

# Prison Overcrowding: Alternative Sentencing in Indonesia's Draft Criminal Code and Its Consequences on Correctional System

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## Abstract

*Imprisonment is often the most preferred choice of punishment in the eyes of law enforcement officers. As a result, prison overcrowding is inevitable and leads to the emergence of various problems in prisons. The discourse of alternative sentencing has recently gained increasing prominence in the Indonesian public with a view to addressing such problems amid the ongoing review of the Draft Criminal Code (Rancangan Kitab Undang-Undang Hukum Pidana/ RKUHP). This article aims to analyze alternative sentencing in the form of community service and probation penalties. It discusses the role and strategic measures taken by the Indonesian correctional system related to the performance of community correctional counselors in order to prepare for the implementation of alternative sentencing in the future. Employing a qualitative method, this study shows that alternative sentencing is principally in line with the concept of social reintegration and the philosophy of the current Indonesian Correctional Institution (Lembaga Pemasyarakatan). The correctional system in the country has also begun to take strategic measures to respond to the future implementation of the alternative sentencing in the RKUHP by means of updating the legal framework and improving infrastructure as well as the quality of human resources in accordance with the framework of community-based corrections.*

**Keywords:** *Alternative Sentencing; Community Correctional Counselor; Correctional System; Prison Overcrowding; Social Reintegration.*

## 1. INTRODUCTION

### 1.1. Backgrounds

The increase in the population of inmates is always much faster than the growth of the occupancy capacity of the prison itself. The construction of new prisons has never been able to accommodate the increasing number of

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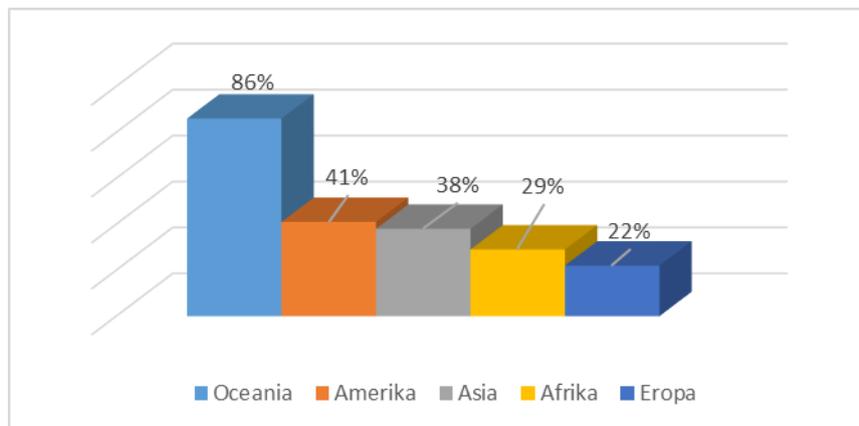
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convicts.<sup>1</sup> Based on data from the World Prison Population List, since 2000, the total population in prisons in the world has increased by 24% or equal to the estimated world population growth in the same period. The largest increase in the population of prison inmates was in Oceania, while in other continents such as Europe, the number of prison inmates has decreased by 22%. In Asia, the prison population showed an increase of 38%, as shown in the following graph.<sup>2</sup>

**Figure 1.**  
*Percentage Increase in Prison Populations in 5 Continents in the Year 2000s*



Source: Walmsley.<sup>3</sup>

The increase in the number of imprisoned criminals is inextricably linked to the tradition of the criminal justice system adopted by law enforcement officers, that is, imposing imprisonment for criminals. Imprisonment is a decision that is often chosen by judges, not only for serious crimes but also for crimes with light penalties.<sup>4</sup> This ultimately contributed greatly to prison overcrowding. This automatically brings a domino effect of other problems. Prison is like a crime school in which novice criminals can learn from their seniors who are more experienced as criminals, and then after being released they will recommit another crime.<sup>5</sup> Prisoners experience deprivation or a decrease in quality of life because prisons find it difficult to meet the living needs of prisoners whose numbers are greater than the budget provided by the state.<sup>6</sup>

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<sup>1</sup> Steven Raphael, "How Do We Reduce Incarceration Rates While Maintaining Public Safety," *Criminology & Pub. Pol'y* 13, (2014): 579.

<sup>2</sup> Roy Walmsley, *World Prison Population List* (Home Office London, 2003), 2.

<sup>3</sup> *Ibid.*

<sup>4</sup> Mike Hough, Jessica Jacobson, and Andrew Millie. *The Decision to Imprison: Sentencing and the Prison Population* (London: South Bank University, 2003), 37.

<sup>5</sup> Clarke R Jones, "Are prisons really schools for terrorism? Challenging the rhetoric on prison radicalization," *Punishment and Society* 16, no. 1 (2014): 74-103.

<sup>6</sup> Morag MacDonald, "Overcrowding and Its Impact on Prison Conditions and Health," *International Journal of Prisoner Health* 14, no. 2 (2018): 65-68.

