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Globalization, Law, and Crimes: The Various Aspects of Law in Broader Context

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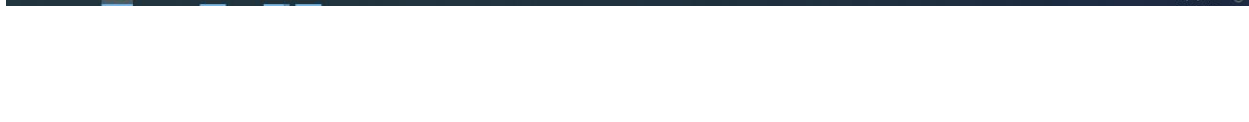
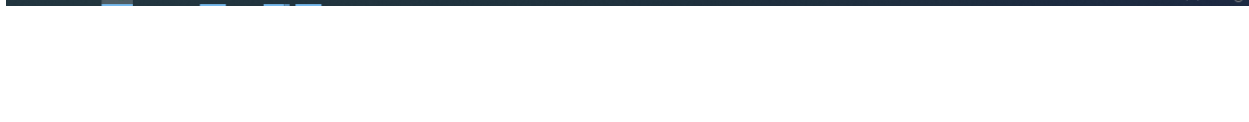
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RESEARCH ARTICLE

**DEPRIVATION OF INMATES IN
CONDUCTING IMPRISONMENT AND
GUIDANCE IN PENITENTIARY ON
VICTIMOLOGY PERSPECTIVE**

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ABSTRACT

Prisoners who undergo imprisonment tend to experience 5 (five) types of deprivation, deprivation of liberty, deprivation of goods and services, deprivation of heterosexual relationships, deprivation of heterosexual experiences, deprivation of liberty deprivation of autonomy, and deprivation of security. The research was conducted with a sociological juridical approach with a sample of Cipinang Class I Correctional Institution research sites and Banjarmasin Class II Correctional Institution as a correctional facility with prisoners' occupancy levels in excess of available capacity (overpopulation). In conditions with very high percentage of overpopulation, deprivation in the perspective of victimization has created victims in this case individual prisoners are caused because the Ministry of Law and Human Rights in this case the prison has carried out policies and actions that are not in accordance with existing provisions especially related to several provisions of Article 12 of the Republic of Indonesia Law No. 12 of 1995 Concerning Corrections, as well as the 4 (four) principles of the 10 (ten) Correctional Principles as stipulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 11 of 2017 About the Grand Design Overcrowded Handling in State Detention Centers and Penitentiaries. Efforts to reduce the existence of overpopulation or overcrowded that can cause victims of human rights violations for prisoners have been carried out through the Minister of Law and Human Rights Regulation of the Republic of Indonesia Number 11 of 2017, but not yet effective.

Keywords: Correctional Institution; Deprivation; Victims; Prisoners; Victimology

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INTRODUCTION

Today, the types of crimes and their implementation are different from those of two centuries ago. In the past the type of criminal activity was more directed towards physical crime as a form of personal retaliation and there was an element of humiliation for those who were subjected to criminal acts. The element of prevention is a secondary element that might be found but the element of guidance or rehabilitative element is relatively yet to emerge. There has been a development after the flow of humanitarianism emerged since the last two centuries which significantly affected the practice of criminal prosecution and its implementation. The

doctrine of humanitarianism, among others, has added a new concept to the practice of correct justice including the inclusion of the concept of rehabilitation.¹

Normatively, the imprisonment and execution of crimes, especially more civilized imprisonment, has received international support with a document known as the Standard Minimum Rules for the Treatment of Prisoners (SMR). This document was first drafted in 1926 by the International Penitentiary Commission which later became known as the International Penitentiary and Penitentiary Commission (IPPC) as an international level activity for the renewal of imprisonment. In 1933 the SMR draft document was approved by the League of Nations (Resolution dated 26 September 1934 Special Supplement No. 123 VI.4). This document was subsequently adopted by the First United Nations Congress on the Prevention of Crimes and the Treatment of Perpetrators, held in Geneva in 1955, and approved by the Economic and Social Council through Resolution 663 C (XXIV) dated 31 July 1957 and Resolution 2076 (Resolution 2076 (LXII) dated May 13, 1977.²

