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STRATEGIES TO REDUCE OVERCROWDING IN INDONESIA:

Causes, Impacts, and Solutions

INSTITUTE FOR CRIMINAL JUSTICE REFORM
ICJR

Strategies to Reduce Overcrowding in Indonesia: Causes, Impacts, and Solutions

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To the Beloved,

Supriyadi Widodo Eddyono

(9 September 1976 –1 January 2018)

A defender of human rights,

Because just like you

Every human is precious

Foreword

In the formation of law, the purpose of the State should be the main reference for lawmakers to think about. The 1945 Constitution of the Republic of Indonesia specifies four purposes of the State, i.e., to protect all the people of Indonesia and the motherland of Indonesia, to improve public welfare, to educate life of the people and to participate towards the establishment of a world order based on freedom, perpetual peace and social justice. The law, hence, is formulated to support the achievement of the purposes of the state as such.

Therefore, in an effort to reform and to formulate criminal law the four purposes of the state mentioned above must be referred in any endeavour to formulate criminal law. The formulation of criminal law shall in no case intend to solely satisfy the desire of deterrent effect. Law, including criminal law, as a matter of fact, is a tool of social engineering, but it should be systematically used. It is necessary to begin with thorough problem identification, including the identification of targeted community and how the law is enforced and its impacts.

One of the most obvious impacts of criminal law formulation is the overuse of imprisonment. It's widely held basic assumption that imprisonment, including the detention of suspect/accused, is very useful in producing deterrent effect. The problem is that the side effects crime prevention efforts through imprisonment have never been thought of seriously.

The present problems brought about by imprisonment-oriented criminal law enforcement have resulted in an overcrowding that has pushed Indonesia to an extreme point with 188% overcrowding. This situation has created various problems ranging from escaping of convicts and detainees form a prison, prison riots, drug circulation controlled from Prison, Prison set ablaze by inmates, to illegal levies taken by Prison officers, and various other problems. Such a situation is not just the result of mismanagement on the part of Prison officers or the lack of equipment and infrastructure, it is more the result of complex relations between the system and it's operational with all their limitations.

This research emphasizes the discussion on the implications of overcrowded inmates and overcrowding situation in most Indonesian Prisons/Detention Centres. Overcrowded inmates here refer to a situation where there are more inmates than a Prison/detention centre can properly hold.

Overcrowding situation refers to a crisis situation that occurs when the demand for space in prison exceeds the capacity for inmates therein.

The present overcrowding situation of Indonesian Correctional Institutions/Detention centres deserves serious attention from the government, because it will create enormous damages for inmates such as unfulfilled basic rights of every detainee/convicts and their families as well as the State as the correctional authority. Although the problem has been lasting for years, Indonesia has not found yet the right formulation to overcome it.

Without the right formulation to overcome this overcrowding situation, Indonesia will always have to confront a vicious cycle. The expectation to transform convicts into better individual through prison-based rehabilitation programs is almost unlikely. To address overcrowding, it is of necessity to take a set of stages to reform criminal policies including overcoming various negative impacts of detention and imprisonment.

This study aims to provide a complete picture of conditions and implications of Correctional Institutions and detention centres overcrowding in Indonesia. It is also intended to be a guided and measurable reference for relevant agencies and other concerned parties to solve the existing overcrowding problems so that the correctional purposes could be achieved.

Anggara
Executive Director

Table of Contents

List of Tables

List of Figures

CHAPTER I

INTRODUCTION

1.1 Background

The concept of *pemasyarakatan* (returning a convict to society process during his or her correctional term in prison) is considered replacing the previously prevailed colonial prison system. To ask what are the actual differences between them, therefore is important since some literature describes and explains that this correctional treat convicts in more humane way. With treatment that is not punitive and not retaliative, the correctional process in prison called Correctional Institution (Lembaga Pemasyarakatan/Lapas), aims to provide equipment for convict before returning to society.

Correctional Institution (Lapas) as part of correctional system is essentially organized to prepare inmate as a complete human who realizes his or her wrongdoing, eager to self-improvement, and will not repeat the crime so that the society accept him or her, actively participate in the development and live normally as a good and responsible citizen.[1]

Problems that arise within Correctional Institutions and Detention Centres are not just the result of mishandling on the part of Correctional Institution officers, the problems are the product of complex relationship between the system and its operational along with the existing limitations. The idea of correction should be in line with the conceptual shift of prison objective from retributive concept to rehabilitative one. The shift can be seen in the emerging idea to change prison institution (which historically called as prison house) to Correctional Institution (Lapas).[2]

Recently mass media widely report crime related issues such as prison breaks, riots in several Correctional Institutions, drugs distribution controlled from Correctional Institutions, Correctional Institutions set ablaze by inmates, illegal levies taken by Correctional Institution officers, and other various problems in Correctional Institutions. They are not exceptional issues, as a matter of fact, in view of longstanding problems in Detention Centres (Rumah Tahanan/Rutan)/Correctional Institutions that are not yet soundly and comprehensively resolved.

[1] Here "to be a complete human" means that the convict should be brought again to his or her nature in the relationship of mankind with God, mankind with his or her individual, mankind among themselves, and mankind with their environment. See the elucidation of Article 22 Law 12/1995 on Prison.

[2] Lembaga Pemasyarakatan (Correctional Institution) was official term for Prison in Indonesian since 27 April 1964 along with the replacement of prison system by correctional system. See Petrus Irwan Panjaitan and Pandapotan Simorangkir, *Lembaga Pemasyarakatan dalam Perspektif Sistem Peradilan Pidana Penjara*, Pustaka Sinar Harapan, Jakarta, 1995, p. 25.

In 2017, for example, there were incidents such as riots in Correctional Institution Class II A Permisan in Nusa Kambangan in November 2017 that injured 3 people and killed 1 person.[3] In November of the same year two inmates managed to escape from Pekanbaru Prison after threatening wardens with gun.[4] Many other stories about horrible things in Correctional Institutions/Detention Centres can be easily found with the right keywords in web search engine.

They are not new problems actually, and Ministry of Law and Human Rights through the Directorate General of Correctional has made a great deal of efforts to anticipate and cope with the problems. However, solving problems based on case by case is just not enough. Comprehensive system and strategy from upstream to downstream is of necessity. The question, therefore, rises about what is really happened and what is the real problem.

Problems within Correctional Institutions/Detention Centres mentioned above are only part of impacts of those institutions' condition and situation. The real sources of various problems in Correctional Institutions/Detention Centres are, among others, pre-trial detention measures, certain conditions for remission, illegal levies to obtain inmates' rights, disproportionally larger number of inmates than that of Correctional Institutions/Detention Centres, sentencing of drug users, overstaying, sentencing policies, and law enforcers' perspectives to take legal measures towards the offender.

There are raising concerns regarding measures such as detention during investigation based on subjective consideration of law enforcers, perception that a case is a success when long time imprisonment verdict is involved, and, above all, a great deal prison sentences for drug users who otherwise can be sent to a rehabilitation program. According to Correction Database System (SDP) as of December 2017 there are 34,438 drug user inmates among 98,013 special inmates.[5] It means

[3] Anonym, 2017, *Kronologi Kerusuhan di Lapas Nusakambangan yang Tewaskan Seorang Napi*, http://www.tribunnews.com/regional/2017/11/08/kronologis-kerusuhan-di-lapas-nusakambangan-yang-tewaskan-seorang-napi, accessed on 2 February 2018.

[4] Chaidir Anwar Tanjung, 2017, *Todongkan Pistol ke Sipir, 2 Napi Kabur dari Lapas Pekanbaru*, https://news.detik.com/berita/d-3738392/todongkan-pistol-ke-sipir-2-napi-kabur-dari-lapas-pekanbaru, accessed 2 February 2018.

[5] Corrections Database System, Directorate General of Correction, Data on Drug Users (NKP) (NKP) of Januaryy-December 2017, available at http://smslap.ditjenpas.go.id/public/krl/current/monthly/year/2017/month/12 accessed on 19 February 2018.

that 35% or one-third of special inmates is actually drug users who should be treated in rehabilitation institutions.[6]

Table 1.1: Data on the Number of Drug Users Convicts (NKP) of 2017

Month	Number of Drug Users	Total of Special Convicts	%	Notes (Regional/Provincial Office that has not yet reported/uploaded data in SDP)
January	32,157	95,844	33.55%	6 Regional Offices (DKI Jakarta, Gorontalo, Jambi, East Kalimantan, NTB, Central Sulawesi)
February	32,234	96,101	33.54%	6 Regional Offices (DKI Jakarta, Gorontalo, Jambi, East Kalimantan, NTB, Central Sulawesi)
March	31,293	96,430	32.45%	6 Regional Offices (DKI Jakarta, Gorontalo, Jambi, East Kalimantan, NTB, Central Sulawesi)
April	33,070	100,000	33.07%	6 Regional Offices (DKI Jakarta, Gorontalo, Jambi, East Kalimantan, NTB, Central Sulawesi)
May	33,956	101,055	33.60%	6 Regional Offices (Gorontalo, Jambi, East Kalimantan, Maluku,NTB, Central Sulawesi)
June	35,743	102,730	34.79%	5 Regional Offices (Jambi, East Kalimantan, Maluku, NTB, Central Sulawesi)
July	34,423	102,318	33.64%	6 Regional Offices (Jambi, East Kalimantan, Maluku, NTB, West Sulawesi, Central Sulawesi)
August	33,566	100,275	33.47%	3 Regional Offices (Jambi, East Kalimantan, Maluku)
September	37,072	103,090	35.96%	6 Regional Offices (Banten, Jambi, East

[6] *Ibid,* except Regional Office of Jambi Province that has not yet updated report to correction database system of 2017.

				Kalimantan, Maluku, Central Sulawesi)
October	35,724	103,938	34.37%	6 Regional Offices (Banten, DI Yogyakarta, Jambi, East Kalimantan, Maluku, Central Sulawesi)
November	36,553	103,169	35.43%	7 Regional Offices (Banten, Jambi, East Kalimantan, Maluku, North Maluku, Central Sulawesi, North Sumatra)
December	34,358	98,013	35.05%	9 Regional Offices (Banten, Jambi, East Kalimantan, Islands of Riau, Lampung, Maluku, West Papua, West Sulawesi, Central Sulawesi)

*) During SDP monitoring of 2017 as of 23 March 2018 Jambi Province did not report (upload data) to Correction Database System

Source: Corrections Database System (SDP), Directorate General of Correctional, Ministry of Law and Human Rights, 2017

These facts surely have serious effect on the unstoppably increasing number of inmates, where entrance gate is widely open while exit gate is heavily guarded by numerous regulations that have brought the condition of overcrowding in almost every Correctional Institutions/Detention Centres in Indonesia. The overcrowded problem can only be resolved by adding new Correctional Institutions/Detention Centres each year to incarcerate the ever-increasing inmates. Data on the number of detainees and convicts incarcerated in Correctional Institutions/Detention Centres in Indonesia can be seen in the following table:

Table 1.2: Increasing Number of Detainees and Convicts in National Detention Centres and Prison in 2013-2017

No	Year	Detainees	Convicts	Total Inmates	Occupancy Capacity of Detention Centres and Correctional Institutions	Difference Between Total Inmates and Occupancy Capacity	Percentage of Surplus Inmates
1	**2013**	**51,395**	**108,668**	**160,063**	**111,857**	**48,206**	**143 %**

2	**2014**	**52,935**	**110,469**	**163,404**	**114,921**	**48,483**	**142%**
3	**2015**	**57,547**	**119,207**	**176,754**	**119,797**	**56,957**	**147%**
4	**2016**	**65,554**	**138,997**	**204,551**	**119,797**	**84,757**	**170%**
5	**2017**	**70,739**	**161,342**	**232,081**	**123,481**	**108,600**	**188%**

Source: Corrections Database System (SDP), Directorate General of Correctional, Ministry of Law and Human Right, 2017

The table above shows that the number of detainees and convicts increased every year. It also shows that the capacity improvement of Correctional Institutions and Detention Centres in 2014, as opposed to 2015, did not answer overcrowding problem because the percentage of inmates increased due to significantly increasing total number of detainees and convicts. Efforts made by the government, Directorate General of Correctional in this case, to construct new Correctional Institutions and Detention Centres to increase occupancy capacity will be pointless if the number of people who will be incarcerated steeply grows.

It is this situation that will be discussed in the research, which is the implication of extra inmates and overcrowding situation in most Correctional Institutions and Detention Centres in Indonesia. By the extra inmates we mean the situation where overcrowding in Correctional Institutions/Detention Centre has occurred or when the number of convicts exceeds the available spaces.

While what we mean by overcrowding is a crisis situation resulted by a Correctional Institutions/Detention Centres crowding. Recent overcrowding situation in Correctional Institutions/Detention Centres in Indonesia deserves more serious attention of the government because, in turn, it will bring about numerous damages not just to inmates, regarding their basic rights and those of their families, but also the State as the administrator of correctional institutions. Despite the longstanding existence of the situation, it seems no formulation was available to deal with it.

1.2 Objectives

The study aims to provide a complete picture of Indonesian Correctional Institutions and Detention Centres overcrowding condition and its implications. Furthermore, it is hoped that the study will serve as a guided and measured reference for concerned agencies and other parties that have interest in how to resolve the prevailing overcrowding so that the objective of corrections might be achieved.

1.3 Problem Identification

The study confines the discussion on situation, causes and impacts of density, inmates' surplus, overcrowding situation in Correctional Institutions/Detention Centres, and strategies to handle situation as such. From the background section above the following research themes can be formulated:

1. How is the situation of crowding and extrainmates and overcrowding problem in Correctional Institutions/Detention Centres in Indonesia?
2. What are causes and impacts of overcrowding in Correctional Institutions/Detention?
3. What are the strategies to reduce and overcome overcrowding in Indonesia?

1.4 Research Methodology

This research can be categorized as descriptive legal study[7] to obtain integral and comprehensive and systematic picture. To further examine this research, the authors use normative juridical research method with the support of empiric juridical research method.

1.4.1 Research Specification

Based on the research's tittle as expounded in the problem formulation and in relation to desired objectives above, the research specification belongs to the realm of descriptive analytical research. Descriptive because it is an effort to describe (to show and to explain) a situation of, causes and impacts of, crowding and surplus of inmates, overcrowding in Correctional Institutions/Detention Centres in Indonesia, which then will be discussed and analysed with various theories and opinions so that eventually a conclusion can be drawn to bring about strategies to handle the problem in question.

[7] Abdul Kadir Muhammad defines descriptive legal study as a legal research that descriptive in nature and aims to obtain complete picture of prevailing legal situation of a certain place and certain time. See Abdul Kadir Muhammad, *Hukum dan Penelitian Hukum*, PT Rineka Cipta, Bandung, 2004, p. 49.

1.4.2 Data Gathering Technique

To gather data, the authors undertake literature research to expose and invent various doctrines and opinions related to the researched issues. As for data gathering techniques the authors break them into three components of data gathering as follows:

Primary data gathering: primary data is legal materials that have binding force in the form of norms, basic principles, basic rules, legislations, etc.[8] Additionally, primary data can be directly obtained through interviews with selected informants such as officials of Directorate General of Corrections, officers of Correctional Institutions/Detention Centres, former inmates and society members in general.

Secondary data gathering: secondary data is materials to explain primary data in the form of books on corrections or prison and other related books, law journals, official documents, etc.,[9] and several court adjudications with permanent legal force and;

Tertiary data gathering: tertiary data is materials that indicate or explain both primary and secondary legal materials. It is also called, therefore, supporting materials. Among tertiary legal materials the authors use are law dictionaries, encyclopaedia, indexes, articles, opinions, etc.

1.5 Chapters and Sections

In line with the research objectives, the strategies to reduce overcrowding in Indonesia are presented in 6 Chapters.

Chapter I: Introduction, this chapter describes the background, objectives, problem identification, of the research and methodologies to perform the research and its systematics writing;

Chapter II: Overcrowding situation, this chapter describes and explains overcrowding situation in Indonesia, its history and comparison with several countries that face similar situation;

Chapter III: Causes of Overcrowding, this chapter describes causes of overcrowding situation that include prevailing sentence policy in Indonesia, socio-economic factor that incites crime, policies that are considered as overcriminalization, pre-trial detention, punitive approaches on drug crime,

[8] Valerine J. L. Kriekhof, *et al*., *Metode Penelitian Hukum (Seri Buku Ajar), Buku A,* Faculty of Law, University of Indonesia, Depok, 2000, p. 27.
[9] *Ibid,* p. 28.

administrative procedure of assimilation and reintegration, and others that considered as causes of overcrowding situation in Indonesia;

Chapter IV: Impacts of Overcrowding, this chapter discusses the existing impacts of overcrowding by highlighting three main impacts, which are impact on the State, impact on inmates and their families, and impact on Prison;

Chapter V: Strategies to Deal With Overcrowding, this chapter describes strategies to take in line with the causes of overcrowding and explains practices taken by the State to handle similar problem;

Chapter VI: Closing, this chapter offers some recommendations and supports the conclusion drawn in the research.

CHAPTER II

OVERCROWDING SITUATION IN INDONESIA

2.1 Overview of Correction System in Indonesia

Combatting crime is one principal duty of the State in order to protect society. Anything taken to cope with crime is often called as criminal policy with the objective to make people prosper within a framework of the State. Criminal policy can be break down into two parts: *penal* and *non-penal*.[10] With regard to most often adopted approach by the States, including Indonesia, which is penal policy, Sudarto explains that criminal (penal) law policy can be understood that it is adopted to achieve the best result of criminal legislation, which is in accordance with requirement of justice and utility.[11] Due to its harsh nature criminal law policy is expected to be able to properly protect society and considered as the most powerful means than any other.

As the time goes and criminal law develops accordingly, prison sentence has gradually shifted to more humane sentence. In the past a convict was considered as banished person and treated inhumanely such as neck and hands tied up to inflict physical agony, for example, but this treatment has been gradually abandoned.

Later, sentencing has shifted to a rehabilitative way that aims to treat perpetrator as a person who will come back to the society through the combination of guidance, education, and training. Prison sentence is regulated in Article 10 of Penal Code, which stated that one of main sentences is imprisonment. This kind of punishment is one that most often found in the Penal Code and other legislations, so it is fair to assume that in every verdict the judges still hold prison sentence as their favourite.

Despite the State eagerness to use prison sentence in combatting crime, it is not always good and right impacts that come about. The use of criminal law policy in combatting crime, however, might criminalizecommon actions and, eventually, tends to create the phenomenon ofovercrimininalization. The overuse of criminal law is against the nature of criminal law as the “last resort”, better known as *ultimum remedium* or the use of criminal law as *Premium Remidium* by the State to control people’s actions.

[10]Evan C., *Privatisasi Penjara: Upaya Mengatasi Krisis Lembaga Pemasyarakatan di Indonesia,* Calpulis, 2016, p. 1.
[11]*Ibid*, p. 2.

Stuart Green offers some criteria where criminal law is excessively used as "*outrageously broad conspiracy laws; the increased use of strict liability; newly minted drug, juvenile, white collar, and intellectual property offenses; and plea-bargaining regime that favour the prosecution at every turn*." The existence of overcriminalization will immediately followed by overpunishment. It is so because the use of criminal justice policy increases criminal sentencing by the court, which, in turn, will increase imprisonment as a criminal sentence. Overpunishment causes the increase of inmates and creates new problems in Correctional Institution, i.e. overcrowded.[12]

Prison reform in Indonesia has its most historical turn when Sahardjo served as Minister of Justice and launched a very significant effort to reform Indonesian prison system in 1964. The term of prison (in Indonesian penjara, from the word penjera: something that deters) was changed to Lembaga Pemasyarakatan (Correctional Institution) that emphasized on the rehabilitation of inmates. The symbol of the institution was changed to a banyan tree that symbolizes protection. The State plays important role in protecting society and developing inmates. Correctional Institution is not a place of punishment to make inmates suffer, but it is a place of development and education that prepares inmates to come back to the society.[13]

Sahardjo, based his views on development philosophy, has enumerated 10 correctional concepts in Indonesia:[14]

1) Protect and provide them with provisions of life so they can play their parts as good and useful citizens. Provisions of life are not just financial and material ones but also, and more importantly, good mental and physical healthy, expertise, skill so they may have potential and effective abilities to become good citizens who will never break the law anymore and useful to the State's development.
2) Sentence is not a vengeance on the part of the State. The only agony that inmates should endure is the lack of liberty.
3) Repentance cannot be sought through torture, but through guidance. It is important, therefore, for inmates to be instilled with the norms and values of life, in addition chance to contemplate their past perpetrations. Inmates could be involved in social activities to nurture their social life responsibilities.

[12] *Ibid*, p. 5.
[13] *Ibid*, p. 3.
[14] Mohammad Taufik Makarao, *Pembaharuan Hukum Pidana Indonesia*, Kreasi Wacana, Yogyakarta, 2006, p. 143-148.

4) The State has no right to make anyone worse/more evil than before incarceration. Hence, it is important to separate between who are recidivists and who are not; between those who commit grave offense and those who commit lesser one; types of crimes committed; adult, young adult, and juvenile; man and woman; convicted and detainee/remand prisoner.
5) During liberty deprivation an inmate might not be isolated from the society. They shall not be geographically or physically isolated so they will not be alienated from the society and its living. Correctional system is based on community-centred guidance, inter-activities and interdisciplinary approachamong wardens, society members, and inmates.
6) Works assigned to inmates should not be ones to fill up free time or performed to the interest of the State in a particular time. Potential works in Prison should be considered as integrated to the potential of national development.
7) Development and guidance must be based on Pancasila (the State's ideology).
8) Everybody is a human and should be treated as human, even if he or she has gone astray.
9) Convict is sentenced by restricting his or her liberty during a certain time. Therefore, it should be taken into consideration how the convict may find income to support his or her family by providing him or herjob or a chance to do job with payment. While for youth and children there should be educational institution (school) as needed or chance to obtain education outside the Prison.
10) For development and guidance of convicts there should be the necessary facilities. It is of necessity to build new Correctional Institutions that suit to development program requirement.

The problems in Correctional Institutions and Detention Centres are not as simple as people thought. Simply adding and constructing new Correctional Institutions are not the solution. Moreover, overcrowding generates further problems such as ever-soaring State Budget, barely adequate development facilities because, among others, the available fund is prioritized to feed inmates, which, in turn, generates various problems such as insufficient service and security, violent acts, sexual harassment, and inadequately undertaken development.

Such problems have broken out more easily with the help of disproportional warden-inmate ratio, the mixing of convicts (convicts of theft and those of murder), problems of inmate's health service and nutriment, and infectious diseases within Correctional Institutions.

Despite prevailing conception of incarceration sentence is a correctional one and the term of prison was replaced by Correctional Institution, in reality, the idea is not supported by a clear conception as part of criminal justice system and sufficient facilities. One of problems has risen from such a situation, which is overcrowding problem in Correctional Institutions/Detention Centres.

2.2 The History of Overcrowding in Indonesia

During colonial Dutch rule (1816-1942), *Oude Batavische Statuten van Batavia* came into force in the Netherlands Indies as basic principles of civil and criminal justice. *Oude Statuten* specified three types of place to incarcerate crime perpetrators, i.e. *bui*, *ketingkwartier*, and *vrouwentuchthuis*.[15]

Bui was a place to hold people who were accused and detained for gambling, drunk, slaves who fought against their masters, and hostages. The condition of *bui* is notoriously horrible. Many detainees died from infectious disease. At that time, the judges examined cases for twice a year only, in May and December, so there were many detainees who died before brought to the court. *Kettingkwartier* was a place to hold Chinese who came illegally and hostages (imprisoned for failure to follow a judicial order to pay a debt). Prison situation was not good, began crowded and no sentence based on wrongdoing. However, its situation was better than *bui*. The detainees also received payment for lumber processing. Different from those two, *Vrouwentuchthuis* only incarcerated Dutch women who were considered violating decency.[16] Apart from *Ketingkwartier* in some places there were *gevangenis*[17]for lesser offenses, detainees, transit prison for transferred convicts, insane person and women with syphilis disease.

After the rules of Daendels (1808-1811) and Raffles (1811-1816) were over, in 1891 a general regulation was issued that stated that native Indonesian convicts to be sentenced to do forced labour, while for European convicts to be incarcerated in prison.[18] The news on improper prison condition, discriminative treatment, and the beginning overcrowding began to emerge during this period.

2.2.1 Discriminative Treatment against Europeans – Natives and the Beginning of Overcrowding

In 1846 Dutch Government assigned a committee to work for five years investigating the situation of *bui*. The committee proposed an improvement plant that unfortunately cannot be realized. In 1854

[15]Sanusi Has, *Pengantar Penologi: Ilmu Pengetahuan tentang Pemasyarakatan Khusus Terpidana*, Monora, Medan, 1976, p. 50.
[16]*Ibid*, p. 51-52.
[17]Prison
[18]*Ibid*, p. 50.

General Pokrol[19] Mr. A. J. Swart explained the news on not good prison houses situation, except for healthcare for Europeans that was far better than that of Natives.

Work that Natives performed for Europeans in Willem I in Ambarawa was making shoes and clothes. While in Banyuwangi they made clothes for forced labourers. However, in prisons for Europeans, complemented with libraries and sportequipment, there were many inmates who loafed around.[20]

As for healthcare, native convicts who fell sick were treated by doctors if possible in a certain remote area or by medicine men in the absence of doctors (Stbl. 1847 No. 53). Chains to fetter hands and legs were replaced by iron necklaces that did not damage convicts' health (Stbl.1835 No. 42). After Mr. A. J. Swart report, came about that of Mr. W. Rappard.[21]

Mr. W. Rappard documented that food for European was far better than that of Natives, and Chinese prisoners and that their food did not make them full. This problem was fixed. However, there were other problems such as prison building condition, low lighting, lack of fresh air and the like.

Overcrowding was recorded for the first time in 1859. The first case of overcrowding situation was reported from Bangkalan Prison that was built to hold 5 inmates. However, there was additional warehouse to incarcete 60 inmates but in reality, it housed 360 inmates instead. In addition to what the *Pokrol* reported, the overcrowding prison played a role in inciting insurgency where 76 detainees attacked wardens and escaped.[22]

2.3 Overcrowding Situation in Indonesia

During recent years, overcrowding situation of Correctional InstitutionDetention Centre in Indonesia has become a problem that is hard to deal with. So far the increasing number of inmates has not been accompanied by adding spaces and occupancy capacity of Correctional Institutions/Detention Centres. Here we present a view on the growth of inmates'number in Detention Centres and Correctional Institutions in Indonesia from 2013 to February 2018:

[19] *Pokrol* was a Defender or Representative of people with law cases (in court); Lawyer/advocate. Available at https://kbbi.web.id/pokrol
[20] Sanusi Has, *op.cit*., p. 50
[21] *Ibid*.
[22] *Ibid*, p. 54.

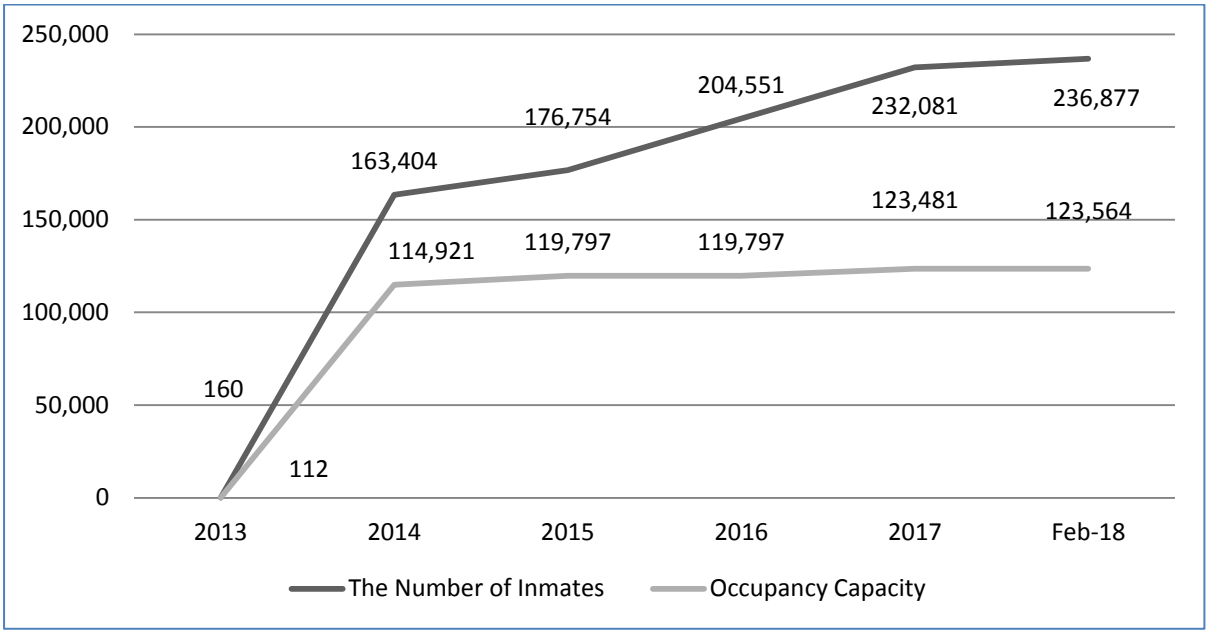
Table 2.1: The Increasing Number of Detainees and Convicts in National Detention Centres and Correctional Institutions 2013-2017

No	Year	Detainees	Convicts	Total Number of Inmates	Occupancy Capacity of Detention Centres and Correctional Institutions	The Difference Between Total Number of Inmates and Occupancy Capacity	Overcrowding Percentage
1	**2013**	**51.395**	**108,668**	**160,063**	**111,857**	**48,206**	**143 %**
2	**2014**	**52,935**	**110,469**	**163,404**	**114,921**	**48,483**	**142%**
3	**2015**	**57,547**	**119,207**	**176,754**	**119,797**	**56,957**	**147%**
4	**2016**	**65,554**	**138,997**	**204,551**	**119,797**	**84,757**	**170%**
5	**2017**	**70,739**	**161,342**	**232,081**	**123,481**	**108,600**	**188%**

The table shows the number of detainees and convicts increases every year. Taking a look at increasing occupancy capacity of Detention Centres and Correctional Institutions in 2014 compared to 2015, it can be said that the additional Correctional Institutions did not solve the existing overcrowding. Yearly increasing of overcrowding is the result of total number of detainees and convicts that also significantly increases.

The effort of the government through the Directorate General of Correction to provide sufficient spaces for inmates by constructing new Correctional Institutions and Detention Centres, however, will be pointless if the soaring growth on those who go to detention centres and Correctional Institutions keep increasing.

Figure 2.1: Comparative Growths of Inmates Number and Occupancy Capacity in Indonesia 2013-2018



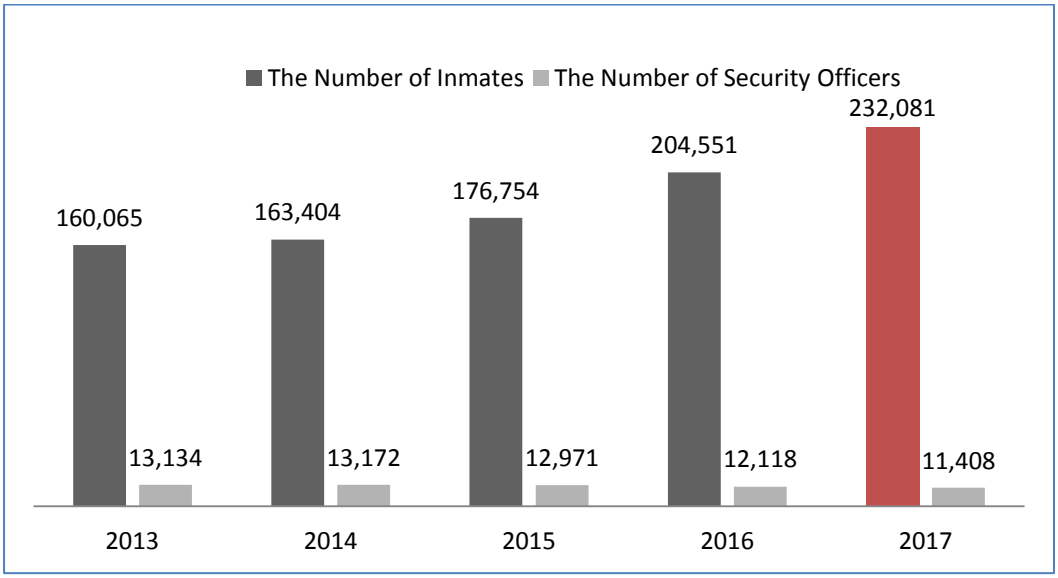
Source: Corrections Database System (SDP), Directorate General of Correction, Ministry of Law and Human Rights, 2018, accessed on 21 February 2018.

In fact, data of February 2018 above shows that the difference between total number of inmates and officers of Correctional Institutions/Detention Centres is 113,313, which means that overcrowding of Correctional Institutions /Detention Centres in Indonesia as of February 2018 is **91,69%**.

The overcrowding situation of Correctional Institutions and Detention Centres will generate various problems.[23] *First*, development programmes (expertise and skill development, medical and social rehabilitation) have not been properly conducted because of overcrowding. *Second*, many inmates have escaped because of unbelievably disproportionate inmate-warden ration. Below is an illustration of inmate-warden ration from 2013 to January 2018:

[23]Supriyadi W. Eddyono, et.al. *ed.*, *Ancaman Overkriminalisasi, dan Stagnasi Kebijakan Hukum Pidana Indonesia: Laporan Situasi Hukum Pidana Indonesia 2016 dan Rekomendasi di 2017*, Institute for Criminal Justice Reform, Jakarta, 2017, p. 6.

Figure 2.2: Comparative Growths of Inmates Number and Security Officers Number of Correctional Institutions/Detention Centres in Indonesia 2013-2017



Source: Corrections Database System (SDP), Directorate General of Correction, Ministry of Law and Human Rights, 2017, accessed on 21 February 2018

From the graph above one may conclude that the number of officer (security unit) by far is disproportionate to that of inmates. Worse, number of security units steadily decreases while that of inmates steeply grows. Ideally wardens-inmates ratio is 1:5, but the real ratio is 1:25.[24] In fact, in some Correctional Institutions the disparity is much wider. For example, in 2017 Class II A Prison of Ruku in North Sumatera 1,963 inmates were watched by only 23 personnels of security unit.[25]

Because of this to wide disparity the guard duty has not been performed will and has caused many escapes and generated other social problems. In 2017 alone there were 30 escape cases across Indonesia:

[24] Aman Riyadi, Director of Information Technology and Cooperation of Directorate General of Correction, Ministry of Law and Human Rights the Republic of Indonesia, in FGD : *Overcrowded dalam Lapas/ Rutan: Situasi, Dampak dan Rekomendasi*, Hotel Aryaduta Jakarta, 30 November 2017.

[25] Apart from disproportionate number of security unit and inmates, Labuhan Ruku Prison has also overcrowding rate of 554% in 2017, Correction Database System, General Directorate of Correction, Ministry of Law and Human Rights, available at http://www.smslap.ditjenpas.go.id

Table 2.2: Cases of Convict and Detainee Escapes in 2017

No.	Month	Date	Province/ Regional Office	Detention Centre (Rutan)/Prison (Lapas)	Number of Escaping Detainee/ Convict	Prison Situation
1	January 2017	Saturday, 7 January 2017	Bengkulu	Class IIA Lapas of Curup	1 Convict	Capacity: 200 inmates
						Inmates: 563 persons
						Overcrowding: 182%
2		Wednesday, 18 January 2017	Central Java	Class IIA Lapas of Pekalongan	1 Convict	Capacity: 466 inmates
						Inmates: 800 persons
						Overcrowding: 0%
3		Saturday, 21 January 2017	Central Java	Lapas of Batu, Nusakambangan, Cilacap	2 Convicts	Capacity: 490 inmates
						Inmates: 490 persons
						Overcrowding: 0%
4		Wednesday, 25 January 2017	Central Java	Class II B Rutan of Purbalingga	1 Convict	Capacity: 92 inmates
						Inmates: 146 persons
						Overcrowding : 59%
5	February 2017	Wednesday, 18 February 2017	Papua	Class II B Lapas of Merauke	1 Convict	Capacity: 319 inmates
						Inmates: 254 persons
						Overcrowding:

						0%
6		Sunday, 19 February 2017	Papua	Class II A Lapas of Abepura	5 Convicts, 1 Detainee	Capacity: 230 inmates
						Inmates: 437 persons
						Overcrowding: 90%
7		Monday, 20 February 2017	Nanggroe Aceh Darussalam	Class II B Lapas of Langsa	3 Convicts	Capacity: 145 inmates
						Inmates: 468 persons
						Overcrowding: 223%
8	March 2017	Thursday, 2 March 2017	Jambi	Class II A Lapas of Jambi	4 Detainees	Capacity: 218 inmates
						Inmates: 1431 persons
						Overcrowding: 556%
9		Sunday, 5 March 2017	East Kalimantan	Class II B Rutan of Tanah Grogot, Paser Regency	4 Detainees	Capacity: 160 inmates
						Inmates: 464 persons
						Overcrowding: 190%
10		Sunday, 5 March 2017	Riau Islands	Class IIA Lapas of Barelang, Batam	1 Detainee	Capacity: 411 inmates
						Inmates: 1428 persons
						Overcrowding: 247%
11		Sunday, 20 March 2017	East Nusa Tenggara	Class II B Rutan of Maumere, Sikka	1 Convict	Capacity: 159 inmates
						Inmates: 144

						persons
						Overcrowding: 0%
12		Wednesday, 29 March 2017	South Sumatera	Class III Lapas of Banyuasin, Palembang	1 Convict	Capacity: 175 inmates
						Inmates: 664 persons
						Overcrowding: 279%
13	April 2017	Monday, 10 April 2017	South Sulawesi	Class IIB Rutan of Watansoppeng	3 Detainees	Capacity: 62 inmates
						Inmates: 125 persons
						Overcrowding: 102%
14		Saturday, 15 April 2017	West Sumatera	Class II B Lapas of Pariaman	6 Convicts	Capacity: 170 inmates
						Inmates: 424 persons
						Overcrowding: 149%
15		Wednesday, 19 April 2017	North Sumatera	Lapas of Tanjung Gusta, Medan	1 Convict	Capacity: 1054 inmates
						Inmates: 3069 persons
						Overcrowding: 191%
16		Friday, 28 April 2017	Nanggroe Aceh Darussalam	Lapas of Banda Aceh	1 Convict	Capacity: 800 inmates
						Inmates: 508 persons
						Overcrowding: 0%
17	May	Friday, 5	Riau	Class IIB Rutan of	473	Capacity: 771

	2017	May 2017		Sialang Bungkuk, Pekanbaru	Convicts	inmates Inmates: 1589 persons Overcrowding: 106%
18		Sunday, 7 May 2015	South Sulawesi	Class I Lapas of Makassar	3 Convicts	Capacity: 740 inmates Inmates:1099 persons Overcrowding: 49%
19		Friday, 26 May 2017	South Sumatera	Class I Pakjo Lapas, Palembang	17 Convicts	Capacity: 540 inmates Capacity: 1606 persons Overcrowding: 197%
20	June 2017	Thursday, 8 June 2017	Riau	Class IIB Rutan of Sialang Bungkuk, Pekanbaru	7 Convicts	Capacity: 771 inmates Inmates: 1674 persons Overcrowding: 117%
21		Sunday, 11 June 2017	East Java	Class II A Lapas of Bojonegoro	1 Convict	Capacity: 250 inmates Inmates: 394 persons Overcrowding: 58%
22		Monday, 12 June 2017	Riau Islands	Class IIA Lapas of Barelang, Batam	1 Convict	Capacity: 411 inmates Inmates: 1426 persons Overcrowding:

						247%
23		Wednesday, 14 June 2017	Jambi	Class II A Lapas of Jambi	76 Convicts	Capacity: 218 inmates
						Inmates: 1164 persons
						Overcrowding: 434%
24		Sunday, 16 June 2017	Nanggroe Aceh Darussalam	Rutan of Singkil, Aceh Singkil Regency	6 Convicts	Capacity: 35 inmates
						Inmates: 174 persons
						Overcrowding: 397%
25		Tuesday, 19 June 2017	Bali	Class II A Lapas of Kerobokan, Denpasar	4 Convicts	Capacity: 323 inmates
						Inmates: 1376 persons
						Overcrowding: 326%
26		Wednesday, 20 June 2017	North Sumatera	Lapas of Tanjung Gusta, Medan	4 Convicts	Capacity: 3178 inmates
						Inmate: 1054 persons
						Overcrowding: 202%
27	July 2017	Tuesday 11 July 2017	Nangroe Aceh Darussalam	Class II A Lapas of Lhokseumawe	1 Convict	Capacity: 136 inmates
						Inmates: 445 persons
						Overcrowding: 234%
28	Novemb er 2017	Wednesday, 22 November	Riau	Lapas of Pekanbaru	2 Convicts	Capacity: 771
						Inmates: 1568 persons

		2017				Overcrowding: 103%
29	Decemb er 2017	Monday, 18 December 2017	North Sumatera	Class II A Lapas of Binjai	7 Convicts	Capacity: 498
						Inmates: 1694
						Overcrowding: 240%
30		Friday, 29 December 2017	Central Java	Class II A Lapasof Pekalongan	7 Convicts	Capacity: 800
						Inmates: 836
						Overcrowding: 5%

Source: Monitor of ICJR, Corrections Database System (SDP), Directorate General of Correction, Ministry of Law and Human Rights, 2017.

Of those 30 escaping detainees/convicts cases happened in 25 Correctional Institutions/Detention Centres that were overcrowded. The high rate of prison breaks and riots in Correctional Institutions and Detention Centres were brought by serious frictions between inmates. The frictions were caused by the fights over food, beds, bathrooms, conflict between groups of convicts, neglected convicts' rights of health, exploitation, and various negative effects of overcrowded prison.[26]

2.4 Overcrowding Situation in Various Countries

Overcrowding is not a situation that only happened in Indonesia, many other countries face the same problem, and this similarity has become a common subject matter that, in turn, involved many countries in search for common solution. It was also this consideration that motivated African countries to hold International Seminar on Prison Conditions in Africa on 19-21 September 1996 in Kampala, Uganda. The seminar produced *Kampala Declaration on Prison Condition in Africa* that was annexed by the Resolution of Economic and Social of United Nations 1997/36.

With regard to Remand Prisoners agenda, the declaration recommended more selective measures in determining pre-trial detention and more rigorous surveillance on both the decision and duration of detention. Additionally, the declaration also strongly recommended all law enforcement agencies to

[26] The Situation and Condition of Detention in Indonesia, Overcrowding is the Main Trigger of Riots, available at: http://icjr.or.id/situasi-dan-kondisi-penahanan-di-indonesia-overkapasitas-menjadi-pemicu-utama-terjadinya-kerusuhan/

think about the impacts of the problems that overcrowding situation caused, and called for every criminal justice element to jointly find solutions to reduce overcrowding problem.[27]

The Kampala Declaration on Prison Condition in Africa was followed-up as a sustainable program in a seminar on "The Challenge of Prison Overcrowding" in San Jose, Costa Rica, in 1997 and finally validated in International Conference held at Kadoma, Zimbabwe, 24 to 28 November 1997 by means of Kadoma Declaration on Community Service which, was also annexed by the Resolution of UN Economic and Social Council of 1998/23.