The problem of an increasing number of the prison population in various worlds mentioned above also occurs in Indonesia. The Indonesian Correctional Institution (Lembaga Pemasyarakatan) has an unequal percentage of the number of occupants and the number of prison occupancy. Within 5 years from 2015 to 2019, there has been a significant increase in the prison population, from 36.19% in 2015 to more than 100% in 2019.

**Table 1.**  
*Increase in the Population of Prisoners in Indonesia (2016-2019)*

No.	Year	Prisoners	Convicts	Total Occupancy (TO)	Occupancy Capacity (OC)	The Difference between TO and OC	Percentage of Excess Occupancy
1.	2015	55,929	118,449	174,378	128,040	46,338	36.19%
2.	2016	66,749	130,907	197,656	128,040	69,616	54.37%
3.	2017	69,643	154,961	224,604	128,040	96,564	75.41%
4.	2018	73,872	176,060	249,932	128,040	121,892	95.19%
5.	2019	66,657	197,590	264,247	128,040	136,207	106.37%

Source: Database System of Directorate of Corrections of Indonesia (available on its website: <http://smslap.ditjenpas.go.id/>)

Therefore, the Indonesian Correctional Institution is often confronted with many problems, ranging from violence between inmates, homosexuality, riots to failure to protect the rights of inmates, all of which leads to ineffective inmates mentoring in prisons so that crimes are consequently often recommitted in society.<sup>7</sup> The current situation of prison overcrowding places Indonesia at a vulnerable stage with an overcrowding percentage of 188%. This in turn creates various problems such as the escape of inmates, riots, narcotics circulation controlled from within prisons, burning of prisons by inmates, illegal fees by prison officers, and other issues. These problems are triggered by some factors such as the errors or mistakes of prison officers in the correct implementation of correctional guidelines, the lack of facilities and infrastructure, and the ineffective implementation of the prison system.<sup>8</sup>

The aforementioned problems have in turn made alternative sentencing increasingly prominent in virtually all legal systems in the world, including Indonesia. Alternative sentencing is considered one of the most effective solutions in overcoming various problems that exist in prisons. Adding prison facilities can hardly solve the problems because

<sup>7</sup> Ismail Rumadan, "Problem Lembaga Pemasyarakatan Di Indonesia Dan Reorientasi Tujuan Pemidanaan," *Jurnal Hukum Dan Peradilan* 2, no. 2 (2013): 263–76.

<sup>8</sup> Leopold Sudaryono. *Drivers of Prison Overcrowding in Indonesia* (New York: Routledge, 2020), 11; Institute for Criminal Justice, "Strategies to Reduce Overcrowding in Indonesia: Causes, Impacts, and Solutions," 2018, 112.

imprisonment is still the most preferred choice of punishment in the eyes of law enforcement officers in Indonesia.<sup>9</sup> The United Nations (UN) Minimum Standards for Non-Custodial Measures, which is also known as the Tokyo Rules, also encourages alternatives to imprisonment as a measure to reduce prison overcrowding and accelerate the need for the social reintegration of inmates. The alternative sentencing in this context is in the form of community service and probation penalties.<sup>10</sup> Alternative sentencing is defined as a form of punishment outside the prison that takes form of a fine or community service from 3 months to one year in community service centers. This program can be in the form of training or placement in certain professional centers. The objective of this alternative sentencing is to overcome the problem of prison overcrowding and other problems that arise from it. This form of criminal punishment is often referred to as a new model in the concept of social control.<sup>11</sup>

In Western countries, studies and implementation of alternative sentencing have been done for quite some time.<sup>12</sup> Alternative sentencing is often found in various other terms such as “alternative to imprisonment”, “non-custodial measures”, and “alternative sanctions”.<sup>13</sup> Seventy percent of criminals in prison only need to be placed in community-based development activity centers. In other words, these are criminals with short-term punishment categories. Placing convicts in prisons will only create various prisons’ problems.<sup>14</sup> This is emphasized by a study conducted by Chaerudin,<sup>15</sup> which argues that imprisonment is considered less effective since convicts do not become better people by serving imprisonment. Similarly, if the prison sentence is imposed on children and adolescents, their chance of recommitting another crime upon the completion of their

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<sup>9</sup> Barda Nawawi Arief Muladi and Barda Nawawi Arief. *Teori-Teori Dan Kebijakan Pidana* (Bandung: Alumni Press, 1998), 47; Iskandar Wibawa, “Pidana Kerja Sosial Dan Restitusi Sebagai Alternatif Pidana Penjara Dalam Pembaharuan Hukum Pidana Indonesia,” *Jurnal Media Hukum* 24, no. 2 (2017): 105–14.

<sup>10</sup> Ann Skelton, “Alternative Sentencing Review,” *CSPRI Research Paper Series*, no. 6 (2004): 17.

<sup>11</sup> Lynn Geurin, Melanie D Otis, and David Royse, “Increasing Alternative Sentencing in the Juvenile Justice System through a Partnership between Public Defenders and Social Workers,” *Journal of Forensic Social Work* 3, no. 3 (2013): 261–77.

