



The Urgency of Penal Reconstruction as an Overcrowded Effort in the Correctional Institutions Based on Criminal Law

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Abstract—The reconstruction of criminal law in Indonesia is a substantial endeavor to modernize the Criminal Code, or KUHP, which has existed since the colonial era. The primary goal is to promote consistency in criminal law by incorporating the principles of Law Number 1 of 2023, which establishes a suitable legal foundation for implementing more efficient and enduring penalties. This study examines essential strategies to address the issue of overcrowding in Indonesian prisons, a persistent problem in Indonesia that affects the efficiency of the criminal justice system. The consequences of this issue include the decline in prisoner conditions and the potential economic burden on the nation due to the financial support provided to incarcerated individuals. Within this framework, reconstruction mitigates adverse consequences by considering diverse factors, such as implementing more suitable sanctions, employing alternate forms of punishment, and safeguarding the rights of incarcerated individuals. Incorporating the ideals of restorative justice is a crucial factor to be considered while conducting a more in-depth study using the analytical prescriptive specification approach. The study findings indicate the pressing need for criminal reconstruction, as outlined in Law Number 1 of 2023, to mitigate adverse effects and enhance the efficiency of the criminal justice system through societal and legal advancements.

Keywords—*Reconstruction; Overcrowding; Penitentiary; Criminal Law; KUHP.*

I. INTRODUCTION

Indonesian criminal law is now undergoing legal reform to critically examine and restructure the law based on the broader socio-political, socio-philosophical, and cultural values of Indonesian society. One pertains to the regulations governing the criminal offense outlined in the Indonesian Criminal Code, a remnant of the Dutch colonial period. One of the legislative provisions of the updated Criminal Code is the rule on criminal sanctions. This regulation was enacted on December 6, 2022, through the Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code.[1]

The Criminal Code, often known as KUHP, is a legislative framework that governs tangible criminal offenses in Indonesia. The ratification of the Criminal Code serves as a replacement for the *Wetboek van Strafrecht*, generally known as the Criminal Code. It is intended to adapt to changes in legal policies, societal situations, and the overall development of life in society, nation, and state while upholding human rights. Law No. 1 of 2023 has brought about significant changes to the criminal system in Indonesia, particularly in regards to the regulation of criminal sanctions outlined in Article 65 Paragraph 1, which states that The primary offenses include incarceration, criminal concealment, criminal oversight, criminal penalties, and criminal rehabilitation.[2] By contrast, Article 10 of the previous Criminal Code delineates the primary forms of criminal penalties, including capital punishment, incarceration, confinement, the cessation of illicit activities, and monetary penalties. Nevertheless, our research primarily focuses on the primary offense specified in Law No. 1 of 2023. This debate focuses on the primary criminal identification outlined in Article 65, paragraph 1 of Law No. 1 of 2023. The aim

is to address problems by identifying them as a means of finding solutions rather than solely focusing on the issue of overcrowding or overcapacity in correctional facilities.[3]

The report from the House of Representatives of the Republic of Indonesia, based on the "brief report of the hearing meeting with the Director General of Corrections of the Ministry of Law and Human Rights on June 13, 2023," identifies overcapacity as a significant issue in the current criminal law environment. The report highlights that overcapacity is the underlying cause of various prison problems. The consequences of excessive capacity or occupancy in prisons are as follows: The convicts' deteriorating health state and the psychological well-being of convicts declines. Conflicts among inhabitants, growing discontent among residents, non-compliance with construction regulations, and excessive consumption of water, power, food, and clothing are leading to a waste of budget. This study will evaluate the subject of punishment using normative juridical law research methodologies with analytical prescriptive specifications. The goal is to apply the findings directly to address issues in prisons.[4]

II. LITERATURE REVIEW

A. Problems of Overcrowding in Correctional Institutions

The overcrowding problem in correctional institutions is a severe obstacle involving several complex factors [8]:

- 1) A significant increase in the number of detainees places additional pressure on institutional capacity, creating inhumane conditions and potentially compromising security.
- 2) Imperfections in the justice system, such as slow court processes, can slow the resolution of cases and cause a buildup of detainees without a final court decision.
- 3) The impact of implementing specific criminal policies, especially those tending to criminalize minor acts, may also contribute to overcrowding, highlighting the need to evaluate existing criminal policies.

