

# Alternative Punishments (Supervision) in Law 22 of 2022 concerning Corrections as a Solution to Overcrowding at Indonesian Correctional Institutions

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**Abstract.** The Indonesian Criminal Justice System places imprisonment or coaching in Correctional Institutions as the final settlement of a crime. The imposition of imprisonment sentence has resulted in overcrowding in almost all correctional institutions in Indonesia. The conditions have resulted in the unideal process of coaching and service for Correctional Assisted Residents (WBP) as stipulated in Law Number 22 of 2022 Concerning Corrections. Imprisonment has many psychological and social impacts and is a financial burden for the state. Along with the development of crime in society caused by changes in the order of social life along with developments in information technology, it demands the Criminal Law System transform this situation, especially in imposing criminal sanctions on perpetrators of crimes. This research used the Empirical Juridical Method by conducting legal comparisons. The problem formulated in this study is how Law Number 22 of 2022 regulates alternative punishment and whether or not Law Number 22 of 2022 can provide a solution to overcrowding in correctional institutions in Indonesia. The objective of this study is to analyze whether Law Number 22 of 2022 regulates alternative criminal solutions in solving overcrowding problems in Correctional Institutions.

**Keywords:** Alternative punishments, Overcrowding, Correctional Institutions

## 1 Introduction

Crime is a form of deviant behavior, which occurs and is inherent in every society. According to Dr. Saparina Sadeli, deviant behavior is a real threat or a threat to the social norms that underlie life or social order, can cause individual and social tensions, and is a real, and potential threat to the continuation of social order.[1]

Primarily, punishment is imposed so that someone proven to have committed a crime will not repeat his/her action and other people are afraid of committing similar crimes. The sentencing was not a form of revenge, but as an effort to develop a convict and at the same time as a preventive measure against the occurrence of similar crimes. In its practice, law enforcers seem to have no alternative, so the choice is always imposed with imprisonment which causes overcapacity in the Correctional Institutions.

When associated with the development of the function of Correctional Institutions, the function of punishment nowadays is no longer just a deterrent. Still, Correctional Institutions have 2

functions, namely: First, punishment is intended as a place or means of coaching, rehabilitation, and reintegration of Correctional Assisted Residents (WBP). Deterrence in the criminal system has elements of revenge and violence in correctional institutions.[2] Second, the sentencing function directs convicts not to commit criminal acts and awakens and returns the inmates of the correctional institutions to the community, making individuals responsible for themselves, their families, the surrounding community, or their environment.[3]

The development of crime rates in the community is not balanced with the development of correctional institutions facilities and infrastructure. Therefore, most correctional institutions experience problems in carrying out coaching processes for prisoners or Correctional Assisted Residents (WBP). Overcapacity is the biggest problem. Almost all correctional institutions experience this phenomenon as a result of the increase in crime in society and the system of sentencing by judges which consider imprisonment as a form of deterrence against perpetrators of criminal acts. Technological developments cause many changes in social life and also affect the development of crime in the community. Therefore, to create security and order and a sense of justice in society, it is necessary to develop and reform the Indonesian criminal justice system.

As a form of legal renewal, on August 3, 2022, Law Number 22 of 2022 was signed and promulgated on the corrections system in lieu of Law Number 12 of 1995. Law Number 22 of 2022 concerning Corrections in lieu of the Law Number 12 of 1995. The new Correctional Law mandates fundamental improvements in the implementation of Correctional functions which include Services, Development, Community Guidance, Treatment, Security, and Observation by upholding respect, protection, and fulfillment of human rights.

Article 2 of Law Number 22 of 2022 concerning Corrections confirms that the Correctional System is organized for the purposes of:

- 1) providing guarantees for the protection of the rights of prisoners and children;
- 2) improving the quality of personality and self-reliance of the Prisoners so that they are aware of their mistakes, improve themselves, and not repeat the criminal acts, so that they can be accepted again by the community, can live normally as good citizens, obey the law, are responsible, and can play an active role in the development; And
- 3) providing protection to the community from repetition of criminal acts.[4]

Based on the objectives of the correctional system above, the fulfillment of the rights of convicts must be carried out based on the principles of equality, justice, and fulfillment of human rights. One of the efforts to reduce over-crowding in Correctional Institutions in Indonesia, the new law on correctional institutions provides integration rights that can be granted to convicts in the form of parole, conditional leave, leave before release, and assimilation as a form of execution of criminal punishment carried out outside the correctional institutions. This policy is a concrete manifestation of the implementation of alternative punishment in the Indonesian justice system which is carried out by the Indonesian Directorate General of Corrections. From the background of the study that has been stated above, the problems in this study are: How does Law Number 22 of 2022 regulate alternative punishment? Is Law number 22 of 2022 able to provide a solution to overcrowding in Correctional Institutions in Indonesia

## **2 Method**

In this research, the writer used a normative approach. According to Abdulkadir Muhammad, normative/juridical research is also called doctrinal research. In this type of legal research, law is conceptualized as what is written in laws and regulations.[5] From the perspective of the objective of this research, it aims to examine the application of Law Number 22 of 2022 concerning Corrections. The writer tries to explain the impact of implementing this law on efforts to overcome the problem of overcrowding in Correctional Institutions. The type of research used is empirical juridical research. Through this research, it is hoped that we will be able to understand the implementation of alternative punishment practices based on Law Number 22 of 2022 concerning Corrections and its impact on the implementation of the Corrections System in Indonesia, especially in overcoming the problem of overcrowding in Correctional Institutions.

