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The Effectiveness of The Alternative Punishment System in The New KUHP on Reducing Prison Overcrowding

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Abstract: Effectiveness System Criminalization Alternatives in the New Criminal Code Against Reducing Prison Overcrowding, Overcapacity of Correctional Institutions (prisons) in Indonesia has become recurring and increasing problems severe, especially after the implementation Kitab Undang-Undang Hukum Pidana (KUHP) in 2023, in face problem Nowadays, several countries in the world have test and implement solution alternative, one of them is use Work social as punishment alternative for perpetrator crime light. Work socially allows perpetrator crime for undergo punishment with the way that No need detention in prison. Scientific article This Use study law normative or study law literature that is research conducted with method research material library or secondary data, and types of research on writing This is study juridical normative, namely reviewed with approach legislation It means something problem will see from aspect the law with examine regulation legislation. Research results show that the law in Indonesia still needs to be completed for form arrangement regarding. Effectiveness System Criminalization Alternatives in the New Criminal Code Against Reducing Prison Overcrowding.

Keyword: KUHP, Prison, Overcrowding.

INTRODUCTION

Over Capacity of Correctional Institutions (prisons) in Indonesia has become recurring and increasing problems severe, especially after the implementation of the latest Criminal Code (KUHP) in 2023. Based on the data obtained from Directorate General Correctional, partly big prisons in Indonesia have beyond capacity the design, with some of them even reach 200 to 300 percent from capacity the maximum that should be. The phenomenon Overcapacity give the impact that very large to various aspect in system correctional facilities, including decline quality services that given to prisoners. Access to various important programs like rehabilitation, care health and education become the more limited consequence from dense residents prison, which in turn make things worse condition life prisoners.(Muh Hidayat, Mitro Subro, 2022) Dense conditions This No only reduce effectiveness in socialization, but also improve potential occurrence conflict between prisoners, which can lead to disruption order within prison. Decrease quality service this is very worrying Because objective main from system correctional facilities is For do

reintegration social for prisoners so that they Can return functioning in a way productive in society after undergo punishment. However, with existence Overcapacity, goal it becomes very difficult For achieved (Bernata Rikardo Manalu, Mitro Subroto.2024)

Various study previously has show that prison overcapacity No only harm welfare physical and mental condition of prisoners, but also inhibits achievement objective correctional facilities That alone. One of them impact the most significant negative is the disruption of a very important rehabilitation program in the reintegration process social prisoners. In many case, the prisoner who should get mentoring psychological, educational, or skills For face life after go out from prison, instead neglected Because limitations facilities and source Power which exists in the prison. (Rafiyah Imas Utari, Dewi Indriyani, Fitria Nita, 2012)

In facing the problem this, some countries in this world has test and implement solution alternative, wrong the only one is use Work social as punishment alternative for perpetrator crime light. Work social allows perpetrator crime For undergo punishment with the way that No need detention in in prison. In case this, the perpetrator crime given chance For give contribution positive to public through work social benefits, such as clean environment, help activity social, or do work humanity others. Concept This has proven Enough effective in various countries in reduce amount prisoners what is needed imprisoned and reduce *Overcapacity* prison, at the same time give chance for perpetrator crime For repair self without must trapped in system overcrowded and inadequate correctional facilities effective. (Elha Rigar Satria Ramadhan and Ali Muhammad, 2023) However, in Indonesia, the implementation of Work social as alternative punishment is still very limited. Even though the new Criminal Code has introduced framework the law that more support use non - custodial sentences, such as Work social, implementation practically Still Far from the ideal. Many challenges that must faced, start from lack of understanding about benefit Work social, ambiguity in implementation, until limitations infrastructure and sources Power people who support the program. This is become something big obstacle in realize alternative more punishment humane and effective For overcome problem prison overcapacity in Indonesia. Although a number of study has study about Work social as alternative punishment, partly big study the often only focused on aspects law solely, without consider impact more social wide or challenge implementation field. Research This aim For overcome limitations the with do exploration deep about role Work social in reduce prison overcapacity and support the reintegration process social prisoners. Research this also attempts For dig potential implementation Work social in context Indonesia, especially in frame support reform which is reflected in the latest Criminal Code. (Vaya GS Monginsidi, 2018)