Crowding prison population reported by the International Centre for Prison Studies (ICPS) in 2013 explained[28] that more than 10.2 million people have been held in prisons penal institutions around the world, mostly as pre-trial detainees/remand prisoners or as sentenced prisoners. Almost half of these have been in the United States (2.24 million), Russia (0.68 million), or China (1.64 million). In addition at least 650,000 have been reported to be in pre-trial or 'administrative' detention in China and 150,000 in North Korea; if these were included the world total would be more than 11 million.

The United States has the highest prison population rate in the world, 716 per 100,000 of the national, followed by St. Kitts and Nevis (714), Seychelles (709), U.S. Virgin Island (539), Barbados (521), Cuba (510), Rwanda (492), Anguilla - United Kingdom (487), Belize (476), Russian Federation (475), British Virgin Island. (460) and Sint Maarten –Netherlands (458). However, more than half of countries and territories (54%) have rates below 150 per 100,000.

The world population at the beginning of 2013 was about 7.1 billion people (from United States figures); set against the world population of 10.2 million this produces a world population rate of 144 per 100,000 (155 per 100,000 if set against a world prison population of 11 million).

Prison population rates vary considerably between different region of the world, and between different parts of the same continent. For example, in Africa the median rate for Western African countries is 46 whereas for southern African countries it is 205; in the America the median rate for south American countries is 202 whereas for Caribbean countries it is 376; in Asia the median rate for south central Asian Countries (mainly the Indian sub-continent) is 62 whereas for East Asian

[27]Appendix to Regulation of Ministry of Law and Human Rights of the Republic of Indonesia 11/2017 on Grand Design to Handle Overcrowding in Detention Centres and Correctional Institutions, p. 35.

[28]Report of the International Centre for Prison Studies(ICPS) of 2013, available at https://www.apcca.org/uploads/10th_Edition_2013.pdf, accessed on 3 March 2018.

countries it is 159.5. In Europethe median rate for western European countries is 98 whereas the countries spanning Europeand Asia (e.g. Russia and Turkey) it is 225.In Oceania (including Australia and New Zealand) the median rate is 151.

Prison populations are growing in all five continents. In the 15 years since the first edition of the Word Prison Population the estimated world prison population has increased by some 25-30% but at the same time the world population has risen by over 20%.The world prison population rate has risen by about 6% from 136 per 100,000 of the world population to the current rate of 144.

According data from the Institute for Criminal Policy Research, in 2016 there have been more than 10.35 million people around the world in prisons as pre-trial detainees or convicted and sentenced prisoners.[29] Between 2000 and 2015, almost everywhere in the world, except for Europe, saw large increases in prison population. South America, Southeast Asia, Oceania, and the Americas saw increases in total prison populations of 64%, 40%, 59%, and 41% respectively. While in Europe, the total number of prisoners has fallen by 21% from 2000 to 2015. The overall decline is attributed to Russia, where the prison population declined from about one million in 2000 to around 640,000 in 2015.[30]

To illustrate overcrowding situation in various countries, Occupancy rate (the ratio of inmates' number to official prison capacity) is used as a benchmark. The terms of overcrowding (above 100% of capacity), critical overcrowding (above 120% of capacity), and extreme overcrowding (occupancy rate above 150%) are also in use.[31] The data processed from World Prison Brief[32] about overcrowding situations in every continent are presented as follows.

[29]The figure must be higher as data is unavailable from several countries and pre-trial detainees in police facilities are not always counted in prison totals. The actual figure might be over 11 million people, see Roy Walmsley, *World Prison Population List*, Institute for Criminal Policy Research (ICPR), 2015, p. 2

[30]Penal Reform International and Thailand Institute of Justice, *Global Prison Trends 2017*, 2017, p. 17.

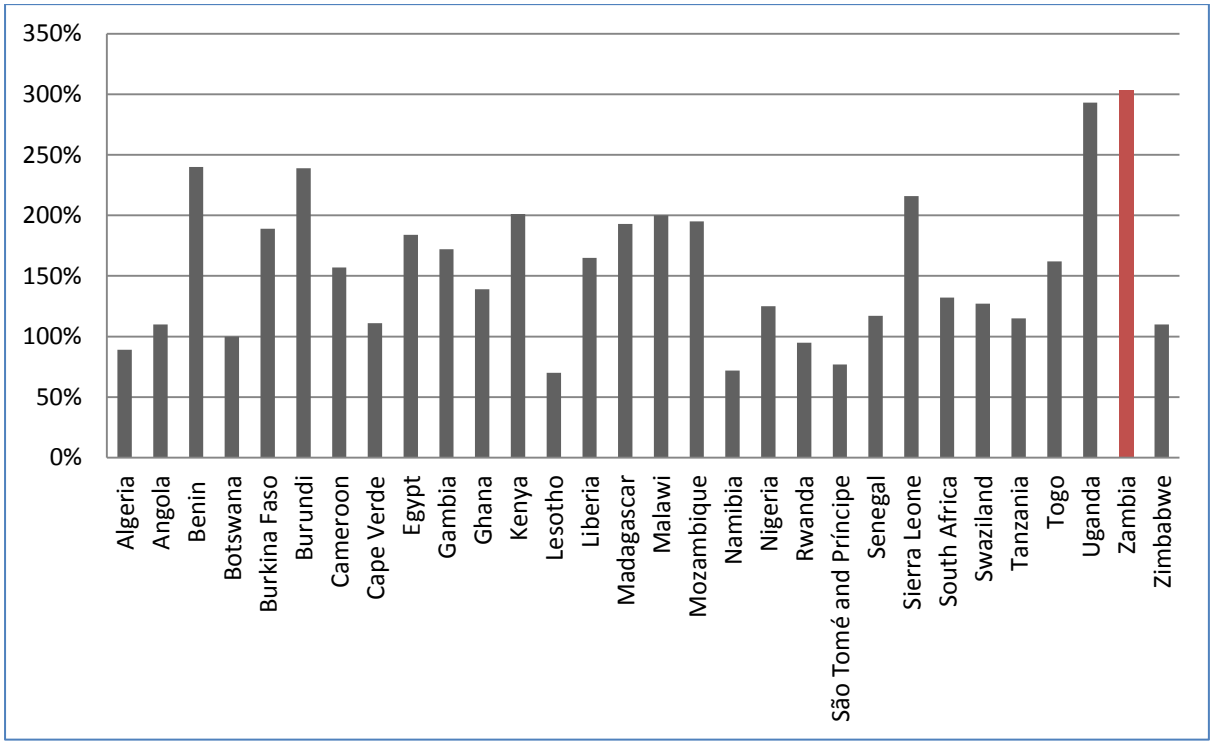
[31]Commission on Crime Prevention and Criminal Justice, *World crime trends and emerging issues and responses in the field of crime prevention and criminal justice*, United Nations Economic and Social Council, 2016, p. 21.

[32]*World Prison Brief* is an online database that provides access to imprisonment information system around the world. *World Prison Brief* is run by *Institute Criminal Policy Research* (ICPR), available at http://www.prisonstudies.org/

2.4.1 Africa

By occupancy rate of 30 African countries from 2014 to 2017,[33] only 5 countries have no overcrowding problem (Algeria, Lesotho, Namibia, Rwanda, São Tomé and Príncipe). There are 4 countries with critical overcrowding (Ghana, Nigeria, South Africa, and Swaziland) and 15 countries with extreme overcrowding (Benin, Burkina Faso, Burundi, Cameroon, Egypt, Gambia, Kenya, Liberia, Madagascar, Malawi, Mozambique, Sierra Leone, Togo, Uganda, Zambia). The highest occupancy rate is held by Zambia (303%, data of 2017), followed by Uganda (293%, data of 2016). Generally, overcrowding situation in African countries is caused by excessive pre-trial detention and excessive punishment against minor offenses.[34]

Figure 2.3: Occupancy Rate of 30 African Countries in 2014-2017

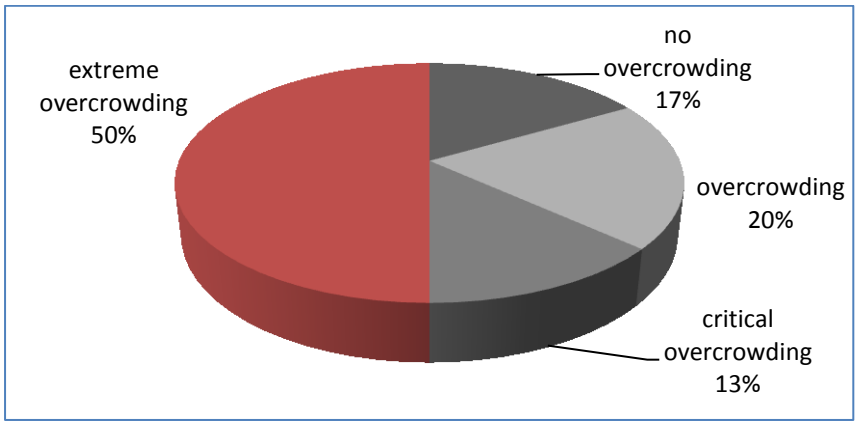


Source: World Prison Studies, 2017

[33] Actually there are 54 countries in Africa, but only the data of 30 countries available during the period of 2014-2017 or only that of occupancy rate of localized prison overcrowding.

[34] People are imprisoned, for example, for using abusive language or operating a business without valid license, or illegal gambling, see Anonym, Alternatives to Imprisonment, available at https://www.penalreform.org/where-we-work/africa/alternatives-imprisonment/, accessed on 20 February 2018.

Figure 2.4: Overcrowding situations in African Countries



Source: World Prison Studies, 2017

2.4.2 Americas

2.4.2.1 North America and Caribbean

Looking at the occupancy rate of 19 North American and Caribbean countries from 2014 to 2017,[35] there are 8 countries with extreme overcrowding (El Salvador, Guatemala, Honduras, Antigua and Barbuda, Dominican Republic, Grenada, Haiti), one country with critical overcrowding(St. Kitts and Nevis), and only 6 countries with no overcrowding situation (Belize, Mexico, Barbados, Dominica, Jamaica, Trinidad and Tobago).

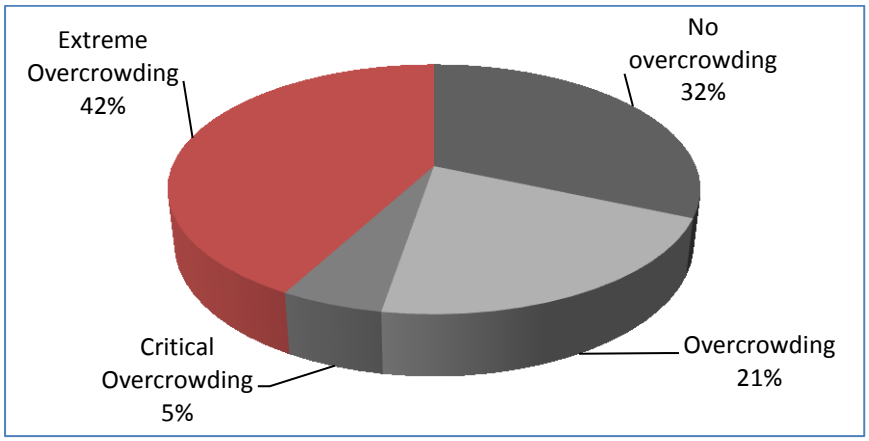
One country in North America, the United States, has the highest incarceration rate in the world, which accounts for one quarter of the global prison population.[36] It is estimated that there are 2.2 million prisoners in the United States, a 500% increase since 1975.[37] Still, occupancy rate in the United States is lower than average African, Asian and Latin American countries.

[35] There are, in fact, 23 countries in North America, but there was only data from 19 countries during 2014-2017 in *World Prison Studies*.

[36] Anthony Kennedy, *Overcrowding and Overuse of Imprisonment in the United States*, 2015, p. 1.

[37] The increase in the result of sentencing policies to combat drug offences since 1980s that emphasized, among others, mandatory minimum sentence. The number of Americans incarcerated for drug offenses has skyrocketed from 40.900 in 1980 to 469.545 in 2015, see *The Sentencing Project, 2017, Trends in U.S Corrections*, available at https://www.sentencingproject.org/publications/trends-in-u-s-corrections accessed on 20 February 2018.

Figure 2.5: Occupancy Rates of 19 North American Countries in 2014-2017



Source: World Prison Studies, 2017

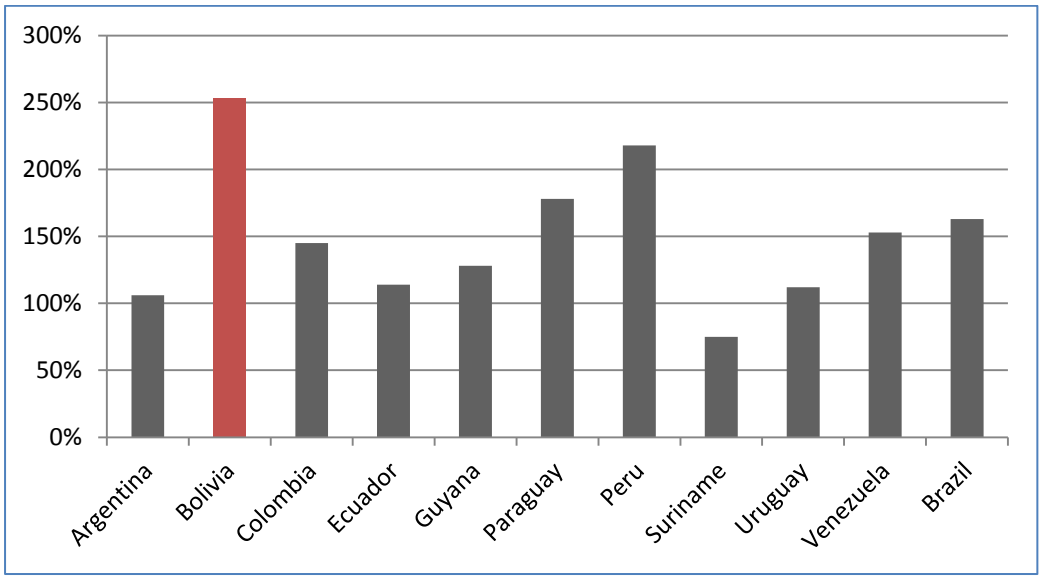
2.4.2.2 South America

Looking at the occupancy rate of 11 South American countries in 2014-2017, only Suriname has not shown an overcrowding situation. Five countries have extreme overcrowding (Bolivia, Paraguay, Peru, Venezuela, and Brazil) and 2 countries have critical overcrowding (Columbia and Guyana). The highest occupancy rate is held by Bolivia (253%, data of 2016), followed by Peru (218%, data of 2017), and Brazil (163%, data of 2017).

Overcrowding situation in Brazil has drawn considerable international attention. This is appararently not only because of its large prison populations (Brazil currently has the fourth largest prison population, over 600,000 people), but also due to its dilapidated prisons conditions and gang warfare, which often stir up violence and insurrections in prisons that kill prisoners.[38]

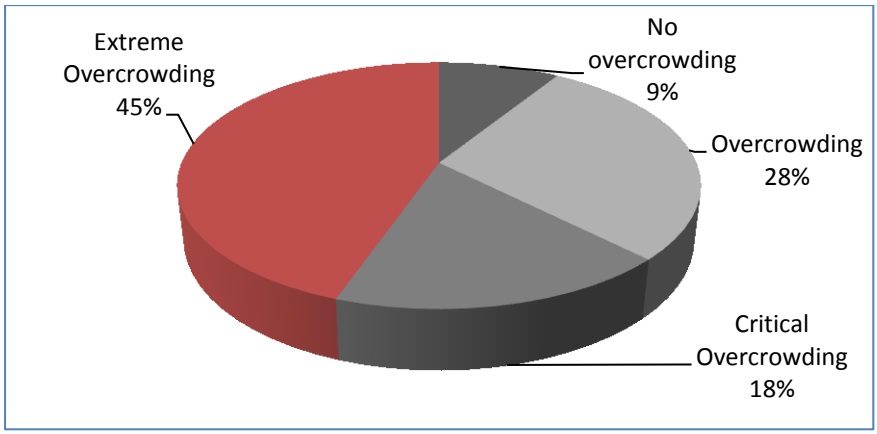
[38] Institute for Criminal Policy Research, *Prison: Evidence of its use and over-use from around the world,* University of London, London, 2017, p. 10.

Figure 2.6: Occupancy Rates of 11 South American Countries in 2014-2017



Source: World Prison Studies 2017

Figure 2.7: Overcrowding situations in South American countries

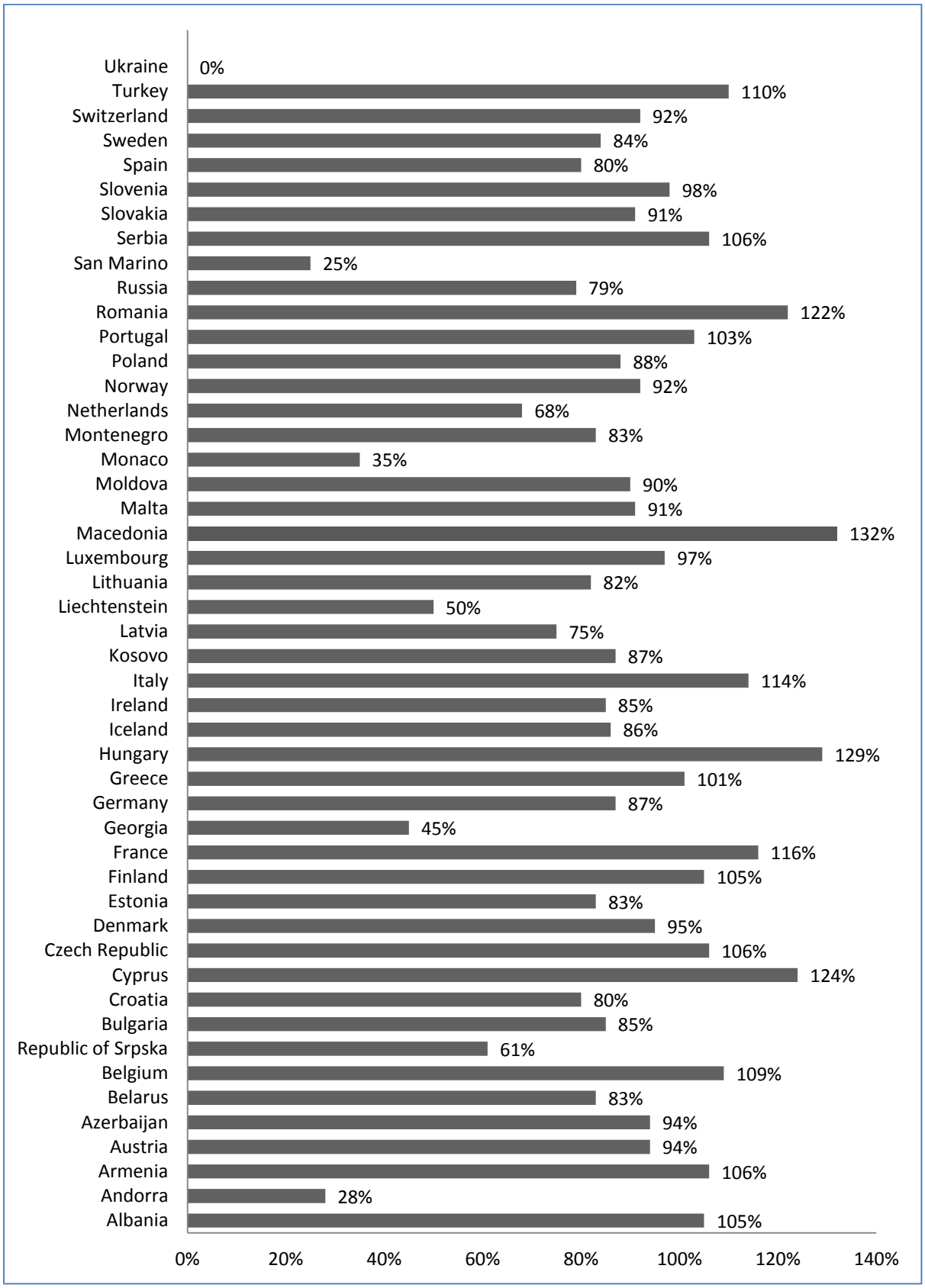


Source: World Prison Studies 2017

2.4.3 Europe

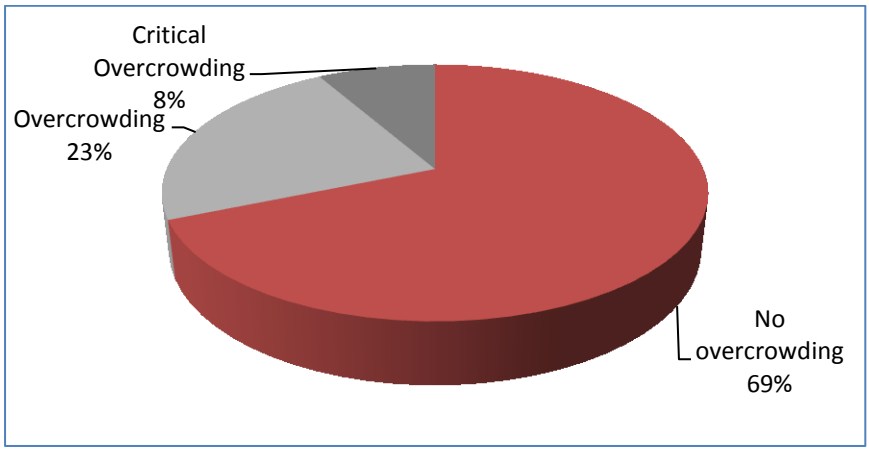
By looking at the occupancy rate of 48 European countries in 2014-2017, there are only 11 countries with overcrowding situation (Albania, Armenia, Belgium, Czech Republic, Finland, France, Greece, Italy, Portugal, Serbia, and Turkey) and 4 countries with critical overcrowding (Cyprus, Hungary, Macedonia, Romania). There is no country with extreme overcrowding in Europe.

Figure 2.8: Occupancy Rates of 48 European Countries in 2014-2017



Source: World Prison Studies, 2017

Figure 2.9: Overcrowding Situations in European Countries



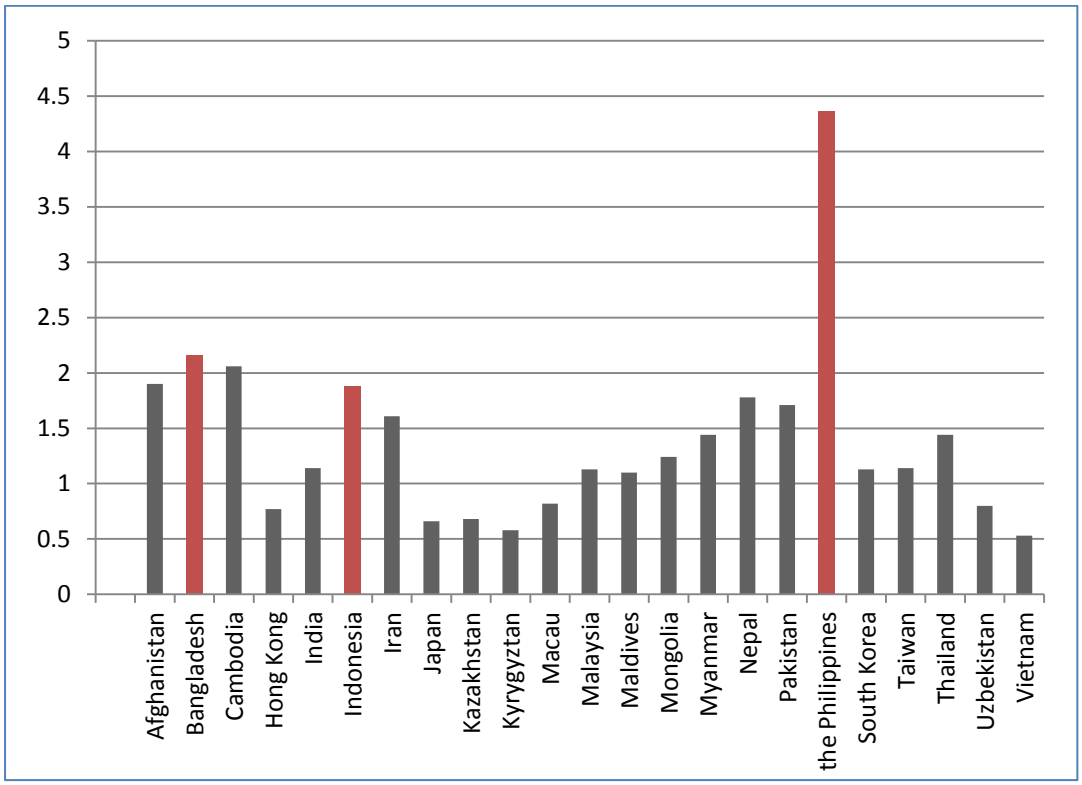
Source: World Prison Studies, 2017

2.4.4 Asia

Occupancy rate of 23 Asian countries in 2014-2017 shows that 8 countries have extreme overcrowding (Afghanistan, Bangladesh, Cambodia, Indonesia, Iran, Nepal, Pakistan, the Philippines), while 3 countries have critical overcrowding (Mongolia, Myanmar, Thailand), and only 7 countries with no overcrowding (Hong Kong, Japan, Kazakhstan, Kyrgyzstan, Macau, Uzbekistan, and Vietnam). The highest occupancy rate is held by the Philippines (436%, data of 2017), followed by Bangladesh (216%, data of 2017), Cambodia (206%, data of 2015), and Indonesia (188%, data of 2017). High occupancy rate of the Philippines is a direct impact of the war on drugs initiated by President Rodrigo Duterte. Prisons hold up inmates to twice or even three times of their capacity, forcing inmates to sleep virtually piled on one another.[39]

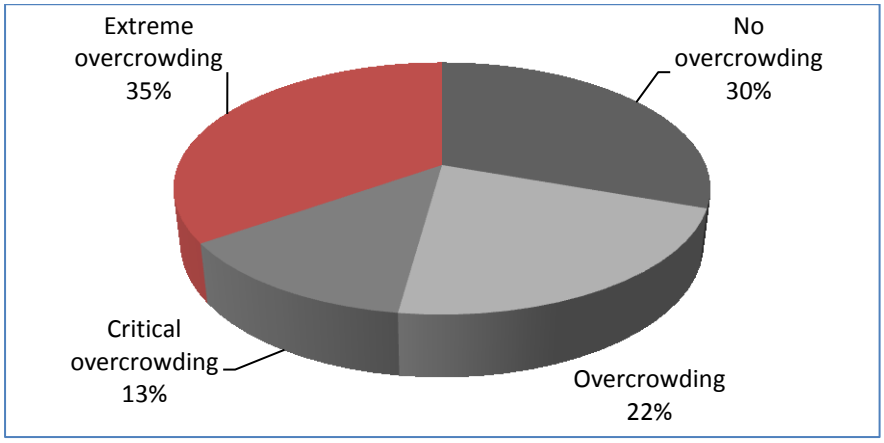
[39] War on drug in the Philippines has not just made prisons overcrowded, but also government or private rehabilitation centres. Drug users, who fear of police operation or vigilantes' actions turned to rehabilitation to save their lives, see Alberto Maretti, 2016, *Prisons and rehab overcrowding in the Philippines*, http://www.aljazeera.com/indepth/inpictures/2016/12/prisons-rehab-*overcrowding*-philippines-161207091046623.html, accessed on 23 February 2018.

Figure 2.10: Occupancy Rates of 23 Asian Countries in 2014-2017



Source: World Prison Studies, 2017

Figure 2.11: Overcrowding Situation of Asian Countries



Source: World Prison Studies, 2017

2.4.5 Situation and Causes of Prisons Crowding in Various Countries

Countries with different prison systems existed, such as federal and state prisons, have very different occupancy rates and density accordingly. Destiny is generally defined referring to occupancy rate and official prison capacity. In this simple formula, density refers to a situation where

prisoner's number exceeds the official prison capacity. Density level is defined as part of occupancy rate above 100 per cent.

It should be noted that these measures are not comparable, since prison capacity is differently measured in different countries, it varies depend on allocated spaces for each detainee set out in national legislation and other regulations or references. Furthermore, density level has no clear value as an indicator of condition under which detainees are placed or the severity of problems they experience.

Hence, the comparison of density levels may vary. However, this is the only available quantitative measure to provide some understanding on the degree of density and its dynamics in a certain country, in addition to comparison between countries. Taking this into consideration, of 194 jurisdictions whose data have been collected by the World Prison Brief of International Centre for Prison Studies, 118 of them have occupancy rate above 100% (overcrowded).

Of all them, 15 jurisdictions have crowding rate above 200%, 33 with rates between 150 and 200%. However, high imprisonment rates may not automatically be related to prison overcrowding, because in many countries high prison sentence cause no overcrowding. Although the condition of overcrowding which was caused by the excessive prison sentences might be temporarily coped with by expanding prison, if the main problem that caused high prison sentence rates remain untouched, new prisons will be filled immediately, and the prison construction program will need to be extended on regular basis.

On the other hand, low prison sentence level does not necessarily mean that prisons will not be overcrowded. In some countries prisons are in fact overcrowded despite low prison sentencing rate. This may be due to lack of prison spaces or inadequate infrastructures, or because the geographical distribution of prisons that does not meet current needs. Prisoners are concentrated only in some prisons, causing overcrowding level to rise above national average.

These prisons generally hold pre-trial detainees because of lengthy pre-trial detention, not because of excessive prison sentencing in general. Indeed, prison sentencing levels of these countries might be low as showed by small number of convicts. A number of conclusions can be drawn, depend on further analysis and researches, to identify looming challenges in criminal justice systems of these countries. However, it is clear that pre-trial detention is often excessively practiced, and that is what

caused prison space to be sort all these time. If the pre-trail detention is not excessively practiced, prison infrastructure will be sufficient in terms of space, though not necessarily so with regard to proper conditions and services.

Discussing and comparing crowding levels in various countries, it is important to note that there is no internationally accepted standard for required minimum space of detention. Standard Minimum Rules for Treatment of Prisoners (SMR) specifies that "all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation."

Among regional standards, commentary of Rule 18 of European Prison Rules shows that European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) considers 4 square metres for prisoners in shared accommodation and 6 square metres for a prison cell are minimum standards. It is said that, although CPT never laid down such a norm directly, indications are that it would consider 9 to 10 square metres as a desirable size for a cell for one prisoner.

In the absence of a universal standard, the International Committee of the Red Cross (ICRC), based on its experience in many countries around the world, has developed specifications concerning space requirement as detailed in a 2014 guide booklet on Water, Sanitation, Hygiene and Habitat that was further refined by additional guidebook: Water, Sanitation, Hygiene and Habitat in Prisons "Supplementary Guidance" 2012.

The ICRC recommends the following specifications as the minimum space needed for detainee to sleep undisturbed, store personal property and move around. The ICRC does not set minimum standards. Instead the ICRC sets the recommended specifications based on its experience.[40] These specifications include:

- 1.6 square meters for sleeping, not included space for toilet and shower.
- 5.4 square metres per person for single cell;
- 3.4 square metres per person for shared or dormitory accommodation, including where bunkbeds are used.

[40]International Committee of the Red Cross (ICRC), *Water, Sanitation, Hygiene and Habitat in Prisons Supplementary Guidance,* 2012.

In defining these specifications, the ICRC clearly states that the amount of space cannot be assessed only on the basis of a specific area measurement. The appropriateness of the recommended specifications will depend on the actual situation in a particular context. Factors that may be relevant to detention situations include:

- Building condition;
- The amount of time spent in the space;
- Number of people in the space;
- Activities carried out in the space;
- Ventilation and light;
- Services available in the space;
- Supervision.

This more comprehensive approach provides a more accurate picture of the reality for detainees and staff. It serves to underline the fact that all aspects of space and its use are interrelated and a variation in one factor will affect other factors and the quality of the individual detainee's prison experience.

As the prison population grows, the number of prisoners with special needs is also increasing in many countries worldwide. Such groups include women prisoners; prisoners with mental health care needs, drug-dependent prisoners, foreign national prisoners, racial and ethnic minorities, elderly prisoners and prisoners with disability. Children are imprisoned and often held with adults, contrary to the provisions of international instruments.

Currently some of these groups constitute a large part of the worldwide prison population. Foreign prisoners, for example, make up over 20 percent of the prison population European Union countries and a few countries in South Asia and the Middle East. Fifty to eighty percent of prisoners have some form of mental disability according to studies undertaken in a number of countries; racial and ethnic minorities represent over 50 percent of the prison population in some jurisdictions. While women still form a small minority in prisons around the world, their numbers are increasing at a faster rate than men in a number of jurisdictions.

Various studies have indicated that the percentage of people in prison who have a drug problem ranges from 40 to 80 percent and drug use amongst offenders entering prison is on the increase. The

special treatment requirements of these groups are rarely met in prisons, especially in facilities that are overcrowded and under-resourced.

2.4.6 Congressional Recommendations on Crime Prevention and Criminal Justice, Salvador, Brazil 2010

In 2010 prison overcrowding was one of the topics discussed in Congress on Crime Prevention and Criminal Justice entitled "Strategies and Best Practices against Overcrowding in Correctional Facilities" held in Salvador, Brazil, in 2010.The discussion resulted in a series of conclusion and recommendations, as follows:

a) Overcrowding in correctional facilities was one of the most serious impediments to be compliance by Member States of relevant United Nations instrument and standards and norms and violated the human rights of inmates;
b) Crime was a social problem to which criminal justice systems could provide only part of the solution. Taking action against poverty and social marginalization was key to preventing crime and violence and, in turn, reducing prison overcrowding;
c) Member States should define prison overcrowding as an unacceptable violation of human rights and consider establishing a legal limit of their prison capacity;
d) Member States should consider reviewing, evaluating and updating their policies, laws and practices to ensure the development of a comprehensive criminal justice strategy to address the problem of prison overcrowding, which should include reducing the use of imprisonment and increasing the use alternatives to prison, including restorative justice programmes;
e) Policies and strategies to address prison overcrowding should be evidence-based;
f) Member States should implement reforms and strategies to reduce overcrowded in a manner that is gender-sensitive and that effectively responds to the needs of the most vulnerable groups;
g) Member States are encouraged to review the adequacy of legal aid and other measures, including the use of trained paralegals, with a view to strengthening access to justice and public defence mechanisms to review of the necessity of pre-trial detention,
h) Member States are invited to conduct a system-wide review to identify inefficiencies in the criminal justice processes that contribute to prolonged periods of custody during the pre-trial and trial processes, and to develop strategies to improve the efficiency of the criminal justice process, which include measures to reduce cases backlogs, and to consider introducing time limits on detention;

i) Member States should be encouraged to introduce measures providing for the early release of prisoners from correctional institutions, such as referral to halfway houses, electronic monitoring and reduction of sentences for good behaviour. Member States should consider reviewing their revocation procedures to prevent the unnecessary return to prison;
j) Member States are invited to develop a system of parole and probation systems;
k) Member States should ensure effective implementation of alternatives to imprisonment by providing necessary infrastructure and resources;
l) Member States should promote the participation of civil society organizations and local communities in implementing alternatives to prison;
m) Member States should raise awareness and encourage comprehensive consultative processes, involving the participation of all relevant sectors of government, civil society, in particular victims' associations, and other stakeholders in the development and implementation of national strategies, including action plans, to address overcrowding;
n) Member States should ensure that evidence-based information on crime and criminal justice is communicated to legislators, politicians, decision-makers, criminal justice practitioners, the public and the media. For this purpose, Member States should be encouraged to continue research on factors contributing to the prisoner overcrowding.

2.5 Overcrowded Situation of Detention Centres/Correctional Institutions in Indonesia by Occupancy Rate Category

Overcrowding situation of Detention Centres/Correctional Institutions in Indonesia as of December 2017 [see **Table 2.1**] is 188%. If the benchmark of overcrowded Detention Centres/Correctional Institutions in Indonesia is illustrated by means of occupancy rate (ratio between the number of detainees to official prison capacity)[41] as used by other countries in reporting Correctional Institutions conditions, then the situation of Detention Centres/Correctional Institutions in Indonesia belongs to extreme overcrowding category (occupancy rate above 150%).

Likewise, if the occupancy rate benchmark to assess overcrowding situation of Detention Centres/Correctional Institutions in Indonesia is seen per Technical Implementation Unit (Unit Pelaksana Teknis/UPT), it fell under extreme overcrowding category where its percentage exceeds the percentage of Detention Centres/Correctional Institutions at national level. For example, UPT of Bagan Siapi-api Detention Centre Branch, North Sumatera Province, which hold the highest overcrowding rate in Indonesia up to 824%.

[41]The term of overcrowding applies for occupancy rate above 100%, critical overcrowding for occupancy rate above 120%, and extreme overcrowding for occupancy rate above 150%.

Table 2.3: UPT With Highest Overcrowding Rate in Indonesia

No	UPT	Number of Inmates	Capacity	*Overcrowded*	Number of Officers
1	**Branch of Bagan Siapi-Api Detention Centre**	808 persons	98 persons	**824 %**	36
2	**Class IIb Detention Centre of Takengon**	453 persons	65 persons	**597 %**	26
3	**Class IIb Prison of Banjarmasin**	254 persons	366 persons	**595 %**	112
4	**Class IIa Prison of Tarakan**	996 persons	155 persons	**543 %**	53
5	**Class IIA LPKN of Bandar Lampung**	1,055 persons	168 persons	**528 %**	90
6	**Branch of Langsa Detention Centre**	379 persons	63 persons	**502 %**	25
7	**Class II b Prison of Kota Baru**	1.070 persons	180 persons	**494 %**	47
8	**Class II a Prison of Labuhan Ruku**	1,770 persons	300 persons	**490 %**	49
9	**Class IIb Prison of Dumai**	920 persons	198 persons	**458 %**	39
10	**Class IIb Detention Centre Kupang**	265 persons	50 persons	**430 %**	45

Source: Corrections Statistics Report, Supporting Data for Working Meeting of Commission III with Minister of Law and Human Rights of the Republic of Indonesia, Thursday, 25 January 2018, available at: smslap.ditjenpas.go.id accessed on 18 January 2018

Of the 33 Detention Centres/Correctional Institutions in provincial level across Indonesia, only 5 of them have no overcrowding situation. It means, using distribution benchmark which Detention Centres/ Correctional Institutions have overcrowding situation and which ones have not, 84.85% of prisons in 28 Indonesia's provinces have overcrowding problem.

Table 2.4: Comparison of General Overcrowding Situation of Detention Centres and Correctional Institutions in all Indonesia's Provinces

Overcrowding Situation of Provincial Detention Centres/Correctional Institutions in Indonesia	Number	Percentage
Not Overcrowded (<100%)	5 Provinces	15.15%
Overcrowded in general (≥100%)	28 Provinces	84.85%
Total	33 Provinces	100%

Source: Corrections Database System (SDP), Directorate General of Corrections, Ministry of Justice and Human Rights, as of January 2018, accessed March 12, 2018, processed by Author

If the overcrowding figure were further classified using occupancy rate benchmark, it would be found that figure and percentage of overcrowded detention centres/Correctional Institutions are dispersed in 2 provinces (6.06%), critical overcrowding (> 120%) dispersed in 5 provinces (15.15%), and extreme overcrowding (> 150%) dispersed in 21 Provinces (63.64%).

Table 2.5: Comparison of Overcrowding Situations of Detention Centres and Correctional Institutions in All Provinces of Indonesia by Category of Occupancy Rate

Overcrowding Situation of Provincial Detention Centres/Correctional Institutions di Indonesia	Number	Percentage
No Overcrowding (<100%)	**5 Provinces**	**15.15%**
Overcrowded (≥100%)	**2 Provinces**	**6.06%**
Critical Overcrowding (≥120%)	**5 Provinces**	**15.15%**
Extreme Overcrowding(≥150%)	**21 Provinces**	**63.64%**
Total	**33 Provinces**	**100%**

Source: Corrections Database System (SDP), Directorate General of Corrections, Ministry of Justice and Human Rights, as of January 2018, accessed on 12 March 2018, processed by the authors

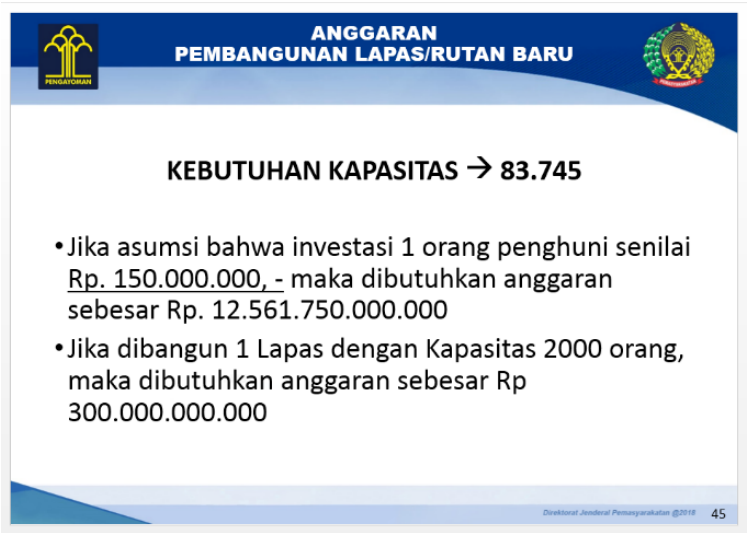
Extreme overcrowding situation of Detention Centres/Correctional Institutions in Indonesia indirectly move towards the same prison situations in 30 countries worldwide that also have extreme overcrowding conditions, among others:

- 15 African countries (Benin, Burkina Faso, Burundi, Cameroon, Egypt, Gambia, Kenya, Liberia, Madagascar, Malawi, Mozambique, Sierra Leone, Togo, Uganda, Zambia)
- 8 North American and Caribbean countries (El Salvador, Guatemala, Honduras, Antigua and Barbuda, Bahamas, Dominican Republic, Grenada, Haiti)

- 5 South America countries (Bolivia, Paraguay, Peru, Venezuela, and Brazil) and;
- 7 Asian countries (Afghanistan, Bangladesh, Cambodia, Iran, Nepal, Pakistan, the Philippines).

Prison overcrowding for those countries with extreme overcrowding has a similar pattern that is generally caused by: excessive pre-trial detention and excessive sentencing against minor offenses.[42] Indonesia is no exception.

Additionally, the most often overlooked problem of overcrowding situation is cost that the State has to spent to cover the expensed of ever-increasing inmates. Inmates are the State's responsibility, so that any expense from food to medicine must be borne by the State. The greater number of inmates the greater burden that the State carries.