<sup>12</sup> Semisch Courtney. *Alternative Sentencing in the Federal Criminal Justice System* (Washington D.C.: Government Printing Office, 2015), 1; James Pitts MA, *et al.*, “Contemporary prison overcrowding: short-term fixes to a perpetual problem,” *Contemporary Justice Review* 17, no. 1 (2017): 124–139.

<sup>13</sup> Novian *et al.*, “Strategies to Reduce Overcrowding in Indonesia: Causes, Impacts, and Solutions”, 168.

<sup>14</sup> Milton Burdman, “Realism in Community-Based Correctional Services,” *The Annals of the American Academy of Political and Social Science* 381, no. 1 (1969): 71–80.

<sup>15</sup> Chaerudin, “Masalah Prisonisasi Dalam Hubungannya Dengan Sistem Pemasarakatan: Studi Pada Lembaga Pemasarakatan Cipinang Jakarta” (Master’s Thesis, Department of Law University of Indonesia, 1995), 85.

prison term will even be greater. This is because prisons are also believed to be facilities that can reproduce crime.<sup>16</sup>

Based on the cost-benefit analysis, imprisonment is also considered to be a financial burden for the state budget. This is because when a person is sentenced to prison, the government is obliged to bear the basic needs of the inmates for 24 hours a day and 365 days a year during the prison term. The state also covers the cost of health care and treatment when the inmates are sick. This factor makes the correctional budget expensive. Basically, prisons are not designed with adequate physical and mental health care mechanisms.<sup>17</sup> In Indonesia, limitations in meeting basic needs often prompt the desire of certain inmates to solicit luxurious facilities in prisons. The financial advantages possessed by these inmates facilitate the flourishing of fraudulent actions aimed to solicit such facilities, which should never be available in correctional institutions.<sup>18</sup>

In some countries, alternative sentencing has been implemented as part of community-based corrections (CBC). Through the lens of a labelling theory, the concept of CBC is a form of coaching program for prisoners or law violators that are aimed at avoiding them from being ostracized by the community they belong to.<sup>19</sup> Snarr and Wolford argue that in the United States of America, the concept of CBC has been highly adopted and is in line with the concept of social reintegration. Therefore, all activities involving the community that is carried out to reunite or reintegrate prisoners with the community can be interpreted as CBC.<sup>20</sup>

The concept of CBC has started since 1950s with a view to supporting the development of a new concept of punishment. Based on the report of the United Nations on Drugs and Crime (UNODC) published in 2007, several countries have succeeded in implementing CBC. Several factors must be heeded by institutions that implement this form of punishment, such as (1) basic knowledge of alternative sentencing, (2) political initiatives, (3) the improvement of laws and regulations, (4) infrastructure and resources, (5) supervision, and (6) public outreach.

In the current Draft Criminal Code (Rancangan Kitab Undang-Undang Hukum Pidana, abbreviated as RKUHP), there are two new alternative forms of punishment other than imprisonment, which are community service and

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<sup>16</sup> Joanna Shepherd, "The Imprisonment Puzzle: Understanding How Prison Growth Affects Crime," *Criminology & Public Policy* 5, no. 2 (2006): 285-98.

<sup>17</sup> Jude Uchenna Okoye, "Imprisonment in Nigeria: A Comparative Study," *Unizik Law Journal* 15, (2020): 13.

<sup>18</sup> Y A Ohoiwutun and Samsudi Samsudi, "Menalar Sel Mewah Di Lembaga Pemasyarakatan," *Masalah-masalah Hukum* 24, no. 1 (2017): 48-54.

<sup>19</sup> Aditya Nugraha, "Konsep Community Based Corrections Pada Sistem Pemasyarakatan Dalam Menghadapi Dampak Pemenjaraan," *Jurnal Sains Sosio Humaniora* 4, no. 1 (2020): 141-51.

<sup>20</sup> Richard W Snarr and Bruce I Wolford. *Introduction to Corrections* (Wm. C. Brown, 1985), 103.

probation penalties.<sup>21</sup> These two alternatives are not found in the colonial legacy of the existing Criminal Code (KUHP).<sup>22</sup> Community service penalty in this context should not contain any commercial aspects. Therefore, its implementation is purely aimed at realizing the theory of restorative justice.<sup>23</sup> The Criminal Code bill is currently under discussion in the House of Representatives of the Republic of Indonesia and is expected to be passed soon to replace the colonial legacy of the Criminal Code. Against this background, the Correctional Institution as the administrator of the punishment needs to be prepared for the consequences of this alternative sentencing. This will have an impact on changes and additions to the functions of the Correctional Institution. Based on the experience of several countries that have implemented this alternative sentencing, the costs incurred by the state will be less compared to imprisonment, and it also provides inmates with more humane treatment. However, there is still a possibility that inmates who receive this alternative sentencing cannot be accepted by the community, particularly if the implementation of the alternative sentencing is not carried out transparently and fairly based on the perspective of victims.<sup>24</sup>

Against the background of issues revolving around the implementation of alternative sentencing discussed above, this study aims to analyze alternative sentencing in the form of community service and probation penalties according to the current Indonesia's RKUHP. The level of analysis in this study is focused on several factors that should be heeded and implemented by the Indonesian correctional system, which are the reform of laws and regulations as well as the readiness of infrastructure and resources.