With Thus, research this is very relevant For overcome problem system existing correctional facilities, and strive For give solution which are more effective use ensure sustainability rehabilitation prisoners. This also has the potential give contribution significant to correctional reform in Indonesia, which No only focus on giving punishment only, but also on coaching and reintegration social prisoners. (Muhammad Qaedi Rifqi Nuranda, 2025) Therefore that, research This expected can give outlook newer comprehensive about implementation Work social as punishment alternatives, as well as the impact to repair system socialization and welfare public in a way overall. Based on background behind behind on so arise problem as following How arrangement normative about system criminalization alternative in Constitution Number 1 of 2023 concerning the New Criminal Code as instrument For Overcoming prison overcrowding and how reality implementation criminalization alternative in practice justice criminal law in Indonesia after the enactment of the New Criminal Code, especially related its effectiveness in reduce prison *overcrowding*.

METHOD

Scientific Articles Effectiveness System Criminalization Alternatives in the New Criminal Code Against Subtraction Prison *Overcrowding* type study normative law or library legal research, namely research conducted by researching library materials or secondary data alone. (Soerjono Soekanto, Sri Mamudji. 2003) Types of research on This writing is a normative juridical research, namely it is studied using an approach legislation (*the statute approach*) means that a problem will be viewed from legal aspects by examining statutory regulations. (Restu Adhie Charisma, Aji Lukman Ibrahim, 2023) Data collection techniques in this research this, with material primary law, law secondary and tertiary collected based on topic problems formulated and studied according to classification problem according to source the hierarchy in a way sequential related Effectiveness System Criminalization Alternatives in the New Criminal Code Against Reducing Prison Overcrowding by Data / material analysis law in research This with the method of library *research* is by means of Study literature is research conducted with use literature (library), both in the form of books, notes, and report results study previously, and the rules legislation, which outlines and connect so that served in systematic writing For answer questions problem above. (Iqbal Hasan, 2008)

RESULTS AND DISCUSSION

Normative Arrangements For The Alternative Punishment System In The New Kuhp As An Instrument To Overcome Prison Overcrowding

Overcrowding of institutions Correctional facilities (prisons) are one of the the biggest problem chronic in system Indonesian criminalization, where the number of prison inmates in general national reach almost double capacity official.(Muladi, 2013) Condition overcapacity This impact on low quality coaching, increasing risk health, and not optimal reintegration process social prisoners. (Henry Aspan, 2024) Therefore that, policy law criminal national need instrument criminalization more alternatives effective than just depend on criminal prison. Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) then promulgated as form update political law shifting criminal law orientation criminalization from approach retributive going to approach multifunctional, namely preventive, corrective, and restorative. (Andi Hamzah 2023) Provisions This poured out in Article 51 of the New Criminal Code which specifically explicit mention that criminalization No intended For demeaning dignity man.

1. Politics Legislation, the Formation of the New Criminal Code and the Problem of Overcrowding

Constitution Number 1 of 2023 concerning the Criminal Code is codification law criminal national that replaces Wetboek van Strafrecht (WvS) legacy colonial.(Andi Hamzah, 2020) Founder Constitution in a way firm confess that one of reason the renewal of the Criminal Code is overcrowding conditions in prisons/detention centers chronic. Directorate General Community Development in a way periodically convey that level national average occupancy reach more from 100% capacity, even some areas reach 200 % on.(Directorate General PAS,, 2023-2024) Condition This show that orientation very prison - centric punishment in the old Criminal Code not Again adequate For addressing systemic problems correctional system. The New Criminal Code includes mechanism criminal alternative as integral part of politics criminal For reduce current enter to Prison.(Drafting Team for the 2022 Criminal Code (RKUHP)

