

# THE URGENCY OF CENTRALIZATION GUIDELINES REGULATION: ALTERNATIVE SOLUTIONS IN MINIMIZING THE OCCUPANCY OF CORRECTIONAL INSTITUTIONS IN INDONESIA

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## ABSTRACT

*This study is intended to examine the urgency of enacting criminal guidelines to minimize the overcapacity of the occupancy rate of Correctional Institutions in Indonesia. This study used an empirical legal research method with a statutory and factual approach. The results of the study found that the occupancy rate at the correctional institution at the Regency level in the Province of Bali included overcapacity as the number of prisoners entering and leaving was not directly proportional to the capacity of the room. The phenomenon of overcapacity that occurs, is felt to have not been able to provide a sense of justice for inmates in prisons. In addition, there is still a lack of legal certainty. Therefore, in the context of realizing justice and legal certainty among inmates so that they can truly become a pillar of hope for them and also all parties involved in it, it is very urgent to enact the guidelines and objectives of punishment in the Draft Criminal Code as an alternative solution to reduce the overcapacity in correctional institutions in Indonesia. Legal certainty will be realized through the existence of sentencing guidelines where this will be closer to achieving a sense of justice for those who are Justice seekers.*

**Key Words:** Province of Bali, Lack of Legal Certainty, Draft Criminal Code, Legal Certainty

## INTRODUCTION

The establishment of Indonesia's current criminal system aims to protect the interests of an individual and his human rights, protect the interests of the wider community, protect the state from evil deeds and disgraceful acts that harm the state, society, individuals, and also to prevent the rulers from acting arbitrarily to the people. Many cases show that when people want to demand justice through the criminal law process, there will be obstacles that they have to face. This obstacle arises because the current formal criminal law, philosophy of criminal law, and sentencing are not designed directly to respond to the impact of crime on victims and society or the accompanying social and humanitarian problems (Septianto, 2014). The absence of sentencing guidelines will greatly affect the imposition of a criminal. This condition will certainly give the judge the freedom to impose a sentence that can range from one day to the death penalty. This legal vacuum will undeniably affect the imposition of criminal decisions that are not based on sentencing guidelines. This in the end also affects the occupancy rate in correctional institutions in Indonesia. Another problem that also arises is that the crimes committed are not only conventional crimes but also unconventional crimes, where the granting of pardons and remissions is not the same for the perpetrators of the crime.

Criminal Law is known as one of the regulations which regulate all spheres of public life, hence it cannot be detached from generally accepted principles (Veresha, 2018). According to Principles of Law, Criminal Law is known as the product of human activity. Law is considered a social phenomenon, both in origin and content, where its emergence is conditioned by the needs of the development and the pattern of a social community (Oliinyk & Valerii, 2020). Therefore, the implementation of criminal law doctrine takes a broad view, for instance,

the implementation of the principle legality which includes: "prohibition of application of the law by analogy; sufficient certainty of the criminal law; establishing the severity of punishment depending on the time the crime was committed; the impossibility of recognizing a person as guilty, as well as applying criminal penalties, unless there is the relevant court decision" (Oliinyk et al., 2020). The implementation of Criminal law thus must not contradict the legal character or the history of the national legislation development (Veresha, 2018).

Criminal penalties for crimes committed such as theft, persecution, fraud, murder, corruption, narcotics, and others in each court are certainly different from one another. The residence of the Correctional Institution is not only inhabited by convicts as inmates but also inhabited by detainees who are entrusted by the police and prosecutors whose cases have not been resolved. The absence of punishment guidelines can trigger overcapacity in correctional institutions. This overcapacity can be caused by the high number of prisoners entering the prison, not proportional to the capacity of the prison space, or the imbalance between the number of prisoners entering and the number of prisoners leaving. In addition, this can also be caused by the number of new convicts exceeding the number of prison terms and the number of convicts who are discharged. The problem of overcrowded prisons has become an increasingly protracted problem and has caused many impacts, both for prisoners and the state.

