

OPTIMALIZATION OF THE APPLICATION OF ACT NUMBER 22 OF 2022 CONCERNING COMPANIES IN OVERCOMING PROBLEMS OF MANAGEMENT OF CORPORATE INSTITUTIONS (LAPAS) IN INDONESIA

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Abstract

The purpose of correctional system is to improve the quality of personality and independence of inmates so that they are aware of their mistakes, improve themselves, and not repeat criminal acts, so that they can be accepted again by the community, can live normally as good citizens, obey the law, be responsible, and can play an active role in development. However, this correctional goal cannot be realized properly and optimally if the problems that exist in prisons are still not resolved properly. The type of research used in this paper is a type of empirical normative research. Collecting data using literature study methods and also interviews through the Forum Group Discussion (FGD), with the type of approach to legal systematics and Non-Judicial Case Study as well as data analysis in the form of qualitative research. Based on the research that the author did, can conclude that problems related to overcapacity, prison facilities and infrastructure, and human resources (prison officers) can be overcome by the establishment of Law Number 22 of 2022, but problems related to *halinar* cannot yet be resolved by Law No. 22 of 2022. The form of optimization strategy that can be done to overcome problems in prisons is to optimize the coaching activities provided to inmates, where prisoners become more active, not just as observers, apply restorative justice in prisons and one example is by providing a special room for mothers and children, as well as forming the National Correctional Agency (BAPASNAS).

1. INTRODUCTION

The rule of law is a state that stands above the law which guarantees justice for its citizens,¹ and Indonesia is a country based on law (*rechtsstaat*), not based on mere power (*machtsstaat*). This statement is expressly stated in the General Elucidation of the 1945 Constitution. This shows that Indonesia is a state of law and as a state of law, Indonesia accepts law as an ideology to create order, security, justice and welfare for its citizens. The consequence of all this is that the law binds every action taken by Indonesian citizens.²

¹ Muntoha, *Negara Hukum Indonesia Pasca Perubahan UUD 1945* (Yogyakarta: Kaukaba Dipantara, 2013), 1.

² Ibrahim Nainggolan, "Lembaga Pemasarakatan dalam Menjalankan Rehabilitasi Terhadap Narapidana Narkotika," *Jurnal Edu Tech* 5, no. 2 (September 2019): 136, <https://jurnal.umsu.ac.id/index.php/edutech/article/view/3388>.

The author would also like to add that it is the duty of the state to provide punishment for lawbreakers as appropriate, from arresting, prosecuting, to putting lawbreakers into prison cells, or as we know as Penitentiary, which the author will hereinafter refer to as prisons. However, lawbreakers are also Indonesian citizens who have the same rights as other people and have the right to get justice as they should.

Based on Article 1 point 18 of Law Number 22 of 2022 concerning Corrections, as a substitute for the old Correctional Law, namely Law Number 12 of 1995 concerning Corrections, which will be briefly referred to as the Correctional Law, it is stated that prisons are institutions or a place that carries out the function of coaching prisoners. Before it was known as a correctional institution (*lapas*), the term used was prison.³ In ancient times before the colonial period the prison system was known in the archipelago. However, the Imprisonment System that is applied is different from the colonial era and today, because of the ruling factor that has certain policies related to the Prison System.

The form of prison in the pre-colonial era was only a detention house in Batavia and was intended for prostitutes, unemployed or homeless women who liked to drink intoxicating drinks. They were put in the detention house and then given jobs and religious education. The famous prison houses at that time were Spinhuis and Rasphuis.⁴ The originator of the penitentiary concept was the Minister of Justice Sahardjo in 1962. The term correctional was first conveyed by the late Mr. Sahardjo, S.H. on July 5, 1963 in a speech conferring the title of Doctor Honoris Causa by the University of Indonesia.⁵ Then, the emergence of the term "correctional" itself officially replaced the term "prison" since April 27, 1964, through a written message from the President of the Republic of Indonesia given at the Service Conference of prison officials in Lembang (Bandung).⁶

Furthermore, one of the goals of correctional system in prisons is to improve the quality of personality and independence of inmates so that they are aware of their mistakes, improve themselves, and do not repeat criminal acts, so that they can be accepted again by the community, can live normally as good citizens, obey the law, be responsible, and can play an active role in development, as stated in Article 2 letter (b) of the Correctional Law.