2. Purpose of Criminalization in the New Criminal Code

Article 51 of the New Criminal Code confirms that objective criminalization is:

- a. Prevent He Did Action Criminal,
- b. Popularize Convict,
- c. Finish Conflict

d. Restore Balance. (Article 51 of the New Criminal Code)

Formulation This show a more modern orientation than the old Criminal Code which tended to oriented retaliation (retributive). (Roeslan Saleh, 1983) Sudarto and Moeljatno mention that modern criminalization must prioritize correction and resocialization, not revenge. (Moeljatno, 2002) With Thus, the use of criminal prison term short No Again considered as means main in punish the perpetrator, but rather as effort ultimate (ultimate remedium). (Lamintang, 2011)

3. Construction System Criminalization Alternative in the New Criminal Code

The New Criminal Code regulates type criminal in Articles 64–65, where criminal main includes:

- a. Criminal Prison,
- b. Criminal Cover,
- c. Criminal Supervision,
- d. Criminal Fine,
- e. Criminal Work Social.

Entry criminal supervision and criminal Work social as criminal main is breakthrough significant compared to the old Criminal Code.

a. Criminal Prison (Articles 64–75 of Law No. 1 of 2023 concerning the Criminal Code)

Criminal prison is one of the type criminal main in law Indonesian criminal law in the form of robbery independence move for convict with method place it in an institution correctional facility (prison) during term time certain as determined in decision court

The New Criminal Code defines criminal prison as the sentence imposed with provision that implementation conducted in an institution correctional facilities with coaching personality and independence. This means that prison No only form punishment repressive, but also an instrument coaching in accordance philosophy correctional facilities.

b. Criminal Cover

Criminal cover is one of the form criminal alternative in Constitution Number 1 of 2023 concerning the New Criminal Code (Law 1/2023). Criminal This is form similar punishment with criminal prison, but implementation done in place special (cover) with condition more more humane and oversight limited compared to prison ordinary. Criminal cover given to convicts who act in good faith well, no dangerous, or action the penalty own character special that is not need strict imprisonment.¹ Criminal This aim For provide alternative to criminal prison in frame reduce institutional overcrowding socialization and providing room for approach more personalized coaching.²

c. Criminal Supervision (Articles 75–77 of the Criminal Code)

Criminal supervision can dropped For action criminal with threat certain relative light, with a period of implementation maximum three year.⁹ The judge determined condition general and terms and conditions special, for example report in a way periodically, following coaching, or prohibition certain.¹ ⁰ Criminal supervision functioning prevent prisoners enter prison, so that potential direct reduce overcrowding.

d. Criminal Social Work (Article 85 of the Criminal Code)

Criminal Work social dropped For action criminal with threat prison not enough from 5 years, especially if the judge decides criminal prison not enough from 6 months or criminal fine category II.¹¹ Criminal This can carried out at home sick, nursing home social, school, facilities public and institutions other social mechanisms.¹² supervision carried out by the prosecutor and the supervisor Community (Bapas).¹³ Criminal Work social in a way explicit designed For reduce imprisonment term short that during This become contributor large overcrowding.¹⁴

e. Strengthening Fine System

The New Criminal Code regulates category fines (categories I–VIII) and mechanisms criminal replacement higher fines proportional. (Articles 79–84 of the 2023 Criminal Code)

Strengthening criminal fine This can push the judge to impose fine as standing sanctions Alone.

4. Regulations Implementation and Readiness Institutional

Article 621 of the Criminal Code orders government For compile regulation implementer for a maximum of two years after enacted.(Article 621 of the 2023 Criminal Code.) Readiness implementation depend on:

- a. Criminal SOP supervision & social work,
- b. Readiness prosecutors and Bapas,
- c. Availability institution social for implementation Work social,
- d. Budget and system assessment risk convict. (Ministry of Law and Human Rights, 2024)

Academic studies show that criminal alternative only effective If supported system mature institutions. (ICJR, 2022)