## 1.2. Method

This study employed a qualitative method. This method is chosen because it can draw a better understanding of the reality in the field than the quantitative method. Furthermore, a qualitative approach is believed to be able to reveal a variety of social aspects that are difficult to capture through statistical figures.<sup>25</sup> This study was conducted through several stages as follows: a literature review and initial observation, preparation of

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<sup>21</sup> Draft Criminal Code of 2019, Art. 65.

<sup>22</sup> Law No. 1 of 1946 concerning Criminal Code, Art. 10.

<sup>23</sup> Iqrak Sulhin, "Correctional Governance: An Indonesian Experience," 2010; Jamin Ginting, "Sanksi Kerja Sosial sebagai Alternatif Bentuk Pemidanaan Dalam Sistem Hukum Di Indonesia," *Law Review* 19, no. 3 (2020): 246–67.

<sup>24</sup> United Nations Office on Drugs and Criminal, "Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment," 2017, 24.

<sup>25</sup> William Lawrence Neuman. *Workbook for Neumann Social Research Methods: Qualitative and Quantitative Approaches* (Allyn & Bacon, 2006), 113.

data collection instruments, data and information collection, and data processing as well as analysis. Data collection was carried out through a literature study by reading the latest RKUHP and having discussions with practitioners regarding the dynamics of the development of the RKUHP. Journal articles, books, legal documents, and other legislation were included as reference sources, particularly regarding the implementation of alternative sentencing applied in other countries.

The field data of this study were also obtained through interviews with officials at the Directorate General of Corrections. In this study, the interviews conducted were unstructured, because even though the researchers had an interview guide, the interview process in the field did not depend solely on this guideline. The interview revolved around the extent to which the Indonesian Correctional System has prepared legislation, infrastructure, and resources in anticipation of the implementation of the RKUHP in the future. In interviews, researchers continue to develop the “logic in practice” technique, which is the development of research questions based on the results of field data found to anticipate developing facts or questions that might not have been stated in the list of questions. Data analysis was carried out by verbatim analysis in which the data were analyzed based on the results of interviews. These data were then categorized according to the perspective of CBC as the theoretical perspective employed in this study.

## **2. RESULT AND ANALYSIS**

### **2.1. Alternative Sentencing and Community-Based Corrections**

The implementation of alternative sentencing has received considerable attention at the international level. This is evidenced by the recommendation of the 6<sup>th</sup> United Nations Congress in 1980 held in Caracas that specifically discussed the topic of deinstitutionalization of punishment.<sup>26</sup> The main purpose of alternative sentencing is to overcome the problem of prison overcrowding. Sudirman argues that efforts to deal with the prison overcrowding do not have to be addressed by burdening the state budget, such as building new prison facilities or detention centers.<sup>27</sup> Several solutions can be categorized as low-cost programs, for example, the “front end” policy or prison avoidance programming and the “back end” alternative policy. The “front end” or prison avoidance programming can be done through several ways, such as providing alternative punishment (restitution), conditional punishment, intensifying forms of house arrest or

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<sup>26</sup> Muladi and Arief, *op.cit*, 97.

<sup>27</sup> Didin Sudirman. *Reposisi Dan Revitalisasi Pemasyarakatan Dalam Sistem Peradilan Pidana Di Indonesia* (Jakarta: Pusat Pengkajian Dan Pengembangan Kebijakan Departemen Hukum Dan Hak Asasi Manusia RI, 2007), 77.

city detention, and providing alternative sentencing. Meanwhile, the “back end” alternatives can be carried out through parole and granting remissions.

Correctional system is a criminal policy that is part of social management. Social management carried out through this correctional system can be divided into imprisonment policies and non-imprisonment policies. This non-imprisonment policy is called deinstitutionalization. Deinstitutionalization of punishment by the sub-systems of the criminal justice system outside the correctional system can be implemented through the forms of discretion, diversion, restorative justice, and decisions on probation or community service by the court. Meanwhile, deinstitutionalization of punishment by the correctional system takes the forms of parole and community-based forms of punishment such as CBC.<sup>28</sup>

CBC can be defined as a non-institutional punishment programs for criminals. The following are some fundamental aspects of CBC:

1. Efforts that are made to divert perpetrators of violations from criminal justice system or prosecution in prisons;
2. Programs that set limits for criminals while in the community;
3. Efforts that are made to expedite the process of transitioning ex-convicts from prisons to their freedom.<sup>29</sup>

All programs of CBC aim to protect communities and rehabilitate convicts and reintegrate them into society. These objectives can be achieved at a fraction of the cost of imprisonment. Furthermore, CBC also holds that punishment should be proportional, *i.e.*, not too heavy but not too light. The CBC also allows a set of sanctions and programs that equal the punishment and the crime committed by convicts.<sup>30</sup>

## **2.2. Alternative Sentencing in the Draft Criminal Code**

Alternative sentencing has been existing in several laws and regulations in Indonesia, such as the Criminal Code, the Juvenile Criminal Justice System Act, and the Narcotics Law, as presented in the following table:

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<sup>28</sup> Minister of Law and Human Rights Regulation No. 40 of 2018 concerning The Blueprint for The Revitalization of The Implementation of Indonesian Correctional Institution (2019-2023), 8.