### **3 Discussions**

#### **3.1. Alternative Punishment in Law Number 22 of 2022**

The coaching program in Correctional Institutions is carried out based on upholding human rights so that convicts or correctional-assisted residents (WBP) receive humane treatment. The enforcement of human rights is very closely related to the rights and obligations of the Correctional Assisted Residents (WBP). There is a lot of discussion on the issues of prisoners' treatment, health services, and access to public goods such as water, sanitation, clean air, clothing, food, and decent places.

The enactment of Law Number 22 of 2022 concerning Corrections which was signed directly by President Joko Widodo on 3 August 2022 confirmed the existence of the Corrections System which is implemented based on the principles of protection, non-discrimination, humanity, mutual cooperation, independence, proportionality, loss of freedom as one only suffering, and professionalism. The formation of Law of the Republic of Indonesia Number 22 of 2022 concerning Corrections strengthens the neutral position of Corrections in the Criminal Justice System which responds to the dynamics of society's need for Restorative Justice.[6]

One of the new materials in Law Number 22 of 2022 concerning the Corrections System is the reformulation of the policy of granting rights and obligations to Correctional Assisted Residents (WBP). In the spirit of the principle of non-discrimination and the principle of humanity, in its implementation, the granting of rights and obligations to Correctional Assisted Residents (WBP) and juvenile prisoners must be carried out and given in accordance with applicable regulations.

The rights and obligations of convicts as regulated in Law Number 22 of 2022 concerning Corrections are contained in Articles 9-11 which state as follows:

Article 9, Prisoners have the right to:

- a) Carry out worship according to their own religion or beliefs;
- b) Get care, both physical and spiritual;
- c) Get education, teaching, and recreational activities as well as opportunities to develop their potential;

- d) Get adequate health services and food in accordance with nutritional needs;
- e) Access information services;
- f) Get legal counseling and legal assistance;
- g) Submit complaints and/or grievances;
- h) Access reading materials and follow non-banned mass media broadcasts;
- i) Receive humane treatment and be protected from acts of torture, exploitation, neglect, violence, and all actions that endanger the physical and mental condition;
- j) Get a guarantee of work safety, wages, or compensation for work results;
- k) Get social services; and accept or refuse visits from family, advocates, assistants, and the community.

In addition to the rights referred to in Article 9, Article 10 paragraph (1) states that convicts who have met 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) parole; And
- g) other rights in accordance with the provisions of the legislation.
- h) Paragraph (2), Certain requirements as referred to in paragraph (1) include:
  - a. well-behaved;
  - b. actively participates in the coaching program, And
  - c. has shown a reduction in risk levels.

Paragraph (3), besides fulfilling certain requirements as referred to in Paragraph (2), convicts who will be given leave prior to release or conditional release as referred to in paragraph (1) letter e and letter f must also have served an imprisonment period of at least 2/3 (two thirds) provided that 2/3 (two thirds) of the period is at least 9 (nine) months.

Paragraph (4), The granting of rights as referred to in paragraph (1) does not apply to convicts sentenced to life imprisonment and those sentenced to death.

Article 11 paragraph (1), Prisoners are obliged to:

- a) obey the rules and regulations;
- b) follow the coaching program in an orderly manner;
- c) maintain a clean, safe, orderly, and peaceful life; And
- d) respect the human rights of everyone in their environment.

Besides obligations as intended in paragraph (1) and paragraph (2), convicts are also obliged to work by taking into account their health condition and its useful value.