Source: Corrections Statistic Report, Supporting Data for Working Meeting of Commission III with Minister of Law and Human Rights, Thursday 25 January 2018.[43]

[42] For example, for using abusive language or operating a business without valid license, or illegal gambling, see Anonym, Alternatives to Imprisonment, available at https://www.penalreform.org/where-we-work/africa/alternatives-imprisonment/, accessed on 20 February 2018.

[43] Notes: Capacity Requirement -> 83,745
* If we consider investment needed for 1 person is Rp. 150,000,000, - the total budget needed is Rp. 12,561,750,000,000
* If 1 Correctional Institution is built with a capacity of 2000 people, then a budget of Rp. 300,000,000,000, - is needed.

CHAPTER III

THE CAUSES OF PRISON OVERCROWDING IN INDONESIA

Indonesian criminal justice system has transform the concept of imprisonment from retribution to rehabilitation. This can be perceived from the idea to change Prison institution (historically called prison house - *penjara*)[44] to Correctional Institution (lembaga pemasyarakatan) in 1963.[45]Imprisontment under correctional system is more oriented to the idea of protection/correction and improvement of convicts to return to society,[46] based on correctional reasoning (treatment, rehabilitation, correction).[47] Prison is expected to be not just as a place to punish people, it also serves as a place to reform or educate inmates. After they went through sentences, hopefully they would live as good law abiding citizens.[48]

The increase of Correctional Institutions and Detention Centres population that resulted in prison overcrowding was not followed by the establishment of new facilities and adequate infrastructures. Conditions as such are far from the expectation to meet the demands of standard minimum rules (SMR). One of the SMR requirements is providing one cell for one convict or providing at least a place with enough space for them to sleep.[49]Besides these overcrowded conditions a number of Correctional Institutions and detention centres have had problems in rehabilitating convicts. The greater number of prisoners results in the greater potential conflicts that force wardens to concentrate more on handling security issues at the cost of providing correctional and rehabilitative programs for prisoners.[50] Moreover, the first and foremost factor heavily influencing the high rate of overcrowding in Indonesia is the will of the state to prioritize imprisonment for any criminal provisions in any political process of law making.

3.1 Indonesian Penal Politics and Policies Contributing to Prison Overcrowding

Penal politics and the perspective of law enforcement agencies in conducting legal measures against those who break the law account for the causes of various prison problems. Measures as such

[44]P.A.F. Lamintang and Theo Lamintang, *Hukum Penitensier Indonesia*, Jakarta, Sinar Grafika, 2010, p. 31.

[45]Andi Hamzah, *Sistem Pidana di Indonesia: Dari Retribusi ke Reformasi,* in *Jimly Asshiddiqie, Pembaharuan Hukum*, p. 161.

[46]Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Bandung, Citra Aditya Bakti, 2002, p. 238.

[47]Mardjono Reksodiputro, *Kriminologi dan Sistem Peradilan Pidana*, Jakarta, Pusat Pelayanan Keadilan dan Pengabdian Hukum (formerly Lembaga Kriminologi) Universitas Indonesia, 1987, p. 151.

[48]P.A.F. Lamintang and Theo Lamintang, *Op.cit.*, p. 31.

[49]Lidya Suryani Widayati, *Rehabilitasi Narapidana dalam Overcrowded Lembaga Pemasyarakatan*, Jurnal Negara Hukum, Vol.3, No. 2, December 2012, FH UII, p. 212

[50]Office of Research and Development of Human Rights, Departmentof Justice and Human Rights of the Republic of Indonesia, *Implementation of Standard Minimum Rules (SMR) in Prison*, Jakarta, Departmentof Justice and Human Rights of the Republic of Indonesia, 2003, p. 69

including detention during investigation by subjective consideration of law enforcement officers, perception of successful rate of a case by putting the convict in jail for a long time, and recently all the more troubling prison sentence for drug users who in all likelihood deserve other correctional measure such as rehabilitation.

Despite public perception considers that imprisonment for a criminal is intended to improve the perpetrator and protect the interest of society, in fact judges impose sentence only because the laws order them to do so.[51]Sentencing aims to bring about deterrent effect to perpetrator. Many judges, therefore, deliver long prison sentences based on the belief that the longer imprisonment will bring about, the stronger deterrent effect to the perpetrator will be. This fact reveals that the judges do not yet fully realize that imprisonment is the last resort (ultimum remedium) in the absence of other types of punishment.

3.1.1 Criminal Law Policy that Contributing to Prison Overcrowding

Indonesian penal policy closely relates to penal policy designed by the government and the House of Representatives (DPR). In fact, to this very moment the government and DPR eagerly enact legislations liable to criminal punishment that are often irrelevant. Many existing legislations containing the substance of penal provisions have as if become tools to force that any law breaker must end up in Detention centres or Prison.

According to the data compiled by the BPHN (National Law Development Agency) Team, the Criminal Code enumerates punishment as many as 485 times with the following details:[52]

- The status of imprisonment as a principle, an alternative, a temporary, or a substitute punishment.
- Imprisonment for years as a principal punishment is mentioned 274 times.
- Imprisonments both for certain years and for lifetime are mentioned 292 times.
- Imprisonment serving as an alternative punishment to other punishment is mentioned 26 times.

From the beginning of *Reformasi* (a reform movement, 1998) to 2016 there have been 563 (five hundred sixty-three) legislations that the government and the DPR enacted, approximately 154 (one

[51]Appendix to Regulation of Minister of Law and Human Rights of the Republic of Indonesia 11/2017 on *Grand DesigntoHandle Overcrowded Detention Centres and Correctional Institutions*, p. 16

[52]BPHN Team, Planning of National Law Development on Criminal Law and Sentencing System (Law Policy and Sentencing), Jakarta, BPHN, 2008, p. 15

hundred fifty-four) of them contain penal provisions. During the period, based on a mapping result there were 1,601 (one thousand six hundred one) acts categorized as crimes with 716 (seven hundred sixteen) of them are newly introduced crimes in Indonesian criminal law. It is important to note that most of new crimes intoduced during 1998-2016 period were liable to prison punishment. There were no less than 654 crimes (91.34%) punishable with improsonment, while detention sentence was liable only for 45 crimes (6.28%) and approximately 17 crimes (2,37%) were punishable for fine. The length of imprisonment ranging from 1 day to 5 years was found in almost 65% of new crimes every year, followed by the length of imprisonment from 5 to 10 years (18%), the length of imprisonment from 10 to 15 years (9%), and the length of imprisonment from 15 years or more (4%).[53]

Meanwhile, a research conducted by ICJR in 2011 showed that from 1946 to 2007 Indonesia continually introduced crimes punishable for imprisonment over 5 years. While in 1995 there were "only" 215 crimes regulated by legislations other than Penal Code punishable for imprisonment over 5 years, in 2007 the figure rose 100 percent to 443 crimes. Such a situation will be consistently in line with the increasing pressure on occupancy capacity of Detention Centres and Correctional Institutions throughout Indonesia.[54]

Furthermore, according to Academic Text on the Draft of Penal Code, currently there are 145 legislations containing penal provisions aside from the Penal Code, inventoried based on 30 law sections, namely:[55]

Table 3.1: List of Regulations Containing Punishment Provisions

No	Laws	Law Section
1	Law Number 9/1998 on Freedom of Expression in Public	Human Rights
2	Law Number 23/2004 on Eradication of Domestic Violence	
3	Law Number 21/2007 on Eradication of Human Trafficking Crimes	
4	Law Number 40/2008 on Eradication of Racial and Ethnic Discrimination	
5	Law Number 16/2011 on Legal Aid	
6	Law Number 5/1990 on Natural Resources and Ecosystem Conservation	Natural

[53]Appendix to Regulation of Minister of Law and Human Rights of the Republic of Indonesia 11/2017 on *Grand DesigntoHandle Overcrowded Detention Centres and Correctional Institutions*, p. 22.

[54]Tim Researchers Team of ICJR, *Potret Penahanan Pra-Persidangan di Indonesia: Studi tentang Kebijakan Penahanan Pra-Persidangan dalam Teori dan Praktek*, Jakarta, ICJR, 2011, p. 153

[55]Academic Text on Penal Code Bill, p. 131

7	Law Number 41/1999 on Forestry	Resources
8	Law Number 7/2004 on Water Resources	
9	Law Number 32/2009 on Environmental Protection and Management	
10	Law Number 5/1960 on Principles of Agrarian Law	Agrarian Affairs
11	Law Number 20/2011 on Condominium	
12	Law Number 29/2000 on Plant Variety Protection	Intellectual Property Rights
13	Law Number 30/2000 on Trade Secret	
14	Law Number 31/2000 on Industrial Design	
15	Law Number 32/2000 on Layout Design of Integrated Circuits	
16	Law Number 14/2001 on Patent	
17	Law Number 15/2001 on Marks	
18	Law Number 28/2014 on Copyrights	
19	Law Number 1/PNPS of 1965 on Prevention of Religious Abuses and/or Defamation	Religious Affairs
20	Law Number 41/2004 on Endowment	
21	Law Number 13/2008 on Hajj Organization	
22	Law Number 23/2011 on *Zakat* (Tithe) Management	
23	Law Number 4/ PNPS of 1963 on Securing Printed Materials Impeding Public Order	Archive
24	Law Number 4/1990 on Duty to Deliver and Deposit Printed and Recorded Works	
25	Law Number 43/2009 on Archival Matters	
26	Law Number 15/2006 on Audit Board of the Republic of Indonesia	State Institutions and Government
27	Law Number 14/2008 on Openness of Public Information	
28	Law Number 37/2008 on Ombudsman of the Republic of Indonesia	
29	Law Number 24/2009 on National Flag, Language, Emblem, and Anthem	
30	Law Number 16/1997 on Statistics	Population and Immigration
31	Law Number 12/2006 on Citizenship	
32	Law Number 23/2006 on Population Administration	
33	Law Number 1/2011 on Housing and Resettlement Area	
34	Law Number 6/2011 on Immigration	
35	Law Number 3/2005 on National Sports System	Youth and Sports
36	Law Number 26/2000 on Human Rights Court	Criminal Justice

37	Law Number 23/2002 on Child Protection	Sytem
38	Law Number 30/2002 on the Commission for the Eradication of Criminal Acts of Corruption	
39	Law Number 18/2003 on Advocate	
40	Law Number 13/2006 on Witness and Victim Protection	
41	Law Number 11/2012 on the Juvenile Criminal Justice System	
42	Law Number 1/1962 on Port Quarantine	Health
43	Law Number 2/1962 on Airport Quarantine	
44	Law Number 4/1984 on Epidemic of Contagious Disease	
45	Law Number 16/1992 on Quarantine of Animal, Fish, and Plant	
46	Law Number 5/1997 on Narcotics	
47	Law Number 29/2004 on Medical Practice	
48	Law Number 18/2008 on Waste Management	
49	Law Number 35/2009 on Narcotics	
50	Law Number 36/2009 on Health	
51	Law Number 44/2009 on Hospital	
52	Law Number 4/1997 on Persons with Disabilities	Social Welfare
53	Law Number 13/1998 on Olderly's Welfare	
54	Law Number 16/2001 on Foundations	
55	Law Number 24/2007 on Disaster Management	
56	Law Number 24/2011 on National Social Security System	
57	Law Number 9/1961 on Money or Goods Collection	Finance and Banking
58	Law Number 2/1992 on Insurance Business	
59	Law Number 11/1992 on Pension Fund	
60	Law Number 8/1995 on Capital Market	
61	Law Number 20/1997 on Non-Tax State's Revenue	
62	Law Number 10/1998 on Amendment to Law 7/1992 on Banking	
63	Law Number 23/1999 on Bank of Indonesia	
64	Law Number 24/1999 on Exchanges Flows and Exchange Rate	
65	Law Number 24/2002 on State Securities	
66	Law Number 15/2004 on State Audit	
67	Law Number 24/2004 on Deposit Insurance Corporation	
68	Law Number 19/2008 on State Sharia Bond	

69	Law Number 8/2010 on Countermeasure and Eradication of Money Laundering	
70	Law Number 3/2011 on Fund Transfer	
71	Law Number 5/2011 ob Public Accountants	
72	Law Number 7/2011 on Currency	
73	Law Number 21/2011 on Financial Service Authority	
74	Law Number 18/1999 on Construction Service	Construction and Building
75	Law Number 28/2002 on Buildings	
76	Law Number 11/1980 on Bribery	Corruption
77	Law Number 20 /2001 on Amendments to Law 31/1999 on Eradication of Corruption	
78	Law Number 36/1999 on Telecommunications	Media dan Communication
79	Law Number 40/1999 on Press	
80	Law Number 32/2002 on Broadcasting	
81	Law Number 11/2008 on Electronic Information and Transactions	
82	Law Number 33/2009 on Film	
83	Law Number 38/2009 on Postal Services	
84	Law Number 12/1985 on Property Tax	Tax and Customs
85	Law Number 13/1985 on Stamp Duty	
86	Law Number 19/2000 on Amendments to Law 19/1997 on Warrant for Tax Collection	
87	Law Number 17/2006 on Amendments to Law 10/1995 on Customs	
88	Law Number 28/2007 on the Third Amendment to Law 6/1983 on General Provisions and Tax Procedures	
89	Law Number 39/2007 on Amendments to Law 11/1995 on Excise	
90	Law Number 28/2009 on Local Taxes and Charges	
91	Law Number 7 /1996 on Food	Food and Horticulture
92	Law Number 13/2010 on Horticulture	
93	Law Number 11/2010 on Cultural Heritage	Tourism and Culture
94	Law Number 18 /2002 on National System of the Research, Development and Application of Science and Technology	Education, Research, and Technology
95	Law Number 20/2003 on National Education System	

96	Law Number 31/2009 on Meteorology, Climatology, and Geophysic	
97	Law Number 12/2012 on Higher Education	
98	Law Number 7/1981 on Mandatory Report on Employment	Manpower
99	Law Number 3/1992 on Employment Social Security	
100	Law Number 21/2000 on Workers/Labour Union	
101	Law Number 13/2003 on Manpower	
102	Law Number 2/2004 on Disputes Settlement on Industrial Relations	
103	Law Number 39/2004 on Placement and Protection of Indonesian Migrant Workers	
104	Law Number 9/2011 on Amendment to Law 9/2006 on Warehouse Receipt System	Trade and Industry
105	Law Number 2/1981 on Legal Metrology	
106	Law Number 3/1982 on Mandatory Company Registration	
107	Law Number 5/1984 on Industry	
108	Law Number 5/1999 on Prohibition of Monopolistic Practices and Unfair Business	
109	Law Number 8/1999 on Consumer Protection	
110	Law Number 42/1999 on Fiduciary Security	
111	Law Number 18/2008 on Waste Management	
112	Law Number 20/2008 on Micro, Small, and Medium Enterprises	
113	Law Number 2/2009 on Indonesian Export Financing Institution	
114	Law Number 10/2011 on Amendments to Law 32/1997 on Commodity Futures Trading	
115	Law Number 27/1997 on Mobilization and Demobilization	Defense and Security
116	Law Number 56/1999 on Trained People	
117	Law Number 15/2003 on Eradication of Criminal Acts of Terrorism	
118	Law Number 9/2008 on the Use of Chemical Materials and the Prohibition of Chemical Materials as Chemical Weapons	
119	Law Number 17/2011 on State Intelligence	
120	Law Number 15/2012 on Veteran of Republic of Indonesia	
121	Law Number 16/2012 on Defense Industry	
122	Law Number 10/1997 on Nuclear Energy	Mining and Energy
123	Law Number 22/2001 on Petroleum and Gas	

124	Law Number 27/2003 on Geothermal Energy	
125	Law Number 4/2009 on Mineral and Coal Mining	
126	Law Number 30/2009 on Electricity	
127	Law Number 44/2008 on Pornography	Pornography
128	Law Number 38/2004 on Road	Transportation
129	Law Number 23/2007 on Railway	
130	Law Number 17/2008 on Shipping	
131	Law Number 1/2009 on Aviation	
132	Law Number 22/2009 on Road Traffic	
133	Law Number 1/1973 on Indonesian Continental Shelf	Space and Territory
134	Law Number 5/1983 on Exclusive Economic Zone	
135	Law Number 27/2007 on Management of Coastal Areas and Small Islands	
136	Law Number 43/2008 on State Territory	
137	Law Number 4/2011 on Geospatial Information	
138	Law Number 2/2008 on Political Parties	Politics
139	Law Number 42/2008 on Presidential Elections	
140	Law Number 8/2012 on General Election of the Members of House of Representatives, People's Consultative Assembly, and Regional Representative Councils	
141	Law Number 18/2009 on Husbandry and Animal Health	Husbandry and Fisheries
142	Law Number 45/2009 on Amendments to Law 31 2004 on Fisheries	
143	Law Number 12/1992 on Plant Cultivation System	Agriculture
144	Law Number 18/2004 on Plantation	
145	Law Number 41/2009 on Protection of Sustainable Crop Lands	

Source: Academic Text of Penal Code Draft Law

The existence of 145 legislations containing penal provisions have contributed to the increase of Correctional Institutions' occupancy rate. Moreover, the Supreme Court Circular (SEMA) and the Attorney General's Circular (SEJA) on the placement of drug users and addicts in rehabilitation institution do not work well either. Data of Directorate General of Corrections shows that on February 2018 there were 25,223 inmates of Detention Centres and Correctional Institutions who are drug users.[56]

[56]Based on data taken from http://smslap.ditjenpas.go.id/public/krl/current/monthly/year/2018/month/2

The prevailing Government Regulation Number 99/2012 that is the second amendment to Government Regulation Number 32/1999 on Conditions and Procedures for Implementing the Rights of Prisoners contains provisions to tighten-up the rights given to inmates convicted for certain crimes, for instance terrorism, drugs-related crimes punishable for imprisonment over 5 (five) years as well as corruption. Consequntly, such regulation causes prison overcrowding and additionally, hinders the achievement of the objectives of correctional system.[57] That is because drug user inmates represent majority of Indonesian Detention Centres and Correctional Institutions inmates. Such a tightening measure by adding substantive and administrative requirements to the existing provisions has made difficult for inmates to access and obtain remission and parole, so that many of them have to undergo their punishment as stated in verdicts.

On the other hand, alternative detention policy and alternative fine sentence seem to be completely out of lawmaker's consideration. The government and parliament seem to overlook alternative punishments such fine for criminal offenses. Recently the provisions and the amount of fine in Penal Code have been adjusted to the Regulation of Supreme Court No. 02/2012 on Minor Offenses' Delimitation and Amount of Fine in the Penal Code.

Additionally, Indonesia has plenty vague provisions contributing to overcriminalization. Overcriminalization has eventually become one of the causes overcrowding in Detention Centres and Correctional Institutions through, among others, the application of Article 27 point (3) of Electronic Information and Transactions (EIT) Law. It is not surprising that Article 27 point (3) of EIT Law often serves as a means to revenge, because it is easy to detain someone by this provision. In fact, a number of cases shows unequal power relations between those who report and those who are reported. Generally, the ones reporting are those who have political power (regional heads, bureaucrats), economic power (entrepreneurs), or those with strong social influence. While those reported mostly powerless and, naturally, have no access to justice.[58] Other example comes from Article 86 of Law No/2009 on Archival Matters. The article in question specifies 10 years imprisonment for those who deliberately destroy archives against proper procedures. The 10 years imprisonment equals to Penal Code's provision against those who perpetrate grave assault leading

[57]Law Research Journal DE JURE, Volume 17, No. 3, September 2017, p. 388

[58]Summary of Elsam's study "EIT Law Disturbs the Freedom of Opinion and Expression, Need to be Revised Soon, p. 2.

to death.[59] Therefore, it is sfe to conclude thatcriminalization in Indonesia is heavily oriented to imprisonment even as a response to administrative or civil matters.

Indonesian criminal justice policy heavily inclines to the values of imprisonment, causing legislations of Indonesia unintegrated in the context of law enforcement and sentencing, in addition to many overcriminalizing articles. Basically, those above-mentioned issues are the main causes of prison overcrowding in Indonesian Detention Centres and Correctional Institutions of which the level have been increasing every year.

3.1.2 Future Criminal Law Policies that Potentially Cause Prison Overcrowding

Penal Code Draft Law (RKUHP) which is under deliberation of the government and the parliament will potentially contribute to the prison overcrowding in Correctional Institutions and Detention Centres in the future, despite the present alarming situation of our Correctional Institutions and Detention Centres. Data of SDP of General Directorate of Corrections as of March 2018 revealed that there are only 5 provinces or provincial offices (Kanwil) not experiencing overcrowded problem: D.I Yogyakarta, West Sulawesi, Maluku, North Maluku, and Papua.[60] The claims that the present Penal Code Revisionwith itsnew sentencing concepts employing the alternatives to imprisonment, is hardly evident. It can be seen from how imprisonment dominating the type of punishment stated in the provisions.

The findings of ICJR pointed out that in the draft of Penal Code there are only 59 crimes automatically liable to social work punishment as an alternative to imprisonment. Whereas 1,154 crimes are liable to imprisonment and, furthermore, 328 crimes liable to at least 1 year to 4 years imprisonment.[61]

The present distribution of punishment in the draft of Penal Code clearly shows that the alternatives to imprisonment have not been effectively applied. According ICJR findings:

a) Out of 555 articles specifying punishment in Book II, there are 1251 types of crime defined.[62]

[59]Anugerah Rizki Akbari, see http://www.hukumonline.com/berita/baca/lt5a5861c1c99e1/ini-beda-kriminalisasi--over-kriminalisasi--dan-dekriminalisasi

[60]Data taken fromhttp://smslap.ditjenpas.go.id/public/grl/current/monthly/year/2018/month/3

[61]See http://icjr.or.id/pola-dan-penentuan-ancaman-pidana-dalam-rkuhp-belum-jelas-aliansi-nasional-reformasi-kuhp-tolak-pengesahan-terburu-buru/

[62]Anggara, et.al, *The distribution of punishments in RKUHP and its implication*, Jakarta, ICJR, 2016, p. 11

b) Out of 1251 crimes, crimes punishable with imprisonment represent highest portion (1154 crimes), followed by punishable with fine (882 crimes). Such pattern shows that imprisonment remains the primary option to crime control measure.[63]
c) There are 37 crimes punishable to death penalty.[64]
d) Imprisonment is generally not specified as a sole punishment. However, the mapping shows that the proportion of crimes on which imprisonment is the only option as punishment is more than 50% compared to crimes punishable with a cumulative and alternative models (i.e. combination between imprisonment and fine).[65]
e) Crimes punishable with life imprisonment are mentioned 7 times.[66]
f) There areat least 13 clusters of minimum-maximum punishments.[67]
g) Imprisonment still dominates the type of punishment, even level of such domination is higher than that of in the present Penal Code.

Out of 2711 crimes punishable with principle punishments, only 59 crimes applicable for social work punishment (representing only 2.17% of the total principal punishments in Book II), in addition to several articles containing imprisonment under 6 months. The implication of such finding is that such types of alternative to imprisonment is rather difficult to significantly affect the decrease of the number of inmates in Correctional Facilities.[68]

In the context of maximum punishment, there are a lot of ranges clustered in the draft of Penal Code. There are at least 13 groups of maximum punishment. In applying the weight of crime , the types of crime considered as minor are low in number, while those considered as grave are in the first rank with 621 crimes, then followed by serious crimes (532).[69]

Considering the low application of alternative punishments aside from deprivation of liberty in the draft of Penal Code, prison overcrowding in Detention Centres and Correctional Facilities in Indonesia will remain become a serious problem in the years to come.

[63] *Ibid*.
[64] *Ibid*, p. 12.
[65] *Ibid*, p. 13
[66] *Ibid*, p.14
[67] *Ibid*, p. 16
[68] *Ibid*, p. 20.
[69] Using Criminal Procedure Code (KUHAP) it will generate implications regarding the number of criminal acts that need legal counsel. In RKUHP they (imprisonment over 5 years) are in fairly great number than criminal acts that do not need legal counsel (under 5 years punishment). This illustration shows that there are great potential economic and social effects on the part of the State with regard to free legal aid for defendants.

Still, there are several articles that incline to overcriminalization, such as Article 460 point (1) of the draft of Penal Code as of 5 February 2018. The provisions regulating sexual intercourse in extra-marital affair went too far by turning private and personal affairs of citizens into a public domain. Detention Centres, as well Police Station detentions, Prosecutor's Office detentions, and Correctional Facilities, will be full of people alleged or accused of having extramarital sexual intercourse, both adults and children.

Besides the draft of Penal Code, there are seven proposed legislation included in the 2018 National Legislation Program (Prolegnas) that must be monitored and advocated so that they will not contribute to a worse overcrowding situation in Detention Centres and Correctional Facilities. The seven proposed legislations are:

- The Draft Law on Criminal Procedure Code or KUHAP (related to criminal justice procedures)
- The Draft Law on Elimination of Sexual Violence
- The Draft Law on Prohibition of Alcoholic Beverage
- The Draft Law on Amendment to Law 15/2003 on the Transformation of the Implementation on Government Regulation in Lieu of Law 1/2002 on the Eradication of Terrorism Crimes into a Law
- The Draft Law on Lawful Interception
- The Draft Law on Narcotic and Psychotropic Substance, which in 2015-2019 National Legislation Program is written as Draft Law on Amendments to Law Number 35 of 2009 on Narcotics
- Draft Law on Amendments to Law 12/1995 on Corrections

As clearly stated in the appendix of the Regulation of Minister of Law and Human Rights 11/2017 on Grand Design to Handle Overcrowded State Detention Centres and Correctional Institutions, one of the factors causing prison overcrowding is theobsolete Sentencing Regulations. It is important, therefore, to reform sentencing regulations promoting *ultimum remedium* principle in criminal justice system in order to achieve “social defence” and “social welfare”.

The Ministry regulation also criticizes public opinion asuming that the objective of criminal law is to pose a deterrent effect on the adherence to the theory of retribution. In addition, the regulation criticizes the present reality where judges decide a case solely to implement legislations.

Sentencing carried out only to pose deterrent effect on the convicts is indicated by the imposition of harsh punishment, a long period of imprisonment. It is believed that the harsher the punishment is, the greater deterrent effect for the convicts will be.[70] Harsher sentence indicates the longer detention period, and therefore the Ministry of Law and Human Rights worries that it will result in higher occupancy rate than the available capacity.[71]

Various notes and inputs offered by Regulation of Minister of Law and Human Rights 11/2017 to the parliament to reduce prison overcrowding in Indonesia are worth to be taken into account by the Government and the drafters of the Penal Code Draft, instead of being overlooked. Criminal justice system is an integrated system commencing from police investigation, prosecution by the prosecutors, trial by judges in a court, and then ends with the admission of convict to correctional institution under Directorate General of Corrections. Thus, it means that any legislation containing punishment provisions enacted by the parliamentenables the State to deprive the liberty of the citizens violating the law. In turn, such arrangement is very likely to directly aggravate the overcrowding rate in Indonesia that is already under the status ofExtreme Overcrowding.

Vague articles prone to overcriminalize and employing unnecessary punishments must be removed. The Government and the parliament need to seriously consider alternatives to imprisonment in order to reduce overcrowding situation in Indonesian Correctional Facilities and Detention Centres. The drafters of Penal Code Draft still holding on to punishment paradigm that is no longer in line with the objectives of Indonesian legal reform will only burden Correctional Institutions and Detention Centres which are already busy rehabilitating convicts. How it is possible to effectively perform correctional duty while Correctional Institutions and Detention Centres are in Extreme Overcrowding situations?

3.2 The Effects of Pre-trial Detention on Overcrowded Detention Centres/Correctional Institutions

Detention as stipulated in Articles 20 to 31 of Criminal Procedure Code authorizes some law enforcement agencies to carry out detention, that is detention by investigator as part of investigation, detention by public prosecutors as part of prosecution, and detention by District

[70]The Appendix of Regulation of Ministry of Law and Human Rights of the Republic of Indonesia 11/2017 on Grand Design to Handle Overcrowding in Detention Centres and Correctional Institutions, p. 16.

[71]The Appendix of Regulation of Ministry of Law and Human Rights of the Republic of Indonesia 11/2017 on Grand Design to Handle Overcrowding in Detention Centres and Correctional Institutions, p. 7.

Court, High Court and Supreme Court as part of trial process. Pre-trial detention in Indonesia includes detention during investigation and prosecution process.[72]

During investigation process, a person can be detained for 20 days and the detention can also be extended for a maximum of 40 days. After the case is transferred to public prosecutors (prosecution process), detention for prosecution process can be carried out for a maximum of 50 days. All in all, pre-trial detention may incarcerate a suspect for 110 days.

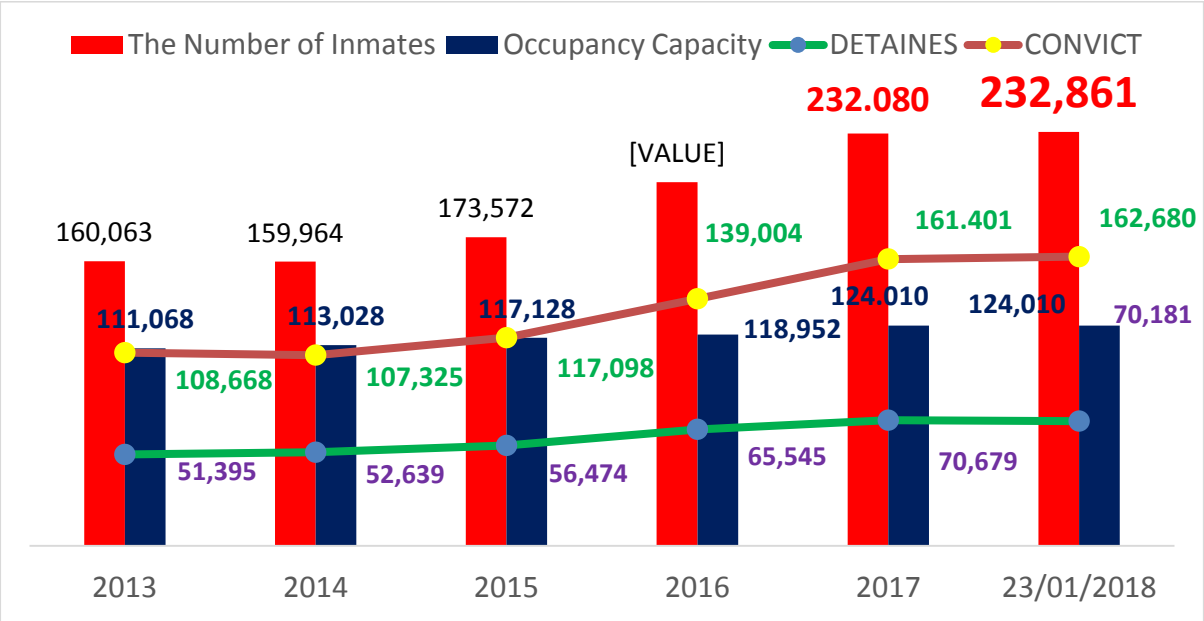
Pre-trial detention may affect defendants' ability to prepare the trial. Inhuman prison condition causes the defendants concentrate more to survive undergoing such conditions, rather than to prepare their defense. Access to a lawyer and information about their case are often much more limited where the defendant is on custody.[73]

In Indonesia, pre-trial detention (PTD) is increasingly perceived as a major problem particularly in correctional issues. Pre-trial detention is one of the factors causing overcrowded prisons and poor condition of detention facilities. Pre-trial detention is also one of key indicators of how the state and society treat a suspect based on the principle of "due process of law", "presumption of innocence", as well as the implementation of other important legal principles.[74]

Pre-trial detention in Indonesia is the root cause of overcrowding situations in Correctional Facilities/Detention Centres. Prison population was doubled from 71,500 to 14,000 from 2004 to 2011, whilst prison capacity only increased by less than 2%.[75] The increased prison population is obviously because the growing number of prisoners that contiunue to increase each year as showed by the graph below:[76]

[72]Pilar Domingo and Leopold Sudaryono, *Ekonomi Politik Dari Penahanan Pra-Persidangan Di Indonesia*, ICJR, 2015, pp. 43-44.
[73]UNODC, *Handbook on Strategies to Reduce Overcrowding in Prisons*, New York, 2013 p.23
[74]Pilar Domingo and Leopold Sudaryono, *et.al*, op.cit., p. iv
[75]*Ibid*., p. 1.
[76] Data of smslap.ditjenpas.go.id on 23 January 23, 2018, presented as Supporting Data for Working Meeting of Commission III with Minister of Law and Human Rights of Republic Indonesia on Thursday, January 25 2018

Figure 3.1: The Comparison of the Number of Detainees and Convicts in Correctional Facilities/Detention Centers and the Prison's Occupancy



Source: Data of smslap.ditjenpas.go.id on 23 January 2018, presented as Supporting Data for Working Meeting of Commission III with Minister of Law and Human Rights of Republic Indonesia on Thursday, January 25 2018

The graph above shows the composition of pre-trial detainees in Detention Centres/Correctional Institutions and the occupancy capacity. In 2013 pre-trial detainees represented 45.95% of total occupancy capacity, in 2014 the percentage was 45.80%, in 2015 it was 47.14%, in 2016 it was 54.72 %, and in 2017 it was 57.24%. These figures excluded the number of detainees held in police detention.[77] There has been an increase of the number of inmates in Detention Centres/Correctional Institutions every year, but the share of pre-trial detainees in total occupancy has always been more than half of the available capacity.

According to the data form the General of Corrections, in February 2018 the number of inmates in Detention Centres/Correctional Institutions in Indonesia was 236,125 persons. About 69,547 prisoners or around 29.45% of them were detainees.[78] In fact, the highest overcrowding rate in Indonesia was found in Detention Centre of Bagan Siapi-api Branch in North Sumatra with overcrowding rate of 824%.

[77] *Op.Cit.*, p. 2.
[78] See smslap.ditjenpas.go.id

Table 3.2: Detention Centres with Highest Overcrowding Rate in Indonesia

No	UPT	Inmates	Capacity	Overcrowding	Wardens
1	Detention Centre of Bagan Siapi-api Branch	808	98	824%	36
2	Class II B Detention Centre of Takengon	453	65	597%	26
3	Detention Centre of Langsa Branch	379	63	502	25
4	Claa II B Detentio Centre of Dumai	920	198	458%	39
5	Class II B Detention Centre of Kupang	265	50	430%	45

Source: Supporting Data for Working Meeting of Commission III with Minister of Law and Human Rights of the Republic of Indonesia, Thursday, 25 January 2018 (data smslap.ditjenpas.go.id 31 December 2017)

Obviously, the conditions described above brought with them impacts or burdens such as reducing the ability of Correctional Institutions/Detention Centres's officers to ensure inmates' security and protection as well as the social rehabilitation services, decreasing the inmates-wardens ratio, increasing family's economic burden to support basic needs of inmate/his or her family as it is the case with the State's economic burden.

The increasing number of detainees is certainly closely related to the increasing crime rates along with the frequent detention by law enforcement agencies. The law offorcers consider detention as an easiest way to ensure that crime suspects will not escape and destroy the evidence even if it is in fact unnecessary to detain them for certain crimes. So long as the requirement to detain are fulfilled, the suspects will be detained anyway despite the Criminal Procedure Code has recognized and specified important principles of the supreme of law, for instance, suspects or pre-trial detainees have the right to presumption of innocence and due process of law.

In reality, anyone involves with criminal justice system will invariably find that such principles simply do not work well. The position (of a suspect in detention) also put them in a difficult condition to prepare self-defence, not to mention access to effective legal assistance. Another issue pertaining to highly increasing inmates is that many regulations employ minimum sentences in the existing

legislations. The minimum sentence in legislation is often served as a basis to justify pre-trial detention.

The author identifies two causes of the high rate of pre-trial detention in Indonesia: firstly, the law enforcement agencies' paradigm putting the idea that pre-trial detention is mandatory; and secondly, the ineffective regulations regarding pre-trial detention in Code of Criminal Procedure enabling the law enforcement agencies to poses a huge authority to detain suspects.

3.2.1 Law Enforcement Agencies' Paradigm Holding Detention as Necessity

In principle, anyone who is allegedly commited a crime has the right not to be detained while waiting for trial, unless an authorized official is able to show relevant and sufficient reasons to justify detention.[79] In other words, detention is an additional instrument in criminal case investigation. The suspect "may" (not must) be detained by the investigator if it objectively deemed necessary for the investigation such as in order to take information recorded in the Police Investigation Report (BAP).

However, law enforcement personnel tend to put detention as a necessity or habitual practice when someone becomes a suspect. Moreover, law enforcement officers also tend to detain suspects to maximum period, just because the Code of Criminal Procedure specifies the maximum limit of detention. For example, law enforcement officers hold a suspect for 110 days in pre-trial detention, despite the investigation has been completed in just 20 days. Supposedly, when the investigation is done, law enforcement officers shall release the suspect from detention.[80]

The assumption that the more suspects go to prison means better achievement is real. The police rarely use their discretionary power, while public prosecutors always try to prove their indictments regardless whether they are supported by valid evidence, and the judges seem to be in a hurry to impose imprisonment as the sentence. In fact, if probation is optimally applied, the Correctional Institutions are unlikely to experience overcrowded situation.[81]

3.2.2 Rules on Pre-Trial Retention in the Code of Criminal Procedure Are Poorly Regulated

Criminal Procedure Code specifies two conditions for investigators/public prosecutors to impose pre-trial detentionconsisting of juridical and necessity conditions.

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[79] Anggara, *ed*, *Pretrial Hearing in Indonesia: Theory, History and its Practice*, Institute for Criminal Justice Reform, Jakarta, 2014, p. 20.

[80] See Article 24 paragraph (3) and Article 25 paragraph (3) Criminal Procedure Code

[81] Appendix to Regulation of Ministry of Law and Human Rights of the Republic of Indonesia 11/2017 on *Grand Design* to Handle *Overcrowding* in Detention Centres and Correctional Institutions, p. 17.

a) Juridical Conditions (objective requirement)

It is called juridical condition because legislation itself determines a list of crimes on which detention may be imposed. Article 24 point (4) of Criminal Procedure Code sets a limitation for imposing detention only for a suspect/defendant committing a crime liable for five-year imprisonment or more, or certain crimes as stipulated in Article 21 point (4) of Criminal Procedure Code.[82]

b) Necessity Condition

According to Article 21 point (1) of Criminal Procedure Code, necessity conditions apply to the situations where law enforcement officers believe that the suspect/defendant will:

- escape;
- damage or remove evidence; or
- reoffend.

Apart from Criminal Procedure Code, necessity conditions are also stipulated in Regulation of Chief of Indonesian National Police No. 14 of 2012 on Management of Criminal Investigations, which are to consider the concerns that:

- the suspect will run away;
- the suspect will repeat his or her actions;
- the suspect will remove evidence;
- the suspect will complicate the investigation process

While juridical conditions in Criminal Procedure Code have a clear standard, the necessity conditions depend on the subjective assessment of law enforcement officers. If law enforcement officicers consider that the perpetrator will run away, reoffend or damage and eliminate evidence, then detention is in order. Moreover, there is no mechanism to inquire whether juridical and necessity

[82] Some crimes punishable under five years yet the suspects/defendants can be detained based on Criminal Procedure Code are specified in:

a. Article 282 paragraph (3), Article 296, Article 335 paragraph (1), Article 351 paragraph (1), Article 353 paragraph (1), Article 372, Article 378, Article 379a, Article 453. Article 454, Article 455. Article 480, and Article 506 of Penal Code;
b. Article 25 and Article 26 of Rechtenordonantie (violations against Customs Ordinance, last amended by Staatsblad of 1931 No. 471),
c. Article 1, Article 2, and Article 4 of Law on Immigration Crime (Law No. 8/Drt/1955);
d. Article 36 paragraph (7), Article 41, Article 42, Article 43, Article 47, and Article 48 of Law 9/1976 on Narcotics.
e. Law 6/2011 on Immigration in **Article 109** specifies that a suspect or defendant who has committed immigration crimes as stipulated in Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 126, Article 127, Article 128, Article 129, Article 131, Article 132, Article 133 point b, Article 134 point b, and Article 135 may be detained.

conditions have been fulfilled for detention. In fact, pretrial hearing as stipulated in Criminal Procedure Code only performs administrative examination, for instance to question whether a copy of a warrant to detain the suspect has been sent to his or her family and whether the warrant is valid.[83]

In practice, pre-trial judges will accept altogether the concerns (necessity condition) resulting from subjective assessment of law enforcement officers.[84] Poorly regulated provisions of Criminal Procedure Code allow the law enforcement officers to poses an enormous authority to easyly detain suspects and eventually contributing to Correctional Institutions/Detention Centres overcrowding.

3.2.3 Failure to Fulfill the International Standards on the Human Rights of the Detainees During Pretrial Detention

Under international standards, people awaiting trial should generally be allowed to return to their communities on condition that they will respect the law and appear before the trial on a set date. Only in certain circumstances should individuals be detained during a pending trial. There must be reasonable grounds to believe that the person has committed the alleged offense and a genuine risk of the person absconding, posing a danger to the community, interfering with the court of justice. Aside from being a recognized international requirement, allowing suspects to return to their communities reduces the possibility of mistreatment and enables them to prepare defense more effectively. Also, it should be noted that releasing people who are awaiting trial does not usually threaten public safety: there are a number of available measures to secure their compliance while their liberty is not deprived, all of which are less costly than pretrial detention. Too many countries, however, cannot or do not comply with these standards. Excessive and/or arbitrary use of pretrial detention contributes to problematic, costly, and counterproductive detention facilities which are overcrowded.[85]

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[83] Article 21 paragraph (2) Criminal Procedure Code: "an investigator or public prosecutor shall detain or further detain a suspect or defendant by presenting a warrant of detention or the ruling of a judge which set forth the identity of the suspect or the accused and states the reason for detention and a brief explanation of the criminal case of which he is suspected or accused and his place of detention," and Article 21 paragraph (3): "A copy of warrant of detention or further detention or of the ruling of the judge as intended by Paragraph (2) must be provided to his family.

[84] See BPHN, *Legal Research on Comparison between ruling of pre-trial hearing and the presence commisioner judges in criminal justice*, Jakarta, 2007.