5. Relationship Criminalization Alternative with Efforts to Reduce Overcrowding

- a. Alternative Criminalization reduces overcrowding through three methods:
- b. Divert perpetrator action criminal light from prison going to criminal community, as has proven in studies comparative penology modern. (Cavadino & Dignan (2006)
- c. Reduce use of criminal prison term short, which according to ICJR is contributor the biggest overcapacity. (CJR.2023)
- d. Encourage mechanisms restorative, so that criminalization No automatic culminating in imprisonment. (BPHN, 2022)

However, its effectiveness is highly dependent on consistency. apparatus enforcer law, readiness of the Correctional Center, and synchronization regulations sectoral such as the Narcotics Law.(ICJR, 2024)

The Reality Of The Implementation Of Alternative Punishment After The Legal Enforcement Of The New Kuhp And Its Comparison With The Old Kuhp (Das Sein)

1. Stage Transition (New Criminal Code to Take Effect in 2026)

Although enacted in 2023, the New Criminal Code will valid effective January 2, 2026 so all over provision criminal alternative Still nature *prospective*. Currently court Still using the old Criminal Code. However has done socialization, training, and simulation implementation criminal supervision / work social by the Supreme Court, the Prosecutor's Office, and Bapas. Supreme Court, 2024)

2. Conditions Factual Overcrowding 2023–2025

Prisons and detention centers in Indonesia are still face high overcapacity ; average level residence during 2023–2025 around between 150–200% nationally. Province certain as Riau reaches more from 240%.

Overcrowding especially triggered by:

- a. Criminalization narcotics that are almost always use prison,
- b. Criminalization term short,
- c. Domination orientation retributive in practice justice. (BNN & Ditjen PAS, 2024)

3. Practice Criminalization Alternatives that Already Existed Under the Old Criminal Code

Even though the New Criminal Code has not yet applicable, system actual Indonesian law Already know a number of similar mechanisms with criminal alternatives, including :

- a. Criminal conditional (Article 14a–f of the old Criminal Code) (KUHP Lama Pasal 14a–14f)
- b. Diversion and criminal service public in the SPPA Law (Undang-Udanng No. 11 Tahun 2012 tentang sistem peradilan anak.)
- c. Restorative justice by the Police, the Prosecutor's Office, and the Supreme Court,(Kejaksaan Republik Indonesia, 2022)

- d. Correctional program like remission and release conditional. (Undang-undang (UU) Nomor 22 Tahun 2022 tentang Pemasyarakatan)

However study empirical show that its use Still limited and not yet influential significant reduction in overcrowding.

4. Preparation Implementation Criminal Supervision & Social Work

Indonesian Attorney General's Office together with the Supreme Court and the Ministry of Law and Human Rights has do :

- a. Criminal pilot project conditional based approach restorative For simulate criminal supervision (Indonesian Prosecutor's Office, 2023)
- b. Compilation guidelines technical criminal Work social
- c. Improvement capacity of the Community Center (BAPAS).

However Because base the law Not yet valid, no There is decision the court that handed down the sentence criminal Work social / supervision according to the New Criminal Code before 2026.

5. Temporary Effectiveness against Overcrowding

Not yet available proof empirical about effectiveness criminalization alternative in reduce overcrowding due to Not yet applied.

However studies comparative international show that expansion the use of community service and probation can pressing residence prison in a way significant (example : Netherlands and Norway).(Muladi & Barda Nawawi Arief, 2021)

6. Obstacles Implementation

Identified barriers in various study : (ICJR, 2023)

- a. Formalistic legal culture apparatus enforcer law,
- b. Limited human resources at Bapas,
- c. Social stigma,
- d. Lack of facility Work social,
- e. It's not complete yet regulations implementer,
- f. Lack of strong evaluation data.