## RESEARCH METHOD

This study uses an empirical legal research method with a statutory approach and an empirical facts approach. The legal materials studied were the Criminal Code, the Draft Criminal Code, and relevant secondary legal materials related to the guidelines and objectives of sentencing from various experts through document studies. Empirical data were obtained through empirical research at the Correctional Institution and Regional Office for Human Rights Law in Bali Province. Legal materials and empirical data were analyzed qualitatively and presented in a qualitative descriptive manner.

## RESULT AND DISCUSSION

The occupancy rate of inmates who have received a permanent decision (inkracht) and also detainees, both from the police and the prosecutor's office, have created unresolved problems experienced by the Indonesian Ministry of Law and Human Rights. The problem that arises is not only because some of the buildings are still inherited and some have been renovated, but also the availability of facilities and infrastructure that is not comparable to fostering residents of the correctional institution and also the increasing number of prisoners entering the correctional facility. The results of the study found that housing in the Bali Penitentiary also experienced an Over Capacity condition as can be observed from the table 1 and table 2 below:

No	UPT	Prisoner							Total	Convict						Total	Prisoner & Convict	Capacity	% Over Capacity
		DL	DP	TD	AL	AP	TA	DL		DP	TD	AL	AP	TA					
1	PENITENTIARY CLASS II A KEROBOKAN	332	0	332	1	0	1	333	1,076	0	1,076	1	0	1	1,077	1,410	323	337	
2	PENITENTIARY CLASS II B KARANGASEM	28	0	28	0	0	0	28	92	20	112	0	0	0	112	140	149	0	
3	PENITENTIARY CLASS II B SINGARAJA	36	3	39	0	0	0	39	187	17	204	0	0	0	204	243	100	143	
4	PENITENTIARY CLASS II B TABANAN	30	1	31	0	0	0	31	147	22	169	0	0	0	169	200	47	326	
5	NARCOTICS	0	0	0	0	0	0	0	529	0	529	0	0	0	529	529	468	13	

	PENITENTIARY CLASS II A BANGLI																	
6	FEMALE PENITENTIARY CLASS II A DENPASAR	0	14	14	0	0	0	14	0	174	174	0	0	0	174	188	120	57
7	SPECIAL DEVELOPMENT INSTITUTION FOR CHILDREN CLASS II KARANGASEM	0	0	0	0	0	0	0	10	0	10	9	0	9	19	19	34	0
8	JAIL CLASS II B BANGLI	14	1	15	0	0	0	15	147	15	162	0	0	0	162	177	116	53
9	JAIL CLASS II B GIANYAR	34	1	35	0	0	0	35	97	13	110	0	0	0	110	145	44	230
10	JAIL CLASS II B KLUNGKUNG	18	1	19	0	0	0	19	56	6	62	0	0	0	62	81	46	76
11	JAIL CLASS II B NEGARA	36	0	36	0	0	0	36	101	10	111	0	0	0	111	147	71	107
	Total	528	21	549	1	0	1	550	2,442	277	2,719	10	0	10	2,729	3,279	1,518	216

Source: Bali Regional Office of Law and Human Rights in 2020

Table 2 DESCRIPTION	
TDL : Male Adult Prisoner	TDP : Female Adult Prisoner
TAL : Male Child Prisoner	TAP : Female Child Prisoner
NDL : Male Adult Convict	NDP : Female Adult Convict
NAL : Male Child	NAP : Female Child

The occupancy rate in correctional institutions in Bali, including prisoners and detainees, should be 1518 people. But in fact, the number of residents is 3,279 as described in the table above, so it can be said as overcapacity. This should be used as a study material regarding how efforts should be made to minimize occupancy in the prison. One of them is by way of consensus carried out by law enforcers to jointly build self-reliance so that prison housing can be reduced to a minimum through law enforcement, namely by immediately promulgating sentencing guidelines accompanied by the purpose of sentencing so that the inmates know what they have been sentenced to for.

To effectively combat crime, it is important to determine at the conceptual level concerning the crime itself, including the need to influence the committed crimes, as well as on the person who committed these crimes; and the need to fight with the social consequences of crime, especially about the enforcement of sentences (Akimzhanov et al., 2021).

Criminal law should be maintained as a means for *social defense*, in the sense of protecting the community against crime by repairing or rehabilitating the maker without compromising the balance of individual interests (makers) and society. Similarly, the 1980 National Criminal Law Reform Symposium, in one of its reports stated: (Kehakiman, 1980).