[85] Martin Schonteich, *The Socioeconomic Impact of Pretrial Detention*, New York, Open Society Foundations, 2010 , https://komitekuhap.files.wordpress.com/2012/06/dampak-sosial-ekonomi-penahanan.pdf

Perversely, although pretrial detention centres lock up people who are presumed innocent, conditions in these centres are often worse than prison. Compared to convicts, pretrial detainees are at a higher risk of being tortured and infected by diseases. They also have fewer opportunities for education and training than sentenced prisoners.[86] Because pretrial detainees are a transitory population, most prison authorities consider their detention as temporary and therefore they do not require healthcare, education, or training services.[87]

Many prisons offering vocational, theraputic, or other activities to sentenced prisoners do not provide the same services to pretrial detainees.[88] Excessive pretrial detention shatters individual lives, destroys families, and degrades communities. It also undermines the rule of law—by fostering corruption and encouraging people to commit a crime—and exposes people presumed innocent to torture, disease, and overcrowded conditions which are much worse than what most sentenced prisoners experienced.[89]

3.3 The Effects of Punitive Approach in Dealing Drug-Related Crimes

Since the promulgation of Law Number 9/1976 on Narcotics, the government has starting to impose punishment for drug users. The trend imposing punishment for drug users has steadily increased until the promulgation of Law Number 35/2009 on Narcotics. However, instead of decreasing the number of illicit drug dealing, imposing punishment for drug users creates new problems. Because there is no clear distinction between drug dealers and drug users in the Law Number 35/2009, the government has losing its focus in addressing drug problems in Indonesia. It turns out that punitive approach towards drug users cannot solve narcotics problems. Among the problems resulting from the imposition of punishment for drug users is overcrowded Detention Centres and Penitentiatires, to which drug-related cases have significantlyly contributed.[90]

However, Article 55 paragraph (2) of the Law Number 35/2009 on Narcotics specifies that Narcotic Addicts and Victims of Narcotic Abused shall undergo medical rehabilitation and social rehabilitation.

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[86] Martin Schonteich, *"The Scale and Consequences of Pretrial Detention Around the World,"* in *Justice Initiatives: Pretrial Detention*, New York, Open Society Institute, 2008, p. 18.

[87] *Ibid*.

[88] Prison Fellowship International website, remand prisoners page: http://www.pfi.org/cjr/humanrights/vulnerable-populations/remand-prisoners/remand-prisoners/

[89] *Op.cit.* Available at: https://komitekuhap.files.wordpress.com/2012/06/dampak-sosial-ekonomi-penahanan.pdf

[90] Supriyadi Widodo Eddyono, *et.al*, 2017. *Working Paper: Strengthening the Revision of Indonesian Narcotics Law, a Civil Society's Contribution*, available at: http://icjr.or.id/data/wp-content/uploads/2017/11/Memperkuat-Revisi-UU-Narkotika.pdf accessed on March 2018

Mandatory rehabilitation as part of mandatory reporting as well as punishment imposed for not reporting have potentially violating the right to health. The right to health covers the information on the types of services for narcotic users provided by the state, while the medical services or treatments shall only be applied under the treated person's consent.

It is worth to note that narcotic addicts in Correctional Institutions/Detention Centres require special treatment. Supposedly there has been a changing approach in order to cope with narcotic users effectively, then it will be a change from sentencing approach to public health one. The reason is simple; the decrease of drug users and drug addicts will significantly reduce illicit narcotic trafficking.[91] However, it will only be the case by applying public health approach, not by adopting harsh punishment. But what happened? The government, through its law enforcement officers, has continously sending narcotic users and drug addicts to the prisons. Meanwhile, according to the Law Number 35/2009, both drug users and drug addicts are more appropriately rehabilitated or treated with medical treatment.[92]

Worse, alternative to detention and alternative to sentencing are seemed to never be taken into consideration by law enforcement officers. Arguably, these Supreme Court Circulars (SEMA) as well as Attorney General Circulars (SEJA) have never been applied and only work on paper: Supreme Court Circular (SEMA) Number 4/2010 on the Admission of Narcotic Abusers, Victims of Narcotic Abused, and Narcotic Addicts to Institution of Medical Rehabilitation and Social Rehabilitation; Supreme Court Circular 03/2011 on the Admission of Victims of Narcotic Abused to Institution of Medical Rehabilitation and Social Rehabilitation; Attorney General Circular (SEJA) Number SE-002/A/JA/02/2013 on the Admission of Victims of Narcotic Abused to Institution of Medical Rehabilitation and Social Rehabilitation; and a technical rule to implement the SEJA Number SE-002/A/JA/02/2013 which is SEJA Number SE-002/A/JA/02/2013 on the Admission of Victims of Narcotic Abused to the Institution of Medical Rehabilitation and Social Rehabilitation. Data of Directorate General of Corrections showed that, in February 2017, there were 35,598 inmates of Detention Centres and Prisons who are drug users.

[91] The Appendix of Regulation of Ministry of Law and Human Rights of the Republic of Indonesia 11/2017 on Grand Design to Handle Overcrowding in Detention Centres and Correctional Institutions, p. 42.
[92] *Ibid*.

Corrections Database System (SDP) of Directorate General of Correctional showed that in December 2017 there were 34,438 drug users among 98,013 special convicts.[93] It means that 35% or one-third of the special inmates were drug users who actually deserve to be treated in rehabilitation institutions.[94]

Table 3.3: Data on Drugs User Convicts (NKP) Figures in 2017

Month	Number of Drug Users	Total of Special Convicts	Percentage (%)	Notes (Provincial Office not reported/uploaded data to SDP)
January	32,157	95,844	33.55%	6 Provinces (DKI Jakarta, Gorontalo, Jambi, East Kalimantan, NTB, Central Sulawesi)
February	32,234	96,101	33.54%	6 Provinces (DKI Jakarta, Gorontalo, Jambi, East Kalimantan, NTB, Central Sulawesi)
March	31,293	96,430	32.45%	6 Provinces (DKI Jakarta, Gorontalo, Jambi, East Kalimantan, NTB, Central Sulawesi)
April	33,070	100,000	33.07%	6 Provinces (DKI Jakarta, Gorontalo, Jambi, East Kalimantan, NTB, Central Sulawesi)
May	33,956	101,055	33.60%	6 Provinces (Gorontalo, Jambi, East Kalimantan, Maluku, NTB, Central Sulawesi)
June	35,743	102,730	34.79%	5 Provinces (Jambi, East Kalimantan, Maluku, NTB, Central Sulawesi)
July	34,423	102,318	33.64%	6 Provinces (Jambi, East Kalimantan, Maluku, NTB, West Sulawesi, Central Sulawesi)

[93] Directions Database System, Directorate General of Corrections, Data of Drug Users (NKP) for January-December 2017, availabe ar: http://smslap.ditjenpas.go.id/public/krl/current/monthly/year/2017/month/12 accessed on 19 February 2018.

[94] *Ibid*, excluded Regional Office of Jambi Province that did not update report to corrections database system for 2017.

August	33,566	100,275	33.47%	3 Provinces (Jambi, East Kalimantan, Maluku)
September	37,072	103,090	35.96%	6 Provinces (Banten, Jambi, East Kalimantan, Maluku, Central Sulawesi)
October	35,724	103,938	34.37%	6 Provinces (Banten, DI Yogyakarta, Jambi, East Kalimantan, Maluku, Central Sulawesi)
November	36,553	103,169	35.43%	7 Provinces (Banten, Jambi, East Kalimantan, Maluku, North Maluku, Central Sulawesi, North Sumatra)
December	34,358	98,013	35.05%	9 Provinces (Banten, Jambi, East Kalimantan, Riau Islands, Lampung, Maluku, West Papua, West Sulawesi, Central Sulawesi)

*) Updated data as of 20 February 2018, Province Regional Office of Jambi did not report (upload data) to Corrections Database System (SDP) for 2017

Source: Corrections Database System (SDP), Directorate General of Corrections, Ministry of Law and Human Rights, 2018.

The present occupancy rate of Indonesian prisons has far exceeded their capacity. Out of 33 Regional Correctional Institutions in every Indonesian Province, 28 of them (89% of Indonesian Correctional Institutions) are overcrowded.[95] The Corrections Database System (SDP) showed that 658 Indonesian UPT of Corrections (detention centres, Correctional Institutions both for adult and children), including 22 Correctional Institutions specifically designed for drug-related crimes, have a total capacity to hold 123,574 inmates. Data released by Corrections Database System (SDP) in December 2017[96] showed that inmates consist of 232,081 detainees and convicts, meaning all of those detention centres and Correctional Institutions have overcrowding rate 188%.

Table 3.4: Number of Drug-Related Convicts in Detention Centres/Prisons

Capacity of Detention Centres/Correctional Institutions	123,574 persons
Number of Inmates (Convicts and Detainees)	232,081 persons

[95] Data as of December 2017, accessed on 7 March 2018 at: http://smslap.ditjenpas.go.id/public/grl/current/monthly

[96] *Ibid*.

Overcrowding Percentage of Detention Centres/Correctional Institutions	188%
Drug User Convicts (NKP)	36,106 persons
The Percentage of Drug User Convicts (NKP) compared to the Total Number of Special Correctional Institutions' Inmates in Indonesia	35%

Source: Corrections Database System (SDP), Directorate General of Corrections, Ministry of Law and Human Rights, 2018.

From the data above it can be seen that around 35% of Detention Centres and Correctional Institutions Inmates are drug users. However, looking at criminal justice practices on dealing with drug-related crimes, the figures of incarcerated narcotic users may be greater than those identified.
It is worth to note that according to research data gathered in 2016 by ICJR, Rumah Cemara and Orbit Foundation, in Surabaya District Court, for example, the majority of drug users and drug addicts are charged with articles specified for drug dealers, because they own, store and/or control narcotics.

The study also found that 61% of narcotic users and drug addicts are charged with Article 111 and 112 of Narcotics Law.[97] Those articles are commonly used to charge narcotic users and drug addicts with very high punishment, namely minimum of 4 year and maximum of 12 year imprisonment.
Those articles also automatically categorize drug user and drug addict as "a drug dealer" instead of just a drug user. Furthermore, data of Surabaya District Court, in line with the use of "drug dealer" articles, showed that 94% of drug users and drug addicts are prison sentenced.[98] The study showed that basically many narcotic users are imprisoned because they were charged with articles for drug dealers instead of drug users.[99]

[97] Article 111 (1) of Narcotics Law states, "Any person that has no right or against the law planting, cultivating, storing, controling, or providing Narcotics of Category I in the form of plants shall be punished with minimum imprisonment of 4 (four) years and a maximum of 12 (twelve) years and a minimum fine Rp 800,000,000.00 (eight hundred million rupiah) and maximum Rp 8.000,000,000.00 (eight bilion rupiah).The different with Article 112 (1) of Narcotics Law lies in the form of narcotics, namely plant and non-plant. Article 112 (1) Narcotics Law states, "Any person that has no right or against the law possessing, storing, controling, or providing Narcotics of Category I which is not plant, shall be punished with minimum imprisonment of 4 (four) years and a maximum of 12 (twelve) years and a minimum fine Rp 800,000,000.00 (eight hundred million rupiah) and maximum Rp 8,000,000,000.00 (eight billion rupiah).
[98] Supriyadi W. Eddyono, et.al, *Op. Cit*. p. 43–53.
[99] *Ibid*.

In many cases, public prosecutors insist to use Article 111/Article 112 (specified for drug dealers) instead of Article 127 (specified for drug users) or at least put them together with unclear reasons in the charge for drug users. Article 111/Article 112 are in use because they are easier to prove and bring with them also higher punishment. Those articles are easier to prove because in practice, someone who is charged with Article 127 for using narcotics personally tends to technically violate Article 111/Article 112, namely possessing, storing, and controlling drugs, in advance.[100]

The Supreme Court in several of its rulings has explicitly criticized public prosecutors for their inclination to use Article 111/Article 112 to charge narcotic users. The Supreme Court Ruling Number 1071 K/Pid.Sus 2012 stated:

> "*Whereas it is true that before using drugs the user must in advance buy and then store or control, possess, and carry drugs, the provisions of Article 112 of the Law Number 35/2009 need not to be always applied. It shall be considered what is the intention or purpose of the Defendant in possessing or controlling the drugs.*"
>
> "*The provisions of Article 112 of the Law Number 35/2009 belong to wastebasket or vague articles. The users' or addicts' acts to control or possess drugs for personal consumption will not be excluded from the range of Article 112, whereas it is wrong to adopt such a way of thinking in applying the law because it does not take into consideration the circumstances or fundamental aspects of why the Defendant controled or possessed the drugs as he or she intended or purposed*"

In other rulings the Supreme Court has explicitly stated that the provisions of Article 111 (with the same elements also applicable to Article 112) cannot be used against drugs users. The Supreme Court's consideration was set out in the Supreme Court Ruling Number 2199 K/ Pid.Sus/ 2012 as follows:

> "*Whereas it is true that the Defendant has been proven to possess or control cannabis leaves, the Defendant's intent and purpose was to use them. Controling and possessing Narcotics in the form of marijuana with the intention and purpose for just personal use cannot be charged with Article 111 (1) of Law Number 35/2009 because the article is intended to be used against illicit drug trafficking, for example the possession or control of Narcotics for distribution and trade and the like against the law or with no rights.*"

[100] *Ibid*.

The Public prosecutor's insistence to use Article 111/112 against drug users is indeed questionable, considering that the use of Article 111/112 has brought detrimental effects towards drug users such as detention, loss of rehabilitation rights, and imprisonment for at least 4 years, which directly contribute to prison overcrowding. Decriminalization of narcotic users will significantly lessen overcrowded situation in Correctional Institutions.[101] It will immediately reduce prison burden including the budget spent and the availability of facilities and human resources. Statistics showed significant decrease of prison overcrowding in Portugal, along with the decrease of drug-related convicts from 44% in 1999 to only 24% in 2013.

3.3.1 Misconception in Interpreting Three United Nations Conventions on Drugs and its Contribution to Prison Overcrowding

The decision to criminalize drug users has come from misconception in interpreting the three main international drug control conventions, namely: the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971, and the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.[102]

There is common misconception among policy makers that these conventions require signatory states to criminalize drug users and those possesing drugs for personal consumption. In fact, there is no specific obligation in the UN drug conventions to make drug use *per se* a criminal offense—the treaties do not oblige countries to impose any penalty (criminal or administrative) for drug useers.[103] The conventions, in contrary, promote flexibility with respect to the legal measures towards the illicit possession of drugs for personal use,[104] in relation to the constitutional obligations of each country to protect human rights or to to provide access to health. The countries may provide measures for treatment, education, aftercare, rehabilitation or social reintegration of the offenders as an alternative to conviction or punishment.[105]

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[101] *Ibid*.

[102] John Godwin, *A Public Health Approach to Drug Use in Asia: Principles and Practices for Decriminalisation*, London, International Drug Policy Consortium (IDPC), 2016, in Supriyadi Widodo Eddyono, *et.al*, 2017. Working Paper: Strengthening the Revision of Indonesian Narcotics Law, a Civil Society's Contribution, ICJR, Jakarta, 2017, p. 34, available at : http://icjr.or.id/data/wp-content/uploads/2017/11/Memperkuat-Revisi-UU-Narkotika.pdf

[103] *Ibid*.

[104] *Ibid*. P. 11.

[105] Article 3 (4) (d) of United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

It is necessary to ensure that such alternative concept is compatible with constitutional objectives of each country. Moreover, in 2015, Lochan Naidoo[106] stated that the drug issue is first and foremost a matter of public and individual health and welfare.[107] Public and individual health and welfare must, therefore, come at first place as the main objective of narcotic drugs regulation. In Indonesia, the long journey of narcotic drugs regulations create an opposite poles between criminal approach and health approach. This has resulted in the ammendment of the Law Number 22/1997 on Narcotics. On 12 October 2009, the Law Number 35/2009 on Narcotics was promulgated. Basically, the Narcotics Law is trying to pursue 4 (four) main objectives, namely:[108]

a) To ensure the availability of narcotics for the purpose of health and/or the development of science and technology;
b) To prevent, to protect, and to save the Indonesian people from narcotics abused;
c) To eradicate illicit trafficking of narcotics and narcotics precursors; and
d) To ensure the medical and social rehabilitation measures for ndrug abusers and drug addicts.

Tradeoffs and conflicts between criminal approach and public health approach are striking in some regulations. Taking a closer look, we find that the drafters of the Narcotics Law were aware that there should be a change in the approach to deal with drug users, a change from criminal approach to public health one. It can be seen from the Article 1 number 13 of the Narcotics Law stipulating that "Narcotic addicts are people using or abusing narcotics and in a state of dependence on narcotics, both physically and psychologically." The definition of narcotic addicts refers to the view that the concerned person has the right to be treated socially and medically. The definition thereby has been put forward in many provisions in the Narcotics Law, for example, Article 54, Article 103, and several other articles.

[106] The President of International Narcotics Control Board (INCB), an independent agency established to monitor the implementation of the UN Drug Conventions. The statement was delivered on the 58th Session of the UN Commision on Narcotic Drugs on the preparations for the UN General Assembly Special Session on Drugs (UNGASS 2016).

[107] Statement by President of INCB at 58th Session of the Commission on Narcotic Drugs Special Segment on preparations for the special session of the General Assembly on the world drug problem (UNGASS) to be held in 2016, Vienna, 9-17 March 2015, available at https://www.incb.org/documents/Speeches/Speeches2015/Statement_INCB_President_CND_2015_UNGASS_06_03_15V_1_cl_INCB_logo.pdf

[108] Article 4 of Law 35/2009 on Narcotic Drugs.

3.3.2 The Problems in Regulating Drug Addicts in Government Regulation Number 99/2012 on the Procedures for Implementing the Rights of Inmates

The Government Regulation Number 99/2012 has amended several provisions of the Government Regulation Number 32/1999 regarding the Procedures for Implementating the Rights of Inmates. The provisions in fact limit the rights of inmates convicted for particular crimes such as terrorism or narcotics punishable with more than 5 (five) year imprisonment. Obviously, it has also caused overcrowded situation in prisons.

The rational behind such conclusion is that the majority inmates of detention centres and penitentaries throughout Indonesia are drug-related convicts. Limiting the convicts' rights such as remission and parole by adding substantive and administrative requirements to the existing regulations make it difficult for inmates to access and obtain the rights as such, hence many of them have to undergo the full punishment as stated in the verdicts. The implementation of the Government Regulation Number 99/2012 is also the factor stimulating overcrowded situation and hindering the performance of correctional system less optimal.

The government seems to neglect to provide alternative sentencing, such as imposition of fine. That is because the provisions and the amount of fine set out in the Penal Code are deemed tooold-fashioned and no longer compatible with the current financial inflation. The latest nominal value of fine in the Penal Code is adjusted by Government Regulation in Lieu of Law 18/1960. Apart form the out-of-date nominal, there is also a problem with unbelievably high nominal values of fine compelling convicts to accept (subsidiary) imprisonment rather than paying such enormous fine.[109]

Many legislations contain sentencing provisions as such implying that any lawbreaker must be locked up in Detention Centre or Prison. Overcrowded situation in Detention Centres and Correctional Institutions are also inseparable from the paradigm of law enforcement officers in criminal justice system such as police, public prosecutors and judges who still hold the view that resolution for any law violation, whether minor offenses or grave ones, is imprisonment as the form of punishment.

Poor laws and regulations on the law enforcement and sentencing systems as well as theunjustified paradigm of law enforcement officers who still emphasize the virtues of imprisonment, are the root

[109] The Appendix of the Regulation of Ministry of Law and Human Rights of the Republic of Indonesia 11/2017 on Grand Design to Handle Overcrowding in Detention Centres and Correctional Institutions, p. 24.

causes of the increased number of detainees and convicts recently in detention centres and Correctional Institutions.

3.4 The Effects of the Procedures for Assimilation and Reintegration on Prison Overcrowding

Rehabilitation program is an important aspect of the penal system as a treatment system for convicts. Rehabilitation is any process or action directly related to planning, preparation, building or developing, directing, using and controling something efficiently and effectively. The existing correctional system facilitate rehabilitation process both in and outside Correctional Institutions. One of the purposes of rehabilitation program outside Correctional Institutions is to prepare a convict to be able to adapt to the society when he or she is released.

In practice, rehabilitation program in prisons is carried out through three approaches, namely education, correction, and reintegration. All these three approaches are considered reliable to help convicts return to the society later. However, the process and stages of rehabilitation must be carried out effectively and professionally in order to attain a succesful result through Assimilation and Social Reintegration as stipulated in the Law Number 12/1999 on Corrections.

The reintegration and correction processes, apart from being part of a rehabilitation program carried out by Correctional Institutions, should be able to resolve the problem of overcrowding in Correctional Facilities.This way, reintegration may provide other effects for correctional institutions. Besides parole, leave before release, and assimilation, inmates also have the right to remission or reduction of their sentence that will automatically affect other reintegration programs. The remission allows inmates to get the opportunity for early release. To obtain assimilation, parole, leave before release and remission there are certain requirements to meet. In other words, there are stages of the correctional process that a convict has to follow in order to enjoy those rights, namely:

a) Admission and Orientation
b) Advanced Personality Development
c) Assimilation
d) Integration into Society

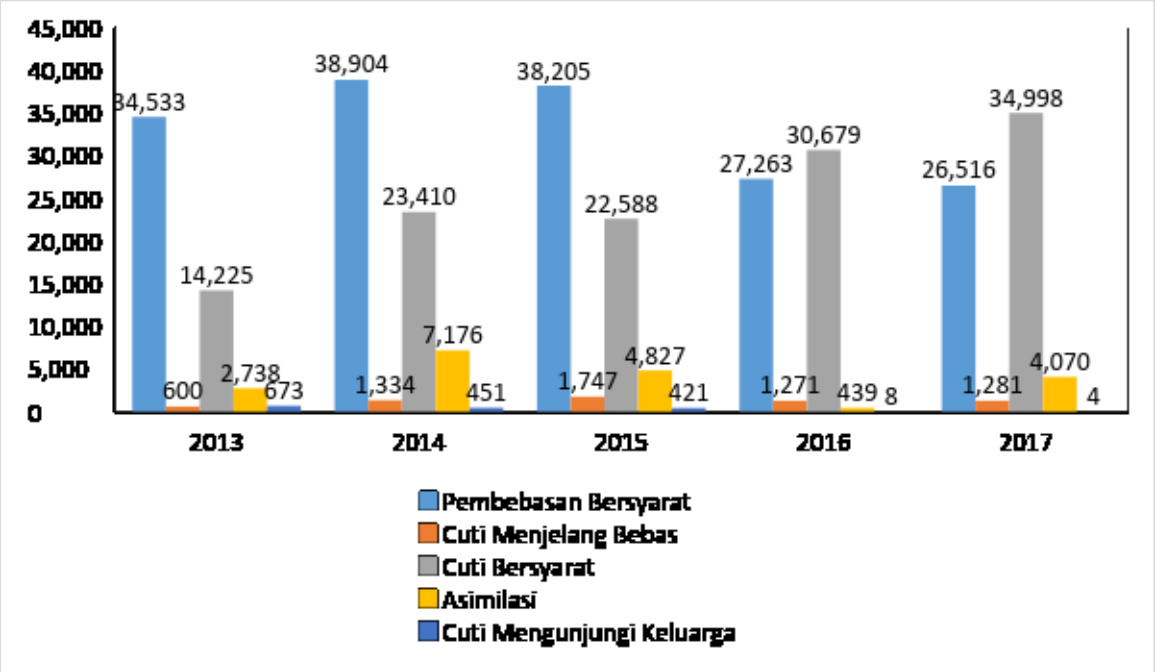
Reintegration process is a part of rehabilitation program aiming to prepare inmates returning to society. This process is carried out through assimilation, leave to visit family, parole, leave before

release, and conditional leave. Terms and procedures for reintegration are regulated in the following laws and regulations:

a) The Government Regulation Number 32/1999 as amended by the Government Regulation Number 99/2012 on Procedures for Implementing the Rights of Inmates;
b) The Regulation of the Minister of Law and Human Rights Number 21/2013 as amended by the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Release.

Those laws and regulations are *mutatis mutandis* applicable to convicts and children[110] who are imprisoned in Detention Centres.[111] According to the data of Directorate General of Corrections, the number of convicts undertaking reintegration programs in 2013-2017 is as follows:

Figure 3.2: The Number of Convicts Undertaking Reintegration Programs



[110] In some laws and regulations on correnctions including the Government Regulation Number 32/1999 as amdended by the Government Regulation Number 99/1012 and the Government Regulation Number 21/2013, the term previously used was Protege of Correctional Institution that consisted of Criminal Child, Civil State, and State Child. Now those terms are not in use since the enactment of the Law on Juvenile Criminal Justice System in 2012. The prevailing terms are Child Conflicted with Law or simply called Child, who is any person between 12 and 18 years old who allegedly commits crime.

[111] See Article 93 of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

Source: Directorate General of Corrections, 2018, Supporting Data for Working Meeting of Commission III with Minister of Law and Human Rights of the Republic of Indonesia.

3.4.1 Assimilation

Assimilation is an *extra-mural* training (outside Correctional Institutions) for convicts who have met certain requirements. Assimilation is carried out by integrating the convicts into society.[112]

3.4.1.1 Assimilation for General Criminal Convicts

Assimilation is provided for convicts who have met the requirements:

a) well-behaved, in a sense that he or she has not udergoing disciplinary sentence within the last 6 (six) months, starting before the date of assimilation granted;
b) has actively and attentively attended training programs; and
c) has served ½ (half) of their sentence period.[113]
d) has fully paid fine and/or substitute money as decided in the verdict.[114]

The requirements of granting such assimilation are proved by enclosing the following documents:[115]

a) copy of the excerpt of the court ruling and the execution report of the court ruling;
b) evidence of full payment of fine and substitute money as determined by the court;
c) progress reports arranged by correctional officers or results of risk assessment and need assessment by assessors;
d) correctional research reports composed by Social Counsellors with the approval from the Head of Probation Service;
e) copy of register F from the Head of Correctional Institution;
f) copy of the list of changes from the Head of Correctional Institution;
g) a statement by the concerned convict that he or she will not run away and will not violate the law;

[112] See Elucidation of Article 6 paragraph (1) of Law on Corrections.
[113] See Article 21 of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave and Article 37 of the Government Regulation Number 99/2012 on the Procedures for Implementating the Rights of Inmates.
[114] See Article 23 of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.
[115] See Article 24 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

h) a letter of abilty to guarantee written by the family and signed by the head of village or the head of urban village or any other authority holding equal position stating that the convict will not run away and violate the law and the family will assist to guide and supervise the convict during the assimilation program

i) a letter of guarantee from school, government agencies, or private sector, and social or religious institution, which guarantee to assist to guide and supervise the convict during the assimilation program.

j) For foreign convicts, besides fulfilling those documents, the following requirements are also necessary:[116]

k) a letter of guarantee stating that the concerned convict will not run away and will comply with the conditions sipulated by the embassy/consulate of original and family, person, or corporation responsible for the presence and activities of the convict while he/she stays in the territory of Indonesia.

l) a statement from the General Director of Immigration or an appointed Immigration Official stating that the person concerned is not obliged to hold a residence permit.

3.4.1.2 Assimilation Procedure for Convicts of Special Crimes

Assimilation for a convict of special crimes (terrorism, narcotic drugs and narcotic precursors, psychotropic drugs, corruption, crimes against state security, gross violation of human rights and other organized transnational crimes) can be granted with the following requirements:

a) well-behaved;

b) actively and attentively attends rehabilitation program; and

c) has undergone 2/3 (two thirds) of the sentence period,[117]

d) has fully paid fine and/or substitute money as ruled by the court.[118]

The requirements of granting such assimilation are proved by enclosing the following documents:[119]

a) copy of the excerpt of the court ruling and the execution report of the court ruling;

[116] See Article 24 paragraph (3) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

[117] See Article 22 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

[118] See Article 23 of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

[119] See Article 24 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

b) evidence of full payment of fine and substitute money as determined by the court;
c) progress reports arranged by correctional officers or results of risk assessment and need assessment by assessors;
d) correctional research reports composed by Social Counsellors with the approval from the Head of Probation Service;
e) copy of register F from the Head of Correctional Institution;
f) copy of the list of changes from the Head of Correctional Institution;
g) a statement written by the concerned convict stating that he or she will not run away and will not violate the law;
h) a letter of abilty to guarantee written by the family and signed by the head of village or the head of urban village or any other authority holding equal position stating that the convict will not run away and violate the law and the family will assist to guide and supervise the convict during the assimilation program
i) a letter of guarantee from school, government agencies, or private sector, and social or religious institution, which guarantee to assist to guide and supervise the convict during the assimilation program.

Especially for convict of terrorism act, aside from fulfilling the assimilation requirements for special criminal acts, they also have to meet the following requirements:[120]

a) fully attended Deradicalization Program organized by Correctional Institutions and/or National Counterterrorism Agency;
b) declare a pledge of: loyalty to the Unitary State of the Republic of Indonesia in a written form for Indonesian nationality; or to not repeat acts of terrorism in written form for foreign nationality.
c) in addition, a certificate of attending Deradicalisation Program from the Head of Correctional Institution and/or the Head of the National Counterterrorism Agency must also be attached as complementary documents.[121]

[120] See Article 22 paragraph (2) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.
[121] See Article 24 paragraph (2) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

3.4.2 Leave to Visit Family

Permission for leaving to visit family may be granted when the convicts meet the following requirements:[122]

a) well-behaved and have never violated order during the current year;
b) not involved in other cases supported by the statement of concerned Public Prosecutor's Office;
c) has undergone ½ (half) of sentence period;
d) a letter of request from one of the family signed by the head of neighbourhood and the head of urban village or the head of village;
e) a security guarantee from the family including guarantee of not absconding signed by the head of the neighbourhood and the head of urban village or the head of village or other authority holding equal position; and
f) has been eligible for requesting the leave to family visit based on considerations of the correctional observer team on the basis of the local Probation Team's research report on the background of the family that will house the convict, the circumstances of surrounding community, and other parties related to the concerned convict.

Requirements for granting permission toleave to visit family are complemented by the attachment of the following documents:[123]

a) copy of the excerpt of the court ruling and the execution report of the court ruling;
b) notification letter to the Public Prosecutor Office regarding the plan to grant a permission for leaving to visit family
c) copy of register F from the Head of Correctional Institution;
d) copy of the list of changes from the Head of Correctional Institution;
e) a letter of request from one of the family signed by the head of neighbourhood and the head of urban village or the head of village;
f) a statement written by the concerned convict stating that he or she will not run away and will not violate the law;

[122] Article 53 of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

[123] Article 37 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

g) a letter of abilty to guarantee written by the family and signed by the head of village or the head of urban village or any other authority holding equal position stating that the convict will not run away and violate the law;
h) correctional research reports from the Head of Probation Service.

For foreign convicts, aside from fulfilling the documents above, they must also attach the following documents:[124]

a) a letter of guarantee stating that the concerned convict will not run away and will comply with the conditions determined by the embassy/consulate of original and family, person, or corporation responsible for the presence and activities of the convict while he/she stays in the territory of Indonesia.
b) a statement from the General Director of Immigration or an appointed Immigration Official stating that the person concerned is not obliged to hold a residence permit.

The permission to leave to visit family cannot be granted to convicts of several cases namely terrorism, narcotics and narcotics precursors (especially those with sentence of 5 years or more), psychotropic substances, corruption, crimes against national security, gross violation of human rights, other organized transnational crimes, death row convict, life imprisonment convict, convicts whose life is jeopardised and convicts likely repeat the crime.[125]

The permission to leave to visit family might be granted for a maximum of 2 (two) days or 2 x 24 (twice twenty-four) hours by the time the convict or child arrives at the family residence.[126]

3.4.3 Parole

3.4.3.1 Parole for General Crimes

Parole can be granted to convict who meets the following requirements:[127]

a) has served at least 2/3 of sentence period, provided that 2/3 of the sentence is at least 9 months;

[124] See Article 37 paragraph (3) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

[125] See Article 37 paragraph (3) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

[126] See Article 44 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

[127] See Article 49 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

b) well-behaved during the sentence period of the last 9 months, starting before the 2/3 of the sentence period;
c) attentively, diligently, and passionately attended the rehabilitation program;
d) society accept the convict's rehabilitation program.

Requirements for granting Parole are proved by completing of the following documents:[128]

a) copy of the excerpt of the court ruling and the execution report of the court ruling;
b) reports on rehabilitation progress arranged by correctional officers or results of risk assessment and need assessment by assessors;
c) correctional research reports composed by Social Counsellors and signed by the Head of Probation Service;
d) notification letter to the Public Prosecutor Office regarding the plan to grant parole to the concerned convict;
e) copy of register F from the Head of Correctional Institution;
f) copy of the list of changes from the Head of Correctional Institution;
g) a statement written by the concerned convict stating that he or she will not run away and will not violate the law;
h) a letter of abilty to guarantee written by the family and signed by the head of village or the head of urban village or any other authority holding equal position stating that the convict will not run away and violate the law and the family will assist to guide and supervise the convict during the parole program.

For foreign convicts, besides fulfilling those documents, the following requirements are also necessary:[129]

a) a letter of guarantee stating that the concerned convict will not run away and will comply with the conditions determined by the embassy/consulate of original and family, person, or corporation responsible for the presence and activities of the convict or child while he/she stays in the territory of Indonesia.
b) a statement from the General Director of Immigration or an appointed Immigration Official stating that the person concerned is not obliged to hold a residence permit.

[128] See Article 50 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.
[129] See Article 50 paragraph (3) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

c) a declaration stating that the convict is not registered in the red notice and in other networks of transnational organized crime from the Secretary of NCB-Interpol Indonesia.

3.4.3.2 Parole for Special Crimes

Parole for convicts of special crimes, namely narcotic drugs and narcotic precursors and psychotropic drugs punishable for minimum of 5 year imprisonment, corruption, crimes against state security, gross violation of human rights, international organized crime, and terrorism, will be granted with the following requirements:[130]

a) willing to cooperate with law enforcement officers to uncover the committed crime;
b) has undergone at least 2/3 (two-third) of sentence period, provided that 2/3 (two-third) of the sentence period is at least 9 months;
c) has involved in assimilation program for at least ½ (half) of the remainingr mandatory sentence.

For convicts of terrorism act, in addition to the above conditions, they also have to show remorse for their wrongdoing and declare a pledge of: loyalty to the Republic of Indonesia in written form for Indonesianl convict; or to not repeat the acts of terrorism in written form for foreign convict.[131]
In order to be granted Parole, convicts need to complete the following documents:[132]

a) statement of willingness to cooperate with law enforcement agencies to uncover the crime provided by law enforcement agencies;
b) copy of the excerpt of the court ruling and the execution report of the court ruling;
c) reports on rehabilitation progress arranged by correctional officers or results of risk assessment and need assessment by assessors;
d) correctional research reports composed by Social Counsellors and signed by the Head of Probation Service;
e) notification letter to the Public Prosecutor Office regarding the plan to grant parole to the concerned convict;
f) copy of register F from the Head of Correctional Institution;

[130] See Article 51-53 of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.
[131] See Article 51 point d of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.
[132] See Article 54 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

g) copy of the list of changes from the Head of Correctional Institution;
h) a statement written by the concerned convict stating that he or she will not run away and will not violate the law;
i) a letter of abilty to guarantee written by the family and signed by the head of village or the head of urban village or any other authority holding equal position stating that the convict will not run away and violate the law and the family will assist to guide and supervise the convict during the parole program.

3.4.4 Leave before Release

3.4.4.1 Leave before Release for Convict of General Crime

Leave before release is granted to convict with the following requirements:[133]

a) has undergone at least 2/3 (two-third) of sentence period, provided that 2/3 of sentence period is no less than 9 months;
b) well-behaved for at least 9 months starting before 2/3 of sentence period;
c) the length of leave before release is the same as the last remission, no later than 6 months.

Requirements for granting leave before release are as follows:[134]

a) copy of the excerpt of the court ruling and the execution report of the court ruling;
b) reports on rehabilitation progress arranged by correctional officers or results of risk assessment and need assessment by assessors;
c) correctional research reports composed by Social Counsellors and signed by the Head of Probation Service;
d) notification letter to the Public Prosecutor Office regarding the plan to grant leave before release to the concerned convict;
e) copy of register F from the Head of Correctional Institution;
f) copy of the list of changes from the Head of Correctional Institution;
g) a statement written by the concerned convict stating that he or she will not run away and will not violate the law;
h) a letter of abilty to guarantee written by the family and signed by the head of village or the head of urban village or any other authority holding equal position stating that the convict

[133] See Article 60 of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave and Article 49 paragraph (1) of the Government Regulation Number 99/2012 on the Procedures for Implementating the Rights of Inmates.

[134] See Article 62 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

will not run away and violate the law and the family will assist to guide and supervise the convict during the leave before release program.

For foreign convict, besides providing the list of documents above, these documents must also be attached:[135]

a) a letter of guarantee stating that the concerned convict will not run away and will comply with the conditions determined by the embassy/consulate of original and family, person, or corporation responsible for the presence and activities of the convict while he/she stays in the territory of Indonesia.
b) a statement from the General Director of Immigration or an appointed Immigration Official stating that the person concerned is not obliged to hold a residence permit.
c) a declaration stating that the convict is not registered in the red notice and in other networks of transnational organized crime from the Secretary of NCB-Interpol Indonesia.

3.4.4.2 Leave before Release for Convict of Special Crimes

For convict of terrorism acts, narcotic drugs, psychotropic drugs, corruption, crimes against state security, gross violation of human rights and transnational organized crimes, leave before release is granted with the following requirements:[136]

a) has undergone at least 2/3 (two-third) of the sentence period, provided that 2/3 (two-third) of the sentence period is not less than 9 months;
b) well-behaved for at least 9 months starting before 2/3 (two-third) of the sentence period;
c) length of leave before release is the same as the last remission, no later than 6 months,
d) has been considered by the General Director.

Requirements for granting leave before release are proved by attaching the following documents:[137]

a) copy of the excerpt of the court ruling and the execution report of the court ruling;
b) reports on rehabilitation progress arranged by correctional officers or results of risk assessment and need assessment by assessors;

[135] See Article 50 paragraph (3) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

[136] See Article 61 of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

[137] See Article 52 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

c) correctional research reports composed by Social Counsellors and signed by the Head of Probation Service;
d) notification letter to the Public Prosecutor Office regarding the plan to grant leave before release to the concerned convict;
e) copy of register F from the Head of Correctional Institution;
f) copy of the list of changes from the Head of Correctional Institution;
g) a statement written by the concerned convict stating that he or she will not run away and will not violate the law;
h) a letter of abilty to guarantee written by the family and signed by the head of village or the head of urban village or any other authority holding equal position stating that the convict will not run away and violate the law and the family will assist to guide and supervise the convict during the leave before release program.

3.4.5 Conditional Leave

3.4.5.1 Conditional Leave for Convict of General Crime

Conditional leave is granted to convict with the following requirements:[138]

a) sentenced to imprisonment maximum of 1 year and 3 months;
b) has undergone at least 2/3 (two-third) of the sentence period;
c) well-behaved for the last 6 months.

Requirements for granting conditional leave are proved by attaching the following documents:[139]

a) copy of the excerpt of the court ruling and the execution report of the court ruling;
b) reports on rehabilitation progress arranged by correctional officers or results of risk assessment and need assessment by assessors;
c) notification letter to the Public Prosecutor Office regarding the plan to grant conditional leave to the concerned convict;
d) copy of register F from the Head of Correctional Institution;
e) copy of the list of changes from the Head of Correctional Institution;
f) a statement written by the concerned convict stating that he or she will not run away and will not violate the law;

[138] See Article 68 of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

[139] See Article 72 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

g) a letter of abilty to guarantee written by the family and signed by the head of village or the head of urban village or any other authority holding equal position stating that the convict will not run away and violate the law and the family will assist to guide and supervise the convict during conditional release program.

For foreign convict, besides providing the list of documents above, these documents must also be attached:[140]

a) a letter of guarantee stating that the concerned convict will not run away and will comply with the conditions determined by the embassy/consulate of original and family, person, or corporation responsible for the presence and activities of the convict while he/she stays in the territory of Indonesia.
b) a statement from the General Director of Immigration or an appointed Immigration Official stating that the person concerned is not obliged to hold a residence permit.
c) a declaration stating that the convict is not registered in the red notice and in other networks of transnational organized crime from the Secretary of NCB-Interpol Indonesia.

3.4.5.2 Conditional Leave for Convicts of Special Crimes

For inmates of criminal acts of terrorism, narcotics, psychotropic drugs, corruption, crimes against state security, gross violation of human rights and organized transnational crimes, leave before release is granted with the following conditions:[141]

a) has been sentenced for a maximum of 1 year 3 months in prison;
b) has undergone at least 2/3 of the sentence period;
c) well-behaved for the last 9 months.

Special requirement for convict of corruption crime is to pay in full fine and substitute money.[142]
For convicts of terrorism, to obtain conditional leave the convicts have to express their awareness and remorse for the sentenced wrongdoings and declare:[143] loyalty to the Republic of Indonesia in

[140] See Article 72 paragraph (3) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.
[141] See Article 70 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.
[142] See Article 70 paragraph (2) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

writing for Indonesian national convict; or will not repeat the acts of terrorism in writing for foreign national convict.

Requirements for granting conditional leave are proved by completing the following documents:[144]

a) copy of the excerpt of the court ruling and the execution report of the court ruling;
b) reports on rehabilitation progress arranged by correctional officers or results of risk assessment and need assessment by assessors;
c) notification letter to the Public Prosecutor Office regarding the plan to grant conditional release to the concerned convict;
d) copy of register F from the Head of Correctional Institution;
e) copy of the list of changes from the Head of Correctional Institution;
f) a statement written by the concerned convict stating that he or she will not run away and will not violate the law;
g) a letter of abilty to guarantee written by the family and signed by the head of village or the head of urban village or any other authority holding equal position stating that the convict will not run away and violate the law and the family will assist to guide and supervise the convict during conditional release program.

For convicts of terrorism, the documents must also be enclosed with a certificate of attending deradicalization program signed by the Head of Correctional Facility and/or the Head of National Counterterrorism Agency,[145] while convicts of corruption have to enclose evidence of full payment of fine and subtitute money.[146]

The requirements for remission, assimilation, parole, leave before release, and conditional leave as described above illustrate the strictness of requirements and the lengthy procedures that, in turn, make the rights exclusive. They are exclusive because in order to enjoy those rights, the convicts have to prepare a sum of money only to ensure their name registered in the proposal list of

[143] See Article 70 paragraph (3) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.
[144] See Article 72 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.
[145] See Article 72 paragraph (5) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.
[146] See Article 72 paragraph (6) of the Regulation of the Minister of Law and Human Rights Number 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave before Release and Conditional Leave.

remission or parole. This is something that the concerned ministry does not deny and will take serious measures in dealing with illegal levies.[147]

This fact was reasserted by the General of Corrections by saying that the chances of bribery or illegal levies occuri when convicts or detainees try to obtain their rights of remission, leave before release, and parole.[148] The nominal value of illegal levies or bribes usually varies from 500 thousand to 2 million rupiah, despite those rights basically can be enjoyed by the convicts free of charge.[149] Strict requirements, lengthy procedures, common practices of illegal levies and bribery, and special requirements attached to convicts of certain crimes (such as corruption, narcotic drugs, and terrorism) have made those rights luxurious for convicts.

Additional mandatory requirements for prisoners convicted for narcotic drugs/narcotic precursors/ psychotropic substances (with minimum punisment of 5 [five] years imprisonment and more) have arguably exacerbating overcrowding problems of Correctional Facilities/Detention Centres in Indonesia. That is because both of detainees and convicts of those crimes represent the majority population of Penintentiaries/Detention Centres (at least almost 50% [percent] inmates of Correctional Institutions and Detention Centres were involved in drug-related cases.[150] In a sense, one of the obstacles in addressing prison overcrowding is the strict requirements for granting the rights of remission, assimilation, and parole to convicts of narcotic drugs cases, that are further complicated by some additional conditions specified for them.