7. Comparison with the Old Criminal Code

- a. Old Criminal Code
 - 1) Retributive oriented,
 - 2) Prison become criminal main,
 - 3) Don't know criminal supervision / work social,
 - 4) It greatly contributes to overcrowding. (Andi Hamzah, 2020)
- b. New Criminal Code
 - 1) Orientation corrective, restorative, and rehabilitative,
 - 2) Enter criminal supervision & work social as criminal main,
 - 3) Strengthen criminal fine,
 - 4) Mentioning objective criminalization in a way Explicit. (Academic Draft of the 2022 Criminal Code Draft)
- c. Prospects Effectiveness

In a way *law in books*, the New Criminal Code has great potential reduce overcrowding, but in a way *law in action*, its success depending on the implementation of 2026 to front.

A number of study penology and correctional conclude that alternative existing criminal penalties Not yet significant reduce overcrowding, among other things because :

1. Dominance paradigm retributive, so that judges are more choose prison than criminal fine or criminal conditional. (Tongat, 2019)
2. Limited ability institutional Father in do supervision implementation criminal alternative
3. Not yet available official guidelines for criminalization (sentencing guidelines) that require consideration criminal alternative before criminal prison. (MA RI, 2025)

4. Narcotics sector Still become contributor the biggest prison inmates— more of 50% of the total population, so that alternative criminalization No impact significant without revision of the Narcotics Law.

Prospects Effectiveness After the New Criminal Code comes into effect in 2026 Potential the reduction in overcrowding would be huge if :

1. Judges are required consider criminal alternative moreover formerly.
2. Father strengthened in a way institutional. (Directorate General of Corrections, 2025)
3. Policy narcotics reformed so that abuser diverted from prison going to rehabilitation.
4. Guidelines criminalization compiled by the Supreme Court so that criminal alternative No Again nature optional.

If all mechanism supporters fulfilled, the New Criminal Code has the potential reduce overcrowding gradually.

CONCLUSION

System criminalization alternative in the New Criminal Code includes criminal supervision, criminal Work social, and strengthening criminal fine in a way offer the right solution For reduce prison overcrowding. This reform mark shift paradigm from criminalization retributive going to approach corrective and restorative. However, in empirical, its effectiveness Not yet can felt because the new Criminal Code is new effective in 2026, provisionally practice criminalization moment This Still dominated criminal prison, especially in case narcotics. Limitations infrastructure, resources Power Bapas, as well as lack of guidelines criminalization also makes criminalization alternative Not yet can implemented optimally. So that criminalization alternative truly capable suppressing overcrowding, is necessary steps strategic, namely compilation guidelines criminalization by the Supreme Court, strengthening capacity Bapas, synchronization regulations especially the Narcotics Law, provision place implementation Work social, as well as change paradigm apparatus enforcer law. Correctional evaluation and data must also be strengthened For ensure implementation of the New Criminal Code is underway effective.

REFERENSI

- Andi Hamzah, Hukum Pidana Indonesia, Sinar Grafika, Jakarta 2017
- Arief Nawawi Barda dan Muladi, Teori-Teori dan Kebijakan Pidana, Bandung, 2013
- Arief, Barda Nawawi. (2021). Kebijakan Penal dan non-penal dalam Sistem Peradilan Pidana. Semarang: Badan Penerbit UNDIP.
- Aspan, Henry. "Overcrowding dan Dampaknya", Andalas Law Review, 2024.
- Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana, kencana, jakarta 2010.
- Bernata Rikardo Manalu, Mitro Subroto, Peranan Lembaga Pemasyarakatan Dalam Proses Pembinaan Narapidana Disabilitas Kasus Narkotika, Journal of Management, Manajemen Pemasyarakatan, Vol 17, Special Issue No 1, May 2024
- BPHN, Restorative Justice dalam Sistem Pidana Indonesia, 2022.
- Cavadino & Dignan, Penal Systems: A Comparative Approach, 2006
- Charisma, R. A., & Ibrahim, A. L. (2023). Comparison of Criminal Law Related to the Trafficking of Human Body Organs in Indonesia and the Philippines. Al Qalam: Jurnal Ilmiah Keagam Muladi, Kapita Selekt Sistem Peradilan Pidana, 2013.
- Cross, Rupert. The English Sentencing System, 1981.
- Direktorat Jenderal Pemasyarakatan. (2021–2023). Overcrowding Report. Jakarta.
- Direktorat Jenderal Pemasyarakatan. (2022). Statistik Pemasyarakatan Nasional. Jakarta: Kemenkumham RI.
- Ditjenpas Kemenkumham, Laporan Kinerja 2024.
- Ditjenpas, Statistik Pemasyarakatan 2024, <https://www.ditjenpas.go.id/laporan-kinerja-pemasyarakatan-tahun-2024>