Following the politics of criminal law, the purpose of punishment must be directed to the protection of society and crime as well as the balance and harmony of life in society by taking into account the interests of the community, country, victims, and perpetrators. It is following the Principle of Equality of Citizens before the Law, which mainly concerning about the consistent and full expression of equality, enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (Oliinyk et al., 2020)

From the two conclusions above, it is clear that the main goal to be achieved by criminal and criminal law as a means of criminal politics is "public protection" (Sahetapy, 1982). The

purpose of protecting the community is what according to Cherif Bassiouni is a cornerstone of criminal law (Bassiouni, 1978).

What is the purpose of the crime (criminal law enforcement) if it departs from the national goal (ie "public protection" or "social defense")? Regarding this, I believe that the purpose of the criminal/criminal must be linked to 4 (four) aspects of the scope of community protection which are a follow: (Arief, 1996).

1. The community needs protection against anti-social acts that harm and endanger the community. Starting from this aspect, the purpose of punishment (criminal law enforcement) is to prevent and overcome crime.
2. Society needs protection against a person's dangerous nature. Therefore, criminal/criminal law aims to improve the perpetrator of the crime or try to change and influence his behavior so that he returns to obey the law and becomes a good and useful citizen.
3. The community also needs protection against misuse of sanctions or reactions from law enforcement and citizens in general. Therefore, it becomes a natural thing if the purpose of the crime is to prevent arbitrary treatment or actions outside the law (inhumane).
4. Society needs protection related to the balance or harmony of various interests and values that are disturbed as a result of the crime. Therefore, it is also natural that criminal law enforcement must be able to resolve conflicts caused by criminal acts and restore balance and bring a sense of peace to society.

It is stated that the purpose of punishment in the provisions in Article 51 of the 2019 Criminal Code Bill is as follows:

- a. Prevent the commission of criminal acts by enforcing legal norms for the protection and protection of the community;
- b. Socialize the convicts by conducting coaching and mentoring so that the convicts can turn into good and useful people;
- c. Resolve conflicts caused by criminal acts, restore balance, and bring a sense of security and peace in society; and
- d. Instill a sense of remorse and free the guilt of the convict.

It is also emphasized by the provisions of Article 52 of the Draft Criminal Code that punishment is not intended to degrade human dignity.

When referring to the provisions of Article 53 (1) of the Draft Criminal Code, the objectives of sentencing are as follows:

- 1) In adjudicating a criminal case, the judge is obliged to uphold the law and justice.
- 2) If in upholding law and justice as referred to in paragraph (1) there is a conflict between legal certainty and justice, the judge is obliged to prioritize justice.

Article 54 of the Draft Criminal Code: (1) In sentencing, it is obligatory to consider:

- a) The form of guilt of the perpetrator of the Crime;
- b) The motive and purpose of committing the Crime;
- c) The inner attitude of the perpetrator of the crime;
- d) Whether the Crime is committed with a planned or unplanned;
- e) How to commit a crime;
- f) The attitude and actions of the perpetrator after committing the crime;
- g) Curriculum vitae, social condition, and economic condition of the perpetrator of the crime;
- h) Criminal influence on the future of the perpetrators of the crime;
- i) The influence of the Crime on the Victim or the Victim's family;
- j) Forgiveness from the Victim and/or his family; and/or
- k) Values of law and justice in society.

The lightness of the act, the personal condition of the perpetrator, or the circumstances at the time the crime was committed and what happened afterward are used as a basis for consideration not to impose a crime or not to impose an action by considering the aspects of justice and humanity

In addition to the objectives and guidelines for punishment for perpetrators of criminal acts, it is also regulated regarding criminal acts committed by the Corporation. Article 56 of the Draft Criminal Code: In criminalizing a corporation, it is obligatory to consider:

- a. The level of loss or impact caused;
- b. The level of involvement of the management who has the functional position of the Corporation and/or the role of giving orders, controlling holders, giving orders, and/or beneficial owners of the Corporation;
- c. The length of the crime has been committed;
- d. Frequency of Criminal Acts by Corporations;
- e. Form of a criminal offense;
- f. Official involvement;
- g. Values of law and justice that live in society;
- h. The track record of the Corporation in conducting business or activities;
- i. The effect of punishment on the Corporation; and/or
- j. Corporate cooperation in handling criminal acts

If the above provisions can be immediately realized, then the Judge as the holder of the justice decision will give appropriate punishment to the perpetrators to stay in prison or by imposing criminal sanctions and actions, as outlined in the Criminal and Action provisions.