3.4.6 The Report of Correctional Research Complicates the Procedure in Providing Reintegration Program

All reintegration programs, both for general and special crimes, start with data collection of convicts who have met the requirements for assimilation and completed the documents required by Prison officers. After data collection process, the correctional observer team recommends the proposal for assimilation to the Head of Correctional Institution based on the Report of Correctional Research.

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[147] http://jakarta.kemenkumham.go.id/berita-hukum-dan-ham/434-hilangkan-pungli-dalam-pemberian-remisi acessed on 14 March 2018

[148] https://news.okezone.com/read/2009/07/09/1/237201/depkum-ham-akan-tindak-petugas-lapas-terima-suap, accessed on 14 Macrh 2018

[149] http://palembang-pos.com/bebas-bersyarat-rp-2-juta/ accessed on 14 March 2018

[150] http://news.liputan6.com/read/2934492/50-persen-narapidana-di-lapas-dan-rutan-dari-kasus-narkoba accessed on 14 March 2018

One of evaluation components in the Correctional Research is the rehabilitation progress of convict in Correctional Facilitys/Detention Centre, including social relations among convicts (whether having involved in commotion or misunderstanding) and social relations with wardens (whether convicts respect wardens and violate no order) in Correctional Facility/Detention Centre. However, social relations among convicts are heavily affected by the condition of Correctional Facility/Detention Centre. Commotions between convicts mostly are triggered by Correctional Facilities/Detention Centres which areovercrowded. Inmates often fight over water or limited food supply because for overcrowded situations, and sometimes even leading to prison riots.

3.4.7 Conducting Assimilation Activities Cannot Completely Reduce the Level of Overcrowding in Prisons

Assimilation (in the forms of educational activities, skill trainings, social work activities, and other training in the society)[151] can be done in two ways, namely giving inmates chance to carry out assimilation outside the Prison or carry it out in an Open Prison. Regulation of the Minister of Law and Human Rights Number 21/2016 specifies that assimilation activities outside Prison are carried out only for maximum 9 hours a day (including travel time) after which inmates have to return to Prison (usually in the afternoon).[152] So far the most adopted form of assimilation is that inmates remain in Prison/Detention Centers and only at specific certain times they may mingle in society.[153] As in the end of the day inmates are returning to Prison/Detention Centre, conducting assimilation activites only temporaly reduces the level of overcrowding in Prisons (during the day), and in the night overcrowded situation then is still problematic.

Table 3.5: Requirements and Procedures for Submitting Remission, Assimilation, and Parole

NO	CONVICT'S RIGHTS	REQUIREMENTS	SUBMISSION PROCEDURE
1	**Remission**	a) well-bahaved; and b) has undergone sentence for more	a) Correctional observation team writes a suggestion in the form

[151] See Article 30 paragraph (1) of Regulation of Minister of Law and Human Rights 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave Before Release, and Conditional Leave.

[152] See Article 21 paragraph (1) of Regulation of Minister of Law and Human Rights 21/2016 on Procedures for Granting Remission, Assimilation, Leave to Visit Family, Parole, Leave Before Release, and Conditional Leave.

[153] Dwi Afrimetty Timorea, *Pelaksanaan Pembinaan Narapidana dalam Tahap Asimilasi di Lembaga Pemasyarakatan Terbuka Cinere*, *Thesis,* University of Indonesia, 2012, p. 66-67.

		than 6 (six) months. c) not undergoing disciplinary punishment for the last 6 (six) months, starting before remission date d) has undergone rehabilitation programme organized by Correctional Institution with good result. Supporting documents : a) copy of the excerpt of court ruling and execution report of of court ruling; b) statement of not undergoing substitute incarcerartion of fine assigned by the Head of Correctional Institution; c) statement of not being in Leave Before Release signed by the Head of Correctional Institution; d) copy of register F from the Head of Correctional Institution; and e) copy of list of changes from the Head of Correctional Institution	of letter of recommendation to the Head of Correctional Institution b) Receiving approval from the Head of Correctional Institution c) The approval from the Head of Correctional Institution is submitted to the Head Office of the Ministry of Law and Human Rights at Provincial Office d) Recommendation from correctional observation team of the Ministry of Law and Human Rights at Provincial Office e) Ruling/decision of the Ministry of Law and Human Rights at Provincial Office f) Sending notifications to the Head of Correctional Institution, to the concerned convict, and to General Director of Correction.
2	**Assimilation**	a) well-behaved; b) not undergoing disciplinary punishment for the last 6 (six) months, starting before Assimilation date; c) has undergone 1/2 (half) of sentence period; d) actively and attentively attended rehabilitation	a) Collecting data on the list of eligible convicts b) Correctional obervation team recommends suggestion of Assimilation to the Head of Correctional Institutionbased on list of eligible Convict and Child. c) The Head of Correctional

		programs. Supporting documents: a) copy of the excerpt of the court ruling and the execution report of the court ruling; b) evidence of full payment of fine and substitute money as determined by the court; c) reports on rehabilitation progress arranged by correctional officers or results of risk assessment and need assessment by assessors; d) correctional research reports composed by Social Counsellors with the approval from the Head of Probation Service; e) copy of register F from the Head of Correctional Institution; f) copy of the list of changes from the Head of Correctional Institution; g) a statement by the concerned convict or child inmate that he or she will not run away and will not violate the law; h) a letter of abilty to guarantee written by the family and signed by the head of village or the head of urban village or any other authority holding equal position stating that the convict or the child inmate will not run away and violate the law and the family will	Institution approves Assimilation application based on the recommendation of correctional observation team. d) If Assimilation is conducted independently and/or with third party, the Head of Correctional Institution decides assimilation application after the approval from the Head of Correctional Institution at Provincial Office. e) If Assimilation carried out in Open Prison, the Ministry of Law and Human Rights at Provincial Office decides assimilation application based on the suggestion from correctional observation team. f) Approval of assimilation's application is granted internally and/or with a third party and assimilation is carried out in open prison will be based on the recommendation from correctional observation team at Provincial Office.

		assist to guide and supervise the convict or the child inmate during the assimilation program; i) a letter of guarantee from school, government agencies, or private sector, and social or religious institution, which guarantee to assist to guide and supervise the convict or the child inmate during the assimilation program.	
3	**Parole**	a) having undergone at least 2/3 (two third) of sentence period provided that 2/3 (two third) is at least 9 (nine) months; b) well-behaved for at least 9 (nine) months starting before the date of 2/3 (two third) of sentence period; c) having attended rehabilitation programs attentively, diligently, passionately; and d) the society accept the convict's rehabilitation programs' activities. Supporting Document: a) copy of the excerpt of the court ruling and the execution report of the court ruling; b) reports on rehabilitation progress arranged by correctional officers or results of risk assessment and need assessment by assessors; c) correctional research reports	a) Correctional officers collect data on the Convict and the Child Inmate except Civil Child who has met the requirements for Parole and completed the necessary documents. b) Correctional observer team recommends the suggestion of Parole to the Head of Correctional Institution based on data of the eligible Convict and the Child Inmate. c) If the Head of Correctional Institutionapproves the proposed Parole, he/she then submits the proposal to the Ministry of Law and Human Rights at Provincial Office based on the recommendation from correctional observer team.

		composed by Social Counsellors and signed by the Head of Probation Service; d) notification letter to the Public Prosecutor Office regarding the plan to grant parole to the concerned convict; e) copy of register F from the Head of Correctional Institution; f) copy of the list of changes from the Head of Correctional Institution; g) a statement written by the concerned convict stating that he or she will not run away and will not violate the law; h) a letter of abilty to guarantee written by the family and signed by the head of village or the head of urban village or any other authority holding equal position stating that the convict will not run away and violate the law and the family will assist to guide and supervise the convict during the parole program.	d) The head office of Ministry of Law and Human Rights at Provincial Office submits the proposal of Parole based on the recommendation from their correctional observer team to the General Director. e) The proposal submitted by the head office of Ministry of Law and Human Rights at Provincial Office is in the form of recapitulation data on the Convict and the Child enclosed with: f) Result of deliberation of Provincial Office's correctional observer team; g) Copy of court's ruling and execution report of court's ruling; and h) Copy of list of changes from the Head of Correctional Institution. i) General Director on behalf of the Minister of Law and Human Rights decides to grant Parole based on the recommendation from Directorate General's correctional observer team.
4	**Leave Before Release**	a) having undergone at least 2/3 (two third) of sentence period provided that 2/3 (two third) is no	a) Correctional Officer collect data on the eligible Convict and Child Inmate.

		less than 9 (nine) months; b) well-behaved for the last 9 (nine) months starting before the date of 2/3 (two third) of sentence period; and c) the length of leave before release is the same as the last remission, no later than 6 (six) month. Supporting Documents: a) copy of the excerpt of the court ruling and the execution report of the court ruling; b) reports on rehabilitation progress arranged by correctional officers or results of risk assessment and need assessment by assessors; c) correctional research reports composed by Social Counsellors and signed by the Head of Probation Service; d) notification letter to the Public Prosecutor Office regarding the plan to grant leave before release to the concerned convict; e) copy of register F from the Head of Correctional Institution; f) copy of the list of changes from the Head of Correctional Institution; g) a statement written by the concerned convict stating that he or she will not run away and will not violate the law;	b) Correctional observer team recommends the proposal of Leave Before Release to the Head of Correctional Institutionbased on qualifed data. c) If the Head of Correctional Institutionapprove the proposed Leave Before Release, he/she then submits the qualified proposal to the head office of Ministry of Law and Human Rights at Provincial Office based on the recommendation from correctional observer team. d) The head office of Ministry of Law and Human Rights at Provincial Office on behalf of the Minister decides to grant Leave Before Release based on the recommendation from their correctional observer team.

		h) a letter of abilty to guarantee written by the family and signed by the head of village or the head of urban village or any other authority holding equal position stating that the convict will not run away and violate the law and the family will assist to guide and supervise the convict during the leave before release program.	
5	**Conditional Leave**	a) sentenced to imprisonment for no more than 1 (one) year and 3 (three) months; b) having undergone at least 2/3 (two third) of sentence period; c) well-behaved for the last 6 (six) months. Supporting Doucments: a) copy of the excerpt of the court ruling and the execution report of the court ruling; b) reports on rehabilitation progress arranged by correctional officers or results of risk assessment and need assessment by assessors; c) notification letter to the Public Prosecutor Office regarding the plan to grant conditional leave to the concerned convict; d) copy of register F from the Head of Correctional Institution; e) copy of the list of changes from	a) Correctional officers collect data on the eligible Convict and the Child Inmate. b) Correctional observer team recommends proposal of granting Conditional Leave to the Head of Correctional Institution based on qualified data. c) If the Head of Correctional Institution appoves the proposed Conditional Leave, he/she then submits the quaified proposal to the head office of Ministry of Law and Human Rights at Provincial Office based on the recommendation from correctional observer team. d) The head office of Ministry of Law and Human Rights at Provincial Office on behalf of the Minister of Law and

		the Head of Correctional Institution; f) a statement written by the concerned convict stating that he or she will not run away and will not violate the law; g) a letter of abilty to guarantee written by the family and signed by the head of village or the head of urban village or any other authority holding equal position stating that the convict will not run away and violate the law and the family will assist to guide and supervise the convict during conditional release program.	Human Rights decides to grant Conditional Leave based on the recommendation from their correctional observer team.

Table 3.6: Additional Requirements in Requesting Remission, Assimilation and Parole for Convicts Sentenced for Particular Crimes

No	Rights of Convicts	Requirements	Approval
1.	**Remission**	a) willing to cooperate with law enforcement agency to help uncover his or her commited crime; b) has fully paid fine and substitute money as ruled by court for those convicted from corruption; and c) has attended deradicalization program held by correctional institution or national counterterrorism agency, and	Approved by Minister of Law and Human Rights

		also has declared: d) loyalty to the unitary state of indonesia in written statement for indonesian citizen, or e) will not repeat terrorism acts in written statement for foreign convict sentenced for terrorism. f) the statement of willingness to cooperate with law enforcement agencies should be in written form and validated by law enforcement agency according to the prevailing laws and regulations.	
2	**Assimilation**	a) well-behaved; b) has actively and attentively attended rehabilitation programs; and c) has undergone 2/3 (two-third) of sentence period. d) for convicts of terrorism: have attended deradicalisation programs held by correctional institutionand/or national counterterrorism agency, and also have declared: e) loyalty to the unitary state of indonesia in written statement for indonesian citizen, or f) will not repeat terrorism acts in written statement for foreign convict sentenced for	a) Approved by the Minister of Law and Human Rights after receiving considerations from Director General of Corrections b) Considerations from Director General of Corrections (written recommendation from relevant institution) c) Written recommendation from: d) Indonesian National Police, National Counterterrosim Agency, and/or Attorney General for Convicts sentenced for terrorism, crime against state security, gross violation of human rights, and/or other transnational organized crimes;

		criminal acts of terrorism.	e) Indonesian National Police, National Narcotics Agency, and/or Attorney General for Convicts sentenced for crimes related to narcotic drugs and narcotic precursors, psychotropic substances; and f) Indonesian National Police, Attorney General, and/or Corruption Eradication Commission for Convicts sentenced for corruption.
3	**Parole**	a) willing to cooperate with law enforcement agencies to help uncover the committed crime; b) has undergone 2/3 (two-third) of sentence period provided that 2/3 (two-third) at least 9 (nine) months; c) has attended assimilation programme for at least 1/2 (half) of mandatory sentence; and d) has attended deradicalisation programs held by correctional institution and/or national couterterrorism agency, and also has declared: e) loyalty to the unitary state of indonesia in written statement for indonesian convict, or f) will not repeat terrorsim acts in written statement for	a) Approved by the Minister of Law and Human Rights after receiving considerations from Director General of Corrections b) Considerations from Director General of Corrections (written recommendation of relevant institution) c) Written recommendation from: d) Indonesian National Police, National Counterterrosim Agency, and/or Attorney General for Convicts sentenced for terrorism, crime against state security, gross violation of human rights, and/or other transnational organized crimes; e) Indonesian National Police, National Narcotics Agency, and/or Attorney General for

		foreign convict sentenced for terrorism. g) the statement of willingness to cooperate with law enforcement agencies should be in written form and validated by law enforcement agency according to the prevailing laws and regulations.	Convicts sentenced for crimes related to narcotic drugs and narcotic precursors, psychotropic substances; and f) Indonesian National Police, Attorney General, and/or Corruption Eradication Commission for Convicts sentenced for corruption.

3.5 Lack of Access to Lawyer Causing Prison Overcrowding

Overcrowding problem is one of subjects discussed during the Congress on Crime Prevention and Criminal Justice entitled "Strategies and Best Practices against Overcrowding in Correctional Facilities" held in Salvador, Brazil in 2010. From the congress, one of the recommendations is that Member States are encouraged to review the quality of legal aid and other measures, including the use of trained paralegals, in order to strengthen the access to justice and public defense mechanisms. Under such a big theme, the necessity for pretrial detention is the most relevant aspect in addressing prison overcrowding.[154] Ensuring an effective legal aid mechanism for suspects is considered as one of the right steps to reduce detention, the duration of detention, unfair sentencing and imprisonment.

How to ensure an effective legal aid for anyone involved in the judicial process from investigation, prosecution, trial to post-ruling is a topic discussed in countries around the world, such as in Article 6 paragraph (3) of the European Convention on Human Rights that includes similar provisions. Access to legal counsel is a fundamental right according to the American Convention on Human Rights, which the State should provide. The American Convention on Human Rights does not limit state-funded legal assistance to only cases where the interest of justice so require. Nor does it mention the inability of the accused to pay for a lawyer, as a condition for eligibility for state-funded legal aid. Furthermore, the resolution on Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa of the African Commission on Human and People Rights provides that an

[154] The appendix of the Regulation of Ministry of Law and Human Rights of the Republic of Indonesia Number 11/2017 on Grand Design to Handle Overcrowding in Detention Centres and Correctional Institutions, p. 36.

accused has "the right to have legal assistance assigned to him or her in any case where the interests of justice so require, and without payment by the accused, if he or she does not have sufficient means to pay it."[155]

In 2003, the European Commission issued a statement stating that "whilst all the rights that make up the concept of 'right to a fair trial' were important, some rights were so fundamental that they should be given priority at this stage. First of all among these was the right to legal advice and assistance. The United Nations Basic Principles on the Role of Lawyers stipulates that the government shall further ensure that all persons arrested or detained, with or without criminal charge, shall have a prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.[156]

Indonesia has clearly regulated legal aid program in, among others, the following laws and regulations:

a) Law Number 16 of 2011 on Legal Aid.
b) Article 56 of the Republic of Indonesia Law Number 48/2009 on Judicial Power specifies that "anyone involved in a legal case has the right to legal aid."
c) Article 13 paragraph (1) on the organization, administration and fincane of the Supreme Court and the courts under the authority of the Supreme Court.
d) Article 54 of Law Number 8/1981 on Criminal Procedure Code specifies, "For the purpose of defense, a suspect or an accused shall have the right to obtain legal assistance from one or more legal counsels during the period of and at every stage of examination; according to the procedures stipulated by this law."
e) Article 56 paragraph (1) of Law Number 8/1981 on Criminal Procedure Code specifies, "In the event of a suspect or an accused is suspected of or accused of having committed an offence which is liable to a death penalty or imprisonment of fifteen years or more or for those coming from low-income family and liable to imprisonment of five years or more who do not have their own legal counsel, the officials concerned at all stages of examination in the criminal justice process shall be obliged to assign legal counsel for them."
f) Article 56 paragraph (2) of Law Number 8/1981 on Criminal Procedure Code specifies "Any legal counsel who is assigned to act as intended by paragraph (1) shall provide his assistance free of charge."

[155] UNODC, *Op.cit*, p. 80.
[156] UN Basic Principles on the Role of Lawyers, Principle 7.

g) Civil Procedure Code (HIR / RBG) Article 237 HIR / 273 RBG specifies, “Everyone who is involved in a lawsuti either as a plaintiff or as a defendant but unable to bear the costs can obtain permission to do so free of charge.”
h) Instruction of Minister of Justice of the Republic of Indonesia Number M 01-UM.08.10 of 1996 on Guidelines for the Implementation of Legal Aid Program for Underprivileged Community Through Legal Aid Institution.
i) Instruction of the Minister of Justice of the Republic of Indonesia Number M 03-UM.06.02 of 1999 on Guidelines for the Implementation of Legal Aid Program for Underprivileged Community through the District Court and the State Administration Court.
j) Circular of the Director General of General Court and State Administration Court Number D.Um.08.10.10 of 12 May 1998 on Guidelines for the Implementation of Legal Aid for People Coming from Low-Income Family Through LBH (Legal Aid Institute).

The existence of many rules on legal assistance for suspect/defendant/convict is certainly based on the expectation that procedural rights of those suspected of committing a crime can be fulfilled, including the right to a fair trial. However, such expectation is difficult to achieve when each stage of the criminal justice process does not provide legal counsel because both law enforcement personnel and the suspect are unaware of the importance of such rights. On the other hand, law enforcement officers, despite knowing the rights of suspects, would prefer to take it only as an administrative requirement in the process of investigation/prosecution, under the paradigm that legal counsel/advocate will only complicate the process.

Such a loophole will dismiss some important information that actually affects the next stage in the judicial process, for instance, the information regarding objective and subjective requirements for detention, the attempt to postpone detention, the prevention of a suspect become extortion object, and to prevent questions incriminating a suspect. However, iIn practice legal counsel/advocate in providing legal assistance is not always effectively present in investigation stage.

Furthermore, the process of investigation might be carried out all night long or with sudden notice both to the person under examination and his or her legal advisor, obviously putting them in unprepared condition. No wonder, the legal counsel can only offer inadequate assistance and weak defence. Even in worse and extreme circumstances, it may also lead to practices of torture and extortion that end up with the suspect being detained.

The decision to put a status of suspect on someone is arguably the point where officials start to detain him/her either in a police detention or a detention center under a correctional institution. It is therefore, indirectly contributing to the increase of the number of inmates in detention centres/penitentiaries that have already overcrowded.

Another critical problem is the difficulty in fulfilling the requirements to be eligible for legal assistance that is free of charge forpeople seeking justice. Apart from submitting a written application, a suspect/defendant must also enclose a certificate of poverty from the head of urban village, the head of village, or any other official holding equal authority where the applicant lives. Moreover, if the legal aid is provided by the State through an accredited legal aid institution, the amount of claimed fund sometimes is very far below the total costs that have been spent by the legal aid providers.

3.5.1. Pretrial Legal Aid

Legal assistance at the initial examination stage of the investigation and arrest greatly affect the subsequent legal process as a suspect. Legal assistance can protect a suspect from psychological and physical burden as well as further coercion or torture. It also give a chance for someone who has been arbitrarily arrested and detained to be released or exempted from pretrial detention. The legal assistance at this stage significantly affects the decrease of detention centres/prison population, because it offers an alternative to detention through a guarantee mechanism. Besides, pre-trial suit can also be filed against the institution rendering the decision to put a status of suspect on someone, that is very likely leading to detention.

It is a matter of common knowledge that in preliminary examination at the investigation stage, a suspect can do nothing but telling what the investigator wants. This is because the investigators often employ various methods of interrogation, ranging from physical intimidation, torture, persuasion, posing some entrapping questions, hindering the suspect to speak freely in the writing process of police investigation report. In fact, the administrative procedures of the investigation are frequently conducted in unlawful ways that sometimes even take victims. Victims of false arrests who have been held for months or even years sometimes can only be released after undergoing a long admnistration process. According to the data collected by LBH (Legal Aid Institute) Jakarta, for the first semester of June 2017 there were at least 37 complaints of false arrest.[157]

[157] https://megapolitan.kompas.com/read/2017/06/22/08572121/kisah.korban.salah.tangkap.yang.disiksa.polisi, accessed on 15 March 2017.

False arrest reveals how unprofessional a law enforcement officer is in carrying out the preliminary examination. Mostly, false arrest could only be disclosed or proved during the trial or later while the suspect/accused had been detained in custody for a long period of time. One fenomenal case in Indonesia happened to Sengkon and Karta who had been in prison for 5 years before they were released for false arrest.[158]

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice System acknowledges that gaining access to effective legal assistance at the investigation stage of the criminal process requires an effective mechanism for ensuring, as a minimum, that:[159]

a) Suspects are informed of their rights to legal assistance and legal aid;
b) Suspects are provided opportunities and facilities for contacting a suitably qualified lawyer or other legal aid provider without delay, and
c) Facilities are provided for legal representatives to consult with suspects in private.

In order to enable such measures to be effectively implemented, the following measures need to be ensured:

a) Law enforcement officials' training to include information on the rights of suspects to have access to legal counsel, and where necessary, legal aid, promptly following arrest;
b) There needs to be a legal obligation for law enforcement officials to inform suspects of this right;
c) Law enforcement officials need to provide suspects with the means and assist them to contact lawyers and legal aid institutions;
d) Information on and contact details of legal aid providers need to be readily available to law enforcement officials for them to fulfill their obligations;
e) Consideration should be given to provide preliminary legal aid to persons urgently requiring legal aid at police stations, detention centres or courts while their eligibility is being determined.

In some countries a duty solicitor model has been set up to ensure the availability of lawyers or paralegals. The example of implementation is presented below:[160]

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[158] Michel Agus, *Antara Sengkon Karta dan Jesica* (Between Sengkon Karta and Jessica), https://www.kompasiana.com/tingkahpolah/antara-sengkon-karta-dan jessica_56b46c9d2a7a61c508361d53, accessed on 15 March 2018

[159] UNODC, *Loc.cit.,* p. 82.

Table 3.7: Access to Legal Aid for Pretrial Detainees in Nigeria

Example	Purpose/Methods	Result
Nigeria; **Duty solicitors and national youth volunteers help to reduce the number of pretrial detainees and the length of their detention period in Nigeria** **Nigeria's prison population is low in relation to its overall population. Many of Nigeria's prison however are overcrowded and pretrial detention is a severe problem. In 2009, 69 per cent of detainees were in pretrial custody and the avarage period of detention was 3.7 years. Studies show that it is not uncommon for those accused of serious offences to spend over 10 years in pretrial detention**	In 2005, REPLACE launched a project in four states—Imo, Kaduna, Ondo and Sokoto—with supprot from the *Open Society Institute Justice Initiative.* Using a duty solicitor model, the project sought to: Reduce the number of pretrial detainees amounted the majority proportion of the overall prison population; Reduce the average length of pretrial detention; Test a low-cost model of pretrial legal assistance supporting duty solicitor scheme with volunteers from national youth corps, and Contribute to a national level consultation on access to legal aid.	During the first nine months of the project, an average 72 percent reduction in the duration of pretrial detention was recorded in the pilot states. The total inmate population also declined by nearly 20 percent, representing a total of 611 detainees who were assisted and then released. In 2007, a total of 1,188 detainees were released from police and prison detention. In 2008, a total of 2,579 detainees were released and between January and June 2009, about 1,704 detainees were released. The majority of detainees who were released only spent a couple of days in detention rather than the national average of 3.7 years.

3.5.2 Legal Aid during Trial

A trial in Indonesian criminal justice system can be briefly described as disclosure of accusation against someone and a defense by the accused commenced with an indictment by public prosecutor

[160] *Ibid*., p. 83.

based on the result of investigation. An indictment is an accusation against someone accused of committing crime and then ended with the citation of articles of Penal Code violated by the accussed. The role of an advocate as a legal aid provider to the accused is to prepare a defense for him of her, the defense is opened with bringing up an objection or counterarguments against the public prosecutor's indictment at the trial.

Legal assistance from lawyer is very influential on the status of the accused because the objection raised by the lawyer may be accepted by the judge. EJudgement ordering the public prosecutor to release the accused from detention may be rendered. Otherwise, the lawyer might also ask the panel of judges to change the form of detention from regular detention in detention centre/prison to city arrest or house arrest that is certainly not against the law. The transfer of detainees and the release of the accused during trial process is a great help to reduce the level of overcrowding in Prisons/Detention Centres.

The next step is that the lawyer must be able to prepare evidence that may reduce the sentence of or even lead the accused to acquittal. Preparing valid evidence within sufficient time is very important in establishing defense because well-grounded and convincing defense greatly affects the final verdict. In relation to overcrowding situation, the duration of imprisonment that is imposed on the convict obviously plays an important role. Convicts sentenced for long imprisonment certainly will stay in prisons in a long time.

The aims of providing legal assistance to defendants during trial are to ensure that the procedure is carried out correctly, to ensure that examination is conducted in timely manner, to ensure the access to documents for defense, and finally to prepare evidence. The defendants hardly manage to ensure those things when they are locked up in detention. Difficult to access means difficult to make a defense. In practice many legal assistances are provided in court only to meet administrative requirements so that the trial is considered obeying the existing procedure. The accused is assisted by a lawyer during trial so that a record in the trial document can be written as it is. However, the assigned lawyers sometimes do not fully understand the case brought before them and when they are asked for a response by the panel of judges, they will only respond verbally.

Consequently, such problematic lawyers will adversely affect the accused. In fact, it is often the case where a defendant has no idea of any legal remedy he can do during appeal at high court or supreme court, even though judges have shortly explained about the rights to appeal during the last

trial at district court. In other words, the trial process of a person accused of a crime without access to professional legal assistance will negatively affect the sentence period if he or she is found guilty. The sentence period obviously will affect the length of his/her stay in Prison/ Detention Centre.

3.5.3 Post-trial Legal Aid

Ensuring legal assistance for someone who has undergone a trial process can also help reducing prison overcrowding as it has to do with rights to appeals both in high court as well as supreme court, including request of judicial review after a person has undergone first instance hearing (in district court). Legal remedy for a convict in prison/detention centre will certainly affect the reduction of prison population, if the remedy brings about different result from that of first instance ruling such as reducing the sentence or even acquittal. However, it is not infrequently that the remedy bring about quite contrary result, for example, increasing the length of punishment.

Apart from appeal at high court and supreme court and judicial review of court ruling, lawyers, as part of their legal assistance can also apply for clemency and help the convicts to arrange parole, conditional leave, and leave before release by preparing the required documents. Although basically all of these efforts can be done by the convict himself or herself, but lawyers can provide better and complete information, explanations, and steps to be taken.

In every stage of examination, the right to legal assistance must be granted to suspects, especially those coming from low-income family and those unfamiliar with legal matters. Article 54 of Law Number 8/1981 on Criminal Procedure Code specifies that:

> "For the purpose of defense, a suspect or an accused shall has the right to obtain legal assistance from one or more legal counsels during the period of and at every stage of examination, according to the procedures stipulated by this law."

It is clear that from investigation stage the suspects are allowed to enjoy or obtain their rights, one of which is the right to obtain legal assistance or legal counsel.

Therefore, it is implied that the rights of the suspect are a guarantee for human rights. The presence of legal assistance or legal counsel aiming to protect a suspect ensures that the rights of suspect are not revoked or compromised. Legal assistance represented by legal counsel/lawyer can prevent arbitrary conduct of law enforcement officers toward suspects in investigation process, especially towards those coming from low-income family and unfamiliar with legal matters. For example, a suspect can apply for a delayedf detention as stipulated in Article 31 of Criminal Procedure Code or file a pre-trial lawsuit as stipulated in article 77 of Criminal Procedure Code.

The role of legal counsel in this regard is very important as one of the instruments of supervision and control against the possibility of misconduct committed by law enforcement officers.[161] In practice almost all detainees are not accompanied by lawyers during interrogation. Research conducted by ICJR in 2012 reveals that only 2% of detainees were accompanied by lawyers during interrogation by police.[162] According to survey conducted by the Institute for Independent Judiciary (LeIP), in about 1,171 out of 1,490 criminal cases, the defendants did not accompanied by legal counsel. Only in 318 cases the defendants had access to legal assistance from lawyer.[163]

In practice, as a legal counsel who accompanied prisoner said, in order to get alternative to detention, the lawyers have to negotiate with the authority regarding the form of guarantee that could be a person or family member or a sum of money,[164] despite the provision of Article 31 of Criminal Procedure Code rules that at the request of suspect or defendant, the investigator or public prosecutor or judge in accordance with their respective authorities can postpone detention with or without money or personal guarantee according to specific requirements. It is for such reason overcrowding situation in Detention Centres or Prison has become more and more problematic.

Furthermore, without the asistance from a legal counsel it is very likely that a suspect is not aware about his/her right to file pretrial lawsuit, particulary on the legality of the decision to put a status of suspect. Being uninformed regarding legal procedures definitely disfavors the suspects/defendants as they may be locked up arbitrarily in Detention Centre or Prison, eventually contributing to overcrowding situation in Detention Centres or Correctional Institutions.

In addition, there is also another problem with regards to inmates overstaying. Many detainees who have overstayed in prisons because their detention period has exceeded the permitted duration stipulated by the law. Detainee in such a situation is a victim of human rights violation through arbitrary detention, as arbitrary detention is a law violation.[165] The overstaying problem thereby has long been considered as one of the causes of prison overcrowding.

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[161] M. Sofyan Lubis, *Prinsip "Miranda Rule" Hak Tersangka Sebelum Pemeriksaan: Jangan Sampai Anda Menjadi Korban Peradilan* ("Miranda Rule" The Rights of Suspect before Investigation: Never Let Yourself Become a Victim if Justice System), Penerbit Pustaka Yustisia, Yogyakarta, 2010, p. 8

[162] Pilar Domingo and Leopold Sudaryono, *Loc.cit.*, p. 29

[163] Abdul Haris Semendawai, et.al., *Briefing Paper ICJR: Preliminary Mapping on the Situation of Detention and Pretrial in Indonesia*, Institute for Criminal Justice Reform (ICJR), Jakarta, 2011, p. 30

[164] Pilar Domingo and Leopold Sudaryono, *Loc.cit.*, p. 27.

[165] Abdul Haris Semendawai, et.al., *Op.cit.*, p. 28.

Limited access to legal assistance is very likely to cause overstaying (being detained exceeding the official duration stated in the documents ordering the detention). According to the Ombudsman of the Republic of Indonesia, the majority of overstaying cases reported in 2012 were caused by the delay in issuing the letter to extend the duration of detention by Public Prosecutor Office.[166]

It is urgently necessary to promote the importance of access to legal assistance in order to reduce prison overcrowding. Arguably, it can be achieved by guaranteeing the fulfillment of the rights of suspects such as submitting delayed detention and a pretrial lawsuit regarding the decision to put a status of suspect, as well as ensuring that the detention is not abused.

3.6 Institutional Problems, Human Resources and Facilities and Infrastructure

3.6.1 Institutional Factors

The development of the institutional system of Prison/Detention Centre is influenced by policies, politics, cultures and dominant values of the society where the system works. One key element of institutional strengthening process is the identification of organizational trend in the past and the future that will affect the ways to address the number of convicts/detainees in Correctional Institutions/Detention Centres.[167]

The identification of how an organization facing or overcoming problems in the past and predicting future challenges must be regularly updated using the same methodology. This is because it will affect the stakeholders in evaluating and making appropriate decisions on adjustments to policies and strategies to institutionally strengthen Correctional Institutions/Detention Centres.

The proper institutional form and size might be a factor affecting the way stakeholders dealing with overcrowding problems. Correctional Institutions/detention centres with lesser classification types than the burden of duty will invariably have limited capacity management.

The increase of capacity will always mean the increase of workload. It is easy to imagine how a Class III Prison with all its limited specifications will be overwhelmed by workload of Class II A Prison, which will significantly contribute to the perpetuation of overcrowding situation.[168]

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[166] Pilar Domingo and Leopold Sudaryono, *Loc.cit.*, p. 21

[167] Appendix to Regulation of Ministry of Law and Human Rights of the Republic of Indonesia 11/2017 on Grand Design to Handle Overcrowding in Detention Centres and Correctional Institutions, p. 48.

[168] *Ibid*.

To carry out the strategies to institutionally strengthen prison system in order to addressthe problem of overcrowding, it is necessary to make improvements by adopting a hybrid approach. Hybrid approach entails an approach to improve organizational structure and governance that are not functioning properly and not appropriate in size, and then establish new organizations that are compatible with the needs to handle overcrowding.

3.6.1.1 The Problems of Conflicting and Obsolete Regulations in Improving Organizational Structure and Working Procedures

Directorate General of Corrections, an institution holding authority in the administration of imprisonment management, previously had only limited duties to formulate and implement policies and technical standards in Correctional affairs. Along with changes in regulations brought about by Presidential Regulation Number 44/2015 on the Ministry of Law and Human Rights, Regulation of the Minister of Law and Human Rights Number 29 /2015 on Organizational Srtucture and Work Procedures of the Ministry of Law and Human Rights, and Regulation of the Minister of Law and Human Rights Number 28/2014 on Organizational Structure and Working Procedures of the Provincial Office of Ministry of Law and Human Rights, the organizational structure and working procedures of the Directorate General of Corrections shall be in line with the dynamics and development in accordance with the needs of the organization.

Accordingly, the Directorate General of Corrections gets an upgraded authority to implement technical policies as well as technical support in organizational unit level dealing with direct services. Apart from changing regulations, restructuring programs and activities within the Ministry of Law and Human Rights have also affected the organizational dynamics. Those policies aim to, among others, put Directorate General of Corrections, Division of Corrections, and UPT of Corrections UPT in one in-line program so that the activity output and performance of the UPT can directly contribute to the achievement of echelon I units' program.

Another expectation lies in the technical budget allocation for UPT in the program carried out by the relevant echelon I so that the performance of UPT can present the whole program achievements. To ensure the program achievement, Directorate General of Corrections has to employ a strategy to manage span of control to reach 613 direct service units that implement the program. Article 17 of Regulation of the Minister of Law and Human Rights Number 28/2014 on Organizational Structure and Working Procedures of Provincial Office of the Ministry of Law and Human Rights specifies that Division of Correcions carries out the duties of Directorate General of Corrections at provincial level.

While the Article 18 specifies that to carry out the duty the Division of Correction performs technical functions and technical support.

Article 57 further specifies that UPT of Corrections is under the Director General and responsible to it through Division of Corrections. This is the strategy of making Division of Corrections as a span of control that is expected to play a role as the implementer of the echelon I unit program at provincial level.

Span control management between Technical Implementation Unit and Division of Corrections is set out in Article 5 of Regulation of Minister of Administrative and Bureaucratic Reform Number 18/2008, stating that in order to guarantee the efficiency and effectiveness of the implementation of duty and to simplify the span control of duty the Minister can establish development coordination mechanisms between one and other UPT or between UPT and vertical agencies.

Regulation of the Minister of Law and Human Rights Number 29/2015 on Organizational Structure and Working Procedures of Ministry of Law and Human Rights and Regulation of the Minister of Law and Human Rights Number 28/2014 on Organizational Structure and Working Procedures of Provincial Office of Ministry of Law and Human Rights stipulate that UPT of Corrections must be put under Division of Corrections. Referring to the procedures regulated by the Regulation of the Minister of Administrative and Bureaucratic Reform Number 18/2008, it is uncertain whether the span of control pattern through Division of Corrections represents a vertical agency or the UPT remain under the coordination of Provincial Office, because Division of Correction is part of the organizational unit of Provincial Office of Ministry of Law and Human Rights.

Based on the existing benchmarking in organizations of other Ministries, the UPT is coordinated by vertical agency of one program with the parent organization, in this regard is Directorate General with the same duty and function.

Looking back at 1985, there was a drastic change in the structural design of Ministry of Law and Human Rights (then Ministry of Justice) that directly affected the organizational structure Corrections. Organizational design with holding type adopted by Department of Justice was changed by the adoption of integrated type. This change resulted in the abolition of Provincial Office of Corrections (Kawip) and the establishment of a new provincial office, namely the Provincial Office of Justice that covers, among others, Kawip. These changes cut off direct command line and span of

control between Director General of Corrections as Echelon I Work Unit that is responsible for Technical Corrections to Division of Corrections at provincial level and UPT of Corrections as a direct service unit in Correctional affairs. This condition causes the absence of vertical authority of Directorate General of Corrections on the implementation of the duties and functions of UPT of Corrections.

However, the manner in which the articles in the Regulations of the Minister of Law and Human Rights Number 28/2014 and Number 29/2015 regulated turns out to be inharmonious with the higher regulation, namely Presidential Regulation Number 83/2012 as well as the equal regulations governing organization and working procedures of UPT of Corrections. Article 5 of Presidential Regulation Number 83/2012 specifies that one function of Provincial Office of Ministry of Law and Human Rights is technically to coordinate operational implementation of technical service units within the Ministry of Justice and Human Rights concerning immigration and corrections. Meanwhile, with regard to technical support, Provincial Office of Ministry of Law and Human Rights functions to coordinate planning, program control and reporting.

It is worth to bear in mind that the principle of lex superior derogat legi inferiori implies that the implementation of higher regulation will take precedence over the lower ones. In other words, promulgation of Regulations of the Minister of Law and Human Rights Number 28/2014 and Number 29/2015 are not legally binding or have no effect because the existence of articles for improvement can be sidelined by the higher regulation, which is Presidential Regulation Number 83/2012.

However, it must be highlighted that Presidential Regulation Number 83/2012 is also inharmonious with the equal regulation, which is the Presidential Regulation Number 44/2015 acting as the elaborate regulation of Presidential Regulation Number 7/2015. The regulation has explicitly mandated that the development of organizational units within vertical agency and technical implementation units carrying out duty and function suitable to those of Directorate General is carried out by the concerned Directorate General.

In this regard, it is necessary to look back to the doctrine of lex posteriori derogat legi priori that the implementation of new regulations must be prioritized over the older ones. Thus, the provisions in the Presidential Regulation Number 83/2012 are considered null and void because they conradict with the Presidential Regulation Number 44/2015.

Therefore, the sequence is as follows: the Presidential Regulation Number 83/2012 overruling the Regulations of the Minister of Law and Human Rights Number 28/2014 and Number 29/2015 has been itself sidelined by the Presidential Regulation Number 44/2015. In other words, Presidential Regulation Number 44/2015 has legally deregulating any conflicting regulations, such as Presidential Regulation Number 83/2012.

Besides span of control, another problem is that the regulations serving as basis for organizational structure and working procedures of UPT of Corrections were themselves out of date, given for the last 30 years no changes have been made. The regulation stated that Correctional Institutions/detention centers are under and are responsible directly to Head of Provincial Office of Department of Justice.

In fact, provisions on Technical Implementation Units that are directly under Directorate General according to its scope of implementation of duties and functions are governed by Article 2 paragraph (1) Regulation of the Minister of Administrative and Bureaucratic Reform Number 18/2008 on Organizational Guidelines for UPT of Ministries/Institutions. They are also in line with Presidential Regulation Number 44/2015 on Ministry of Law and Human Rights, Regulation of the Minister of Law and Human Rights Number 29/2015 on Organizational Structure and Working Procedures of Ministry of Law and Human Rights, and Regulation of the Minister of Law and Human Rights Number 28/2014 on Organizational Structure and Working Procedures of Provincial Office of Ministry of Law and Human Rights.

Furthermore, Article 4 paragraph (1) Regulation of the Minister of Administrative and Bureaucratic Reform Number 18/2008 on Organizational Guidelines for UPT of Ministries/Institutions stipulates that UPT has the task of carrying out operational technical activities and/or supporting technical activities as well as the implementation of government's affairs from its parent organization which in principle is not development in nature and is not directly related to the formulation and determination of public policies.

Given the regulation has existed for about 30 years, the duties and functions of UPT of Corrections formulated in the present organizational regulation and work procedures are deemed not accommodated yet the duties and functions of a dynamic parent organization.

The various problems mentioned above have further confirmed that the Decree of Minister of Justice Number M.01.PR.07.03 of 1985 on Organization and Working Procedures of Correctional Institution, the Decree of Minister of Justice Number M.04-PR.07.03 of 1985 on Organization and Working Procedures of Detention Centre and State Storage House of Confiscated Objects, and the Decree of Minister of Justice Number M.02-PR. 07.03 of 1987 on Organization and Working Procedures of Social Guidance Agency and Child Relief Centre need to be adjusted to the higher as well as equal regulations.

3.6.1.2 The Problems of Duplication of Functions and Clustering the Organizational Functions

The need to reorganize UPT of Corrections is not only based on the need for legal alignment. From organizational perspective, it is also identified that organizational design interpreted in Organizational Structure of UPT of Corrections is not properly adjusted as indicated by the duplication of functions and improper clustering functions.[169]

In Prison's structure, for example, the function of Security and Order Sector will overlap with that of Prison Security Unit. Moreover, clustering rehabilitation and treatment functions is considered inappropriate as it is sidelined the function of working activities which is of that rehabilitation function.[170]

Apart from Correctional Institutions, Detention Centres also have the same condition, where administrative section as a supporting unit has overlapped duties with management section. Some descriptions of the organizational structure as such confirmed that the urgency of institutional structuring must be prioritized.[171]

Institutional strengthening of Correctional Institutions/Detention Centres will also consider the implementation of classifications that in practice is graded into the following functions:

a) Maximum Security Prison;
b) Medium Security Prison; and
c) Minimum Security Prison.

