,579 people were in the children group, 269,175 people were in the adult age group, and 4,418 people were in the elderly group. Meanwhile, according to the type of crime, there were 139,839 people in correctional institutions who were perpetrators of drug-related crimes. In detail, there are 125,288 people who are drug users and there are 14,551 people who are dealers, dealers, collectors, and drug producers. The number of drug offenders dominates the prison population. The portion reaches 50% of the total penitentiary residents (Katadata, 2022).

Based on the table above it can be seen that currently prisons in Indonesia are experiencing a state of overcapacity, where the number of inmates exceeds the capacity of the correctional institutions that have been provided. It can be seen that the current capacity of the penitentiary can only accommodate 132,107 people. While the number of convicts and detainees is currently 132,107 people. This means that the number of overcapacity in correctional institutions currently amounts to 144,065 people. If put into percentage, the overcapacity rate in correctional institutions in Indonesia reaches 109%.

### **3.2. The Urgency of Conditional Release Policy to Resolve Overcapacity in Correctional Institution**

The essence of the penitentiary system aims to protect the public, so that what must be put forward is to create order and provide a sense of security to the community. Imprisonment is one of the means to rehabilitate criminals. Prison sentences are believed to be aimed at retaliating and deterring perpetrators, as well as protecting the interests of the state and society. imprisonment is considered a way to carry out coaching. Therefore, imprisonment must contain a retaliation commensurate with the losses incurred, imprisonment must make the perpetrators become deterrent.

Overcapacity in correctional institutions will complicate supervision, maintenance of correctional institutions, up to the rapid evacuation process in the event of a disaster such as a fire. In addition, leaving prisons in bad conditions is in essence a violation of human rights. The problem of



overcapacity of prisons coupled with the lack of facilities can cause psychological pressures for prisoners which in turn can endanger the level of security in the correctional institution itself.

then, the lack of security in prisons due to the limited number of officers, so it is likely that the wardens will not be able to stem the anarchy of the inmates. Along with this condition, over capacity creates problems within the penitentiary itself, such as the decreased level of supervision and security that occurs within the penitentiary. So that the original purpose of the penitentiary, namely as a place to foster convicts, actually gave rise to a new level of crime in it.

Overcapacity in community institutions also affects the budget issued. With the large number of inmates in correctional institutions, it will greatly drain the budget they have, especially the budget for the daily consumption of their inmates. The state has an obligation not only to foster but also to guarantee a decent life for every inmate in a penitentiary. In addition to the bloated consumption budget, the large number of inmates in correctional institutions also increases the operational costs that must be incurred by each correctional institution. The division of the budget that is owned will only focus on meeting the daily needs of the assisted residents and will hamper infrastructure development and increase the number of buildings which are currently limited.

The large number of convicts and detainees has an impact on the burden on the state and society in the implementation of imprisonment and detention. Both in the form of detention facilities, personnel and other financing, including health and food costs. The cost of eating inmates alone in 2019 amounted to 1.79 trillion (Kompas, 2023).

Angkasa said, several policies adopted by the government in an effort to overcome the problem of overcapacity of correctional institutions include the creation of new rooms, rehabilitation of buildings and the construction of new correctional institutions with the aim of increasing capacity, but these efforts do not appear to be significant in addressing overcapacity of correctional institutions. In this regard, other alternatives are needed, for example through actions that are non-institutional in nature, including conditional sentences, suspended sentences, compensation, restitution and restorative justice (Angkasa, 2010).

UNODC, in collaboration with the ICRC, noted several possible alternatives to reduce prison overcapacity, namely: a) decriminalization and depenalization, b) abolishing short-term sentences, c) life imprisonment restrictions, d) rationalization of other sentences, e) providing alternatives to punishment prisons, f) considering prison capacity in the implementation of detention; g) changes to laws and

regulations relating to narcotics crimes, h) reducing prisons for people with mental health care needs, i) national pardons, and j) amnesties (The United Nations Office on Drugs and Crime (UNODC), 2013).