¹ Donald Clamer, *Observations on Imprisonment as a Source of Criminality*, 41 J. CRIM. L. & CRIMINOLOGY. 311, 312-314 (1950). Furthermore, Clamer also emphasized that prisons and prisoners are what they are because of what they have been in the past, and because of the mood and temper of society concerning them. Institutions could be so organized as to be less deliterious, it is believed, but society is not ready for this step. Modern and progressive penological methods have done much in recent years to alter and counteract the harmful influences which are inherent in them. As for comparison, See Ahmed A. White, *The Concept of Less Eligibility and the Social Function of Prison Violence in Class Society*.56 BUFF. L. REV. 737, 740-760 (2008); Brent A. Paterline & Douglas Orr, *Adaptation to prison and inmate self-concept*. 4 JOURNAL OF PSYCHOLOGY. 70, 74-75 (2016); Robert Scott, *The Concept of Reducing Recidivism via College-in-Prison: Thoughts on Data Collection, Methodology, and the Question of Purpose*.9 CRITICAL EDUCATION. 1, 10-14 (2018). ALEXANDRU ZOSIM, THE PRISON ALTERNATIVES IN THE MODERN CRIMINAL LAW 50-75 (2006).

² STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS (SMR),The rules were first adopted on 30 August 1955 during a UN Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva, and approved by the Economic and Social Council in resolutions of 31 July 1957 and 13 May 1977. Since their adoption by the Economic and Social Council in 1957, the Standard Minimum Rules for the Treatment of Prisoners (SMR) have served as the universally acknowledged minimum standards for the treatment of prisoners. Despite their legally non-binding nature, the rules have been important worldwide as a source for relevant national legislation as well as of practical guidance for prison management. Although not legally binding, the SMRs provide guidelines for international and domestic law for citizens held in prisons and other forms of custody. The basic principle described in the standard is that "There shall be no discrimination on grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. See NIGEL RODLEY & MATT POLLARD, THE TREATMENT OF PRISONERS UNDER INTERNATIONAL LAW 130-154 (2009); UNODC Document, retrieved from https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatme

The aim of the SMR is not to describe in detail the model of the penal system which must be strictly enforced by all prison prisoners throughout the world. The emphasized aspect is the existence of essential elements which are considered good for use in efforts to deal with prisoners and prison convicts. SMR still allows institutions that handle prison convicts and detainees to carry out variations in the handling of prisoners and/or detainees provided they are in harmony with the principles and objectives of the SMR.³

Some of the salient principles contained in the SMR are formulated in section 1 on the generally accepted Rules as basic principles. Some of the principles referred to are about the applicable rules that are impartial. In this case there should be no discrimination based on race, color, sex, language, religion, political opinions or other opinions, nationality or social class, wealth, ancestry or other status. Furthermore, the religious beliefs and moral rules of the group from which the detainee belongs also needs to be respected.⁴ SMR also regulates accommodations which include bed accommodation, sanitation installations, bath installations, clothing, food, sports facilities to medical facilities. In addition, the SMR also regulates the limits imposed sanctions on prisoners who commit violations while undergoing prison in a prison institution.⁵

On a national level, Indonesia's positive law related to the law of imprisonment has also responded to the values and enthusiasm contained in the SMR with the enactment of Law Number 12 of 1995 concerning Corrections. The Penitentiary Law also contains a management model or treatment of prisoners known as fostering prisoners with a penal system. This system rejects the old system which essentially focuses on the principle of retributive, oppression of the life and freedom of prisoners.⁶

nt_of_Prisoners.pdf; ANDREW COYLE & HELEN FAIR. A HUMAN RIGHTS APPROACH TO PRISON MANAGEMENT: HANDBOOK FOR PRISON STAFF. INSTITUTE FOR CRIMINAL POLICY RESEARCH BIRKBECK 213-225 (2018); Rose M Brewer & Nancy A. Heitzeg, *The racialization of crime and punishment: Criminal justice, color-blind racism, and the political economy of the prison industrial complex*, 51 AMERICAN BEHAVIORAL SCIENTIST. 625, 630-637(2008). Also see Katrin Tiroch, *Modernizing the Standard Minimum Rules for the Treatment of Prisoners—A Human Rights Perspective*. 19 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW ONLINE. 278, 285-297 (2016)

³ *Id.* with all accompanying texts.