By looking at the problems that exist in prisons today, the goals and ideal forms that you want to create in the community are inversely proportional to the conditions that occur on the ground. The author can conclude that the purpose of correctional which is primarily aimed at the inmates, will not be able to be carried out optimally if there is still an overcapacity prison condition with inadequate facilities and infrastructure, an insufficient budget, and an unbalanced number of prison officers with prisoners and prison officers who are ineffective and not fully committed in carrying out their duties. With this unresolved prison problem, there will be lots of possibilities that will happen, for example where with the lack of maximum coaching activities provided to the inmates, the inmates will not realize their mistakes, the inmates will become recidivist, and not become a prisoner, a better person after being released from prison so that crime cases in Indonesia are increasing and the public will also become distrustful of the government.

³ Wahyu Saefudin, *Psikologi Pemasyarakatan* (Jakarta: Kencana, 2020), 70.

⁴ Muchamad Sulton, Ibnu Sodiq, and Andy Suryadi, "Perkembangan Lembaga Pemasyarakatan Pulau Nusakambangan Kabupaten Cilacap," *Journal of Indonesian History* 7, no.1 (2018): 46, <https://journal.unnes.ac.id/sju/index.php/jih/article/view/25373>.

⁵ Yustinus Sanda, Silpanus Dalmasius, and Wilfridus Samdirgawijaya, *Spiritual Direction for Catholic Prisoners, (Studi Kasus Tentang Warga Binaan Katolik Pada Lapas Narkotika Samarinda)* (Samarinda: Yayasan Mitra Kasih, 2020), 2.

⁶ Andri Rinanda Ilham, "Sejarah dan Perkembangan Konsep Kepenjaraan Menjadi Pemasyarakatan," *Jurnal Kajian, Penelitian, dan Pengembangan Pendidikan Sejarah* 5, no. 1 (June 2020): 2, <https://doi.org/10.31764/historis.vXiY.1924>.

Based on the background that the author has mentioned above, the author decided to form a formulation of the problem of this research, namely as follows: 1) How is the strategy in optimizing the management arrangement of Correctional Institutions (*Lapas*) according to Law No. 22 of 2022 concerning Corrections; 2) How is the strategy in overcoming the problems of Correctional Institutions (*Lapas*) in Indonesia.

2. METHOD

The type of research that the author uses in this research is a type of empirical normative research. The author uses a non-judicial case study research type, where the author uses a legal study approach that is without conflict so that there is no interference with the court. The type of data that the author uses is Secondary Data which is strengthened by Primary Data. Data collection techniques/methods that the author uses are data collection techniques in the form of library research and also through interviews (interviews). The author uses a sampling technique in the form of group interviews or better known as the Forum Group Discussion. The type of research approach that the author uses is an approach to legal systematics and an approach to legal cases and the author uses the nature of data analysis in the form of qualitative research.

3. RESULTS AND DISCUSSION

3.1 Strategies in Optimizing the Management of Correctional Institutions (*Lapas*) According to Law Number 22 of 2022 concerning Corrections

The change in the rules for the management of Correctional Institutions (*Lapas*) from Law Number 12 of 1995 concerning Corrections to Law Number 22 of 2022 concerning Corrections, according to the author, is one strategy in optimizing prison management. This is because, the author argues that if Law Number 12 of 1995 is still enforced today, then the Law is not in accordance with the conditions of our current prisons, where the problems that exist in prisons are very complex. With this change, by looking at the understanding of optimization theory, the author concludes that in essence, optimization is an effort and effort made to an existing thing to achieve an expected result effectively and efficiently. With this understanding, the author concludes that the efforts to make changes to the old Penal Law into the new Penal Law can greatly help to reduce overcapacity and other problems in prisons, in which case, prisons that are initially considered as a place for garbage disposal, it no longer exists and this also has an impact on the community's stigma towards prisons, where prisons are believed to be a place of guidance for perpetrators of criminal acts and coaching activities for prisoners can also run optimally and optimally.