[169] *Ibid*., p. 60.
[170] *Ibid*.
[171] *Ibid*.

Institutional strengthening in accordance with the respective functions will be closely related to the models of rehabilitation and security for convicts through the assessments based on the risk level and the need of intervention for their criminogenic factors.[172]

Article 14 of Regulation of the Minister of Administrative and Bureaucratic Reform Number PER/ 18/M.PAN/11/2008 on the Organizational Guidelines of Technical Implementation Unit of Ministries and Non-Ministry Government Institutions stipulates that:

a) If the number of a certain UPT in a Ministry/LPNK environment has varied in terms of volume/workload, the UPT is classified according to criteria.
b) If the number of a certain UPT in a Ministry/LPNK has varied in terms of characteristics of the type and the nature of the duty and organizational environment, the UPT is subjected to a typology.

The regulation provides space for arrangement of organizational formation based on volume and workload and characteristics of the nature of duties undertaken. The decision to organizationally establish UPT of Corrections (Prison in this regard) is based on the security approach. historically, the establishment of Class I Prison is a manifestation of Prison with maximum security criterion, whereas Class II A/B and Class III Correctional Institutions are those with Medium Security criterion. Meanwhile, Open Prison prison is a manifestation of Prison with Minimum Security criterion.

In addition to the regulations described above, it is clear that the development of inmates' characteristics in Detention Centres/Correctional Institutions consist of detainees and convicts clustered according to types of crimes they committed. It is possible therefore to predict that the future institutional arrangements will be carried out through the typology of organizational functions that will affect the core business or specialization of main function run by UPT of Corrections.

The improvement on the organizational structure of UPT of Corrections must be able to reflect on the business process flow as well as the core business carried out. This way, the correctional objectives can be achieved effectively and efficiently.[173]

In the end, the most important thing among the problems above is how to arrange an organizational framework that accommodates the role and the involvement of Directorate General of Corrections

[172] *Ibid*., p. 66.
[173] *Ibid*., p. 67.

in UPT of Corrections. Besides, it is also important to consider how to design an UPT organization based on business processes and that represents the functions of its parent organization.[174]

3.6.2 Human Resources Issues

Beside affecting some aspects explained above, overcrowding situation in Correctional Institutions/ detention centres will greatly affect the aspects of supervision and security. It is so because the increasing number of inmates in Correctional Institutions/detention centres is followed by the demand in the improvement of supervision in quantity as well as quality.[175]

Unfortunately, the situation was not accompanied by increasing number of officers and improvement/addition of supporting facilities, which weaken the supervision. Worse, an overcrowding atmosphere will greatly affect the psychological health of inmates. Such an atmosphere will easily generate conflict between inmates because resources of the prisons are insufficient to provide equal access for all inmates.

It is also the case with the demand on services for prisoners' rights as stipulated in laws and regulations, while personnel and supporting facilities are relatively unchanged. This condition will intensify dissatisfaction, which is not unlikely to incite protests against the authority and to generate security problems in Correctional Institutions/detention centres.

The present security duty in Correctional Institutions/detentions centres implemented by human resources of Corrections is hindered by technical problems. The overcrowding situation in many places trigger various problems related to the security of Correctional Institutions/detention centres that increases in complexity, such as:

3.6.2.1 Comparative Ratio of Officers and Inmates

Annual Inmate's number growth (2010-2013) was on average of 8,609 people, while annual occupancy capacity growth (2010-2013) was on average of 4,367 people. Moreover, the growth of Inmate's number was not accompanied by a growing number of staffs.[176]

[174] *Ibid*.
[175] *Ibid*., p. 75.
[176] *Ibid*., p. 76.

Out of 29,998[177] staffs of Corrections, about 14,584 of them work as security officers.[178] Asumming that each prison/detention centre has 4 guard shifts, it means 3,646 Security personnel (14,584: 4) have to guard 232,521 convicts/detainees for each guard shift.[179]

It is fair thus to conclude that the comparative ratio between officers and prisoners is 1:65, that 1 Security Officer has to deal with 65 convicts/detainees in a prison/detention centre. Indonesia has the largest disparity ratio gap and even higher than that of Thailand and the Philippines. Below is comparative ratio of security officers and convicts/detainees in neighboring countries of Asia and Australia:

Table 3.8: Comparative Ratio of Security Officers and Convicts/Detainees in Several Countries

Country	Number of Officers	Officer-Inmate Ratio
Australia (NSW)	5363	1 to 2.2
Brunei Darussalam	409	1 to 1.4
China	467,676	1 to 3.5
Japan	19,634	1 to 3.0
Malaysia	15,204	1 to 3.4
Philippines	2,689	1 to 15.4
Singapore	2,159	1 to 5.9
Thailand	10,319	1 to 30.0
Vietnam	18,043	1 to 7.6
Indonesia	**14,584**	**1 to 65**

Source: Statistical Data Report of Corrections during Hearing RDP with Commission III of DPR RI, 25 January 2018.

[177] Composition of Men: 22,805 (78%), Women: 6,285 (22%)
[178] Data as of 31 January 2017 based on Statistical Data Report of Corrections presented during Hearing with Commission III of DPR RI, 25 January 2018..
[179] *Ibid*.

Moreover, when we look at Prisons in provincial capital, for instance Class I Prison of Cipinang, 2,765 inmates are guarded only by 30 officers per shift. Hence the officer-inmate ratio = 1: 92. This fact causes the duty to guard prison/detention centre in overcrowding conditions will never be optimal.

3.6.2.2 The Quality of Correctional Officers

Problems related to correctional officers are not only limited to numbers. The limited number of officers is aggravated by the low quality of the available officers. Insufficient education and training result in stagnant quality and lack of improvement in developing the skills of wardens. This condition often results in incompetent officers failing to keep up with the present demand in carrying out correctional duties.

The implementation of correctional duty is impeded by many problems, such as the limited number of officers in prison/detention centres while they have to deal with the ever-increasing order and security disturbances, more varied inmates, inadequate infrastructure facilities, under skilled correctional officers and moratorium on staff recruitment. Consequently, correctional disparity has become more and more widened in tackling those challenges.

Human resource management generally aims to ensure that an organization is able to achieve success by means of people. The specific target of management in the HR field is the realization of the resources of officers or staffs who are competent, professional, high-performing, service-oriented and prosperous.

The scope of human resources management in Correctional Institution includes system improvement: recruitment, education and training, placement, performance appraisal, career development, staffing and welfare database and discharge as well as retirement.[180]

3.6.2.3 Unavailabilty of Standard Operational Procedures (SOP) on Recruitment Pattern

Recruitment is one primary element in staff procurement system of government institutions including prison. However, there are some fundamental issues that are problematic. Firstly, the recruitment process has not been planned systematically because it has not been based on workload and competency. The recruitment system has not taken into consideration the number and the needs of staffs in correctional facilities so that the ideal number of staffs and what strategies to achieve it remain unknown.

[180] Appendix to Regulation of Ministry of Law and Human Rights of the Republic of Indonesia 11/2017 on Grand Design to Handle Overcrowding in Detention Centres and Correctional Institutions, p 79.

Secondly, there is no clear Standard Operational Procedure to address recruitment pattern of correctional staff. Recruitment has not yet involved a professional third party through a transparent and accountable procurement system. The planning for the need of other functional personnel of Bapas (Probation Service), Prison, and State Storage House of Confiscated Objects (Rupbasan) in so far has not considered educational competencies, expertise and other special requirements in order to recruit a professional correctional officers. Scope of the recruitment problem is found in the recruitment process of CPNS (Civil Servant Candidate) and in the recruitment process of officials during on duty.

3.6.2.4 Poor Coordination in Organizing Education and Training (Diklat)

The skill development of Prison's staff is carried out through education and training which are fully under responsibility of other echelon I unit of Ministry of Law and Human Rights, namely the Human Resources Development Agency (BPSDM). The coordination between BPSDM, the Directorate General of Corrections, and Provincial Office of Law and Human Rights in conducting education and training programs for correctional staff is still very poor.

Such poor coordination generates various problems. Firstly, education and training programs are held disregarding the needs in the field. Secondly, the capacity of the training participants is incompatible with the type of training held. Thirdly, the training curriculum has not supported the improvement of the quality of staff. Fourthly the ability and the quality of instructors/trainers are insufficient, not to mention inadequate training facilities and infrastructure. Lastly, the placement evaluation after training and the evaluation of the skill development after training are not well controlled.

Another note is the unavailablity of internal policies and provisions (SOP) regulating the guidelines in organizing education and training programs for correctional officers. The scope of the training consists of pre-duty training and training during on duty according to Government Regulation Number 101/2000 on the implementation of education and training during on duty for Civil Servants towards the empowerment in Functional Training and Correctional Technical Training.

3.6.2.5 Placement Accountability Issues

To meet organizational demand on human resources, the placement of correctional staff must be carried out appropriately, effectively, and efficiently. In reality, the placement of correctional staffs is confronted by the problems of the existing rotation, mutation, and promotion patterns and

promotions that have not been properly and consistenly implemented. The implementation should have been through an integrated information system and placement coordination between the Secretary General, Directorate General of Corrections, and Provincial Office of Law and Human Rights. On the other hand, the unit of Directorate General of Corrections has no standard operating procedures to orderly and accountably manage and organize placement activities.

3.6.2.6 Irrelevant Standard for Performance Assessment

The assessment for Civil Servants Performance is carried out in periodical term. The assessment aims to figure out the success or the failure of a Civil Servant as well as the shortcomings and the advantages of the concerned Civil Servant in duty performing.

The result of the performance assessment will be considered in the process of appointment, promotion, office assignment, education and training, and rewarding. The present system of assessment is based on Government Regulation Number 10/1979 on Assessment of Civil Servants' Job Performance. Such system is similar to the method adopted by Directorate General of Corrections, which is List of Job Performance Assessment of Civil Servant (DP3).

However, such system is considered irrelevant to all job areas. This assessment standard should be updated in order to meet the demands and the dynamics of employment as well as to ensure a conducive and responsive work climate to any internal and external change.

In practice, the DP3 system is considered incompatible with the performance indicators and principal responsibilities of each staff. Another obstacle found is the unavailability of a Performance Management System that efficiently supports the system to assess both the success and the failure of performance target achievement.

Performance Assessment is implemented only to meet an administrative requirement for promotion, while a clear Standard Operating Procedure (SOP) addressing Staff Performance Assessment remains unavailable. Specifically, the weaknesses of present performance assessment are as follows:

a) Recency Bias/very subjective parameter;
b) The asessment is more focused on personal quality/characteristic of an individual instead of performance;
c) The system provides no information on individual ability to do the job;

d) It is difficult to guarantee objectivity, both in validity, consistency, and reliability of the results;
e) Personal quality often does not reflect actual performance; and
f) Asessment is only used for promotional purpose.

3.6.2.7 Unavailability of Career Management Pattern

Career management consists of career information systems, career planning, career development system, and career guidance. So far there is no appropriate strategy to organize career management of Correctional Staff. Moreover, the Correctional Institution has not yetstandardized career patterns that represents career development related to the congruity of positions, ranks, education and training as well as tenure from the first appointment to retirement.

It is also the case with the unavailability of clear career path for staffs regarding the order of positions from the lowest to the highest positions. Apart from the absence of standardized strategies and regulations on career management, the problem of less transparent and accountable working culture in the implementation of career management perpetuates poor implementation of Correctional Staff career management.

3.6.2.8 Unavailability of Personnel Information System

A timely, precise, and accurate personnel information system will strongly support the implementation of staff resources management related to formation planning, appointment, development, coaching, transfer, salary and benefits, discharge and retirement.

The system involves mechanism of data collecting, storing, reporting, and presenting. The very poor management of correctional personnel information is caused by the lack of obligation for each UPT to share their personnel data to Directorate General of Corrections. It thereby causes personnel database of Directorate General of Corrections becomes less updated.

Another problem is the unavailability of a Data Base System that is directly connected online from the Directorate General of Corrections to UPT as well as to Secretary General. There is no clear Standard Operating Procedure (SOP) that regulates the Personnel Database.

3.6.2.9 Remuneration System

For correctional personnel, welfare conditions are reflected by two measurement scales, namely the amount of salary and allowance. Problems found in practice are often the payment of benefit that

are irrelevant to performance, triggering conflicts among the officers. Calculation of salary and accumulated allowance has not been based on the weight or grade of position based on a proportional performance assessment. In a sense, according to the Directorate General of Corrections, correctional remuneration system has not reflected fair and proportionate treatment to personnel.

3.6.2.10 Discharge

The dischrage of Civil Servant is regulated by Government Regulation Number 63/2009 on the Amendments of Government Regulation Number 9/2003 on Authority to Appoint, Transfer, and Discharge Civil Servants. There are 2 (two) following types of civil servant discharge in the regulation:

a) Honorable discharge, including:
   - Reaching Retirement Age;
   - At Own Request;
   - Pass away;
   - Physical Disability.

b) Dishonorable discharge, including:
   - Violating Oath of Civil Servant and Oath of Office, disloyal to Pancasila (state's ideology), the 1945 Constitution, the State and the Government;
   - Sentenced to imprisonment or confinement by court ruling that has been legally binding for committing a crime related to their duties as civil servant;
   - Committing serious disciplinary violations.

As described in the above rules, both honorable and dishonorable discharge are two conditions that confirm the end of the employment relationship between the personnel and the workplace.

Problems that occur in correctional facilities are those related to punishment. The imposition of sanctions for a civil servant seems to be more relaxed and take a considerably long procedure. The slow process of imposing personnel disciplinary punishment is because it takes a long time for the Secretariat General to issue the Decision on Disciplinary Punishment. Consequently, such long process triggers the personnel concerned will continue to make violations.

Another problem that is causing the Decree of Retirement slowly processed is due to the length of approval process from the Ministry. On the one hand, Correctional Institutions do not have an information system and regulations regarding the discharge and retirement of personnel. On the other hand, the other human resources needed to respond in such condition already have international instrument as stated in SMR 49 that specifies:

a) So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.
b) The services of social workers, teachers and trade instructors shall be secured on a permanent basis (permanent personnel), without thereby excluding part-time or voluntary workers.

Furthermore, SMR 22 point 1 states that:

> "At every institution there shall be available the services of at least one qualified medical officer who should possess some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or country. They shall include a psychiatric service for diagnosis and, in proper cases, the treatment of states of mental abnormality."

If we look at the provisions on correctional human resources as mandated in the SMR, it will be difficult to meet the ideal needs of personnel according their duties and functions. The big question for some circles or agencies in charge of personnel problems is what the ideal number of correctional personnel needed. The discussion on ideal number needed cannot be separated from the ideal ratio of correctional personnel and inmates.

The ideal number of correctional personnel closely related to the burden or task carried out. With regard to officer-inmate ratio, there are several determining factors:

a) facility and infrastructure for security duties,
b) personnel ability,
c) occupational challenges.

A thorough study is necessary to determine ideal ratio and a need analysis of Correctional Personnel. Determining the ideal ratio of officers and inmates will affect the planning and the formation of human resources in Correctional Institution. In the future, therefore, to procure correctional human resources, the formation plan for correctional personnel shall be fulfilled based on the ideal need and proper needs analysis.

Implementation and procurement of recruitment pattern for Correctional Personnel should also consider specific characteristics that must be met. The characteristics may entail educational background, abilities and skills of correctional personnel candidate in relation to the functions carried out in each UPT of Corrections: service functions, coaching, management of guidance, security and healthcare.

Subsequently the recruited human resoruces of Correctional Personnel are placed based on a rigorous assessment to meet the principles of the right man on the right job. To develop the quality of human resources, education and training for officers are directed to increase individual competencies and capacities that are specifically needed to perform duty and job.

Education and training system for personnel, therefore, are competence-based training where each individual officer who has completed the training program experiences the increasing of his or her competence. Moreover, education and training also become the principal requirement in the development/promotion of personnel.

The present types and levels of education training for correctional personnel are considered barely sufficient particularly in the part of technical and functional training. Such training aims to improve technical/functional competencies related to the tasks and functions that are under the responsibility of personnel.

In the future, there should be a policy seting out the type of training for correctional personnel through identifying training needs assessment. Additionally, such policy has to determine training levels as well as the minimum needs of each correctional personnel to attend training each year. This training may be attended by the personnel themselves (self-financing) or funded by the Correctional Institution. With this policy, each staff may continuously develop capability and no need to wait budget availability. Consequently, the constructed career system should be in line with the implemented training program.[181]

3.6.3 Facilities and Infrastructure Problems

The availability of facilities and infrastructure at UPT of Corrections is a necessity and inseparable from the quality of duty and function performance of UPT of Corrections. Limited facilities and infrastructure of Prison/Detention Centre and overcrowding situation have resulted in poor quality of services and the hindrance to organize proper coaching and security. Improvement and acceleration to solve the problem of prison overcrowding should consistently refer to the improvement and procurement of infrastructure in UPT of Corrections.

[181] *Ibid*., p. 86.

CHAPTER IV
THE IMPACTS OF PRISON OVERCROWDING ON DETENTIOAN CENTRES AND CORRECTIONAL FACILITIES IN INDONESIA

4.1 The Impacts of Prison Overcrowding on the State Finance from Socio-economic's Perspective

One of the worst conditions within Indonesian criminal justice system can be found in Prisons, where the principle of "due process of law" is often not fulfilled. The cost taken by over-exploitation of imprisonment, which is a fundamental reason for prison overcrowding in many countries around the world, can significantly increase the level of poverty and socio-economic marginalization for certain groups and reduce the available fund of government spending for other sectors. This is how prisons contribute to social poverty.

Prisons in Indonesia mostly have a number of embeded problems, for instance: prison overcrowding, inadequate number of staff, enormous detention authority, insufficientbudget, prevalence of corruption, high level of prison violence among inmates, poor water quality and sanitation, and low quality of health and education services in detention facilities.[182] The combination of those factors, triggered by prison overcrowding, not only affects prison conditions, but also affectssocio-economic aspect of society andpublic health aspect as well.

Imprisonning large segments of society places a significant burden on State budget. In developing countries where budgets rarely meet the need of all citizens, the additional burden of large prison populations will decrease the available fund for health, social services, housing and education. Therefor, when calculating thecost of imprisonment, it should be calculated not only from the actual fund spent for each prisoner, which is usually much higher than what is spent on a non-detained convict, but also from collateral costfrom social, economic and health services. Such costs indeed cannot be easily calculated and require an incredibly amount of and a long-term allocation of fund.
In Indonesia Prison overcrowding also affects the State finance due to the huge budget burden, for example, the correctional budget burden for meals (BAMA) and Non-meals.[183]

[182] Pilar Domingo and Leopold Sudaryono, *Loc.cit.*, p.13

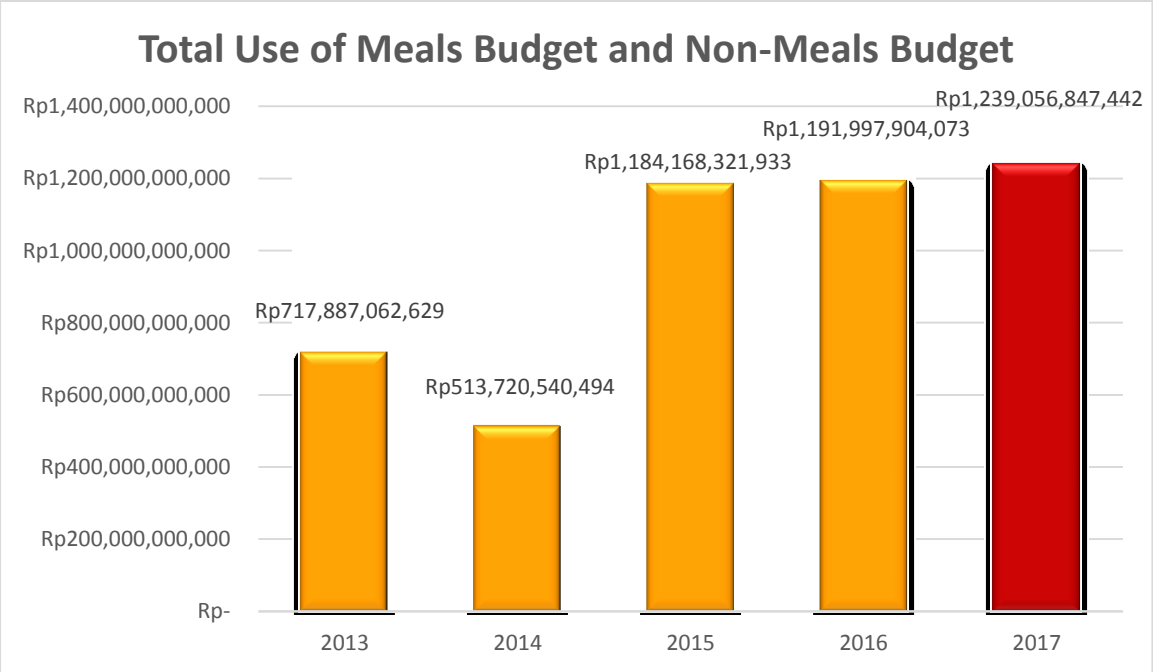
[183] BAMA is budget spent to food and drink for detainees and inmates that includes rice and side dishes,managed by respective UPT of Detention Centre or Corectional Facilities, while Non-BAMA is budget or cost spent for UPT operational such as health, cleaning, clothes, and other cost incured by management and fulfilment of detainees' and inmates' rights.

Table 4.1: Budget of Meals (BAMA) and Non-Meals for Detention Centres and Interval Correctional Institutions 2013-2017

No	Year	Meals Budget Absorption	Non-Meals Budget Absorption	Total of Budget Spent
1	2013	Rp 379,052,483,204	Rp 338,834,579,425	Rp 717,887,062,629
2	2014	Rp 387,753,186,068	Rp 125,967,354,426	Rp 513,720,540.494
3,	2015	Rp 650,116,753,792	Rp 534,051,568,141	Rp 1,184,168,321,933
4	2016	Rp 593,130,405,041	Rp 598,867,499,032	Rp 1,191,997,904,073
5	2017	Rp 815,939,179,333	Rp 423,117,668,109	Rp 1.,239,056,847,442

Source: http://smslap.ditjenpas.go.id/ accessed on 17 October 2017

Figure 4.1: The Increasing Spent of Meals Budget and Non-Meals Budget for Detention Centres and Correctional Facilities in Indonesia



Source: http://smslap.ditjenpas.go.id/public/ung/current/monthly/year/2017/month/ accessed on 20 January 2018

From the table and graph above, it can be concluded that at national levelthe state has to spend an enormous budget, which is Rp 1.2 trillion per year, for detainees and inmates. The budget is only for Meals and Non-meals, excluding the budget for wardens'salary, deliveringrehabilitation programs, and establishing new detention centres and prisons.

Figure 4.1 shows that every year the population of detainees and inmates has been increasing, resulting the increase of the budget for meals and non-meals spent by correctional facilities. For the state, any detention or imprisonment contributing to prison overcrowding means that it will lead to an increased expenditure, a reduced income, and limited resources for other programs. Consequently, 85% of the detention centres and prisons in Indonesia dealing with prisonovercrowding will always undergoriots, absconding convicts, prison caught on fire and any other problems resulted from the problem of prison overcrowding.

During the Working Meeting of Commission III and Ministry of Law and Human Rights, the Ministry of Law and Human Rights has stated that currently, prison capacity that can house 83,745 inmates is urgently necessary. Assuming that the cost for one person is Rp. 150,000,000,- (one hundred and fifty million Rupiah), the State has to provide a budget of Rp. 12,561,750,000,000 (Twelve Trillion and Five Hundred and Sixty-One Billion and Seven Hundred and Fifty Million Rupiah). Thus, a prisonwith the capacity for 2000 personswill cost Rp 300,000,000,000 (three hundred billion rupiah).[184]

Additional prisons are likely to increase the number of inmates, resulting the increase of prison's operational costs. The state annually provides more than Rp. 560 billion for the meals of inmates. The overall operational cost that presently reach Rp. 2.8 trillion will also continue to increase if more and more persons are detained and imprisoned. Such enormous sum of state budget could be allocated for more important and beneficial sectors such as education, health, or crime prevention programs.[185]

Of course, it is difficult to make rational decisions on policy making without an accurate understanding on economic costs of such policy compared to the existing alternatives. Obviously, government policies should not be valued only on the basis of costs. A number of government policies or services are considered so important that any costs must be provided.[186] However, with regard to this prison overcrowding, it is necessary to calculate indirect costs that the state will endure such as lost of productivity, reduced tax payments, and health insurance costs that must be provided by the state due to transmission of diseases spreaded by inmates released from prisons.

[184] Supporting data for Working Meeting of Commission III with Minister of Law and Human Rights on Thursday, 25 January 2018, p. 46.
[185] Choky Ramadhan, *Pengantar Analisis Ekonomi Dalam Kebijakan Pidana Di Indonesia*, ICJR, Jakarta, 2016, p. 41
[186] Martin Schoenteich, *Op.Cit.*, p. 37

Therefore, in order to calculate the cost of imprisonment both for detainees and convicts, the incured cost cannot only be calculated from the fund actually spent for each detainee or convict. Collateral costs resulted from social, economic, and health services, should also be included,even though such costs are amounted to a large sum and long term yet quite difficult to measure.

In addition, every rupiah that the government allocates for imprisonment or detention cannot be spent on health or education services. It is also the case with money spent by detainees or inmates and their families, as well as society.

4.1.1 Human Rights Issues

Prison overcrowding is an increasingly widespread problem in some countries and it is obviously a very serious humanitarian problem, because it will invariably bring about a detention condition that is often inhumane. Tens of thousands of people have to live for a long time in a tight space, a very limited space to move, sit and sleep. Piled up in a small room, not to mention often in poor hygiene and no privacy settings, makes the experience of being deprived of liberty (that is still stressful even in normal situation) much worse. Such situations erode human dignity and damage the physical and mental health of detainees, as well as their reintegration prospect.[187]

Furthermore, poor conditions in prisons also quickly cause difficulties in maintaining order, putting security as well as supervision of detainees/inmates at risk. Almost all of prisons in Indonesia are experiencing similar problems. The impacts thereby can be predicted, i.e.poor health condition of detainees/inmates (sometimes they are even ended up dying), the absence of rehabilitation programs, the decreased quality of correctional services in some cases even leading to the human rights violation, , , and psychological problems experienced by inmates/detainees at a critical level. The latter problem is likely to be the reason why the inmates/detainees are easily got angry and offended, then stirring up quarrels or even prison riots.[188]

Documentation on Situation of Inmates of Penitentiarues and Detention Centres in Indonesia

[187] Regulation of Ministry of Law and Human Rights of the Republic of Indonesia 11/2017 on Grand Design to Handle Overcrowding in Detention Centres and Correctional Institutions, p.41.
[188] *Ibid*.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Source: The Situation of Prison Overcrowding in Correctional Facilities/Detention Centres, Directorate General of Corrections, 9 November 2017

4.1.2 Health Issues

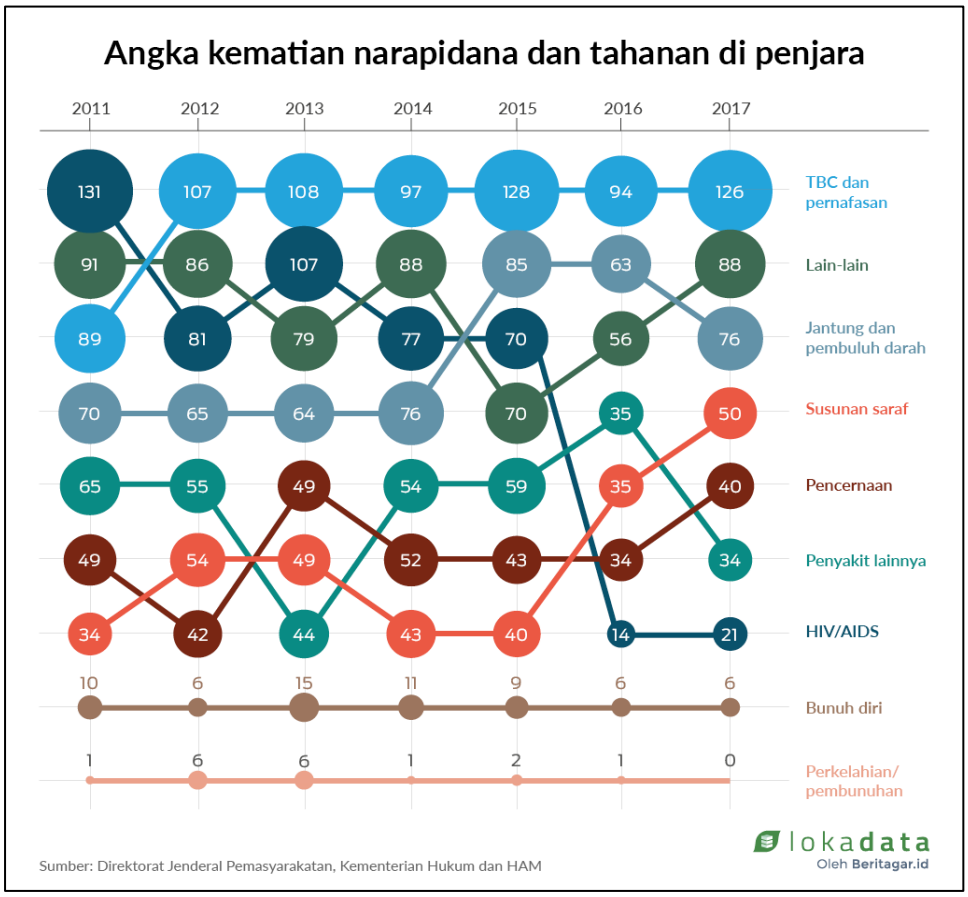
There are serious impacts of prison overcrowding in Indonesia directly undergone by detainees and inmates. Firstly, prison overcrowding aggravates their poor health conditions. The budget on health services has been significantly reduced in recent years due to the state budget deficit. Even the healthcare budget for inmates was declined in the 2014 budget year,[189] impeding the access of nmates/detainees to proper health services.[190] Furthermore, TBC and respiratory diseases, which have been invariably dominated diseases in the last 6 years, are contagious diseases and considerably contribute to the mortality rate of detainees and inmates in prisons as showed by the graph below.[191]

[189] Interview with correctional officers in Banjarmasin on 17 february 2014, in Salemba on 12 ad 13 February 2014; and in Pondok Bambu on 12 February 2014, and the statements were affirmed during a meeting with Director General of Corrections on 17 December 2014.

[190] Pilar Domingo and Leopold Sudaryono, *Loc.cit.*, p. 14

[191] Beritagar.id, *Bunuh diri di Bui*, https://beritagar.id/artikel/berita/bunuh-diri-di-bui, accessed on 15 March 2018

Figure 4.2: Mortality Rate of Convicts and Detainees in Prison from 2011 to 2017[192]



Additionally, there is a phenomenon of suicide among detainees and inmates. Suicides in Correctional Facilities indicates that life in prison causes a lot of depression/psychological pressure for inmates. In 1981, Bartol conducted research on suicides in correctional facilities and found 3 reasons for convicts committing suicide, namely:

Shame for the disgrace they committed which bring his or her family to humiliation;

a) Feeling of helplessness and tight control over convicts' lives.
b) Using suicidal behavior to manipulate other people while actually they have no intention to really end their own life.[193]
c) It is also possible that a suicide is committed to alleviate suffering aggravated by prison conditions, one of which is extreme overcrowding that sweep over detention centres and Correctional Facilities across Indonesia (188%).[194]

[192] Notes Figure 4.2: Tuberculosis and respiratory diseases, Etc, Heart diseases, Neurological disorder, indigestion, Other diseases, HIV / AIDS, Suicide, Fights / Murder

[193] C.R. Bartol and A.M. Bartol, *Psychology and Law: Research and application (2nd ed.)*, Pacific Grove, CA: Broks/Cole, 1994 in Sugeng Pujileksono, *Sosiologi Penjara* (Prison Sociology), Malang: Intrans Publishing, 2017, p. 161

[194] Data as of December 2017.

Similarly, the condition of detention centre or prison that isalready on the level of overcrowding facilitating the spread of infectious diseases such as tuberculosis and even HIV/AIDS. HIV/AIDS can increasingly infect prisoners as a result of unsafe sexual intercourse between male convicts due to the prison policies that entail separation and restricted relationship with the opposite sex. A study of male sexual relations between men/male sex with male (MSM) in prison was carried out by Helen M. Eigenberg (2000).[195] Eigenberg's study more focused on the changing processes of sexual orientation in male prisons. Homosexuality among men in the society is regarded as taboo and controversial, but in prison it becomes normal.[196]

In addition to the above-mentioned factors, since the number of detainees/prisoners increases leading to prison overcrowding, the water, sewage, and sanitary systems are less likely to work normally. The systems will be pressured to serve all of the inmates/detainees and consequently it will be difficult to meet the basic needs of of them. In overcrowded cells and shelters, access to fresh air is severely restricted, especially when theopportunity to spend some time outside is also limited. Obviously, such condition will negatively impact the health of detainees in a significant way.

The reality in many prison systems in Indonesia is that inmates do not have even a minimum space as recommended by the ICRC above, resulting them spending their time in a smalland cramped room. In some conditions, the level of prison overcrowding may be so critical that detainees/convicts are forced to sleep in turns, sleep piled up each other, share beds or tie themselves to bars so that they can sleep while standing. Paradoxically, density levels are often much worse in pre-trial detention facilities in most countries around the world, and prison conditions are even much worse, despite the fact that pre-trial detainees must be considered innocent until proven guilty by courts and special rights must be given to them, considering the status of those who have not been convicted for the elleged crime they committed.

[195] Helen M. Eigenberg, *"Homosexuality in Male Prisons: Demonstrating the Need for a Social Constructionist approach"*, The Prison Journal, Vol. 80, No. 4, pp. 415-433 in Sugeng Pujileksono, *Sosiologi Penjara* (Prison Sociology), Malang: Intrans Publishing, 2017, p. 166

[196] As admitted and affirmed by Wilson (PRD activist, former inmate of Cipinang Prison) in his book "*Dunia di Balik Jeruji*" (World Behind Bars), Yogyakarta: Resistbook, 2005.

Standard on the minimum requirements that should be applied in prisons have been set out in the Standard Minimum Rules for the Treatment of Prisoners (SMR).[197] Some basic principles regarding the treatment of prisoners are regulated in the SMR, including:[198]

a) **Separation of categories**, based on gender, age, criminal record, and legal reason for detention: untried prisoners shall be kept separate from convicted prisoners; persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by the reason of criminal offense; young prisoners shall be kept separate from adult.

b) **Accomodation:**

- Each prisoner shall occupy by night a cell by himself, except for special reasons and if the dormitories are used, they shall be occupied by prisoners carefully selecting as being suitable to associate with one another in those conditions;
- Sleeping accommodation shall meet all requirements of health, particularly to cubic content of air, floor, lighting, and ventilation;
- In all places where prisoners are required to live or work, the windows shall be large enough to enable the prisoners to work by natural and fresh light and artificial light shall be provided sufficiently for the prisoners to read without injury to eyesight;
- The sanitary installation shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

c) **Clothing and bedding:**

- Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit that shall in no manner be degrading or humiliating and shall be changed and washed as often as necessary;
- In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorised purposes, he shall be allowed to wear his own clothing or other inconspicuous clothing;

[197] In 1955 the UN Congress on Prevention of Crime and the Treatment of Offender admitted that the issue of treatment of prisonerss is an international problem. The Congress then approved and validated Standard Minimum Rules for the Treatment of Prisoners (SMR). The UN Resolution No. 663 C of 1957 on Standard Minimum Rules for the Treatment of Prisoners, 1955, became one guideline on treatment of prisoners and the rights of prisoners that should be upheld. SMR is a regulation governing the treatment on prisoners including food, cloths, personal hygiene, exercise and sport, healthcare, information to and complaints by prisoners, relationship with outside world, books, religion, storage of prisoner's wealth, notification on death, illness, transfer and the like, personal institution, special rights, job, education and recreation, sosial relations and after-care, insane and mentally abnormal prisoner, prisoners under arrest or awaiting trial.

[198] Lidya Suryani Widayati, *Rehabilitasi Narapidana Dalam Overcrowded Lembaga Pemasyarakatan* (Convict's Rehabilitation in Overcrowded Prison), in P.A.F. Lamintang and Theo Lamintang, *Hukum Penitensier* (Prison Law), Sinar Grafika, Jakarta, 2010, p. 35

- Every prisoner shall, in accordance with local or national standards, be provided with separate bed, and with separate and sufficient bedding which shall be changed often enough to ensure its cleanliness.

d) Food: every prisoner shall be provided with food of nutritional value adequate for health and well served

e) ... and so forth.

However, it can be safely argued that the current prison conditions are still far from fulfilling SMR described above. Living in a crowded room, inmates must arrange their position in such a way that they do not overlap each other just for sleeping. In Class II B Penitentuary of Banyuwangi, a space of 8 x 4 metters is occupied by 25 people, even to avoid crowded condiction some of them sleep on the cupboard.[199]

The lack of sufficient space is only one of so many problems resulted from overcrowded prison. The impact of overcrowding has also affected the quality of nutrient, sanitation, detainees' activities, healthcare, and treatment for vulnerable groups. All of those issues will influence the physical and mental comfort of all detainees, instigate tension and violence among prisoners, aggravate the existing mental and physical health problem, increase the risk of contagious diseases, and bring about serious management challanges.

Table 4.2: Diseases Prevalent Among Convicts and Detainees (as of December 2017)

DISEASES	NUMBER OF CONVICTS & DETAINEES INFECTED
HIV	1,678
TBC	776
TOOTH DISEASE	2,256
RESPIRATORY DISEASE	8,021
DIGESTIVE DISEASE	3,334
HEARING DISORDER	347
HYPERTENSION	1,519
PHYSICAL DISABIITY	173
DIABETES MELLITUS	687

[199] https://www.jawapos.com/radarbanyuwangi/read/2018/01/18/41168/lapas-over-kapasitas-satu-sel-25-orang-tidur-di-atas-lemari, accessed on 20 March 2018.

NERVOUS DISEASE	**424**
STROKE	**48**
CIRRHOSIS HEPATIS	**13**
KIDNEY FAILURE	**26**
CARDIOVASCULAR DISEASE	**168**
MENTAL DISORDER	**70**
CANCER	**12**

Source: Statistical Report on Corrections, Supporting Data for Working Meetting of Commission III with Minister of Law and Human Rights, Thursday 25 January 2018

4.1.2.1 Spread of Diseases in Prison

Prisons have been referred to as incubators of diseases as the detrimental impacts of imprisonment on health are not confined to a prison cell. Prisoners potentially spread disease to the community outside the prison via staff, family, or visitors. The large majority of prisoners are eventually released and are likely to spread any disease they got infected in prisons to the community.

A study based on longitudinal TBC data from 26 countries in Eastern Europe and Central Asia concluded that the rate of the prison populations' growth was the most important determinant of differences in the TBC infection rates in these countries. The AIDS rate is six times higher in state and federal prisons than in general population in the United States, and 20-26 per cent of people living with HIV/AIDS having spent their time in the prison system.[200]

Health conditions of inmates/detainees in penitentiaries/detentions centres can be divided into two classifications: first, the disease that imates/detainees have already suffered before enter prison and the disease that the inmates/detainees get infected after enter prison. Mechanisms to treat convicts or detainees suffering a disease is considered important to prevent the spreading of the infectious diseases such as HIV, TBC or hepatitis, or any other infectious disease.

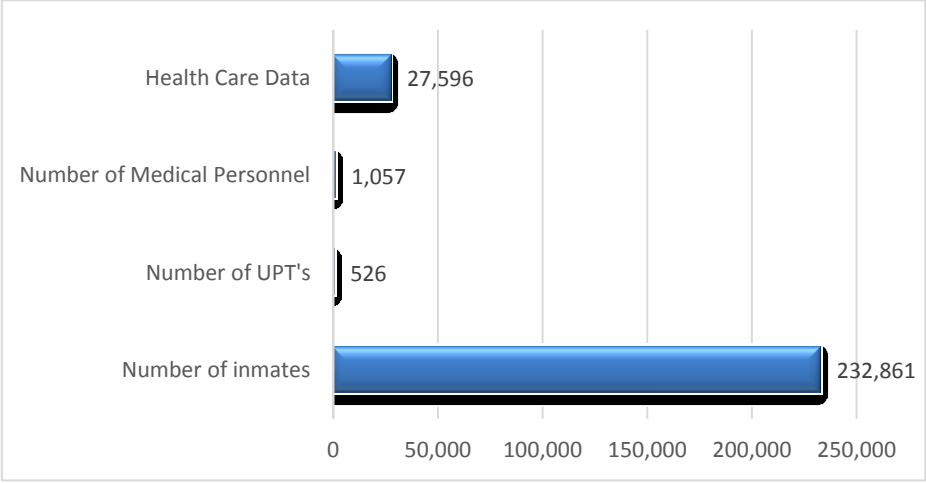
The process to prevent the spreading of infectious diseases must surely be supported by proper facilities and infrastructures, from health rooms, equipments, medicines, and health professional personnel to help recover or heal inmates, preventing the other inmates to get infected.

[200] UNODC, *Loc.cit.*, p. 17.

Due to the fact thatmostly prisons in Indonesia suffers from the poor quality of clean water, sanitation, ventilation and the crowded convicts/detainees' population in one space, it can be fairly concluded that the prison conditions in Indonesia are still far below the standard. Penitetiaries/detention centres in Indonesia are undera an unfavorable category, resulting prisons becomes vulnerable place for spreading infectious diseases brought by prisonerss/detainees who have already suffered the diseases before enter the prisons. There are at least 1678 inmates suffering from HIV and 776 inmates suffering from TBC in all UPT under correctional institutions in Indonesia.[201]

Despite the existing government programs in Correctional Facilities/detention centres to detect TBC and HIV infection for new convicts, it has not been conducted effectively. The reason of such ineffectivenes is, in fact, closely related to other health supporting conditions such as the lack of healthcare rooms andthe limited number of medical and other supporting treatment professional. It is also closely related to the poor condition of space where convicts/deteainees spend a lot of their time.