⁴ *Id.*

⁵ *Id.*

⁶ ROMLI ATMASASMITA, STRATEGI PEMBINAAN PELANGGAR HUKUM DALAM KONTEKS PENEGAKKAN HUKUM DI INDONESIA 16-20 (1982). As a comparison, Lilik

With the existence of the SMR, then supported by positive law in the form of the Correctional Law cannot automatically run and achieve the goals and objectives set. Practices in the field can take place differently, this can be observed by the large number of imprisonments that take place in correctional institutions with over population occupancy and some overcrowded.⁷

Data from the Directorate General of Corrections of the Ministry of Law and Human Rights on February 14, 2020 shows that the total number of prisoners and detainees totaled 204,167 people while the capacity was 131,563 people. Thus, the number of prisoners and detainees has exceeded the available capacity (overpopulation). These conditions are spread across 33 Regional Offices of the Ministry of Law and Human Rights throughout Indonesia. It can be further specified that from 33 Regional Offices of the

Mulyadi also underlined that basically, the aspect of punishment is the culmination of the Criminal Justice System, namely by the decision of a judge. Theoretically, in the literature both according to the scope of the Anglo-Saxon system and Continental Europe the terminology of criminal justice as a system is relatively debatable. Concretely, the Criminal Justice System can be assessed more gradually through the approach of the legal, sociological, economic and management dimensions as per Satjipto Rahardjo's assumptions and descriptions that there are several options for reviewing a legal institution such as the criminal justice system, namely with a legal approach and with a broader approach, like sociology, economics and management. From a professional standpoint, the criminal justice system is commonly discussed as an independent legal institution. Here we pay attention to the principles, doctrines and laws that govern the criminal justice system. In law, such an approach is called positivist-analytical. See Lilik Mulyadi, *Pergeseran Perspektif dan Praktik dari Mahkamah Agung Republik Indonesia Mengenai Putusan Pidanaan*, BADILUM MAHKAMAH AGUNG (2001), retrieved from https://badilum.mahkamahagung.go.id/upload_file/img/article/doc/pergeseran_perspektif_dan_praktik_dari_mahkamah_agung_mengenai_putusan_pidanaan.pdf; Romli Atmasasmita, *Tiga Paradigma Hukum dalam Pembangunan Nasional*, 3 JURNAL HUKUM PRIORIS. 1, 10-16 (2016); Suyanto, *Efektivitas Pelepasan Bersyarat dalam Pembinaan Narapidana*, 5 JURNAL PRO HUKUM: JURNAL PENELITIAN BIDANG HUKUM UNIVERSITAS GRESIK. 115, 117-120 (2016); Muhibuddin, *Analisis Yuridis terhadap Hak Narapidana dalam Pembinaan Lembaga Masyarakat*, 7 REUSAM-JURNAL ILMU HUKUM. 13, 15-18 (2019); Ahmad Rofiq, Hari Sutra Disemadi, & Nyoman Serikat Putra Jaya, *Criminal Objectives Integrality in the Indonesian Criminal Justice System*, 19 AL-RISALAH. 179, 182-185 (2019); Khudzaifah Dimiyati & Angkasa, *Victimological Approaches to Crime of Rape in Indonesian Criminal Justice System*, 4 HASANUDDIN LAW REVIEW. 366, 368-370 (2019).

⁷ For comparison and comprehensive picture, please also see Dey Ravena & Ade Mahmud, *The Implications of Overcrowding for Fostering Prisoners in Prison: Management and Systems Problems*, 54 JOURNAL OF SOUTHWEST JIAOTONG UNIVERSITY. 1, 10-11 (2019); Klaas Stutje, *From Across the Water: Nusakambangan and the Making of a Notorious Prison Island*, 64 INTERNATIONAL REVIEW OF SOCIAL HISTORY. 493, 450-454 (2019); ANDREW COYLE & HELEN FAIR, *A HUMAN RIGHTS APPROACH TO PRISON MANAGEMENT: HANDBOOK FOR PRISON STAFF* 118-125 (2018); Mohammed Farid Ali al-Fijawi, et al. *Violations of Basic Rights of Prisoners In Conventional and Islamic Law: Theory and Practice*, 27 INTELLECTUAL DISCOURSE. 455, 460-464 (2019).