Firstly, the author will briefly discuss the meaning of the coaching, coaching has the meaning of treating someone with the status of an inmate to be built in order to rise to become a good person.⁷ So, in essence, Correctional Institutions desire to educate, foster, and guide prisoners, namely to improve the mindset and behavior, as well as the mentality of every prisoner who is serving a sentence.⁸

The process of fostering prisoners with the correctional system contains the following objectives: 1. So that correctional students/prisoners do not violate the law anymore; 2.

⁷ Kasmanto Rinaldi, *Pembinaan dan Pengawasan dalam Lembaga Pemasyarakatan* (Batam: Yayasan Cendikia Mulia Mandiri, 2021), 28.

⁸ *Ibid.*

Make correctional students/prisoners as active and productive participants in development; 3. Help correctional students and prisoners happy world hereafter.⁹

Not only that, the optimization strategy that can be carried out on prison management arrangements is one of the optimization of the coaching activities provided to prisoners. As stated by Mrs. Kristina in the Forum Group Discussion (FGD) held in Semarang that:

We have coaching, namely personality and independence development. Such personalities are religious, intellectual intelligence, sports, arts, fostering national and state awareness. We also regularly worship both Christians, Muslims, and Hindus and we also have a small monastery. To pursue the package, we collaborate with SKP, libraries, sports, arts and national and state awareness, and every August 17, we hold a flag ceremony. Self-reliance development at our place, there are 15 self-reliance working groups and of the current 294 people who do not work in our workshop, only 50 people are those who have not been assessed. So, before we take them to the workshop, we assess and work with prisons.

Then, those who are at high risk are also unable to work in the workshop. We have many workshops, namely batik, gardening, catering, barista, and sewing. So, because of the batik canting process, hand-drawn batik is difficult and takes a long time, so it's not only painted or dyed, it takes almost 3 months to make, and it only produces 1 product. Sales of this product are done online. We also made a cafe, where there are baristas, as many as 15 children. In a pandemic situation like this, we can't have kiosks in front and inside, so friends can order online. Yesterday, October 7th, we had an innovation, so we have a Prasmart, namely Pramesti Market, where at this Prasmart, everyone can shop for all of our workshop products. So, later it can be accessed through the website, and there our works are sold. For example, ordering coffee, you can go through Gojek. In addition, we also have the SIJULI innovation, namely the Online Visiting System, so outsiders, namely families, can register for video calls during this pandemic. So, we provide video call facility by accessing our website. Then, this is a tracking system for the shipment of goods, so from the front we receive it, then enter the X-Ray, then it reaches the person concerned, the activities can be seen on the cellphone. Visitors also get a receipt and can see where the shipment has arrived.¹⁰

Mrs. Kristina's statement is an optimization strategy in prison management settings. In other words, these coaching activities can be a provision for inmates to be able to continue their lives after leaving prison. It can also reduce the presence of recidivists. In addition, the authors also argue that prison human resources (HR), namely prison officers, can provide new innovations related to prison management and supervise inmates to carry out all the activities given actively. Furthermore, the optimization strategy related to cases of violence perpetrated by prison officers against prisoners, the authors argue that in the process of selecting prison officers, an assessment must be carried out as well as possible. Prison officers in charge of supervising the activities of personality development and independence carried out by prisoners must have a high sense of responsibility and have received proper training. The author has this opinion because Mr. Muhammad Ali Syeh

⁹ Sri Wulandari, "Fungsi Sistem Pemasyarakatan dalam Merehabilitasi dan Mereintegrasi Sosial Warga Binaan Pemasyarakatan," *Jurnal Ilmiah Serat Acitya* 4, no. 2 (2015): 92, <http://jurnal.untagsmg.ac.id/index.php/sa/article/view/155>.

¹⁰ Hasil penelitian pada saat pengambilan data primer melalui *Forum Group Discussion* (FGD) yang berjudul "Pembaharuan Terhadap Kebijakan Pengelolaan Lembaga Pemasyarakatan di Indonesia", disampaikan oleh Ibu Kristina H, A.Md., S.Sos., M.H. sebagai Kalapas Wanita Semarang.

Banna, in his presentation during the Forum Group Discussion (FGD) in Padang, said that basically, many prison officers are now disrespectful, in the sense that they have no respect for seniors in the field. Over them, and many are chosen without being given any briefing and training first.