- Elha Rigar Satria Ramadhan and Ali Muhammad, "Peran Pembimbing Kemasyarakatan Dalam Meningkatkan Self-Control Klien Pemasyarakatan Di Bapas Kelas I Yogyakarta," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial*1, no. 8 (2023)
- Hamzah, Andi. (2023). "Reformasi Pemidanaan dalam KUHP Baru". *Jurnal Hukum Pidana Indonesia*, 9(2).
- Hidayat, Muh, and Mitro Subroto. "Penerapan Konsep Community Based Correction dalam Program Pembinaan di Lembaga Pemasyarakatan." *Jurnal Pendidikan dan Konseling*, vol. 4, no. 3, 2022,
- ICJR, Overcrowding dan Pidana Jangka Pendek, 2023.
- Iqbal Hasan, Analisis Data Penelitian Dengan Statistik, Bumi Aksara, Jakarta, 2008
- Kemenkumham RI, Naskah Akademik KUHP, 2023
- Kitab Undang-Undang Hukum Pidana
- Lamintang, Dasar-Dasar Hukum Pidana Indonesia Bandung : Citra Aditya Bhakti, 2013
- Moeljatno, 2002. *Asas-asas Hukum Pidana di Indonesia*. PT. Rineka Cipta. Jakarta.
- Muhammad Qaedi Rifqi Nuranda, Peran Kerja Sosial Dalam Pemasyarakatan Untuk Mengatasi Masalah Overcapacitypenjara Pasca-Pemberlakuan Kuhp Terbaru, *Jurnal hukum dan konstitusi* 2025
- Muladi(1995). *Kapita Selekta Sistem Peradilan Pidana*. Bandung: Alumni.
- Peraturan Kapolri (Perpol) Nomor 8 Tahun 2021 adalah dasar hukum bagi Kepolisian Negara Republik Indonesia (Polri) untuk menangani tindak pidana berdasarkan keadilan restoratif.
- Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif
- Peter Mahmud Marzuki, (2011), *Penelitian Hukum*, cetakan ke-11 Jakarta:Kencana
- Rafiyah Imas Utari, Dewi Indriyani, Fitria Nita, "Gambaran Tingkat Kecemasan Pada Warga Binaan Wanita Menjelang Bebas Di Lembaga Pemasyarakatan Wanita Kelas II a Bandung," *Students E-Journal*66, no. 4 (2012)
- Roeslan Saleh, *Studi tentang Perbuatan Pidana*, Jakarta, Aksara Baru 1983.
- Soerjono Soekanto, Sri Mamudji. 2003. *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*. Jakarta: PT Raja Grafindo Persada
- Sudarto, *Hukum dan Hukum Pidana*, PT. Alumni, Bandung. 2008.
- Sudarto. (1986). *Hukum dan Hukum Pidana*. Bandung: Alumni.
- Tongat. *Pidana Kerja Sosial Dalam Pembaharuan Hukum Pidana Indonesia*. Jakarta: Djambatan, 2001.
- Undang-undang (UU) Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak
- Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana
- United Nations. (1990). *United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)*.
- UNODC, *Handbook of Probation*, 2020
- Vaya G. S. Monginsidi, "Perintah Jabatan Yang Diberikan Oleh Penguasa Yang Berwenang Sebagai Alasan Pembenar Menurut Pasal 51 Ayat (1) Kuhp Kajian Putusan Mahkamah Agung Nomor 181 K/Kr/1959)," *Lex Crimen*7, no. 2 (2018)