<sup>29</sup> Belinda Rodgers McCarthy, Bernard J McCarthy, and Matthew C Leone. *Community-Based Corrections* (Wadsworth Publishing Company, 1997), 33.

<sup>30</sup> *Ibid.*

**Table 2.**  
*Alternative Sentencing in Indonesian Legislation*

<b>Alternative sentences</b>	<b>Mentioned in</b>
Criminal fines	Criminal Code
Conditional sentences (house arrest)	
Rehabilitation	Law No. 35 of 2009 concerning Narcotics <sup>31</sup>
Crime Warning	Law No. 11 of 2012 concerning the Juvenile Criminal Justice System <sup>32</sup>
Job Training	
Conditional sentences (house arrest)	

*Source:* Gathered from various laws and regulations

However, in practice, the implementation of these alternative forms are not effective. For example, regarding fines, the Criminal Code does not stipulate a time limit for paying fines, and if a defendant declares that he or she is unable to pay the fine, the fine can be replaced with maximum imprisonment of eight months. Furthermore, fines cannot be effectively imposed because the value of the fines stipulated in the Criminal Code is significantly under-valued based on the current value of the Indonesian Rupiah.<sup>33</sup> Similarly, regarding a conditional sentence, although there are provisions in the Criminal Code, it is rarely practiced by law enforcement officers. This is due to the implementation of regulations in Indonesia that tend to impose imprisonment rather than the conditional sentence. Furthermore, there is a widely held assumption in Indonesian society that a conditional sentence is not considered a form of punishment because it does not have a deterrent effect for the perpetrators of crime.<sup>34</sup>

It is against the aforementioned background that the current RKUHP contains important changes, particularly those related to the purpose of sentencing and principal criminal sanction. In the existing Draft, there is a strong commitment to reduce dependence on imprisonment. There are at least 15 clauses in the Draft that stipulate that imprisonment should be imposed under certain conditions, such as in the case where the defendant is a child; the defendant is over 75 years old; the defendant commits a crime for the first time, and several other requirements.<sup>35</sup>

<sup>31</sup> Law No. 35 of 2009 concerning Narcotics, Art. 127.

<sup>32</sup> Law No. 11 of 2012 concerning Juvenile Criminal Justice System, Art. 71.

<sup>33</sup> Novian, *et al.*, *op.cit.*, 77; Supreme Court Regulation No. 2 of 2012 concerning Settlement of Minor Crime Limits and Amount of Fines in the Criminal Code.

<sup>34</sup> Surastini Fitriasih, "Pidana Pengawasan Dalam Konsep Rancangan KUHP: Suatu Analisis Mengenai Penyempurnaan Pidana Bersyarat" (Master's Thesis, Department of Law University of Indonesia University of Indonesia, 1997), 68.

<sup>35</sup> Draft Criminal Code of 2019, Art. 70.

Regarding principal criminal sanction, in the latest draft of the RKUHP, 3 types of non-imprisonment are regulated, namely fines, community service, and probation. Of these three alternative forms of criminal sentences, community service and probation are the new forms of sentences and therefore serve as the focus of discussion in this study. The probation penalty as stipulated in Article 76 of the RKUHP is imposed for a maximum period equal to imprisonment penalty of not more than 3 years with general conditions, such as the convict will not commit the crime again. In addition to these general requirements, there are also special requirements that must be met as follows:

- a. The convict within a certain period that is shorter than the probation penalty period must compensate all or part of the losses incurred as a result of the crime; and/or
- b. The convict must do or not do something without sacrificing religious and political freedom.

When the convict violates the general conditions mentioned above, the convict is obliged to serve a prison term of no more than the imprisonment penalty for the crime committed. Likewise, when the convict violates the special conditions, the convict can be proposed to serve imprisonment or have his probation period extended.

Community service penalty, as explained in Article 85 of the RKUHP, is imposed on defendants who commit crimes punishable by imprisonment of fewer than 5 years, and the judge imposes maximum imprisonment of 6 months or a maximum fine of the second category. Fines in the second category, as regulated in Article 79 of the RKUHP, are fines with a maximum nominal value of IDR 10 million. Furthermore, the community service penalty cannot be commercialized and is imposed for a minimum of 8 hours and a maximum of 240 hours. In imposing a community service penalty on a defendant, the judge is obliged to consider matters such as the defendant's confession regarding the committed criminal act; the ability of the defendant to work; the defendant's approval regarding the objectives, and all matters relating to community service penalty; social history of the defendant; work safety protection; religious and political beliefs; as well as the ability of the defendant to pay criminal fines.