Article 64 of the Criminal Code Bill consists of:

- a. Principal crime.
- b. Additional penalties.
- c. Specific criminal offenses for certain crimes specified in the Act.

#### Article 65 of the Draft Criminal Code Bill

(1) The principal penalties as referred to in Article 64 letter consist of:

- a. Imprisonment.
- b. Cover Crime.
- c. Supervision Crime.
- d. Fines
- e. Social work crime.

(2) The principal penalties as referred to in Article 64 letter consist of:

- a. Imprisonment.
- b. Cover crime.
- c. Supervision crime.
- d. Fines; and
- e. Social work crime.

(2) The order of punishment as referred to in paragraph determines the severity or lightness of the punishment.

#### Article 66 of the Draft Criminal Code Bill

(1) Additional penalties as referred to in Article 64 letter b consist of

- a. Revocation of certain rights.
- b. Confiscation of certain goods and/or invoices.
- c. Announcement of judge's decision.
- d. Payment of compensation.
- e. Revocation of certain permits.
- f. Fulfillment of local customary obligations.

(2) The additional punishment as referred to in paragraph (1) may be imposed if the imposition of the principal sentence alone is not sufficient to achieve the purpose of the punishment.

(3) The additional penalty as referred to in paragraph (1) may be imposed for 1 (one) type or more.

(4) Additional punishment for probation and assistance is the same as additional punishment for the crime.

- (5) Additional penalties for members of the Indonesian National Armed Forces who commit criminal acts in the case of connectivity shall be imposed following the provisions of laws and regulations for the Indonesian National Armed Forces.

Article 67 of the Draft Criminal Code Bill: Criminal sanctions of a special nature as referred to in Article 64 letter c are capital punishment which is always threatened with alternatives.

#### Article 70

- (1) Of the Draft Criminal Code Bill By taking into account the provisions as referred to in Article 52 and Article 54, imprisonment as far as possible shall not be imposed if conditions, as follows, are found:

- a) The defendant is a child
  - b) The defendant is over 75 (seventy) years old
  - c) The defendant has committed a crime for the first time
  - d) The loss and suffering of the victim is not too great
  - e) The defendant has paid compensation to the victim
  - f) The defendant does not realize that the crime committed will cause a large loss
  - g) The crime occurred because of a very strong incitement from another person
  - h) The victim of a crime encourages or moves the occurrence of the crime
  - i) The crime is the result of a situation that cannot be repeated
  - j) The personality and behavior of the defendant ensure that he will not commit another crime
  - k) Imprisonment will cause great suffering to the defendant or his family;
  - l) Coaching outside the correctional institution is expected to be successful for the accused
  - m) The imposition of a lighter sentence will not reduce the seriousness of the crime committed by the defendant
  - n) Crime occurs in the family
  - o) Crime occurs due to negligence.
- (2) The provisions as referred to in paragraph (1) do not apply to criminal acts that are punishable by imprisonment of 5 (five) years or more, criminal acts that are punishable by a special minimum penalty, or certain crimes that are very dangerous or detrimental to the community, or financially or detrimental to the country's economy. Article 71

- (1) If a person commits a crime that is only punishable by imprisonment of less than 5 (five) years, while the judge believes that it is not necessary to impose a prison sentence after considering the purpose of punishment and the sentencing guidelines as referred to in Article 52 and Article 54, that person may be sentenced to fines.

- (2) The fine as referred to in paragraph (1) can only be imposed if:

- a) Without victims;
- b) The victim doesn't mind; or
- c) Not a crime that is repeated.

- (3) The fine that can be imposed based on the provisions as referred to in paragraph (1) is a maximum fine according to category V and a minimum fine according to category III.