B. Criminal Reconstruction as a Response to Overcrowding

Penal reconstruction is an urgent response to the problem of overcrowding in correctional institutions. There needs to be more than expanding institutional capacity alone.[12] The urgency of criminal punishment reform involves a comprehensive review of criminal law regulations. Rethinking the types of punishment and their duration is essential. A more progressive and rehabilitative legal approach is key in responding to the excess number of prisoners. Focusing on resocialization and social reintegration must also be integral to criminal reconstruction.

C. Legal Framework, Legal Perspective, and International Best Practices

A review of the legal framework governing the criminal system and related legal perspectives is critical to understanding the root of the problem and designing practical solutions.[13] Integrating international best practices, which may involve diversifying sentences and implementing alternative dispute resolution, could be a valuable guide. Ensuring that criminal reconstruction reflects the values of human rights, justice, and effectiveness is a crucial element that must be considered. These steps can provide a solid foundation for achieving a more just and sustainable penal system.

III. METHOD

The library research method in the context of criminal law reconstruction in Indonesia entails identifying pertinent legal resources, analyzing legal concepts and principles, and evaluating ways to address the issue of jail overcrowding. This methodology further enhances the study by examining the concept of restorative law and employing a prescriptive analytical method to offer a comprehensive and directive perspective on the execution of reconstruction. This research endeavors to enhance the fairness and efficiency of the criminal law system in Indonesia by comprehending the implications of Law Number 1 of 2023 and formulating pertinent conclusions and recommendations.

IV. RESULT AND DISCUSSION

Indonesia is explicitly recognized as a constitutional state in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states: "Indonesia is a state governed by the rule of law." This phrase indicates that all actions undertaken must adhere to legal standards. The Criminal Code (KUHP), a subfield of legal science, governs criminal law in Indonesia.[5]

One legislative provision in the Criminal Code pertains to the regulation of offenders, including primary offenses and supplementary crimes. The criminal penalties outlined in the Criminal Code have experienced multiple modifications.[6] Article 10 of the Criminal Code, which is the first book, explains both primary and secondary offenses. Major offenses encompass capital punishment, incarceration, criminal detention, monetary penalties, and criminal concealment. Law Number 1 of 2023, in Articles

65 and 66, outlines primary offenses, including incarceration, obstruction of justice, surveillance of criminal activities, monetary penalties, and community service as forms of punishment. In addition, both legal frameworks also encompass other offenses, such as the violation of specific rights, the seizure of assets and/or documents, the public announcement of the judge's decision, the payment of compensation for damages, the revocation of specific licenses, and the fulfillment of local customary duties.[7]

The central criminal amendments of Law Number 1 of 2023 were recently implemented in Indonesia. The dispute continues about the proposition that criminal sanctions should not just focus on past actions but also consider future advantages or objectives for offenders, victims, and society. Furthermore, concerning the aforementioned punitive philosophy, Indonesia lacks clarity in its execution in terms of legislation and rules beyond those stipulated in the Criminal Code.[8]

The alternative application of the leading crime is regulated by Article 65, paragraph 2 of Law Number 1 of 2023, which states that the severity or lightness of the crime is determined by the criminal order mentioned in paragraph (1). Moreover, Article 65, paragraph 1, explicitly states that criminal supervision and social work crime are substitutes for incarceration, offering an alternate approach to executing criminal sentences. The incorporation of these categories of offenses arises from the recognition of criminal legislation that considers the equilibrium of interests between the actions and conditions of the offenders (known as the principle of proportionality) to devise alternatives to incarceration. Another interpretation within the explanatory provisions pertains solely to the endeavors to realign and revamp criminal penalties in Indonesian criminal law, emphasizing a distinct aspect of legal politics.[9]