If examined more deeply, there are 3 foundations that form the basis for consideration of granting conditional release rights to convicts, that is:

a) Philosophical Foundation

In the fourth paragraph of the Preamble of the UUD NRI Tahun 1945 which reads "Then instead of that to form an Indonesian state government that protects the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate the nation's life and participate in carrying out world order based on independence, peace eternal life and social justice, then ..." is the goal to be achieved by the state. Therefore, it has an obligation to provide protection to the entire nation, promote people's welfare, and educate the nation's life. The granting of parole rights to convicts is that our new penitentiary system wants to create a coaching system that prioritizes and upholds justice and human rights. If we reflect on the many cases of overcapacity in penitentiary institutions, of course this will violate the mandate and ideals contained in the Preamble of the UUD NRI Tahun 1945, and will reduce the essence of human rights which are upheld by our nation. Conditional release for convicts can reduce the accumulation of the number of convicts in correctional institutions so that convicts can serve their sentences more properly and penitentiaries can carry out their functions properly.

b) Sociological Foundation

The apprehension of penitentiary conditions in Indonesia will not only affect the development of convicts in correctional institutions, but also affect public trust in penitentiaries as an institution. The dynamic development of society increasingly fosters public awareness about the importance of carrying out correctional duties. Society has hope that penitentiaries become institutions capable of carrying out their duties and functions optimally. The community also has high expectations regarding the treatment of inmates who prioritize protection and respect for law and human rights. The main purpose of a sentencing process is not how heavy and painful a convict is to suffer the suffering he has to accept as punishment. However, whether the punishment given can have an impact on convicts to regret their actions and reduce crime. The granting of parole rights to convicts is expected to make and motivate a convict to change for the better, not to repeat his actions, and to be accepted back into society.

c) Juridical Foundation

The development of correctional conditions and the increasing variety of problems in the practice of correctional practices, for example, is overcapacity in correctional institutions. In the end, it encourages the government to immediately form correctional arrangements that cover



various conditions and legal needs that develop in society. The granting of parole rights to convicts is one of a series of efforts to realize the government's goals. the existence of this right is part of a series of government efforts in realizing a punishment system based on coaching. The establishment of this regulation was also carried out as an effort to align, harmonize and harmonize the legal basis for the implementation of correctional duties with other legal regulations. The right to conditional release for convicts who have carried out their obligations and fulfilled the conditions is a form of protection for justice for all of Indonesia's bloodshed and guarantees for human rights which are upheld and contained in the Preamble to the 1945 Constitution of the Republic of Indonesia. With this in mind It is hoped that the penitentiary can focus more on and optimize assistance to convicts and make efforts not to repeat crimes again, so that they can guarantee security and represent the wishes and expectations of the community.

#### **4. Conclusion**

Conditional release rights to convicts is a policy adopted in the context of reforming the penal system and criminal law which no longer emphasizes retaliation against convicts, but is based on a correctional system that adapts to community development and fulfillment of the conditions that occur in the existing penal system. Until now, correctional institutions in Indonesia have various problems that will hinder the main goal of correctional institutions, namely the development of prisoners. An example is the over-capacity of correctional institutions and the lack of facilities that can cause psychological pressures for prisoners which in turn can endanger the level of security in prisons.

Currently prisons in Indonesia are experiencing a state of overcapacity, where the number of inmates exceeds the capacity of the correctional institutions that have been provided. It can be seen that the current capacity of the penitentiary can only accommodate 132,107 people. While the number of convicts and detainees is currently 132,107 people. This means that the number of overcapacity in correctional institutions currently amounts to 144,065 people. If put into percentage, the overcapacity rate in correctional institutions in Indonesia reaches 109%. Therefore, Law Number 22 Year 2022 provides for conditional release rights for convicts with the aim of providing convicts with the opportunity to improve themselves while in correctional institutions and in society, as well as implementing a punishment system based on coaching and removing the stigma that results from by crime as deprivation of liberty. It is hoped that with clear regulations and supported by the implementation

with integrity the right to parole can support the realization of a correctional system based on fostering.

Suggestion from author is, conditional release policy can be given priority to convicts of minor crimes and juvenile offenses with an individual approach to correctional institutions to ensure that the coaching program is running well. In practice, correctional institutions require integrity and are supported by clear regulations to ensure that the coaching program is successful so that convicts who are entitled to parole do not repeat their actions and are accepted again and contribute to society. It is hoped that with clear regulations and supported by implementation with integrity the right to parole can support the realization of a correctional system based on guidance.

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