In addition, it is necessary to optimize socialization to the community related to the conditions and activities carried out by inmates while in prison. This is because, according to the author, if the public's stigma towards prisons and ex-convicts is still bad, then all the optimization strategies mentioned above are useless. Inmates or ex-convicts who will later be provided with coaching and independence activities from prisons, they still cannot develop if the community does not want to accept their existence. Therefore, the author can conclude that the role of the community is also quite important in order to prevent ex-convicts from becoming recidivist.

B.2 Strategies in overcoming the problems of Correctional Institutions (*Lapas*) in Indonesia

Problems with overcapacity, human resources (prison officers), prison budgets, facilities and infrastructure, and information (mobile phones, extortion, and drugs). Here the author will discuss related to this problem in more detail. First, related to the problem of prison overcapacity. With the changes to the Correctional Law as it is today, it has become one of the strategies in overcoming the problem of prison overcapacity, but back to what the implementation practice is like, whether it has been optimal or not and whether it has been efficient or not. Seeing the overcapacity condition of the prison, the coaching activities, both in terms of personality and independence given to prisoners, will not run optimally. With this overcapacity, it can violate the rights of prisoners, which are stated in Article 9 letter (c) of the Correctional Law which states that "Prisoners have the right to education, teaching, and recreational activities as well as opportunities to develop their potential". With overcapacity, prisoners cannot get education, teaching, and opportunities to develop their potential to the fullest. The fulfillment of the rights of prisoners above is also the full responsibility of the government. The government's responsibility arises as a result of the authority possessed by the government. In carrying out its authority over the rights and obligations that must be carried out by the government according to the applicable provisions.¹¹

Second, related to human resources or often known as prison officers. Seeing the gap in the number of prison officers and prison residents, it can cause prison management to be not optimal. Supervision of all activities that carried out by inmates is not optimal because the number of prison officers is not proportional to the number of prison residents. In addition, considering that most prison inmates are dominated by narcotics, prison officers who do not have a firm personality and are responsible for their work will be easily provoked by the inmates. Likewise, with the acts of violence committed by prison officers against inmates.

The treatment of acts of violence does not provide a deterrent effect to prisoners, but violates the rights of prisoners and does not humanize them. This violates Article 9 letter (i) of the Correctional Law, namely receiving humane treatment and being protected from acts of torture, exploitation, omission, violence, and all actions that are physically and mentally harmful. For this reason, efforts to overcome these obstacles are by increasing human

¹¹ Citra Anggraeni Puspitasari, "Tanggung Jawab Pemerintah dalam Pelanggaran Hak Narapidana dan Tahanan pada Lembaga Pemasyarakatan/Rumah Tahanan Negara," *Jurnal Panorama Hukum* 3, no. 1 (June 2018): 40, <https://doi.org/10.21067/jph.v3i1.2342>.

resources for officials or employees as well as KALAPAS, DIRJENPAS (Directorate General of Corrections) must optimize the training of employees/officers and officials within the ministry of law and human rights so that the apparatus or prisoner development is optimally in accordance with their professionalism with the rules that apply in the ranks of the Directorate General of Corrections and can improve facilities and infrastructure in fostering prisoners so that they are right on target.¹²

Third, related to the prison budget. The author's opinion that in fact, no matter how much the budget is set for prison management, it will never be enough if the problem of overcapacity in prisons is not resolved. Likewise, the complexity of the procedure for submitting a budget for prison management has also become an obstacle in the management of prisons. This budget is also related to all activities that will be carried out in the prison, especially if there are new innovations that the prison wants to do in order to provide opportunities for prisoners to develop themselves to be hampered, due to the non-existent budget.

Fourth, related to facilities and infrastructure. There are still many prison buildings that live in other buildings or even prisons that are flooded due to inadequate facilities and infrastructure. This is contrary to Article 83 of the Correctional Law, which explains that the facilities and infrastructure of the correctional institution are meant to at least include one of the buildings. Furthermore, the author alludes to coaching activities that require facilities and infrastructure from prisons, these coaching activities will also be hampered.