Legal certainty necessitates the codification of national criminal law. Upon examining the procedure, it becomes evident that court decisions predominantly impose prison sentences for the primary offense. Therefore, it is crucial to ensure comprehension by law enforcement authorities who will execute it. The goal of the penalty is to ensure that retribution and restoration are achieved as a criminal sanction. Enhancements are frequently required in the execution of prisons and incarceration. One of the reports from the hearing meeting of Commission III of the House of Representatives of the Republic of Indonesia includes a discussion with the director general of corrections, director of AKIP, and head of prisons throughout Indonesia. The report highlights that the issue of overcapacity is the underlying cause of various problems in prisons. The consequences of prison overcapacity include deteriorating health conditions among prisoners, worsening psychological atmosphere among prisoners, increased likelihood of conflicts among inmates, heightened dissatisfaction among residents, failure to adhere to regulations regarding inmate guidance, and increased expenditure on water, electricity, food, and clothing, resulting in budgetary waste.[10]

The issue of jail overcrowding in Indonesia is prevalent throughout all regional offices. This information demonstrates a proclivity toward incarceration. According to an article published in Data Indonesia on March 24, 2023, the jail population in Indonesia has surpassed the maximum capacity of the country's prisons. The current number of inmates is 265,897, while the entire capacity is 140,424.

Table. 1 Quantity of Adult Prisoners based on gender

Adult Prisoners	Quantity
Man Prisoners	414,035
Female Prisoners	20,425

Source: <https://sdppublik.ditjenpas.go.id/>

The issue of prison overcrowding in Indonesia imposes a financial strain on the state due to the expenses incurred for housing and maintaining prisoners. As an illustration, a report published in January 2023 said that Indonesia allocated IDR 799,108,511,000.00 to procure consumer items for convicts until December 31, 2022. When computing, the government must allocate a substantial sum of money that the state requires to sustain the incarcerated population. The budget does not encompass additional funding for incarcerated individuals. Reconstructing the requirement system is crucial to alleviate the burden on the state in Indonesian criminal law. If the existing issues are left unaddressed and not subject to rebuilding, the problems in jails will persist. They may even exacerbate, leading to broader economic implications at a national level.

The implementation of jail sanctions in criminal law requires immediate attention, given existing institutions' challenges in establishing uniform guidelines for alternative punishments.[11] A practical approach to streamline this issue is to utilize legal mechanisms within the domain of Criminal Law as outlined in the Criminal Code. In addition to being a comprehensive idea of Indonesian criminal law, it also has the advantage of facilitating the formation of state policies in a timely and cost-effective manner.

Legality is acknowledged, although incarceration is deemed more efficacious regarding provisions and deterring criminal offenders (prisoners). However, the current implementation of imprisonment is no longer suitable due to the excessive number of incarcerated individuals. [12]

Construction within prisons in Indonesia. Governments can implement measures to mitigate the detrimental effects of prisoner overcrowding on social reintegration and alleviate the financial strain on state budgets. These measures can be adopted as both long-term and short-term strategies. It can be argued that this is crucial in addressing the legal void in enforcing the new Criminal Code (Law Number 1 of 2023 about the Criminal Code).[13]

V. CONCLUSION

Based on the information provided, it can be inferred that if the primary concerns of Indonesia's existing criminal law difficulties are not addressed, they will continue to be unmanageable. Put simply; more overcrowding necessitates more significant financial support from the country to accommodate additional prisoners. Consequently, the country will experience a more substantial burden without human intervention. Hence, there is an imperative need to overhaul the Indonesian criminal legislation. Various measures can be implemented to enhance the effectiveness of the ongoing Criminal Code revision. This article provides a concise overview of the fundamental challenges in Indonesian criminal law, which can serve as a basis for evaluating and developing alternative solutions that align with the present circumstances.

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