**Table 3.**  
*Provisions on Community Service and Probation Penalties in the Draft Criminal Code*

<b>Types of Sentences</b>	<b>Articles in the RKUHP</b>	<b>Sentencing Criteria</b>	<b>In Case of Violation</b>
Probation	Article 76	The maximum is equivalent to a prison sentence of not more than 3 years.	The convict is obliged to: <ul style="list-style-type: none"> <li>• serve a prison sentence that is not longer than the imprisonment penalty for the crime;</li> <li>• extend the probation period.</li> </ul>
Community Service	Article 85	Criminal offenses are punishable by imprisonment of fewer than 5 years and the judge imposes maximum imprisonment of 6 months or a maximum fine of the second category.	The convict must: <ul style="list-style-type: none"> <li>• re-do all or portion of the community service penalty;</li> <li>• serve all or part of the jail sentence that is being substituted by community service penalty;</li> <li>• pay all or part of the criminal fine.</li> </ul>

Source: Draft Criminal Code of 2019<sup>36</sup>

### **2.3. The Strategic Role of the Indonesian Correctional System in Response to Alternative Sentencing in the Draft Criminal Code**

The existence of community service and probation in the RKUHP as an alternative form of imprisonment is a welcome initiative in the eyes of the Indonesian Correctional System. This policy plan is expected to unravel the complex problems of prisons, one of which is overcrowding. For this purpose, the Indonesian correctional system believes that only people who are considered dangerous by society who should be put in prison. If a policy such as this is implemented, it will certainly help reduce prison overcrowding. The Code of Criminal Procedure (Kitab Undang-Undang Hukum Acara Pidana, abbreviated as KUHAP) regulates this as long as the perpetrator is guaranteed not to run away, not to destroy evidence, and not to commit the act again.<sup>37</sup>

The existence of this alternative sentencing, however, also leaves homework for the correctional system. Alternative forms of non-imprisonment require adequate preparation on the part the Indonesian correctional system so that the alternative sentencing can be implemented

<sup>36</sup> Draft Criminal Code of 2019, Art. 76 and 85.

<sup>37</sup> Dindin Sudirman (Secretary of the Directorate General of Corrections), "Alternative Sentencing in Indonesia," Interview by Nadia Utami Larasati, Jakarta, May 7, 2009; Nadia Utami Larasati, "Efek Prisonisasi dan Urgensi Pemberian Pidana Alternatif bagi First Offender," *Deviance: Jurnal Kriminologi* 2, no. 1 (2018): 51-64.

effectively. In its future implementation, as explained in the RKUHP, community service and probation penalty will greatly depend on the duties and functions of the community correctional counselors. One of the primary roles of the community correctional counselors is to supervise convicts to ensure they do not re-offend or violate the terms of their probation or parole.

In the regulation of criminal supervision in Article 76 of the RKUHP, it is explained that the advice and suggestions of the community counselor are needed by the prosecutor in order to provide recommendations to the judge on matters related to whether the convict needs to serve imprisonment or extend the probation period if there is a violation of criminal conditions for probation. Furthermore, a proposal to reduce the probation period can also be submitted by the prosecutor to the judge if there is any advice or suggestions from the community correctional counselors that the convict shows good behavior.<sup>38</sup> Based on these provisions, community correctional counselors have an important role in supervising the implementation of the convicts' probation period. The function of the community correctional counselors is to provide guidance and supervision to convicts who have been sentenced to probation and to report them to the prosecutor. This guidance and supervision include the observation of the convicts' behavior while serving the sentence. In other words, the extent to which the convict shows a behavioral change is subject to the community correctional counselors' observation and supervision. Similar to the probation penalty, in Article 85 of the RKUHP, it is explained that the observation of the implementation of community service penalty is carried out by prosecutors, and the supervision is carried out by community correctional counselors. Thus, the community correctional counselors in this case also have the task of supervising the implementation of the community service penalty and changes in the behavior of the convicts.<sup>39</sup>

As explained above, correctional system and institution in Indonesia are given a fairly important mandate if the current version of RKUHP is ratified in the future. This is because the task of observing and supervising the convicts will be in the hands of the community correctional counselors. Based on the UNODC report published in 2007, there are several factors that must be held and adhered to by the criminal justice system apparatus in implementing alternative forms of punishment effectively as follows: (1) fundamental knowledge; (2) political initiatives; (3) legal updates; (4) infrastructure and resources; (5) supervision; (6) publications; (7) media support; and (8) justice and equality. Of all these factors, this study focuses

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<sup>38</sup> Draft Criminal Code of 2019, Art. 76.