The fulfillment of rights with certain requirements as regulated in Article 10 Paragraph (1) letters b to f is a form of coaching process carried out outside the Correctional Institution which involves the participation of Community Counselors (PK) under the auspices of the Correctional Center. The activities are efforts to socially reintegrate the prisoner back into society. At this

stage, there is a transition from the prisoner's status from being a prisoner of the Correctional Institution who was previously placed in the Correctional Institution to being a client of the Correctional Center. The process of integrating prisoners who are undergoing the program of Conditional Release, Conditional Leave, Leave Before Release, and Assimilation back into society is part of the alternative punishment in the form of probation which is carried out by the Directorate General of Corrections under the auspices of the Correctional Center involving the Community Counselor (PK) as the person in charge in the supervision of correctional client in the community

### **3.2 Law Number 22 of 2022 as a Solution to Overcrowding/Overcapacity in Correctional Institutions in Indonesia**

The Correctional System in Indonesia really needs attention from all parties, especially the government. There have been many problems that arise around Correctional Institutions and the real pattern of coaching therein. The problems start from over-capacity in Correctional Institutions and, the growth of crime in them such as narcotics trafficking, gambling, and fights between inmates. It is undeniable that in the current Indonesian Corrections System, the approach applied is the consciousness approach, which increases the awareness that convicts as human beings are prioritized.

Law Number 22 of 2022 concerning Corrections mandates fundamental improvements in the implementation of Correctional Institutions which include Service, Development, Community Guidance, Treatment, Security, and Observation by upholding respect, protection, and fulfillment of human rights.

Based on the principle of equality for all convicts, the granting of rights with certain requirements as stipulated in Article 10 of Law Number 22 of 2022 provides an opportunity for convicts who have fulfilled the normative and administrative requirements to be granted their rights.

In addition to equal rights, the purpose of conditional granting of rights to convicts is to overcome the problem of overcrowding in correctional institutions because many convicts have been detained or cannot be granted parole rights because there are regulations that limit the granting of these rights and there are different requirements among convicts with certain types of crime.

Based on the Corrections Data System, hereinafter referred to as SDP, throughout September, the Directorate General of Corrections has issued 58,054 PB/CB/CMB SKs for convicts in all criminal cases throughout Indonesia. The basis for granting prisoners conditional rights is Conditional Release in Article 10 of the Corrections Law Number 22 of 2022 concerning Corrections, as intended in Article 9, Prisoners who have fulfilled certain requirements without exception are also entitled to remission, assimilation, leave to visit or be visited by family, conditional leave, leave before release, conditional release and other rights in accordance with the provisions of statutory regulations. Certain requirements as referred to above are they must have good behavior, actively participate in the coaching program, and have demonstrated a reduced level of risk. All prisoners who have fulfilled the administrative and substantive requirements can be given conditional rights such as conditional release (PB), conditional leave (CB), and leave before release (CMB) to fulfill their human rights.

From the data above, it can be seen that there has been a significant decrease in inmates in correctional institutions in Indonesia because of the enactment of Law 22 of 2022 concerning Corrections. The number of convicts who receive integration rights will gradually reduce by 77% of the total convicts in the correctional institutions in Indonesia which are experiencing overcrowding/overcapacity. With ideal and not overcrowded correctional institutions, it is hoped that the process of implementing the coaching program in correctional institutions can be carried out optimally so that the objectives of the correctional system can be achieved.

#### **4 Conclusions**

Explicitly and directly, Law Number 22 of 2022 concerning Corrections does not mention the existence of alternative punishments, but in its implementation, the granting of the right to integration with certain conditions in the form of conditional release, conditional leave, leave before released and assimilation is the implementation of an alternative punishment, namely the probation. In its implementation, the rights to integration given to prisoners change the prisoners' status to that of a Correctional Client who will serve the remaining sentence at home and return to society under the control of Community Counselors and the surrounding community within the auspices of the Correctional Center. The provision of conditional rights mandated by Law Number 22 of 2022 concerning Corrections which prioritizes equal rights without discrimination, and prioritizes the fulfillment of human rights has been able to provide a solution in reducing over-crowding in correctional institutions in Indonesia. This can be seen from the promulgation of Law 22 of 2022 concerning Corrections. From August 2022 until September 2022, as many as 58,054 of Prisoners' PB/CB/CMB decrees were issued for all criminal offenses throughout Indonesia.

Alternative Punishment is a progressive form of punishment by prioritizes conscience and the principle of expediency in the social life of society. Therefore, its implementation must be considered, especially for solving minor crimes. The implementation of conditional rights for convicts based on Law Number 22 of 2022 must be carried out consistently and outreach to the community must be carried out openly to avoid multiple interpretations and social problems in its implementation. Law 22 of 2022 concerning Corrections has not clearly provided limitations for the conditional rights for the recidivists so the granting of conditional rights seems to provide the widest possible space for criminals to repeat offending the crimes.

The current Indonesian Criminal Code is a legacy of the Dutch Colonial which used to have the status of colonizers of the Indonesian nation. Logically, the legal rules made by the colonialists were not based on the interest of the people, but on the authorities. As a nation that has been independent for 77 years, it is mandatory to have a new Criminal Code that is in accordance with the socio-cultural conditions of society and in accordance with the development of crime in society. The ratification of the Criminal Code Bill to become the new Indonesian version of the Criminal Code will provide a complete juridical basis for judges in imposing alternative punishments for criminal offenders.

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