Figure 4.3: Number of Medical Personnel, Convicts/ Detainees, and UPTs



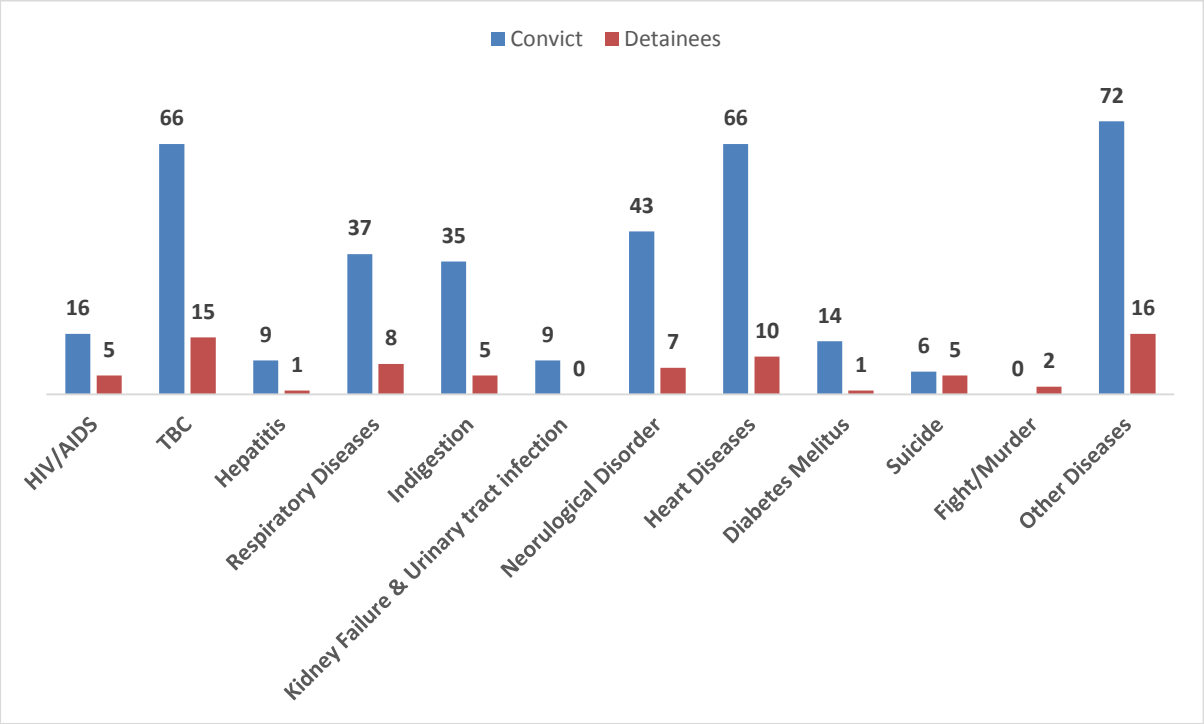
Source: Statistical Report of Corrections, Supporting Data for Work Meeting with Commission III with Minister of Law and Human Rights, 25 January 2018

The data on the graph above do not include the number of convicts/detainees who shall be rehabilitated for drug addiction. The graph illustrates a non-ideal ratio between personnel on health services and inmates. Although the data do not tell about the distribution of health services, but

[201] http://smslap.ditjenpas.go.id/ accessed on 20 January 2018

ratio between the existing UPT and the availablehealth workers is imbalance. This is the factor impeding an optimum treatment for the infected convicts/detainees, which is very likely to cause the death of inmates/detainees.

Figure 4.4: The Causes of Covicts/Detainees' Death as of December 2017



Source: Statistical Report of Corrections, Supporting Data for Working Meeting of Commission III with Minister of Law and Human Rights, Thursday, 25 January 2018

4.1.3 Security and Economic Isue Due to Illegal Levies

Overcrowding situation has led to the dynamics of prison life with regard to convicts' social organization, particularly the formation of groups or gangs. The emergence of gangs and the power of particular convicts stir up violence in the prison both in the form of gang fights or torture and harassment. Moreover, it is a common knowledge that feudalism hierarchy of sorts is found in the cells of detention centres and Correctional Facilities where the old inmates will dominate the new-comers. But the hierarchical group may also be based on the level and type of crime they committed. Such condition certainly reduces or even destroys the prospect of rehabilitation process of detainees and convicts.

4.1.2.1 Imprisonment Pattern

Extreme overcrowding in Correctional Facilities/detention centres will affect the culture of inmates, not to mention undermining the security system. Due to the weak surveilence over a group in prison/detention centre, a criminal offence is likely to occur in such condition. Meanwhile, a life pattern of inmates is commonly identified as they try to join a group in which they can share the same feelings with other members from undergoing deprivation of liberty andfacing social issues inherently emerged in prison life.

Theoretically, it can be explained that prison overcrowding creates a certain pattern of imprisonment. Sykes's "pains of imprisonment theory" argues that essentially imprisonment is formed in response to the adjustment problems caused by the punishment to imprison someone with all forms of deprivation. In this case, adjustment is defined as relieving the pain of deprivation. Deprivation means that someone loses something normally owned by a free man, which later cause them suffering from jostling one another in a cell because of overcrowding situation.

Basically, a newcomer inmate is in a triangle between organization or official representative of the personnel's norm and a group of inmates offering solutions to various problems including overcoming deprivation of liberty, which is a suffering.[202] If the latter group moves in an antagonistic direction, it will negatively affect the condition of prison/detention centres, particularly on the rehabilitation programs provided by the institution.

Some forms of suffering from imprisonment, among others, are theft among fellow inmates, confiscation of personal belongings among fellow inmates, groups fights, bullying for newcomer inmates, regional clustering, and some sort of ethics to cover up each other's treatment or violations among inmates, certainly leading to prison disorder and undermining the rehabilitation process for inmates. On the other hand, this group will strengthen its members by facilitating transfer knowledge about the methods or modus operandi of a crime enabling them to be a more professional criminals after release from prisons.

In adddition, imprisonment obviously negatively affects accidental offender or a first-timer. Bernes and Teeters argue that prisons have grown to be notorious places where prison advocates try to avoid. This is because in this place accidental offenders learn about criminal activitiesfrom the

[202] Angkasa, *Over Capacity Narapidana di Lapas, Faktor Penyebab, Implikasi Negatif serta Solusi Dalam Upaya Optimalisasi Pembinaan Narapidana* (Overcrowding of inmates in Prison, Causing Factors, Negative Implications, and Solution in Optimizing Coaching of Inmates), Jurnal Dinamika Hukum Vol 10, 2010. P.l 214.

experienced ones. Bernes and Teeters further state that even professional prison officers have failed to eliminate enormous vices of prison.[203] Therefore, inmates will encourage to "learn" criminal behaviour from each other and the best place to learn about crime is in an overcrowded prison/detention centre.

4.1.2.2 Security Problems for Prison Officers

Apart from the security of prisoners, prison overcrowding has also significantly affected the safety and security of staff, where a prisoners-staff tension is high and prisoners easily get mad and frustrated at the prison conditions. Experience of many countries showed that the risk of violence, prisoners' protests, and other disorder in overcrowded prisons is higher than that of prisons not experiencing overcrowded.

There is a serious threat on security system caused by the high rate of overcrowding. The ratio between wardens and inmates at national level, which is 1:21, is still belowthe international standard, which is 1:15. Meanwhile, in certain overcrowded prisons such as in East Kalimantan Province, the ratio can be far more alarming (1:24).[204] This figure has not been divided yet by the number of shifts/rotations of officers that is usually conducted 2-3 times a day. If it is the case, the ratio will raise to 2-3 times of the calculation.

In 2016, Salemba Detention Centre had to ensure the detention's safety whena warden-inmate ratio was 1: 161. It should be noted that the worse the overcrowding level, the worse the level of safety and security. In 2014 Banjarmasin Prison had an even more alarming ratio, which was 1:450.[205]

A low ratio between inmate and staff put prison management on a difficult situation as it considerably increase the level of violence (or threats to violence) and the risk of other criminal offence such as distribution of illicit materials, fights for cigarette among inmates,[206] and the formation of gangs or informal groups of inmates.[207]

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[203] *Ibid*., p. 216.

[204] Ditjenpas.go.id, Recent Data on the Number of Inmates in Every Provincial Office, http://smslap.ditjenpas.go.id/public/sdm/current/monthly/year/2017/month/12 accessed on 14 March 2018

[205] Supriyadi W. Eddyono, *Op.Cit.*

[206] A cigarette outside the thick wall of prison, and a cigarette inside the prison, are the same object. But they have different meaning. A cigarette in the prison might represent superiority and ego. That is why a convict considers a butt is his right, which will make him insulted if it is taken. Arswendo Atmowiloto, *Hak-hak Narapidana: Epilog: Sebuah Pengalaman Pribadi yang Tersisa dari Ingatan dan Catatatan* (Prisoner's Right: an Epilogue: A Personal Experience Remains in Memory and Notes), Elsam, Jakarta, 1996, p. 67.

[207] Pilar Domingo and Leopold Sudaryono, *Loc.cit.*, hal. 14

In overcrowded Correctional Facilities/detention centres, inmates cannot sleep together in one cell due to lack of space. Consequently, at night only a block or parts of a block can be locked, since the cells cannot be locked. Thus, the security risk is likely to increase both among inmates and between inmates and officers. The probability of criminal offence occured in detention centre or prison increases and the chance to escape is also high.

Violence in prisons can be categorized into three types, namely: individual violence (inmate versus inmate, inmates with wardens), collective violence (riots, turmoil, and commotion in prison), and violence related to prison's rules and regulations (because of negative relationship between wardens and prisonerss).[208] A number of riots that had occured in Correctional Facilities and detention centres in Indonesia are listed below:

[208] Sugeng Pujileksono, *Sosiologi Penjara* (Prison Sociology), Malang: Intrans Publishing, 2017, p. 173

Table 4. 3: The Number of Riots That Had Occured in Correctional Facilities and Detention Centres in Indonesia

No	Date of incident	Causes	UPT	Number of Inmates	Prison Capacity	Level of Overcrowded	Number of officers
1	20-Jan-17	Inspection of incoming food and healthcare facilities	Class II A Jambi Prison	1768	218	711%	61
2	11-Feb-17	A convict taken by police for investigation on criminal case	Class II A Binjai Prison	1191	498	139%	37
3	23-Feb-17	Inmates claimed to be harmed by prison authority	Class II A Bukittinggi Prison	498	242	106%	27
4	01-Mar-17	Prison overcrowding, improvement of facilities, eradication of illegal levies, opposing drugs sweeping and the removal of the Director of the Correctional Facility	Class II A Jambi Prison	1431	218	556%	60

5	25-Mar-17	Diet and the removal of the Director of the Correctional Facility	Idi Rayeuk Detention Centre of East Aceh	This Branch of Detention Centre is not included in the correctional database system (SDP)[209]	-	-	-
6	04-May-17	Prison riots bydrug-related convicts dan general criminal convicts	Class IIA Bentiring Prison of Bengkulu	787	686	15%	47
7	05-May-17	the removal of the Director of the Correctional Facility and prisonovercrowding	Class II B Sialang Bungkuk Detention Centre of Pekanbaru	1294	561	131%	30
8	06-Jul-17	Protest over illegal levies and water facilities	Class II Banyuasin Narcotics Prison of Palembang	751	175	329%	19
9	24-Jul-17	Fights among inmates	Class III Prison of Banjarbaru	557	798	0%	26

[209] In Aceh, there were only 26 UPT registered in the database system of corrections pemasyarakatan, see: http://smslap.ditjenpas.go.id/public/grl/current/monthly/kanwil/db686c50-6bd1-1bd1-ebe6-313134333039

10	16-Jul-17	Transfer of convicts	Class II B Sialang Bungkuk Detention Centre of Pekanbaru	1178	561	110%	28
11	21-Aug-17	Assault of convicts	Class III Prison of Banjarbaru	584	798	0%	27
12	08-Sep-17	Transfer of convicts	Class II A Juvenile Prison of Tangerang	2393	1251	91%	85
13	25-Sep-17	prison overcrowding	Idi Rayeuk Detention Centre of East Aceh	This branch of Detention Centre is not included in correctiona l database system (SDP)	-	-	-
14	27-Sep-17	A convict taken by BNN for investigation on criminal case	Class II A Jambi Prison	951	218	336%	60
15	31-Oct-17	Supervision on changing facilities: environmental posts that	Class II A Banda Aceh Prison	550	800	0%	37

		were changed into cells					
16	07-Nov-17	Group riot of terrorism convicts and convicted men of John Kei	Class II A Permisan Prison of Nusakambangan	312	221	41%	36
17	10-Nov-17	Inspection of cell phones	Brimob Command Headquarter Detention Centre	This Branch of Detention Centre is not included in correctional database system (SDP)	-	-	-
18	18-Des-17	Sweeping of drugs	Class II B Malabero Detention Centre of Bengkulu	504	250	102%	21

Source: Monitoring Data of Prison Riots, ICJR, 2017.

The data above reveal that an extreme overcrowding at Correctional Facilities or detention centres is one of the factors causing prison riots in various parts of Indonesia. Such situation put prison management on the difficult position to control security and safety due to the low ratio of wardens to inmates. Under those conditions, the inability of prison staff to prevent the absconding inmates is quite understandable.

Prison overcrowding has directly affected the practice of prison commodification. Moreover, there is a problem of corruptive nature of individuals seeking profit from such situation. Overcrowding has

obviously caused inadequate accommodation and facilities for inmates. Proper conditions can only be materialized when a prison houses the number of inmates based on its capacity.

How come the convenience can be achieved when the level of occupancy in one UPT, Detention Centre Branch of Bagan Siapi-api, has reached the worst level ever in Indonesia, which is 824% or almost 8 times than that of normal conditions? Overcrowding has also decreased prison's minimum standard services to ever-alarming level. The quality of basic services such as drinking water, food, communication, bedrooms including healthcare will get the direct impacts.

Poor services in prisons force inmates to look for alternatives to obtain minimum living standards in prison because the State is unable to fund the spending for fulfiling the minimum standards. This is the situation where eventually seeks outside support from their families. Yet the problem is that the extent of family support certainly depend on the economic level of each family, some of them are rich but many of them are poor.[210]

Prison overcrowding will also facilitate the growth of illicit drugs distribution inside prisons and nurture the culture of corruption. This has been indicated by several media disclosures mentioning Correctional Institutions as a drug-controlled room and as the most systematic drug market. With regard to corruption, this can be reflected from the existence of several illegal levies or from the practice of bribery paid by prisoners to officers in return of more comfortable life in Correctional Facilities.

In conclusion, the low ratio of wardens to inmates pose a difficulty for officials in managing prison.. Under such conditions, the inability of prison officers to prevent inmates absconding is quite understandable. Lastly the high rate of riots in Correctional Facilities and detention centres is caused by conflicts among inmates, for instance fights over food, beds, bathrooms, cigarrates, and so forth.

4.1.4 Debt-Related Problems of Detention Centres and Correctional Facilities in Indonesia

Some Correctional Facilities or detention centers have to rely on debt to pay the meal of convicts or detainees. For example, Class I A Surakarta Detention Centre has debt of IDR 2.4 billion[211] or

[210] Supriyadi W. Eddyono, *Op.Cit.*
[211] See http://kbr.id/nusantara/05-2017/rutan_solo_overload__pengelola_utang_miliaran_rupiah_untuk_konsumsi_napi/90065.html

Kerobokan Prison that has unpaid debt of over IDR 1.95 billion.[212] Correctional Facilities and detention centres in North Sumatra are in debt or having unpaid debts for side dishes and electricity up to the total amount more than IDR 7.5 billion in the past one or two years.[213]

According to the official statement from the Minister of Law and Human Rights Yasonna Laoly, the debts to afford meals for convicts in Indonesia in 2014 and 2015 was IDR 228.82 billion.[214] Meanwhile, the debts of electricity and prison services (PLN/PDAM) was IDR 9.39 billion.[215]

Meanwhile, the payment of debts for meals in 2015 and 2016 was IDR 69.6 billion allocated to pay unpaid debts in 2015 and 2016 for 148 UPT of Corrections. Whereas the Payment for the Lack of Service Power in 2017 has increased from the previous year, which was IDR 11.1 Billion, allocated to pay the Lack of Service Power of 2017 in 22 UPT of Corrections throughout Indonesia.[216]

The cost of prison overcrowding as a result of a punitive paradigm towards Indonesian sentencing system is indeed incredibly high and even generates the debts of billion rupiah for the correctional institution as the last part of criminal justice system. It is important to keep in mind that Indonesia's state budget is often unstable, and even every year Correctional Institutions have debts to third parties. The phenomenon of detention centre's/Correctional Institutions' debts directly caused by prison overcrowding undoubtedly affects the state's finances, apart from having to bear meal cost, non-meal cost, and salaries for correctional staffs that increase yearly. Accordingly, the amount of debt on Correctional Institutions will also increase every year.

4.2 The impacts of Prison Overcrowding on Inmates and Their Families

The impacts of prison overcrowding on inmates and their families can be seen clearly from socioeconomic aspects. As a lot of inmates housed in prisons, a lot of family members also lose income sources and their family life conditions decrease in various aspects. The social stigma

[212] See http://www.bapanasnews.com/2017/05/tony-nainggolan-hutang-lapas-kerobokan.html
[213] See http://dpr.go.id/berita/detail/id/16357/t/Komisi+III+DPR+RI+Temukan+Utang+Bahan+Makanan+di+Rutan+dan+Lapas+Sumut
[214] See https://www.cnnindonesia.com/nasional/20170410133125-12-206278/utang-makanan-rp200-miliar-yasonna-usul-swasta-kelola-rutan
[215] Brief Report of Working Meeting of Commission III with Ministry of Law and Human Rights, 7 June 2016, available at : http://www.dpr.go.id/dokakd/dokumen/K3-14-f06105c36e7886ef6596be6901dce593.pdf
[216] Statistical Report of Corrections, Supporting Data for Work Meeting of Commission III with Minister of Law and Human Rights on Thursday 25 January 2018.

attached for being a convict or family of a convict has also complicated the reintegration process into society.

Both detainees and convicts face a very high risk of losing their jobs and also experiencing prolonged unemployment since the lack of available job opportunities for them after release. The stigma as an ex-prisoner, along with the lack of educational or training opportunities, will inevitably affect the income of an ex-convict for the rest of his or her life.

Due to their status as an unemployed person, there will be one or more family members who have to bear more devastated consequences. In some cases, the wife – and even her children – must look for work to cover the loss of income. However, in many other cases the wife has to quit the job as a consequence of her husband dealing with criminal justice system, such as attending trial, prison visit, and bringing food and other necessities for the incarcerated spouse.[217]

Convicts' families in almost all cases lose a living that results in loss of livelihood. Not to mention the need of the family to afford additional costs to support the lives of a convict about IDR 600,000 to IDR 5,500,000 per month. This amount, with the Regional Minimum Wage about Rp. 2,000,000 to IDR 2,500,000 is an enormous burden for many households in Indonesia.[218]

A field research also found two types of informal 'payments' with regard to varied convict's situations during criminal justice process. Firstly, costs related to legal/case processes including 'informal payments' to law enforcement officer as one of efforts to reduce the length of punishment. Almost all of the interviewed detainees said that they saw almost no chance to be proven not guilty, so they focused more on reducing the length of pre-trial detention or punishment. They believe that informal 'payments' to law enforcement personnels will reduce their sentence or the duration of pre-trial detention.

Secondly, the costs related to the convict's basic needs include travel expenses for families to visit inmates; "visit fees" paid to other inmates; costs to help inmates meet their basic needs such as additional side dishes (budget for daily three-times meals of convict is IDR 6,500), toiletries, and basic necessary medicines.[219]

[217] Martin Schonteich, *Ibid.*, p. 27
[218] Pilar Domingo and Leopold Sudaryono, *Loc.cit.*, p. 16
[219] As confirmed in statistical data of Centre for Detention Studies (2014) in Pilar Domingo and Leopold Sudaryono, *Loc.cit.*, p. 16

Inmates' families in Jakarta must allocate fund between IDR 500,000 (USD 45) and IDR 4,600,000 (USD 440) each month so that the inmates can fulfill their basic needs such as supplementary food, toiletries, and LPG contributions for cooking. The cost varies depending on where the inmate is, and how the family can support the inmate. In South Kalimantan, in order to get meals twice a day, adequate drinking water, pay for TV fees and cleaning services, a convict must pay around IDR 1,120,000.

Four of six inmates' families interviewed in Jakarta emphasized the tremendous cost burden on their livelihoods due to the inmates being held in prisons. The burden includes loss of income if the inmate were breadwinner, apart from additional cost to meet the life needs of convict. Convicts' families often had to rely on help from relatives, sell assets and ownership, or borrow money. Two other families continued the family business although the income had significantly dropped.[220]

There are several examples of how inmate's families experience high level of depression that they begged for a lethal injection applied to the inmate because of the extreme burden and the difficulties they have to deal with.[221] Not to mention inmates who have children, it will be very difficult for a child to accept the fact that their parents are incarcerated in detention centre or prison. This will change a child's attitude and psychological behaviour. The child may become shy and difficult to mingle with his/her friends because of scorn or insult, and anger.

A literature study on children with incarcerated mothers found that "the lives of these children were severely deranged, which resulted in an increase of school failure rates and eventually an increase of criminal rates."[222] Research on children with incarcerated mothers showed "an increase of the likelihood that these children will become 'NEET' (Not in Education, Employment or Training)."[223]

Prison overcrowding has also forced a transfer of many convicts and detainees. As a consequence, many families and relatives of convicts and detainees need to spend more money to visit them. This

[220] Pilar Domingo and Leopold Sudaryono, *Loc.cit.*, p. 16.

[221] See http://modusaceh.co/news/dianggap-persulit-napi-berobat-keluarga-minta-rutan-suntik-mati-napi/index.html

[222] Barbara J. Myers, Tina M. Smarsh, Kristine Amlund-Hagen and Suzanne Kennon, *Children of Incarcerated Mothers,* Journal of Child and Family Studies, Vol. 8 (1), 1999, p. 11

[223] New Economics Foundation, *Unlocking value: How we all benefit from investing in alternatives to prison for women offenders*, London: New Economics Foundation, 2008

practice thus put inmates' families as "the other punished subjects" since they are directly affected by a large number inmates being housed in prisons.[224]

Imprisonment as a form of deprivation of liberty placing someone in prison/detention centre will incur direct cost burden to convicts/detainees as well as their families. Families, in almost all cases, lose breadwinners leading to loss of their livelihood.[225]

Not only that, if inmates are incarcerated in prison/detention centre that is far away from their families, it can be ascertained that considerable costs should be prepared by the families for just visiting the convicts/detainees.

If the inmate is the only family backbone or, in a sense, a single breadwinner of the family, it will certainly destroy the opportunity of one family to fulfil their daily needs. The burden is not limited only to losing job and the cost of visit (transportation fare), but there are some other costs which are more or less the same amount spent by convicts staying behind the bar.

The costs of renting rooms, cigarette money, instant noodles, toiletries, renting mats, even illegal levies that are frequently asked by officers every time during visits. The latter practices can be similarly found in some Correctional Facilities/detention centres.[226]

Prisoners housed in Correctional Facilities/detention centres mostly come from low-income households. Sucha fact certainly affects financial stability of the family in order to cover the needs described above. Also, the families have to deal with an extra financial burden even more when the convict/detainee is the only family backbone.

Family resources prioritized to support the convict's life in prison will surely diminish the quality of life of the concerned family or those who weredependence on the convict or detainee. Social stigma attached as an ex-prisoners will also impede the life of released convicts. The stigma will be long attached to theperson and causing the decline of his/her life's quality in terms of social economy. No wonder, such condition will also encourage the convict to choose reoffending.

[224] Supriyadi W. Eddyono, *"Overcrowding" yang Menghantui Lapas di Indonesia* (Overcrowding that Haunts Indonesian Correctional Institutions), 7 July 2017, available at: https://nasional.kompas.com/read/2017/07/07/12130041/.*overcrowding*.yang.menghantui.lapas.di.indonesia?page=5

[225] Pilar Domingo and Leopold Sudaryono, *Loc.cit.*, 2015, p. 26.

[226] http://jateng.tribunnews.com/2017/08/14/ternyata-narapidana-banyak-pengeluaran-di-lapas-bisa-lebih-dari-rp-1-juta-per-bulan, accessed 20 March 2018

CHAPTER V
STRATEGY TO ADDRESS OVERCROWDING PROBLEMS

5.1 General Strategy to Address Overcrowding

Previous chapters describe various problems related to overcrowding, including those in Indonesia. Some countries have taken strategies to overcome overcrowding in various ways. United Nations Office on Drugs and Crime, for example, has formulated a strategy to overcome overcrowding by encouraging the development of comprehensive strategies that are evidence based and how to get public support.[227] Furthermore, countries need to establish an action plan to overcome overcrowding.[228]

Indonesia has launched efforts to deal with overcrowding that include, recently, grand design to handle overcrowded in Detention Centres and Correctional Institutions.[229] This policy is intended to overcome overcrowding situation in State Detention Centres and Correctional Institutions.[230] This policy document also emphasizes that overcrowded Correctional Institutions/Detention Centres handling should not only carried out by the authority of Correctional Institutions/Detention Centres, but requires a holistic and coordinated response of various stakeholders, including the highest policy-maker and grass-roots in sorciety in general, carried out comprehensively and simultaneously to avoid or minimize negative impacts the existing massive imprisonment.[231]

These two documents were drawn with the awareness that overcrowding in Correctional Institutions/Detention Centres had become a global human rights, health and security issues for offenders, their families and communities.[232] Referring to these two documents, general strategies to handle overcrowding are:

First, the handling of overcrowding is carried out by setting clear objectives, namely overcoming the negative impacts of detention and imprisonment, increasing the protection of the human rights of detainees and convicts, including ensuring the security and health of detainee and convicts, their

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[227] United Nations Office on Drugs and Crime, *Handbook on Startegies to Reduce Overcrowding in Prison,* Criminal Justice Handbook Series, 2010, p. 39.
[228] *Ibid.*, p. 174.
[229] Regulation of Minister of Law and Human Rights 969/2017 on Grand Design to Handle Overcrowding in Detention Centres and Correctional Institutions.
[230] *Ibid.*, Considering part of point b.
[231] *Ibid.*, hal. 39.
[232] United Nations Office on Drugs and Crime, *op.cit.,* p. 3. See also Regulation of Minister of Law and Human Rights 969/2017, pp. 41-44.

families and communities. The objectives of overcrowding handling also have to consider gender sensitivity and vulnerable groups's interests, such as women and children.

Second, the policy to overcome overcrowding should be formed in a comprehensive and continuous/simultaneous way, to ensure that overcrowding handling considers various related aspects. Therefore, overcrowding handling must be carried out in various stages, namely short, medium and long term.

Third, the policy to overcome overcrowding should also be carried out by involving various relevant parties and not solely be the responsibility of those who manage Detention Centers or Correctional Institutions. The highest policy makers, law enforcement officials and the executive who hold responsibility for Detention Centre and Correctional Institutions are the main stakeholders who must be involved in efforts to handle overcrowding. Furthermore, the involvement of society and community is important to be included in overcrowding handling programs.

5.2 Experiences of Various Countries in Handling Overcrowding

5.2.1 Correctional System Management Reform

Correctional system management in the world, generally fell under one of the following three institutions: Ministry of Law, Ministry of Internal Affairs or Ministry of Defense.[233] In some countries, the transfer of responsibility for managing correctional system from Ministry of Internal Affairs to Ministry of Law is a way to overcome overcrowding.[234] It is so because Ministry of Law is considered to have a closer relationship with the judiciary institutions that better understands the issue of sentencing policies.[235] One of the countries that managed to overcome overcrowding in this way is Russia.

In 1998, the number of prison population in Russia was one million people or around 688 per 100,000 Russian population. It was so due to the excessive imprisonment and pre-trial detention. As

[233] International Centre For Prison Studies, 2008, *International Experience in Reform of Penal Management System, A Report by the International Centre for Prison Studies*, Kings College, London, available at www.kcl.ac.uk/depsta/law/research/icps/downloads/International_Experience.pdf.

[234] Hans-Joerg Albrecht, *Prison Overcrowding – Finding Effective Solutions: Strategies and Best Practices Against Overcrowding in Correctional Facilities*, 2012, p. 42.

[235] Bryan Gibson, *The New Ministry of Justice: An Introduction*, Waterside Press, London, 2008, p. viii.

a result, there was overcrowding where inmates in prison do not even get basic needs such as food, clothing and medicine.[236]

At first the correctional system in Russia was managed by Federal Service for the Execution of Sanctions (FSES) which was under Ministry of Internal Affairs. The Russian Ministry of Law was responsible for drafting legislation relating to correctional services, but its implementation is the responsibility of FSES. Since 1998, the correctional system management has been transferred to Ministry of Law that enable reform of the correctional system better protect human rights, and increase the involvement of the judiciary in drafting criminal policies.

Since 1998, the Russian ministry of law has succeeded in carrying out institutional reform and legislation. From an institutional perspective, in 2002 The Ministry of Law established an ombudsman in charge of ensuring the prison condition in accordance with human rights standard and if it was not appropriate the ombudsman recommended remedies for detainees. In terms of legislation, Russia launched a reformed criminal procedural law (came into force in 2002) that includes: 1. Supervision of judges over pre-trial process, especially in relation to the regulation of pre-trial detention that was originally held by public prosecutor transferred to judge's authority; 2. The obligation of the suspect to be accompanied by legal counsel; 3. Alternative pre-trial detention to house arrest; 4. Reduce the maximum time limit for pre-trial detention and imprisonment for women and children; and 5. Periodic amnesty granting.[237] As a result, Russia can significantly reduce the prison population. In 2008, the prison population in Russia dropped to around 800,000,[238] and in 2015 it was 640,000.[239]

The transfer of responsibility for managing prison to private companies (privatization of prisons) is the solution to overcrowding and the increase of incarceration rates from year to year in the United States. In 2015, private prisons in the United States were able to accommodate 126,272 people or around 8% of the total prison population in the United States.[240] In Indonesia, the privatization of prison has often been conceived as a way to reduce overcrowding and overcome riots in

[236] International Centre For Prison Studies, *op.cit*.
[237] *Ibid*.
[238] *Ibid*.
[239] Penal Reform International dan Thailand Institute of Justice, *loc.cit*.
[240] The Sentencing Project, 2017, *Private Prison in The United States*, available at https://www.sentencingproject.org/wp-content/uploads/2017/08/Private-Prisons-in-the-United-States.pdf

Correctional Institutions.[241] But based on research in the United States, despite reducing overcrowding, prison privatization has a positive role in increasing the number of imprisonments. This is because in the privatization of prisons, detainees are considered as "customers" that determines the company's business continuity. In addition, in contracts made between the government and the private sector, there is a compensation clause that must be given to the private sector regardless of the number of prisoners in prison. As a result, the government tends to maximize the number of detainees in prison.[242]

5.2.1.1 Prison Litigation

Prison litigation is a form of court intervention on prison management systems. Poor prison conditions and overcrowding are basically a violation against individual fundamental rights.[243] Therefore, some countries provide mechanisms for detainees to "test" the constitutionality of prison management through Prison litigation.

In the United States, the Prison Litigation Reform Act 1995 regulates litigation procedures for detainees and what forms of remedies the court may impose on the state for violations against the constitutional rights of prisoners.[244] The form of recovery regulated by the law, one of which is ordering prison to reduce its population.[245] In 2011 the Supreme Court of the United States, in Brown v. Plata, ordered the State of California to reduce the number of prisoners by 137.5% of its capacity or around 38,000 to 46,000 persons.[246] The Supreme Court stated that overcrowding in California prison, with total inmates twice as much as prison capacity, violated individual rights not to be punished cruelly (right against cruel and unusual punishment) as stipulated in the Amendment VIII of the United States Constitution.[247] Besides the United States, in 2007 Delhi High Court ordered the Tihar prison authority to release 600 convicts of minor crimes to reduce overcrowding.[248]

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[241] Mehulika Sitepu, *Penjara Indonesia diserahkan ke swasta untuk atasi seringnya rusuh?* (Indonesian prison will be handed to private sector to overcome frequent riots?), http://www.bbc.com/indonesia/indonesia-39836857, accessed on 17 March 2018.

[242] Vardui Kirakossyan, *Profits Before People: The Effect if Prison Privatization on U.S. Incarceration Rated and Recidivism*, Tesis, University of California, 2015, pp. 12-13.

[243] Hans-Joerg Albrecht, *op.cit*, p. 45.

[244] Mary Rogan, *Dealing With Overcrowding in Prisons: Contrasting Judicial Aprroaches from the USA and Ireland*, Dublin Institute of Technology, 2012, p. 2.

[245] *Ibid*.

[246] Susan M. Campers, *A Failing Correctional System: State Prison Overcrowding in the United States*, Pell Scholars and Senior Theses, 2012, p. 15.

[247] *Ibid*.

[248] Hans-Joerg Albrecht, *loc.cit*.

Although prison litigation might be a way to reduce prison overcrowding, many experts argue that this method does not touch the root of the problem of correctional system.[249]

5.2.1.2 Decriminalization, Depenalization and Diversion

In Thailand, decriminalization of narcotic drugs users has proven successful in reducing the prison population. In 2003, Thailand had overcrowding prison population reaching more than 260 thousand persons, two thirds of which had been convicted of drug charges.[250] After the enactment of law on rehabilitation for drug users (treating users as rehabilitation patients instead of crime perpetratirs) the prison population has decreased significantly and reached 160,000 persons in 2007.[251] The Thai government has also encouraged the use of diversion, probation, parole and community-based treatment programmes.[252]

In 1969, Germany renewed its penal code in order to reduce the use of custodial measures. Reforms were carried out in several ways: First, the depenalization of minor violations that were threatened with imprisonment to administrative violations with administrative sanctions in the form of fine. Second, imprisonment of less than one month is replaced by fine. Through this reform, Germany managed to reduce the number of imprisonments from 136,519 in 1969 to 36,874 in 1996. Even in 1996 imprisonment was only 5% of the total sentences, 82% were fine sentences, and 12% were probations.[253]

In Bangladesh, a complicated justice system makes it difficult for poor people and rural people to access justice. This condition is exacerbated by the lack of legal assistance, which makes judicial system runs so slowly and creates overcrowding because of the large number of prisoners awaiting trial.[254] The 2015 International Center for Prison Studies data even mentions about 52,876 people or about 74% of the prison population are awaiting trial detainees.[255] This condition encouraged the idea of diversion in the form of community-based mediation. The Madaripur Legal Aid Association in Bangladesh developed the Madaripur Mediation Model, a diversion involving society members,

[249] Susan M. Campers, *op.cit*, hal. 16.
[250] United Nations Office on Drugs and Crime, 2007, *Handbook of basic principles and promising practices on alternatives to Imprisonment*, p. 7.
[251] International Centre for Prison Studies, *op.cit.*
[252] United Nations Office on Drugs and Crime, *loc.cit*.
[253] United Nations Office on Drugs and Crime, *Handbook on strategies to reduce overcrowding in prisons*, 2010, p. 118.
[254] *Ibid*, p. 15.
[255] Global Delivery Initiative, *Justice and Prison Reform for Priomoting Human Rights and Preventing Corruption: Overcoming the Problem of Prison Overcrowding in Bangladesh*, 2016, pp. 3-4.

litigant parties and village elders in resolving cases. In 2014, this system successfully diverts 815 cases (of a total 1,971 cases) from the formal criminal justice system.[256]

5.2.2 Reform of Pretrial Detention Regulations

The excessive use of pretrial detention turned out to contribute to prison overcrowding in various parts of the world, therefore one effort often used by countries is to reform their pretrial detention regulations. As previously described, Russia has succeeded in reducing almost half of its prisoner population since 2002 through the reform of criminal procedural law related to pretrial detention.
In recent years extreme overcrowding in Latin American countries has encouraged them to reform pretrial detention regulations. The reform of pretrial detention regulations includes:[257]

5.2.2.1 Tighten Pretrial Detention Requirements

Columbia, through Law No. 1760, has handed the authority to detain to judges and requires them to point out whether detention is the only way to ensure the presence of suspects in court and if detention is not carried out the community is in danger.

5.2.2.2 Shorten the Criminal Justice Process (Abbreviated Trials) and Guilty Pleas

In Peru, Legislative Decree No. 1194 of 2015 stipulates the obligation for public prosecutor to immediately bring the perpetrator to court if the criminal act charged is drunk driving, not paying for family assistance and the crime of flagrante delicto.[258] Argentina also imposes short criminal justice processes for flagrante delicto with a maximum imprisonment of 15 to 20 years. However, according to Inter American Commission on Human Rights (IACHR) the use of guilty pleas and abbreviated trials in Latin America in practice often do not reflect due process of law. First, in many cases even though the suspect is not guilty, the suspect chooses to use guilty plea after the persuasion of his own legal counsel for the sake of not being detained or for obtaining lesser sentence. In some cases, suspects were even forced to use plea guilty by law enforcement officials. Second, with regard to abbreviated trials, often the suspect is taken to a “brief” trial without having the opportunity to prepare a defense.[259]

[256] *Ibid*, p. 13.
[257] Inter-American Commission on Human Rights (IACHR), *Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas*, 2017, p.
[258] Caught red-handed
[259] Inter American Commission on Human Rights, *op.cit*., p.

5.2.2.3 Alternative to Pretrial Detention

Article 155 of the Mexican Federal Code of Criminal Procedure provides several detention alternatives such as periodic reports to judges or other competent authorities, collateral security, supervision by certain persons or agencies/institutions, prohibition on approaching certain persons or places, house arrest, and electronic monitoring.

Article 522 The Comprehensive Organic Criminal Code of Ecuador provides four alternatives to pretrial detention: leaving country ban, periodic reports to the authorities, house arrest and electronic monitoring.

The Federal Code of Criminal Procedure, Law 27,063 Argentina provides a broader alternative to pretrial detention: promises to obey criminal justice procedures and do not preclude investigations, the obligation to submit to the supervision of certain persons or entities, periodic reports to judges or authorized institutions, prohibition of leaving certain areas, holding travel documents, prohibiting going to certain meetings, visiting certain places or communicating with certain people, collateral, electronic surveillance and house arrest.

5.2.2.4 Pre-trial Detention Hearings

According to the monitoring of the IACHR, Argentina, Mexico and Peru have made legal reforms by including arrangements on pretrial detention hearings. In essence, the pretrial detention hearing is a form of court involvement in determining whether a person can be subject to pretrial detention. The usual parties involved are judges, prosecutors, suspects, and legal counsel.

In Mexico, under the Federal Code of Criminal Procedure, pre-trial detention must be decided by a judge in an open examination attended by judge, public prosecutor (Ministerio Publico), victim and his or her legal counsel, and the suspect and his or her legal counsel.

In Brazil, it is known that a custody hearing (audiências de custódia) requires that everyone who is arrested for being caught in the act must be brought before a judge within 24 hours of his arrest, attended by representatives of the Office of Attorney General and the Office of the Public Defender. The judge will then decide whether the suspect can be subject to detention. Custody hearings in Brazil have been proven successful in reducing the number of pretrial detainees in Rio de Jainero (at first the number of detainees was 72% decreased to 57%) and Sao Paulo (at first the number of prisoners was 61.3% decreased to 53%) within one year (2015-2016).

5.2.3 Alternative to Imprisonment

Finland has sucsessfully reduced prison population using alternative sentences: fine and probation. Since 1990, two of three criminal offenses were adjudicated with probation, while fine has been imposed on more than 60% of criminal acts. Consequntly, Finland managed to reduce prison population from 11,538 persons in 1992 to 7,102 persons in 2007.[260]

In 2001 Supreme Court of Kazakhstan obliged judges to explain the reasons for imposing a prison sentence, if the law provided for both options for the offense committed: prison sentence or alternative sentence. As a result, Khazastan succeeded in reducing the number of prison sentences from 51.3% of all sentences in 2000 to 41.8% in 2002.[261]

Similar to Kazakhstan, Germany has also succeeded in reducing the number of imprisonment imprisonment by requiring judges to impose suspended sentences against imprisonment of less than one year, and if the judge imposes a sentence of less than one year the judge must give specific reasons.[262]

Table 5.1: Strategies to Handle Overcrowded Prison in Various Countries

Effort	Country	Note	Result
Correctional system management reform	Russia	Court delegates responsibility of correctional system management from ministry of internal affairs to ministry of law	Russian ministry of law launched institutional and legislative reform particularly with regard to pretrial detention. As a result, Russia significantly reduced its prison population. In 2008, prisom population in Russia decreased to about 800,000 persons, and in 2015 decreased to 640,000 persons.
	United States	Prison Privatization	In 2015, private prison in the United States able to hold 126,272 inmates or around 8% of total prison population in the United States.

[260] United Nations Office on Drugs and Crime*, Op.cit.,* hal. 112.
[261] *Ibid*, p. 114.
[262] *Ibid,* hal. 118.

Prison Litigation	United States	Prison Litigation Reform Act 1995	In 2011 Supreme Court of United States in *Brown v. Plata*, ordered State of California to reduce prisoners to 137.5% of its capacity or about 38,000 to 46,000 persons. Supreme Court stated that overcrowding in California prison violated individual rights not to be cruelly punished as stipulated in Amandment VIII to the United States Constitution.
	India		Delhi High Court ordered Tihar prison authority to release 600 convicts to reduce overcrowding.
Decriminalizatio, Depenalization and Diversion	Thailand	Decriminalization for narcotic drugs users	In 2003, prison population exceeded 260 million inmates, two-third of them were narcotic drugs convicts. Following the decriminalization of drug users, prison population significantly decreased to 160,000 inmates in 2007
	Germany	Depenalization of minor offenses punishable with imprisonment to administrative offenses punishable with fine sentence	Germany succesfully reduced prison sentences from 136,519 in 1969 to 36,874 in 1996. In fact, in 1996 prison sentences represented only 5% of total sentences.
	Bangladesh	Madaripur Mediation Model, diversion involved society members, parties of legal cases and elders of villages in resolving cases	In 2014, the system succesfully diverted 815 cases (of total 1,971 cases) from formal criminal justice system.

Reform of Pretrial Detention Arrangement	Latin America Countries	Criminal Procedural Law Reform regarding pretrial detention including: tightening pretrial detention requirements through abbreviated trials and guilty plea, alternatives to pretrial detention, pretrial detention hearing	In Brazil, pretrial detention hearing known as *audiências de custódia* succesfully reduced pretrial detainees in Rio de Jainero (from 72% to 57%) and Sao Paulo (from 61.3% to 53%) in one yaer (2015-2016).
Alternatives to Prison Sentences	Finland	Fine sentence and probation as substitution to prison sentence	Since 1990, two of three criminal acts have been sentenced to probation. Fine sentence for more than 60% criminal acts. As a consequence, Finland reduced prison population from 11,538 in 1992 to 7,102 in 2007.
	Kazakhstan	Obliged judges to explain special reasons in ruling prison sentence, if for concerned criminal acts there are alternative formulations: prison sentence and alternative sentence.	Reduced prison sentences from 51.3% in 2000 to 41.8% in 2002.
	Germany	Obliged judges to rule suspended sentences againts prison sentences of less than one year, and if the judges rule prison sentence for less than one year they have to	Succesfully reduced prison sentences from 136,519 in 1969 to 36,874 in1996. In fact, in 1996 prison sentence represented only 5% of total sentences, 82% were fine sentences, and the rest of 12% were probation.

		offer specific reason.	