<sup>39</sup> Djoko Setiono (Director of Social Guidance of the Directorate General of Corrections), "Alternative Sentencing in Indonesia," Interview by Nadia Utami Larasati, Jakarta, November 10, 2017.

on the aspect of legal reform as well as infrastructure and resources in the Indonesian correctional system and institution.<sup>40</sup>

#### **2.4. Legal Reform in the Indonesian Correctional Institution**

To develop alternative penalties, policymakers need to reform legislation. The new legislation needs to be accompanied by seminars and trainings to facilitate the effective implementation of alternative sentencing.<sup>41</sup> The formulation of policies is needed as a first step to prepare alternative sentencing practice.<sup>42</sup> Therefore, since 2009, the Indonesian Correctional Institution has compiled a Blueprint for Correctional Reform that was stipulated through a ministerial regulation in 2009.<sup>43</sup> This blueprint details ideas, suggestions, and strategic measures to be taken to reform the Indonesian Correctional Institution. It also serves as a means of reflection and evaluation of the implementation of the current correctional system. The blueprint appears to have a strong commitment to address the challenges and obstacles of the correctional system in Indonesia. This is, for example, reflected in the proposed idea of deinstitutionalization of punishment or alternative punishments.

Furthermore, in the Draft Law on Corrections, which will later be proposed to replace Law No.12 of 1995 concerning Corrections, in Article 57 Chapter III Part Four concerning Community Guidance, it has also been regulated that community correctional counselors have responsibilities to carry out assistance, supervision, and observation of convicts undergoing community service and probation penalties. However, this provision does not yet regulate in detail the forms and mechanisms of the implementation of such responsibilities.<sup>44</sup>

The Indonesian Correctional Institution also responds to the existence of alternative criminal penalties in the RKUHP by revising its previous blueprint. The above-mentioned Regulation of the Minister of Law and Human Rights of the Republic of Indonesia published in 2009 has been amended with the issuance of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia in 2018 on The Blueprint for The Revitalization of The Implementation of Indonesian Correctional Institution

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<sup>40</sup> United Nations Office on Drugs and Criminal, "Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment", 45.

<sup>41</sup> *Ibid.*

<sup>42</sup> Richard W Snarr and Bruce I Wolford, *op.cit.*, 89.

<sup>43</sup> Minister of Law and Human Rights Regulation No. M.HH-OT.02.02 of 2009 concerning The Blueprint for The Revision of The Implementation of Correctional System, Art. 5.

<sup>44</sup> Narya (Head of Evaluation and Reporting Section at the Secretariat of the Directorate General of Corrections), "Alternative Sentencing in Indonesia," Interview by Nadia Utami Larasati , Jakarta, September 30, 2020.

(2019-2023).<sup>45</sup> This new blueprint is aimed at strengthening the supervisory function of the Correctional Center (Balai Pemasyarakatan, abbreviated as Bapas) in the implementation of alternative sentencing. The revitalization programs are carried out through reviewing and making regulations as well as monitoring instruments, increasing the capacity and quantity of community mentoring resources, budget allocations, and increasing facilities and infrastructure.

## **2.5. The Readiness of Infrastructure and Resources in the Indonesian Correctional Institution**

In addition to readiness in terms of regulations and laws, alternative sentencing also requires adequate resources.<sup>46</sup> Furthermore, it is also necessary to ensure the availability of necessary facilities and infrastructure with a view to not only initiating but also sustaining the implementation of this alternative sentencing the future.<sup>47</sup> Alternative sentencing is a policy that is in line with the philosophy of social reintegration as the underlying philosophy of the Indonesian Correctional Institution. However, further measures need to be taken in terms of organizational and human resources in correctional institutions. One of them is the need to develop the function and role of the Correctional Center. The Correctional Center functions to provide judges with advice or suggestions based on a societal perspective for the purpose of issuing judicial decisions.

The social aspect of the community is elaborated based on the results of studies conducted by Correctional Centers. Therefore, the Correctional Center has a major role in the implementation of the alternative sentencing. This is because the findings of studies conducted by the Correctional Center through the community correctional counselors serve as a valuable basis upon which judicial decision is made by the judge. These societal studies principally aim to examine matters related to the dynamics of the social life of the convicts.

Moreover, the professionalism of Correctional Centers' officers also needs to be improved. As mentioned above, alternative sentencing will be suggested to judges based on studies conducted by Correctional Centers. Therefore, a pool of professional community research analysts is needed. The community research analysts cannot be made based on the "orders" of certain parties. Essentially, punishment is based on the principles of truth, justice, and the protection of human rights. These three principles must

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<sup>45</sup> Minister of Law and Human Rights Regulation No. 40 of 2018 concerning the Blueprint for The Revitalization of The Implementation of Indonesian Correctional Institution (2019-2023), Art. 5.