Fifth, related to the *halinar* (handphone, *pungli* and *narkoba*) problem which has also not been resolved. There is a statement in the news that "The reason is, there is a prisoner named Patra Eka alias Etus who allegedly uploaded a photo of himself on the Instagram story feature through his personal account, @patraeka.1. He allegedly uploaded a photo of himself inside the Tangerang Class 1 Prison 38 weeks ago". Based on this news, the Head of Tangerang Prison I, Viktor Teguh stated "Although it is classified as a violation of regulations, the circulation of cellphones in prisons is not a problem as long as it is not known. If the circulation of the cellphone is a disciplinary violation, as long as it is not known, there is no problem. If it is found, it must be examined and a disciplinary process must be carried out."¹³ Seeing this statement, published in the news that can be accessed by many people, it is possible that the family, during their visit, still tried to smuggle cellphones into the prison.

Likewise related to extortion. Extortion as a form of extortion crime is a social phenomenon that is eternal so that it always colors the side of social life. Therefore, any form and effort is impossible because the crime was born due to multi-complex problems, especially human problems in fulfilling the needs of perfect life and the interests of each different individual.¹⁴ Illegal levies (extortion) are one of the facts that hinder public trust in law enforcement, in this case the government.¹⁵

¹² Wilsa, *Lembaga Pemasyarakatan, Sejarah, dan Perkembangannya (Suatu Pendekatan Terhadap Pembinaan Anak di Lembaga Pemasyarakatan di Indonesia dan Instrumen Internasional)* (Yogyakarta: Deepublish, 2020), 67.

¹³ Muhammad Naufal and Nursita Sari, "Napi Diduga Pakai Ponsel di Dalam Sel, Kalapas Tangerang: Sepanjang Tak Diketahui, Tak Masalah," *Kompas.com*, September 9, 2021, <https://megapolitan.kompas.com/read/2021/09/09/19465461/napi-diduga-pakai-ponsel-di-dalam-sel-kalapas-tangerang-sepanjang-tak>.

¹⁴ Laurensius Arliman S, "Penanganan Perkara Tindak Pidana Pungutan Liar oleh Penyidik Direktorat Kriminal Khusus," *Kanun Jurnal Ilmu Hukum* 22, no. 1 (April 2020): 52, <https://doi.org/10.24815/kanun.v22i1.13564>.

¹⁵ Wahyu Ramadhani, "Penegakan Hukum dalam Menanggulangi Pungutan Liar Terhadap Pelayanan Publik," *Jurnal Hukum Samudra Keadilan* 12, no. 2 (July-December 2017): 266, <https://ejournalunsam.id/index.php/jhsk/article/view/139>.

An example of a case of illegal levies (extortion) is extortion that occurred in Parepare, Makassar, the brief chronology is "Head of the Regional Office of the Ministry of Law and Human Rights (*Kemenkumham*) Sules Liberti Sitinjak imposed disciplinary sanctions on the Head of Class II A Parepare Prisons with the initials Z because it was proven practice illegal levies or extortion in the prison. Previously, there was information circulating that the Head of Class II A Parepare Prison, Z, was suspected of carrying out extortion practices to the families of prisoners and convicts by asking for money of up to Rp40 million so that they could be released immediately.¹⁶ In the absence of awareness and responsibility of prison officers about their duties and obligations as prison officers, which makes them continue to carry out extortion in prisons. The author is of the opinion that with the regulations that are made in such a way as to the implementation of this extortion, if there are no strict and correct sanctions implemented for prison officers who still make mistakes, and without any awareness for prison officials that the action is wrong, then this extortion will continue. Moreover, seeing the condition of the family who want their family members who are prisoners to be quickly out of prison, they must be somewhat interested in taking this opportunity.

Lastly, drugs. The number of drug cases in prisons, prison officers who help with drug trafficking, prison officers who become drug users, and visitors (family or acquaintances) who try to smuggle drugs into prisons. Likewise, from the results of this research, the existence of prison officers who are drug users, and there is still circulation in prisons, this is contrary to Article 4 letter g of the Minister of Law Number 6 of 2013 concerning Orders for Correctional Institutions and State Detention Centers.