Ministry of Law and Human Rights in Indonesia only in 3 Regional Offices of the Ministry of Law and Human Rights whose prison population and / or years do not exceed the available capacity. The 3 Regional Offices of the Ministry of Law and Human Rights and referred to are 1. Regional Office of DI. Yogyakarta, 2. North Maluku Regional Office, and 3 West Sulawesi Regional Office, Southeast Sulawesi Regional Office. The rest or 27 Regional Offices of the Ministry of Law and Human Rights have over population. Ten Regional Offices of the Ministry of Law and Human Rights experienced dangerous overpopulation, specifically related to criminal and criminal purposes, in the order of: (1) East Kalimantan Regional Office (250%); (2) DKI Jakarta Regional Office (215%); (3) Riau Regional Office (207%); (4) North Sumatra Regional Office (178%); (5) South Kalimantan Regional Office (174%); (6). Bali Regional Office (136%); (7). East Java Regional Office (130%); (8). Banten Regional Office (117%); (9). West Kalimantan Regional Office (115%); and (10). Central Sulawesi Regional Office (115%).

The density of prisoners' dwelling in correctional institutions which mostly overpopulated as shown in the data above does not rule out the possibility of adding to the type of deprivation experienced by prisoners and the impact of adding to suffering (pains of imprisonment).⁸ This condition is not only in harmony with the spirit of the SMR and also the penal system and can disrupt the purpose of fostering prisoners themselves, because in several studies there show that the density of dwellings that also increase prisoners suffering can lead to prisonization.⁹ Another negative impact is that it cannot achieve criminal and criminal objectives because it can increase recidivism rates.¹⁰ Other negative implications of

⁸ ROGER HOOD AND RICHARD SPARKS, KEY ISSUES IN CRIMINOLOGY 222-226 (1987).

⁹ ANGKASA, PRISONISASI DAN PERMASALAHANNYA TERHADAP PEMBINAAN NARAPIDANA (SUATU STUDI DI LEMBAGA PEMASYARAKATAN SEMARANG DAN LEMBAGA PEMASYARAKATAN PURWOKERTO) 85-93 (1993) [hereinafter ANGKASA, PRISONISASI]. See also Risang Achmad Putra Perkasa, *Optimalisasi Pembinaan Narapidana dalam Upaya Mengurangi Overcapacity Lembaga Pemasyarakatan*. 4 WAJAH HUKUM. 108, 110-113 (2020); Galih Ihza Mahendra, *Dampak Over Capacity Bagi Narapidana di Lembaga Pemasyarakatan, Faktor Penyebab Implikasi Negative Dalam Pengoptimalisasian Pembinaan Narapidana*. 7 JUSTITIA: JURNAL ILMU HUKUM DAN HUMANIORA. 390, 393-394 (2020); Angkasa, *Over Capacity Narapidana di Lembaga Pemasyarakatan, Faktor Penyebab, Implikasi Negatif, Serta Solusi dalam Upaya Optimalisasi Pembinaan Narapidana*. 10 JURNAL DINAMIKA HUKUM. 212, 214-215 (2010) [hereinafter Angkasa, *Over Capacity*].

¹⁰ Francesco Drago, Roberto Galbiati & Pietro Vertova, *The Deterrent Effects of Prison: Evidence from a Natural Experiment*. 117 JOURNAL OF POLITICAL ECONOMY. 257, 260-265 (2009).

various deprivations and illness can be a trigger factor for prisoners to develop norms that are precisely contrary to the norms of officers and criminal and criminal purposes.¹¹ It is this kind of thing that also triggers criticism of the effectiveness of prisoner development as rehabilitative measures as a result of some previous studies.¹²

Various conditions that are not in accordance with the norms and the spirit that accompany these norms become a separate issue when viewed from the point of view of victimization. Victimology perspectives or perspectives can be seen from the presence of victims, the problems faced by victims and efforts to create a system to reduce the suffering of victims. Based on the foregoing study of the types of deprivation experienced by prisoners in prisons whose conditions of overpopulation are interesting to do, this is to find out the type of deprivation that occurs as well as the possibility of victims in that condition. As a sample of research locations are Cipinang Class I Penitentiary and Banjarmasin Class IIa Penitentiary.