<sup>46</sup> Iskandar Wibawa, *loc.cit.*

<sup>47</sup> United Nations Office on Drugs and Criminal, "Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment", 103.

therefore be balanced. Truth must be upheld, but the truth must also not violate justice and human rights. These three variables need to be accommodated by community correctional counselors. Thus, the presence of community correctional counselors is vital in the implementation of this alternative sentencing.<sup>48</sup>

Snarr and Wolford suggest that in order to implement alternative sentencing effectively, attention must be paid to determine what is to be achieved and what resources are available.<sup>49</sup> As described earlier, the principle of truth, justice, and protection of human rights can only be achieved if professional human resources are available. As one of the steps to strengthen this professionalism, a community correctional counselor has become a functional position that falls within the legal and judicial cluster as regulated in the Regulation of the Ministry of State Apparatus Empowerment and Bureaucratic Reform of the Republic of Indonesia published in 2016 concerning Functional Position of Community Correctional Counselors.<sup>50</sup> The position of community correctional counselors is designated as a functional position in the category of expertise with the highest level being “*Ahli Utama*” and the lowest being “*Ahli Pertama*”. Moreover, in terms of infrastructure, the Indonesian correctional system has also added about 17 Correctional Centers. Currently, there are 90 Correctional Centers throughout Indonesia and this number will continue to increase in line with the increasingly difficult tasks of community correctional counselors. Community correctional counselors will also be placed in the Correctional Centers to accommodate tasks that are not accessible due to the limited number of prisons currently available in the country.<sup>51</sup>

Another task that must be implemented by the Correctional Center is to prepare for community participation. The main challenge in building CBC and alternative sentencing lies in community involvement. Although this is not easy, it is an important aspect to implement the CBC successfully. Therefore, there needs to be an effective approach to get a good level of acceptance and involvement from the community.<sup>52</sup> Community correctional counselors also need to run a grass-roots campaign to inform the Indonesian public that imprisonment is not always an effective form of punishment for convicts. In other words, the community also needs to be given understanding and empowerment regarding the implementation of alternative sentencing. Furthermore, it is also important to realize an

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<sup>48</sup> Dindin Sudirman, *loc.cit.*

<sup>49</sup> Snarr and Wolford, *op.cit.*, 75.

<sup>50</sup> Minister of Empowerment of the State Apparatus and Bureaucratic Reform Regulation No. 22 of 2016 concerning The Functional Position of Community Correctional Counselors, Art. 2.

<sup>51</sup> Narya, *loc.cit.*

<sup>52</sup> Snarr and Wolford, *op.cit.*, 97.

Integrated Criminal Justice System (ICJS), because prison overcrowding is closely linked to the criminal justice system that tends to imprison as many people as possible. Coordination is also needed to get correctional institutions involved in the criminal justice system from the outset, which is similar to the case of children in the criminal justice system. This is what Snarr and Wolford referred to as an effort to build cooperation and coordination between parties within criminal justice system with a view to implementing alternative sentencing effectively.<sup>53</sup>

### **3. CONCLUSION**

The philosophy of social reintegration that underlies the Indonesian correctional system is quite advanced. However, the implementation of the correctional system is not effective because it is riddled with problems that hinder the achievement of the system's objectives, that is, reintegrating prisoners into society. One of the problems is prison overcrowding, which in turn renders correctional institutions unmanageable and increasingly vulnerable. Thus, an effective observation and supervision of inmates becomes a difficult goal to achieve. This study attempted to address this issue by analyzing the extent to which Indonesian Correctional Institution manages to adapt to the future alternative sentencing according to the latest version of RKUHP.

The alternative form of punishment is actually in line with the philosophy of social reintegration that has been the basis of correctional system that aims to reintegrate prisoners into society.<sup>54</sup> However, this aim is addressed through deinstitutionalization efforts or non-imprisonment policies. These efforts are currently being discussed in the RKUHP, and several suggested alternative forms of punishment are community service and probation penalties.

This study demonstrated that based on the RKUHP, the Indonesian correctional system is preparing to undertake many strategic measures through the revisions of relevant regulations and laws, increasing the number of infrastructure and facilities, and increasing the quality of human resources for community correctional counselors according to the framework of CBC. However, this study showed that some measures mentioned above are unfortunately not enough, because there are still many improvements that need to be made by the Indonesian correctional system. Reviewing and formulating regulations, monitoring instruments, increasing the capacity and quantity of community correctional counselors, allocating an appropriate budget, and adding facilities and infrastructure need to be

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<sup>53</sup> *Ibid.*

<sup>54</sup> Alpaslan Özerdem, "A Re-Conceptualisation of Ex-Combatant Reintegration: 'Social Reintegration' Approach," *Conflict, Security & Development* 12, no. 1 (2012): 51-73.

addressed and accommodated. Thus, when the time of the ratification of the RKUHP comes, alternative sentencing can be implemented effectively. Otherwise, expectation that alternative sentencing can be a solution to solve the prison overcrowding will only be wishful thinking.

In addition to policies, infrastructure, and human resources, the CBC approach still leaves some key determinants in order for the alternative sentencing to be implemented successfully, such as publications, community involvement, and media support. Therefore, the authors suggest that future studies are needed to examine alternative sentencing with determinants other than those mentioned above. Furthermore, the readiness for the implementation of this alternative sentencing must not only be implemented by the Indonesian Correctional Institution, but also by the entire sub-system of the criminal justice system including the police, prosecutors, and judges. Therefore, future studies within the scope of these institutions also need to be carried out in order to evaluate the readiness of the future implementation of the alternative sentencing.

## **ACKNOWLEDGMENTS**

This research was funded by The Ministry of Research Technology and Higher Education of the Republic of Indonesia through the scheme of “Novice Lecturers Research”.

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