5.3 Strategies to Handle Overcrowding in Indonesia

As previously described, the government has issued a policy on Grand Design to Handle Overcrowding in Detention Centres and Correctional Institutions. The policy looks quite complete as a "road map" to deal with overcrowding in detention centres and Correctional Institutions, namely through (i) regulation arrangement; (ii) institutional strengthening; (iii) fulfillment of facilities and infrastructures; and (iv) empowerment of human resources. However, the policy still needs to be comprehensively completed and refined, referring to the identification of the causes of overcrowding in Indonesia.

5.3.1 Criminal Law and Criminal Justice System Reform in Indonesia

The handling of overcrowding requires the existence of a comprehensive and simultaneous policies, requires a new policy direction for the development of criminal law and criminal justice system in Indonesia. Changes in the orientation of criminal law in Indonesia must be directed to address various problems of criminal law enforcement and ensure the protection of human rights. Various efforts to handle overcrowding will work best if there is a change in orientation in criminal law in Indonesia.

Important aspects in the effort to carry out these reforms are:
First, there is significant decriminalization politics in various laws and regulations in Indonesia. Data shows the number of actions that can be subjected to detention and sentenced to prison and contribute to overcrowding, so this reorientation requires efforts to rearrange various criminal acts punishable to imprisonment either those which have been stipulated in Penal Code or in various laws and regulations which contain sentencing provisions outside the Penal Code.

The draft law on criminal law still shows the tendency of sentencing with massive imprisonment that has not shifted yet from the predominantly approach of imprisonment.[263] In the bill of Penal Code nothing much changed. Of 1251 criminal acts in the bill, the number of criminal acts punishable to imprisonment represent the highest portion of 1154, followed by 882 fine sentences. Of these, more than 50% of imprisonment is imposed without any optional sentence available. Therefore, the

[263] *Ibid,* p. 11-13.

tendency of 'overcriminalization' in the bill of Penal Code needs to be reviewed by carrying out a significant decriminalization process.

For example, decriminalization of narcotic drugs users can be one way to overcome overcrowding in Indonesia. According to Correctional System Database as of December 2017, 35% or approximately 34,448 special convicts are narcotic drugs convicts. If the narcotic drugs users are rehabilitated instead of imprisoned, Indonesia can reduce prison population by around 14%.

Moreover, law enforcement officials must also begin to perceive criminal acts that can be subjected to non-prison sentences if Bill of Penal Code is passed someday. There are 5 principal sentences in Bill of Penal Code as stated in article 71 RKUHP,[264] which are:

a) Imprisonment
b) Confinement (pidana tutupan),
c) Surveillance,
d) Fine,
e) Social work.

Thus, in the future, for criminal act punishable under 5 years the perpetrators can be sentenced to non-prison principal sentence such as surveillance or social work.

There are 294 criminal acts in Indonesia bill of penal code liable to surveillence sentnce, such as theft (article 550), unfair competition (article 580), fraudulent acts (Article 567), assault (534 paragraph 1). This is also a note for Parliament (DPR) members and the Government, the Ministry of Law and Human Rights in this regard, to correct the pattern of punishments and the derivative instrument of the implementation of alternative punishments which is promised to be more oriented towards democratization according to the original spirit of Indonesia bill of penal code. If imprisonment is still dominant in Indonesia bill of penal code, which will be enacted in the future, then the overcrowding phenomenon and its derivative effects will remain as certainty and become a problem that the state will never be able to resolve.

Second, the reorientation of the criminal justice system is directed to ensure that criminal procedural law allows the process of resolving criminal cases outside the court. Reorientation accompanied by changes in the criminal procedural law will provide space for law enforcement

[264] Bill of Penal Code as of 2 February 2018, available at: http://reformasikuhp.org/r-kuhp/

officials to use various approaches in handling cases and changing the easily detain or impose imprisonment paradigm of law enforcement apparatus.

The reform of criminal procedural law is also specifically related to, for example, reformulation of provisions on pretrial detention as a cause of overcrowding. The weak regulation of pretrial detention in Criminal Procedure Code gives so much authority for law enforcement officers, which is related to the necessity requirement of detention as a full discretion of law enforcement. This situation is exacerbated by the absence of a mechanism that can examine and test whether the conditions of detention have been met by law enforcement personnel. Although Criminal Procedure Code allows alternative detention, namely house arrest, city arrest, and postponement of detention, it does not regulate an accountable mechanism on how alternative detention should be carried out. As a result, the alternative detention becomes discretionary investigators.[265]

Similarly, in the bill of Criminal Procedure Code (KUHAP), there is no new alternative to detention.[266] Similar to the reform of pretrial detention arrangements in Latin America which emphasized the involvement of judges in pretrial detention (by giving detention authorities to judges and through pretrial detention hearings), the bill of KUHAP introduces Preliminary Examination Judges (Hakim Pelaksana Pendahuluan / HPP) to check the validity of detention carried out by law enforcement. However, the HPP is a different concept from, for example, pretrial detention hearings or custody hearings in Brazil, the bill of KUHAP does not oblige law enforcement officers to bring all those arrested or detained to the HPP without delay. Because there are no such requirements, a person may be detained in certain periods without being given consideration about the issue of the validity of their detention.[267]

Moreover, in pretrial detention hearing the suspect is confronted together with legal counsel and public prosecutor before the judge for the decision of the validity of his detention, there is no such arrangement in the Bill of KUHAP. As a result, HPP can only make detention decisions based on information in the BAP (police investigation report). If the suspect expects to be heard, then he must submit application by himself to the HPP.[268]

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[265] Luthfi Widagdo Eddyono, *ed.*, Ekonomi Politik dari Penahanan Pra-persidangan di Indonesia (Socioeconomic Aspect of Pretrial Detention in Indonesia), Institute for Criminal Justice Reform, Jakarta, 2015, p. 27.

[266] *Ibid*.

[267] Supriyadi Widodo Eddyono, 2014, *Penahanan Pra Persidangan Dalam Rancangan KUHAP* (Pretrial Detention in the Bill of Criminal Procedure Code), Institute for Criminal Justice Reform, p. 22.

[268] *Ibid*.

Third, the important reform to carriy out is to reaffirm the function of prison as correctional effort for convict. The existing correctional system provides space for the coaching process both in prison and outside prison. The purpose of outside prison coaching is to prepare a prisoner to adapt to society after his release. In this context there need to be a strengthening of regulations to maximize the orientation of coaching to inmates, for example by amending Law 12/1999 on Corrections.

The three aspects of changes in criminal law and criminal justice system above need to be accompanied by the development of various alternatives to imprisonment. The settlement of criminal cases need to be developed to ensure that criminal law is not just oriented to retributive justice but also other approaches to models such as restorative justice. The limited use of restorative justice has been practiced for criminal acts committed by juveniles and for narcotic drugs users, and it need to be applied to various other crimes.

5.3.2 Making Non-Prison Sentence Policies Effective

In practice, various non-prison sentencing policies that have been taken need to be increased in effectiveness. Restorative justice approach based on Law 11/2012 on Juvenile Criminal Justice System has given the possibility for juvenile criminal cases to be solved outside the court and the Child is spared prison sentence. However, this mechanism needs to be developed so that it truly achieves the goal of using the restorative justice mechanism or maximizing the use of diversion.[269]

Referring to the Grand Design to Handle Overcrowding in Detention Centre and Correctional Institutions, the overcrowding handling strategy also includes restrictions to incarcerate people in prison through intensification of non-prison sentences as stipulated in Article 10 of Penal Code where there are 3 types of non-prison sentences known, namely: detention, confinement, and fine. Detention is regulated in Articles 18-29 of Penal Code. Fine sentences are regulated in Article 30 of Penal Code. While confinement is not regulated other than in Article 10 of Penal Code.

Furthermore, Penal Code specifies a conditional sentence that is also known as probation. The probation is regulated in Article 14a. The probation is adjudicated for a person who is sentenced in prison to a maximum of one year or detained, where the judge can determine that the sentence was not to be executed. Except, when another judge rules otherwise, such as in probation period the

[269] For the purpose of Diversion see Article 6 Law 11/2012 on Juvenile Criminal Justice System, see also Government Regulation 65/2015 on Guideline to Implement Diversion and Addressing Children Under 12 years old.

convicted commit another crime or did not fulfill certain requirements, for example not paying compensation to the victim within a certain time.[270]

As time passes, several laws emphasize more on non-prison sanctions in favour of administrative sanctions. Administrative sanctions are sanctions imposed on administrative violations or administrative laws. Administrative sanctions can be in the form of written warning, fine, restrictions or freezing of activities, permit revocation, approval cancellation, and registration cancellation, etc. For example, Law 8 /1999 on Consumer Protection or Law 32/2009 on Environmental Protection and Management.

Given the ever-growing number of inmates, a breakthrough can be made in any bill by always prioritizing alternative sentencing such as: Fines, Community Service, Surveillence Sentence, Restitution, Probation, Community-based Sentences.

Various provisions of Penal Code, other legislations and even bill of penal code should be able to maximize support for the existence of non-prison sentences to control overcrowding from the upstream and for the long term.

5.3.3 Fulfillment of Convict's Rights and Making Rehabilitating Function Effective

Besides implementing policies for resolving criminal offenses outside the court, the effectiveness of the mechanism for rehabilitating convict is carried out with the aim of giving their rights (for example parole, leave before release, and remission) to expedite convict's release to reduce overcrowding. This can be done by fixing administrative procedures related to assimilation and reintegration of convicts. The two highlighted aspects, as identified in previous sections, are report of social research result that complicates reintegration programme and assimilation activities that have not succeeded in reducing overcrowding.

A number of regulations need to be reviewed, for example Regulation of Minister of Law and Human Rights 21/2016 that stipulates that assimilation activities outside Correctional Institutions are carried

[270] Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana di Indonesia* (Pinciples of Indonesian Criminal Law), Bandung, PT Refika Aditama, 2003, pp. 183-184

out no later than 9 hours a day (including travel time) before inmates return to Correctional Institutions (usually in the afternoon).[271]

By far the most frequent assimilation is inmates remain in Correctional Institutions and only at certain times can they mingle with society.[272] Such an assimilation program will only reduce overcrowding for a while (during the day), but at night the Correctional Institutions is overcrowded again.

Similarly, Government Regulation 99/2012 which is the second amendment to Government Regulation 32/1999 on Procedures for Implementation of the Right of Inmates. This regulation introduces a strict mechanism for remission, assimilation, and parole to narcotic drugs convicts, namely the additional mandatory requirements **for the criminal acts of narcotic drugs**/narcotic precursors psychotropic substances (with a minimum of 5 [five] years and more punishment).

In fact, detainees or convicts of these cases are the largest contributor to Correctional Institution/Detention Centre population, at least almost 50% (per cent) of inmates in Correctional Institutions and detention centres are from drugs cases.[273] While other policies, such as the Supreme Court Circular (SEMA) and the Attorney General's Circular (SEJA) on the admission of narcotic drugs users and addicts to rehabilitation centres, have not run optimally so they have not been able to reduce the level of morning imprisonment of drugs users and addicts.

5.3.4 Improving Coordination among Law Enforcement Agencies and Building Monitoring Mechanism

Weak coordination and understanding between law enforcement agencies are a problem in fulfilling of the rights of suspects, defendants and convicts. This can be seen, for example, in cases that involve juvenile offenders, overstaying problems, and prison sentencing.
In the context of overcrowding, coordination between law enforcement agencies is often considered as one crucial problem. Authority overlapping between law enforcement agencies actually has a very strong role, including direct contact with the authority to detain or put detainees that affects supply of Detention Centre and Prison inmates.

[271] See Article 21 (1) Regulation of Minister of Law and Human Rights 21/2016 on the Procedures for Granting Remission, Assimilation, Family Leave, Parole, Leave before Release, and Conditional Leave.
[272] Dwi Afrimetty Timorea, *Op.cit.*, pp. 66-67.
[273] http://news.liputan6.com/read/2934492/50-persen-narapidana-di-lapas-dan-rutan-dari-kasus-narkoba accessed on 14 March 2018

Small examples such as completeness of files that result in detainees or inmates spending longer time in detention or prison often are easy to find. In a more detailed context, the authority to extend detention has been considered only as a "stamp" to continue someone's staying in detention. In fact, the extension of detention can be one way of control and supervision that can be done to ensure someone is eligible to be detained.

In another context, coordination between law enforcement officers is reflected in Memorandum of Understanding (MoU) or joint regulation. In Joint Regulation on Narcotic Drugs Addicts and Narcotics Abuse Victims in Rehabilitation Institute, several ministries and state institutions agreed to ensure addicts and victims of narcotics abuse to be placed in rehabilitation institutions.

In the evaluation study conducted by ICJR along with Mappi FH UI, Rumah Cemara and BNN, it was found that the initial purpose of coordination was not accomplished. The Prosecutor's Office and the Police still consider that the assessments in the form of recommendations from the TAT team (Integrated Assessment Team) is an administrative burden. As a result, many cases were filed without the TAT recommendations of abusers or addicts,[274] to avoid the administrative backlogs.[275] The impact is clear, abusers or addicts cannot be admitted to rehabilitation institutions or find it difficult to get a rehabilitation ruling since it is not charged with drugs abuse articles.

Searching for an ideal coordination system is indeed a unique problem of Indonesia due to the enormous authority dichotomy between law enforcement agencies, like it or not it is the police that plays a major role in resolving cases, while that role should be played by the prosecutor to facilitate coordination. Judges must also move out of understanding as part of law enforcement agencies, in a broader context, judges must stand in the middle to ensure the existence of a mediator in the issue of coordination, which has been a problem between law enforcement agencies.

Furthermore, to support the improvement of policy effiecieny to resolve cases outside the court and the coaching process is the existence of monitoring system that is also effective. This monitoring system is carried out both internally and externally. Internally, supervision is carried out by internal law enforcement organizations, both in the police, prosecutor's office and court. While effective

[274] Article 127 Law 35/2009 on Narcotic Drugs.

[275] Erasmus A. T. Napitupul and Choky R. Ramadhan, 2018, *Evaluasi Peraturan Bersama Penanganan Pecandu Narkotika Dan Korban Penyalahgunaan Narkotika Ke Dalam Lembaga Rehabilitasi*. *Drug Demand Reduction Workshop*, 20-21 March 2018.

external oversight includes supervision carried out by authorized institutions including supervision carried out by advocates as the companion of suspects, defendants and convicts.

Ideally, at least against forced efforts by law enforcement officials should be placed under judicial scrutiny.[276] There should not be any authority for the forced efforts of law enforcement agencies that are are free from court supervision, this at least will impede the occurrence of arbitrariness and guarantee the rights of suspects or defendants.

5.3.5 Expanding Legal Aid Access and Quality

Expanding access and quality of legal assistance to suspects, defendants and prisoners is an important aspect in dealing with the problem of overcrowding. Access to advocates to provide legal assistance is needed at every stage of the criminal justice process to guarantee the rights of suspects such as being able to file a postponement of detention and file a pretrial lawsuit regarding determination of the suspect status, and ensure detention is not abused.

Overstaying problem is one factor that causes overcrowding, apart from the fact that it is a violation of human rights, namely arbitrary detention.[277] The existence of legal assistance will avoid the emergence of overstaying cases that affect occupancy rate of Detention Centres.

Pursuant to Regulation of the Minister of Law and Human Rights Number M.HH-24.PK.01.01.01 of 2011 on the Release of Detainee for the Sake of Law the Head of Detention Centre or Head of Correctional Institutions is obliged to release detainees for the sake of law because of the expiring of detention or extension of detention.[278] For Head of Detention Center or Head of Correctional Institutions who does not release Detainee for the sake of law there are administrative sanctions in accordance the prevailing laws and regulations.[279] This information can be better conveyed to detainees if access to assistance for convicts to their rights is wider opened.

Access to legal assistance to convicts can help them to obtain their rights, for example with regard to efforts to obtain remission or other assimilation and reintegration programmes. Provision of legal

[276] Supriyadi W. Eddyono, et. al., *Praperadilan di Indonesia: Teori, Sejarah dan Praktiknya* (Pretrial in Indonesia: Theory, History, and Its Practice), ICJR, Jakarta, 2014, p. iv.
[277] Abdul Haris Semendawai, et.al., Loc.cit., p. 28
[278] Article 6 (3) Regulation of Minister of Law and Human Rights Number M.HH-24.PK.01.01.01 of 2011 on the Release of Detainee for the sake of Law
[279] Article 10 Regulation of Minister of Law and Human Rights Number M.HH-24.PK.01.01.01 of 2011 on the Release of Detainee for the sake of Law

assistance to convicts in prison need to be held to deal with various legal issues faced by convicts. There are many lagislations that ensure legal assistance for suspects, defendants and convicts to increase access to legal assistance.[280]

In case of the only mechanism for detention complaints is pretrial, legal counsel plays a vital role. ICJR Research in 2014 found out that the majority of pretrial lawsuits are filed by legal representation. This fact shows that the presence of legal counsel the chances of someone to submit pretrial lawsuit are clearly greater.[281] As additional notes, from the gathered data, the majority of cases are corruption cases which are assumed that pretrial applicants are those who have access to legal counsel or financially able.[282]

With the expansion of access and the quality of legal assistance, the complaint mechanism can at least work for detainees, a system of correction and supervision of law enforcement officers or correctional officers who are negligent to immediately release detainee and contribute to overcrowding by unnecessary detention or overstay.

5.3.6 Changing the Mindset of Law Enforcement Personnel Concerning Detention

Many law enforcement personnel of criminal justice system such as police, public prosecutor and judge who still hold the view that the settlement against any violation of law, whether minor or serious crime, must be sentenced in prison as a punishment. Many police officers and public prosecutors who have the greatest discretion at the beginning of criminal justice system still hold the view that detention is a necessity or something taken for granted when someone wes determined a suspect and they will opt maximum detention.

The assumption that more people go to prison is an achievement is a real assumption. The police rarely use discretionary authority, while prosecutors always try to prove their indictments are often forced, and the judge seems to be in a hurry in imposing imprisonment. Whereas if the criminal

[280] Provisions on Legal Aid are Law 16/2011 on Legal Aid, Goverment Regulation 42/2013, Regulation of Minister of Law and Human Rights 3/2013 and Regulation of Minister of Law and Human Rights 10/2015. The implementation of legal assistance in Detention Centre and Prison specifically governed by Decree of Director General of Corrections No. PAS-14.OT.02.02 of 2014 and Decree of Director General of Corrections No. PAS-173.PK.01.05.12 of 2015`

[281] Supriyadi W. Eddyono, et. al., *Op.Cit*, p. 119.

[282] *Ibid*.

imposition of the trial is maximized, then the number of inmates in the Correctional Institution will not experience overcrowded.[283]

It is for this reason that equality and unity of understanding and perception about the duties and authorities of each law enforcement is needed to resolve criminal cases in the circle of law enforcement. The equality of position of each sub-system of criminal justice system has a significant contribution to establish a pattern of relations between law enforcement personnel to solve overcrowding problem. If all elements have not yet adopted the same view, efforts to handle overcrowding will be hampered by enormous challenges.

However, changes of the mindset of law enforcers need to be carried out by encouraging criminal policies and the criminal justice system changes as well as increasing the understanding of alternative sentencing outside of prison. This can be done by conducting various education and training among law enforcement apparatis concerning alternatives to imprisonment, the existence of guidelines or technical instructions for implementing alternative sentencing for law enforcement apparatus and drawing internal regulations that enable law enforcement agencies responsive to alternative sentencing other than prison. It will gradually deconstruct the mindset of "the more people imprisoned, the more successful the law enforcement officers will be."

5.3.7 Redistribution of Convicts

One of the easiest ways to handle overcrowding is to build Detention Centere and Correctional Institutions as needed. Despite the feasibility, the policy is short-term and will not solve the problem of overcrowding to its roots. It is the case because the existing overcrowding control system is partial while the number of detaines and convicts is always increasing.

Furthermore, Regulation of Minister of Law and Human Rights of 11/2017 on Grand Design to Handle Overcrowing in Detention Centre and Prison stated that basically increasing occupancy capacity by constructing detention centre and prison is not a top priority in handling the present overcrowding problem.

The enormous fund needed to build detention centre and Correctional Institutions in view of limited state budget is one reason to search other alternatives feasible for Directorate General of

[283] Appendix to Regulation of Ministry of Law and Human Rights of the Republic of Indonesia 11/2017 on Grand Design to Handle Overcrowding in Detention Centres and Correctional Institutions, p. 17

Corrections to overcome overcrowding situation in detention centres and Correctional Institutions. Given the average allocation of fund needed by a Prison with a capacity of 2000 inmates, the average budget of IDR 300,000,000,000 (three hundred billion rupiah) is needed.

Alternative as a short-term solution that can be carried out by Directorate General of Corrections at present in suppressing overcrowding rates of detention centres and Correctional Institutions is redistribution of convicts.

This redistribution is carried out by transferring convicts from highly overcrowded prison to one with fewer inmates. The number of inmates redistributed per 2016 is 36,075 inmates with the following details:

Table 5. 2: Number of Redistributed Convicts in 2017

No	Month	Redistribution	Achievement
1	January	**2,791**	**3.26%**
2	February	**3,548**	**4.03%**
3	March	**3,925**	**4.24%**
4	April	**2,869**	**2.98%**
5	May	**4,572**	**4.59%**
6	June	**3,822**	**3.77%**
7	July	**3,401**	**3.34%**
8	August	**3,644**	**3.57%**
9	September	**5,293**	**5.57%**
10	October	**3,333**	**3.17%**
11	November	**412**	**0.38%**
12	December	**667**	**0.60%**

Source: Statistical Report of Corrections for Hearing with Commission III of the Indonesian House of Representatives, 25 January 2018

The table data showed an average of 3,190 convicts were transferred in one month. At the very least, it is expected that the convict's redistribution policy will reduce the impact of and overcrowding level and evenly distributed convicts in the short term in all Correctional Institutions in Indonesia.

5.3.8 Institutional Strengthening of UPT

5.3.8.1. Institutional Strengthening

One way to unravel overcrowding situation other than what mentioned above is institutionally strengthen Correctional Institution. One key element of the institutional strengthening process is the identification of past and future organizational trends that will affect the handling of convicts/detainees in Correctional Institutions/detention centres.[284]

Suitability of institutional form and size might be a factor that influences the disentanglement of overcrowding problems. Correctional Institutions/detention centres with increasing capacity can be ascertained to have workload accordingly, needles to say they have their limit in capacity management.

To institutionally strengthen the endeavour to handle overcrowding in Correctional Institutions/detention centres it is a necessary to make improvemen using a hybrid approach, which is an approach to improvie organizational structure and work procedures that are not properly functioning and appropriately sized and the formation of new organizations that are compatible to handle overcrowding.[285]

Improvement of organizational structure and work procedures can be started by revising Presidential Regulation 83 /2012 to synchronize it with the current institutional regulations. Because this regulation has deregulated Regulation of Minister of Law and Human Rights 29/2015 on Organizational Structure and Work Procedure of Ministry of Law and Human Rights and Regulation of Minister of Law and Human Rights Regulation 28/2014 on Organizational Structure and Work Procedures of Provincial Office of Ministry of Law and Human Rights and conflicts and overlap with Presidential Regulation 44/2015 on Ministry of Law and Human Rights of the Republic of Indonesia. Besides, it is necessary to change the organizational structure and work procedures of the Correctional Division so that it reflects the duty of Directorate General of Corrections Pas and to add units to carry out the facilitative functions as entities.

The need to reorganize UPT of Corrections is not only based on the need for legal alignment. From organizational perspective, it is also identified that organizational design interpreted in

[284] Appendix to Regulation of Ministry of Law and Human Rights of the Republic of Indonesia 11/2017 on Grand Design to Handle Overcrowding in Detention Centres and Correctional Institutions, p. 48

[285] *Ibid*., p. 48.

Organizational Structure of UPT of Corrections is not properly adjusted as indicated by the duplication of functions and improper clustering functions. In Prison's structure, for example, the function of Security and Order Sector will overlap that of Prison Security Unit. It will be better to combine them as one unit that perform a whole and complete security function.

Moreover, clustering of coaching and caring functions is considered inappropriate because it sidelined the function of work activities which is of that coaching function. Therefore, it is better to align several similar sectors to optimize the Correctional Institutions performance. Apart from Correctional Institutions, Detention Centres face the same conditions, where administrative section as supporting unit overlap with management section. This situation reveals that the urgency of institutional structuring shall be a priority.

Institutional strengthening of Correctional Institutions/Detention Centres can be viewed from the implementation of classifications that in practice are graded into the following functions:

a) Maximum Security Prison;
b) Medium Security Prison; and
c) Minimum Security Prison.

Institutional strengthening according the respective functions will be closely related to the models of coaching and security for convicts through the assessments based on the risk level and the need to intervenene with the criminogenic factors.[286]

Therefore, considerable attention shall be paid on how to arrange an organizational framework that accommodates the role and involvement of Directorate General of Corrections in UPT of Corrections. And how to design UPT organization based on business processes and represent the functions of its parent organization.

Apart from reforming the organizational structure and working procedures, it is necessary to establish new Technical Support Unit that is supportive and compatible. It is necessary to map the number of overcrowding in Correctional Institutions and Detention Centres throughout Indonesia which will be a reference in determining the priority of overcrowding handling policies. Regional priority mapping can be divided as follows:

a) Priority 1, which covers 10 regions with highest overcrowding level.

[286] *Ibid*., p. 66.

b) Priority 2, which covers areas outside 10 regions with overcrowding problem above.
c) Priority 3, which corvers areas without overcrowding problem.

5.3.8.2 Strengthening Human Resources

Responding to the problems mentioned above, it is necessary to make a settlement effort to optimize security tasks in Correctional Institutions/detention centres. Some strategic efforts are needed to respond to these problems. Steps that can be taken to overcome these problems are efforts to optimize security that can be done by improving the quality and quantity of security officers. It can be done by empowering human resources through good and proper management. Human Resource Management is a policy and practice to determine aspects of "human" or human resources in management positions, including recruiting, filtering, training, rewarding and assessments.

Human resource management generally aims to ensure that an organization is able to achieve success by means of people. The specific target of management in the HR field is the realization of the resources of officers or staffs who are competent, professional, high-performing, service-oriented and prosperous.

The scope of human resources management in Correctional Institution includes system improvement: recruitment, education and training, placement, performance appraisal, career development, staffing and welfare data base and discharge as well as retirement.[287]

5.3.8.3 Strengthening Facilities and Infrastructure

When a person is undergoing criminal justice process or sentence in Detention Centre/ Correctional Institution, he or she must be supported optimally by adequate and humane dwelling that is clean, has adequate air ventilation, bathrooms, sleeping equipment and activity rooms, which are not available so far, such as complaint rooms, legal consultations, counseling, education and good work activities.

Furthermore, the fulfillment of facilities and infrastructure of health and environmental diagnostic tools that should be available such as X-rays, dental care equipment, laboratory blood tests to conduct early detection of infectious diseases such as HIV / AIDS, hepatitis and tuberculosis, and

[287] Appendix to Regulation of Ministry of Law and Human Rights of the Republic of Indonesia 11/2017 on Grand Design to Handle Overcrowding in Detention Centres and Correctional Institutions, p 79.

sanitation facilities and infrastructure. In order to fulfill the quality of the meal, it is necessary to develop standardization of kitchen equipment and facilities that are ideal so that food diversification can be fulfilled properly.

The construction of new UPT is supportive and compatible with the program to handle overcrowding if the building is constructed in the right area to disentangle the problem and become the destination of convicts' distribution from overcrowded areas. The capacity difference in some areas that are not overcrowded, which is 1,264 inmates, can also be used as a destination for dwelling distribution controlled by central authority. Furthermore, it can be strengthened by the construction of Correctional Institutions/detention centres in buffer zones as Correctional Institutions /Detention Centre satellites that were overcrowded.[288]

In addition, optimization can also be carried out through the existence of Open Prisons, which are classified as quite effective and efficient programs for convicts who have passed the assessment and entered the assimilation stage (1/2 Sentence Period). The not too rigid capacity and flexible treatment limitation can be a breakthrough in overcoming overcrowding.

On the one hand, Open Correctional Institutions are the best way for convicts to integrate, where the walls are no longer a barrier to re-absorp the values in society. On the other hand, the fulfillment of facilities and infrastructure in UPT of Corrections is a necessity that cannot be separated from the implementation of the duties and functions of UPT Corrections. Revamping and accelerating the resolution of the overcrowding problem, must consistently to refer to the improvement and fulfillment of infrastructure in UPT Corrections.

The improvement and completion of security facilities and infrastructure such as firearms, CCTV, handcuffs, X-rays, etc. in order to improve security and order of UPT Corrections also needs to be considered, because such functions are inherent and inseparable to support the implementation of the core business correctional system. Improvements in the completeness of good office equipment as well as the ability of administrators to manage the administration need to be improved in order to create an ideal and modern management and administrative system support.

In particular for children, fulfilment of facilities and infrastructure emphasized on the fulfillment of children's needs which are often incarcerated in detention centers for adult. Despite Law 11/2012

[288] *Ibid, p. 69*

on Juvenile Criminal Justice System stipulates that children can only be detained in Temporary Child Placement Institution (LPAS)[289] or in Social Welfare Organizing Institution (LPKS).[290] All in all, the maximum detention period for children can only be done for 47 days and can be extended for 63 days.[291]

Table 5.3: Period of Detention for Children

No	Detention	Period	Extension	Period
1	Investigation	7 days	Prosecution	8 days
2	Prosecution	5 days	Judge	5 dys
3	Distric Court Trial	10 days	Head of District Court	15 days
4	High Court Hearing	10 days	Head of High Court	15 days
5	Supreme Court Hearing	15 days	Chief of Supreme Court	20 days

Source: Law 11/2012 on Juvenile Criminal Justice System, Processed by ICJR

Minister of Law and Human Rights Yasonna Laoly, in a Hearing with the Commission III of DPR, has explained mechanism for optimizing and accelerating the granting of rights for convicts and children. It is stated that all process of proposals and granting of rights for children are carried out digitally using Correctional Database System. In 7 (seven) days inmates and children undergo sentence in Correctional Institutions/LPKA, UPTs are required to request and complete various documents needed in processing the proposal to grant the rights of convicts and children. In addition, there must be time limit for the completion of all required documents.

Moreover, there is a deadline both in UPT, Provincial Offices and Directorate General of Corrections regarding the process of proposing and granting rights to Convicts and Children. The printing process of the Decree of the rights granting for convicted children is carried out in the UPT with the electronic signature of Director General of Corrections, which save the required time.[292]

[289] See Article 33 (4) Law 11/2012 on Juvenile Criminal Justice System, http://peraturan.go.id/uu/nomor-11-tahun-2012.html

[290] See Article 33 (5) Law 11/2012 on Juvenile Criminal Justice System, http://peraturan.go.id/uu/nomor-11-tahun-2012.html

[291] Anggara, et.al, *Studi Implementasi Penanganan Anak Di Pengadilan Berdasarkan UU SPPA* (Study on Implementation of Children Handling di Court Based on Law on SPPA), ICJR, Jakarta, 2016, pp. 18-19

[292] Statistical Data Report of Corrections in Hearing with Commission III of DPR RI, 25 January 2018.

There are other things the children need, however, which are related to education and teaching activities such as the availability of classrooms, libraries or computer labs to support the teaching and learning activities. The available education levels must also be prepared starting from the lowest level (elementary school) to the highest (senior high school). Additionally, the need of recreation for children must also be considered through the provision of playgrounds for children.

Especially for female convicts in Women Correctional Institutions, there must be effort to provide facilities and infrastructure to fulfill their natural needs. For example, the need for treatment of reproductive organs and prevention of diseases prone to attack women. Other needs, such as a baby care room for female inmates who were born and raised there need to be provided.

The needs of UPT Corrections can be met through systematic planning in order to meet the needs of facilities and infrastructure carried out by Directorate General of Corrections. The needs planning is prepared based on analysis studies and preparation of a master plan containing a mapping of facilities and infrastructure needs for each UPT Corrections within a certain period. Planning the fulfillment of facilities and infrastructure must be realistic with the reality of the available budget allocation and based on the priority level of needs.

The process of procuring facilities and infrastructure needed by UPT Corrections Unit UPT is carried out continuously by considering the quality and needs of UPT Corrections, carried out with accountability and transparency in the procurement process

CHAPTER VI
CONCLUSION AND RECOMMENDATION

6.1 Conclusion

This research has attempted to describe the situation of overcrowding in Detention Centres/Correctional Institutions in Indonesia, its causes and impacts on inmates, the impact on family and society and the impact of overcrowding on the state. The conclusions of this study are as follows.

First, Detention Centres/Correctional Institutions in Indonesia are in an alarming situation because they belong to the **extreme overcrowding category**. The overcrowding situation in Detention Centres and Correctional Institutions in Indonesia as of December 2017 was **188%**. If the benchmark of overcrowding situation in Detention Centres/Correctional Institutions in Indonesia is illustrated using the occupancy rate (number of detainees per official prison capacity),[293] the situation of detention centres/Correctional Institutions in Indonesia is in the **extreme overcrowding category** (**Occupancy rate above 150%)**.

Of 33 provincial offices of detention centre/Correctional Institutions all over Indonesia, only 5 provincial offices have no overcrowding situation. That is, using any distribution benchmarking of detention centres/Correctional Institutions with overcrowding situations and those with no overcrowding situation, **84.85% of Provinsial Offices in 28 Provinces of Indonesia have overcrowding situation** in various levels (overcrowding, critical overcrowding, and extreme overcrowding).

Second, the density of prisons with extreme overcrowding situation has a similar pattern which is generally caused by many factors that affect one another. These contributing factors include Indonesian sentence policy that still emphasizes imprisonment, excessive sentencing against minor offenses, victimless crimes, excessive pretrial detention, non-optimal administrative procedures, assimilation and reintegration, minimum access of Suspects/Convicts to Advocates to avoid them from excessive snares of detention and imprisonment and institutional problems, human resources and infrastructure problems of Directorate General of Coorections and UPT Corrections are also a driving factor for overcrowded Detention Centres/Penitentiaris.

[293] Overcrowding refers to occupancy rate above 100%, critical overcrowding refers to occupancy rate over 120%, and extreme overcrowding refers to occupancy rate over 150%.

Third, overcrowding situation has generated problems of human rights, security and health for inmates. Moreover, overcrowding situation also affects suspects'/convicts' families, society, and the State. These impacts can be seen in the following conditions:

a) Rehabilitation programmes in prison cannot work well because there are too many inmates. The programmes include vocational training, skills training, and improving poor medical and social rehabilitation.
b) Lack of personnel due to enormous disproportionate inmates-personnel ratio. This has caused many inmates to abscond. One of the direct effects of density explosion of detention centers and prison is the unchecked security risk, including ensuring that inmates do not run away.
c) High rate of riots in Correctional Institutions and detention centres due to the large friction among inmates, fights over food, beds, bathrooms, etc. Correctional Institutions' overcrowding in Indonesia have directly affected the practice of Correctional Institutions commodification. Not to mention the corruptive behaviour of individuals who seek profit.
d) Issue of enormous cost spent by the state to finance inmates. It is worth to note that inmates of detention centers and Correctional Institutions are the responsibility of the state, therefor all types of financing from food to medicines must be borne by the state. The greater the number of inmates, the greater the burden borne by the state.
e) Overcrowding has caused many convicts and detainees transfer. This has compelled inmates' families and relatives to pay more for visit. This practice, in turn, has turned inmates' families as other punsihed subjects due to Correctional Institutions and detention centres overcrowding.

Fourth, experience of various countries shows that there are success stories of overcrowding handling. In general, efforts to overcome overcrowding are carried out by: (i) setting goals to address the negative impacts of detention and imprisonment, protection of human rights, security and health of inmates, their families and society, considering gender sensitivity and vulnerable groups, such as people woth disability, women and children; (ii) the establishment of a comprehensive and sustainable/simultaneous handling policy in short, medium and long terms;

More specific, overcrowding handling in various countries is carried out by forming a series of sentencing policy reforms or other strategic steps. These steps include: (i) reforming the management of correctional system through prison litigation approcah, decriminalization, depenalization, and diversion; (ii) reforming pretrial detention arrangements in the form of: (a)

tightening requirements for pretrial detention, (b) shortening criminal justice processes (abbreviated trials) and guilty pleas, (c) alternatives to pretrial detention, and (d) pretrial detention hearings; and (iii) strengthening alternatives to imprisonment.

Fifth, referring to overcrowding situation, factors that cause overcrowding problem and its impact in Indonesia, comprehensive and multi-stakeholder strategies to handle overcrowding in Indonesia are carried out through the following efforts:

a) Changes in orientation/reform of criminal law politics and criminal justice system by implementing decriminalization policy on acts that are not criminal acts, forming and developing non-prison sentencing policies (alternatives of imprisonments), restorative justice, and establishing a procedural law that is able to stop excessive detention;
b) Making effective the implementation of various exsiting regulations that provide sanctions or non-prison sentencing;
c) Maximizing the fulfillment of the rights of convicts and streamlining the function of coaching;
d) Enhancing coordination among law enforcement agencies and developing monitoring mechanisms;
e) Expanding access and improving quality of legal assistance for suspects, defendants and convicts;
f) Changing the mindset of law enforcement authorities regarding detention;
g) Redistribution of convicts;
h) Strengthening institutions, human resources and strengthening facilities and infrastructure of UPT and Directorate General of Corrections.

6.2 Recommendations

First, the Government and other policy-makers must respond extreme overcrowding conditions in Detention Centres/Correctional Institutions by forming comprehensive and short, medium and long terms policies and strategies. This is intended to ensure that overcrowding handling is not short-term/temporary and partial in its nature and is properly carried out to answer the root causes of overcrowding, including:

a) Reorientation of Sentencing; present overcrowding problem in Indonesia is obviously cannot be resolved in a short time, one strategy that can be planned is to review the prevailing sentencing model, this shance can be immediately realized given that parliament as legislator is deliberating the bill of Penal Code and the bill of Criminal Procedure Code.

Apart from sentencing that can be formulated better in handling overcrowding problem, pretrial detention requirements can also be one of the deliberations in amending the two laws;

b) **Making Effective Non-Prison Sentencing Policy**; alternative sentencing in the Bill of Penal Code (R KUHP) through supervision and social work are expected to have a significant impact on the reduction of correctional burden. The Government and the Parliament that plan to ratify the R KUHP in 2018 have a great opportunity to open up the widest alternative requirements for alternative sentencing (requirements for social work and supervision), and encourage the preparation of derivative needs for the implementation of the mechanism of social work and supervision in Book I RKUHP. Meanwhile, the indicator of the possibility of alternative sentencing in RKUHP, must be seen in Book II RKUHP, namely punishments that fall into the scope of social work or supervision as well as sentencing requirements in Book I RKUHP must increase in number compared to the RKUHP as of 5 June 2015, which still tends to imprisonment and alternative places of sentencing are only given a portion of no more than 5% of the total types of punishment regulated in the RKUHP (imprisonment, fines, etc.).

c) **Revision of Regulations that Obstruct Outflow**; most inmates of Correctional Institutions/detention centres in Indonesia are related to narcotic drugs cases, in some cases prisoners who have been convicted through the judicial process have received sentence over 5 (five) years in prison. One of requirements for inmates of narcotic drugs cases to obtain remission and parole rights is to cooperate with law enforcement officers or in practice the convicts are justice collaborators acording to Government Regulation 99/2012 on the Procedures for the Implementation of the Right of Inmates. This Governemnt Regukation does not determine whether the conditions apply to Narcotics Dealers or Users because in practice it is not uncommon that narcotic drugs users also get a five-year prison sentence. This problem has limited chances for convicts to obtain their rights in the form of remission and parole. Despite the importance of these requirements in the prevention and eradication of a criminal act, including the expected deterrent effect. Looking at the reality where inmates are currently dominated by those who are involved in narcotic drugs cases, it is better for the government to review the Government Regulation, especially the part related to narcotic drugs crime, which is expected to have a significant impact on reducing prison inmates

Second, Overcrowding handling must be viewed as a collective effort between all stakeholders and not just the problems faced by the implementers in Detention Centres/Correctional Institutions. This

joint work must involve various interested stakeholders, including policy-makers, law enforcement apparatus, implementers in detention centres and penitentiaires, as well as the involvement of community and society, including:

a) **Effort to Restrict Pretrial Detention**; the Police and Public Prosecutor's Office may draw internal regulation such as Regulation of Chief of Police or Regulation of Attorney General regarding pre-trial detention requirements that are oriented more to the need for disclosure of cases, not only because the suspects can be detained according to subjective conditions of the investigator. Therefore, the investigator and public prosecutor in carrying out detention have to make in advance an analysis on the necessity to detain a suspect beyond the conditions set by the law, followed by effort to maximize the available detention alternatives such as city arrest and house arrest.

b) **Improving Access to Legal Aid**; the quantity and quality of legal assistance at every level of the criminal justice process is one of the efforts to reduce overcrowding. Generally, the advocates/legal counsels can take measures and provide input to suspects, defendants and convicts to take the opportunity provided by the Law. Apart from the defense carried out in the process of postpone detention, a defense that can reduce punishment, and convicts' rights such as assimilation, remission, parole, leave before release can be maximized by the presence of legal assistance to those who undergo the process. The success of legal aid work will indirectly reduce occupancy rate as one of causes of overcrowding.

c) **Improvement of Facilities and Infrastructure**; the improvement in handling overcrowding problem is not limited to the addition of Correctional Institutions/detention centres, which include competent human resources, as well as professional coaching models. Improvement of infrastructure and facilities can be focused on areas with the highest level of overcrowding. Based on the available data, priority to improve facilities and infrastructure can be carried out in areas considered to have extreme overcrowding.

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ABOUT ICJR

Institute for Criminal Justice Reform (ICJR) is an independent research institution focusing on criminal law reform, criminal justice system reform, and legal reform in general in Indonesia. One of the most crucial issue in Indonesia during the transitional period is to reform its legal system and criminal justice system towards a more democratic direction. Back in the 'Reformasi' era, criminal law and criminal court were used as a tool to support the authoritarian government, while also used to achieve social engineering interest. Now is the time to make the orientation and instrumentation of criminal law into the direction that support a democratic political system and respecting human rights. This is the main challenge in reforming criminal law and criminal justice system during the current transitional period.

To give a solution for the abovementioned challenge, it is necessary to have a planned and systematic measures. A grand design for the reform of criminal justice system and legalsystem in general must be pioneered. Criminal justice system is placed at a strategic position for the purpose to establish the Rule of Law and respect towards human rights. This is due to the fact that democracy can only well-functioning if there is an institutionalization towards the concept of the Rule of Law. Criminal justice system reform that is oriented towards the protection of human rights is a "conditio sine quo non" with the process of institutionalizing the democracy during the current transitional period.

The measures in transforming the legal system and criminal justice system to be more effective is currenly ongoing. However, such measures must gain broader attention. The Institute for Criminal Justice Reform (ICJR) tries to take the initiative to support such measures. Providing the support in the context of establishing the respect towards the Rule of Law and at the same time establishing the culture of human rights within the criminal justice system—these are the reasons of ICJR's existence.

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