The author also believes that the strategy that can be carried out by *Kalapas* related to optimizing the management of this prison is to apply the principle of restorative justice in prisons. Based on the statement submitted by Mrs. Ade, she said that "The services provided at the Yogyakarta women's prison for vulnerable groups, especially pregnant women and infants, include: a place for mothers and children (diaper changing rooms and baby beds), children's play rooms, health checks on child growth and development carried out by the medical team at the polyclinic, escort for mothers who will prepare for their birth in public hospitals, and related to food menus, separate budget for pregnant women and provision of balanced nutrition".¹⁷

The author argues that restorative justice in the form of services provided by women's prisons in Yogyakarta, should also be provided by all women's prisons in Indonesia. In addition, restorative justice that can be given to inmates is to give warnings to inmates if they make mistakes in prison, instead of giving punishments in the form of violence against those who can violate their rights. Furthermore, related to strategies to reduce recidivism, the author argues that the Government can provide guarantees to prisoners that they will be well received in society, after they are released from prison.

The government can also guarantee them to get a decent job when they get out of prison or cooperate with businesses in order to provide job opportunities for ex-convicts, where the inmates after being released from prison, immediately get a decent place to work. They move on with their lives. Because, in prison they already have the skills from the coaching activities they get. One example is the manufacture of hotel slippers by inmates at Padang Prison. Then, related to changes in the Narcotics Law. Once again the author

¹⁶ M Darwin Fatir, "Kepala Lapas Parepare Dicapot Karena Pungli," *Antarababel*, August 18, 2021, <https://babel.antaranews.com/berita/294653/kepala-lapas-parepare-dicapot-karena-pungli>.

¹⁷ Hasil penelitian pada saat pengambilan data primer melalui *Forum Group Discussion* (FGD) yang berjudul "Pembaharuan Terhadap Kebijakan Pengelolaan Lembaga Pemasyarakatan di Indonesia", disampaikan oleh Ibu Ade Agustina, A.Md.IP. S.H., M.H, sebagai Kalapas Perempuan Kelas II B Yogyakarta.

mentions that most of the prisoners in prisons are dominated by narcotics cases, so the Narcotics Law needs to be changed. There needs to be a division or classification related to dealers, and users, so that not all of them have to be punished, so that the problem of overcapacity can be solved properly.

Furthermore, the author argues that it is necessary to establish a National Correctional Agency (BAPANAS), in other words, the author argues that the Penitentiary becomes an independent institution, namely by the establishment of this BAPANAS. With the establishment of BAPANAS, the management of prisons has become more attentive and more focused. Not only that, with a structure under the Coordinating Ministry for Political, Legal and Security Affairs, the National Development Planning Agency can coordinate directly with other law enforcement agencies such as the National Narcotics Agency (BNN), the National Counter Terrorism Agency (BNPT) where the day-to-day work of correctional institutions is indeed come into direct contact with perpetrators of narcotics crimes, terrorists, and other criminals.¹⁸ Although the new Penal Law does not mention and does not accommodate the establishment of BAPANAS, this author's research still refers to the establishment of BAPANAS.

4. CONCLUSION

The establishment of Law Number 22 of 2022 concerning Corrections is a form of effort or strategy that has been carried out as a form of optimization in prison management arrangements. However, whether the results given as a result of these changes will be optimal or not, it returns to the implementation of Law Number 22 of 2022. Seeing the changes in the Correctional Law, the regulation of prison management is more complex than the old Penal Law, all of which have been included in the strategy for optimizing prison management arrangements. Apart from these changes, optimization is also needed in terms of coaching activities for prisoners. Then, the problems of prisons in Indonesia today, both from the problem of overcapacity, prison facilities and infrastructure, cellphones, extortion, drugs, and community resources (prison officers) whose numbers are not balanced with prison residents and the existence of acts of violence committed by prison officers against prisoners, can be overcome if the Government can immediately take a stand in overcoming the problem of overcapacity. This is because prison overcapacity causes other problems in prisons and the community still has a bad stigma towards prisons and ex-prisoners. If this overcapacity problem is not immediately followed up, then other prison problems cannot be resolved. With the existence of Law Number 22 of 2022 concerning Corrections, it has actually able to solve problems that exist in prisons, such as overcapacity, prison facilities and infrastructure, as well as human resources (prison officers). However, related to *halinar*, Law Number 22 of 2022 still cannot be resolved with the existence of Law Number 22 of 2022 concerning Corrections.

¹⁸ Agus Budianto and Afdhal Mahatta, "Pembaharuan Terhadap Kebijakan Pengelolaan Lembaga Pemasyarakatan," *Law Review* 21, no. 3 (March 2022), <http://dx.doi.org/10.19166/lr.v0i3.4773>.

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