- (4) The provisions as referred to in paragraph (2) letter c do not apply to people who have been sentenced to imprisonment for a crime committed before the age of 18 (eighteen) years.

This overcapacity condition will certainly be overcome if all components of law enforcement realize the importance of the objectives and guidelines for sentencing, both regarding the imposition of crimes and actions, therefore the role of judges in deciding a case is very important, both reviewing through investigation and analysis using logical reasoning and legal arguments.

The urgency to examine the essence of legal considerations of court decisions because legal considerations are a very important and decisive part. The many differences in court decisions require a special search and study to know the reasoning and logic as well as legal arguments. Differences in decisions indicate differences in legal considerations, which include

decisions of the court of the first instance, appeal, and cassation. The legal basis, reasoning, and legal argumentation have been contained in legal considerations which include the application of various legal theories, theories of truth, and justice which serve to provide the basis for the decision. Decisions are the result of a process or series of actions and treatment of judges during the trial process where the litigating parties must be treated according to the laws and regulations. Judgment justice is justice demanded by the society based on the rule of law and a pluralistic sense of justice.

Judgment legal considerations are the responsibility of the judge which therefore must be prepared using the law of reasoning and appropriate legal reasoning. According to Djokosoetono, a good judge's decision must meet two requirements, namely theoretical and practical needs (Gandasubrata, 1994). Theoretical needs look at the content and considerations. The decision can be justified in terms of legal science or must be *juridisch en filosofisch verantwoord*. Practical needs with decisions are expected to resolve existing legal disputes and can be accepted by related parties and the community because legal decisions are felt to be fair, correct, and based on law or sociologically acceptable. Court decisions contain the following principal matters: based on applicable laws and regulations, both formal and material law, contain moral values, provide a sense of justice, and can be implemented or executed for legal certainty. Court decisions are the crown of judges and the essence of their crown lies in their legal considerations. As the core of the crown, legal decisions by themselves must be made and compiled using the law of reasoning and correct legal reasoning.

Reasoning in this case is defined as

- a. A thought process concluding the form of knowledge
- b. A process of finding truth in which each type of reasoning has its criteria of truth.

(Jujun S Suriasumantri, 2000) Characteristics of reasoning: first, there is a mindset that can be broadly called logic. Second, there is the analytical nature of the thought process (Jujun S Suriasumantri, 2000). Legal reasoning is one of the main elements that must be understood in legal research (Ibrahim, 2006). Legal reasoning studies scientific accountability in terms of legal knowledge of the judicial decision-making process which includes arguments and logical reasons as reasons for justification of decisions made (Ibrahim, 2006). In a proper legal decision, legal logic is needed that controls the process of justification in every legal decision. Scientific activities included in legal reasoning include legal logic, legal argumentation, and legal discourse. (Ibrahim, 2006) Court decisions can be included in legal decisions. Therefore, the application of legal reasoning in legal considerations of decisions is imperative. Legal reasoning can lead us to understand decisions and the mindset used by judges.

## CONCLUSION

The sense of pluralist justice that is meant is justice based on the rule of law that applies in each environment. Every society has different laws or customary laws. Fair treatment according to one society does not guarantee that the treatment is also fair to other community. This difference in the rule of law results in the emergence of a different sense of justice towards the community. In adjudicating and deciding cases, a judge must therefore also pay attention to positive law and living law, as well as laws whose truth is believed by the public.

In adjudicating a case, a judge remains bound by the laws and regulations, both formal and material. During the process of examining cases, judges must treat the parties well and uphold human dignity and religious values and pay close attention to the prevailing order in society. The judge's decision must be enforceable or executed for the sake of legal certainty. If all the criteria have been met.

Problems related to crime and sentencing are things that need careful consideration when a legal decision is handed down by the court so that justice and legal certainty can be obtained for people seeking justice. Therefore, it is very urgent to enact the guidelines and objectives of

punishment in the Draft Criminal Code, considering that the existence of legal provisions regarding the guidelines and objectives of sentencing will undoubtedly bring the inmates closer to justice and legal certainty. That way, legal certainty can truly become the foundation of hope for all parties involved in it and become one of the alternative solutions in reducing overcapacity in Correctional Institutions.

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