¹¹ Shelley Johnson Listwan, Christopher J. Sullivan, Robert Agnew, Francis T. Cullen & Mark Colvin, "The Pains of Imprisonment Revisited: The Impact of Strain on Inmate Recidivism." 30 JUSTICE QUARTERLY. 144, 146-147 (2013).

¹² Benjamin R Gibbs & Robert Lytle, *Drug court participation and time to failure: An examination of recidivism across program outcome*. 45 AMERICAN JOURNAL OF CRIMINAL JUSTICE. 215, 221-228 (2020); Paul Nieuwbeerta, Daniel S. Nagin & Arjan A. J. Blokland, *The relationship between first imprisonment and criminal career development: A matched samples comparison*. 25 J QUANT CRIMINOL. 227, 233-242 (2009); Cassia Spohn & David Holleran. *The effect of imprisonment on recidivism rates of felony offenders: A focus on drug offenders*. 40 CRIMINOLOGY. 329, 331-338 (2006). For comparison, also see Elizabeth Thomas C., et al., *Conceptualizing restorative justice for people with mental illnesses leaving prison or jail*. 89 AMERICAN JOURNAL OF ORTHOPSYCHIATRY. 693, 698-701 (2019); Emmanuel Chikwelu Nwune, et al., *Across the Wall: the Perception of Rehabilitation, Reformation and Reintegration Programmes in Anambra State Prison Command*. 2 JOURNAL OF LAW AND JUDICIAL SYSTEM. 13, 15-19 (2019); Amar Akbar & Imam Zainuri, *Development of empowerment model of people with mental health disorders in community and prison, to improve productivity and quality of life, in Indonesia*. 9 INDIAN JOURNAL OF PUBLIC HEALTH RESEARCH & DEVELOPMENT. 163, 166-167 (2018); Ardian Praptomojati & M. A. Subandi, *Forgiveness therapy for adult inmate in Indonesian correctional facility: a pilot study*. THE JOURNAL OF FORENSIC PSYCHIATRY & PSYCHOLOGY (2020).

TYPES OF DEPRIVATION IN CORRECTIONAL INSTITUTIONS

A person with the status of a prisoner and must undergo a criminal term in prison at least undergo various deprivation. Gresham M. Sykes (1958-2007) stated that there are five basic deprivations for a prisoner who violates life in prison, which includes the deprivation of liberty, deprivation of liberty, deprivation of goods and services, deprivation of goods and services, deprivation heterosexual sexual relations, deprivation of autonomy, and deprivation of security.¹³

Deprivation of liberty means the loss of independence for him, namely limited freedom of movement within the walls of the prison. The loss of independence is also followed by a break in normal social relations with the nuclear family, relatives and hope when the person concerned is still a person who is not in trouble with the law and has not been sentenced to prison. This also happened to all prisoners who served their sentences in prison and detention centers, including the Cipinang Penitentiary and Banjarmasin Penitentiary. For 24 hours a day during the period of imprisonment in force they are required to settle in the room, room and yard according to the intended designation and schedule. All of which are limited by the perimeter walls of the correctional facility whose upper part is given a barrier in the form of barbed wire which is equipped with CCTV from various angles and is guarded very closely by officers so that prisoners do not come out of the correctional institution and escape. This deprivation of liberty is felt to be very painful for the prisoners, therefore they really miss the time of freedom, this is shown how much they are very understanding and memorized and always remembered about when the time of freedom will be present.

Deprivation of goods and services means he becomes poor because he has no furniture in prison and no other facilities. Furnishings and facilities that exist only for the purpose of life in prison.¹⁴ Correctional institutions have provisions for limiting the goods and money carried. This

¹³ STEVEN BOX, *DEVIANCE, REALITY & SOCIETY* 215-218 (1981); GRESHAM M SYKES, *THE SOCIETY OF CAPTIVES: A STUDY OF A MAXIMUM SECURITY PRISON* 115-120 (2007) [hereinafter SYKES, *THE SOCIETY OF CAPTIVES*].

¹⁴ ANGKASA, *PRISONISASI*, *Supra* note 9, at 85-85; Angksa, *Over Capacity*, *supra* note 9.

is in accordance with the provisions of Article 4 of the Regulation of the Minister of Law and Human Rights Number 6 of 2013. These provisions include, among other prisoners or detainees, prohibited from carrying and/or saving money illegally and other valuables (letter f); equip residential rooms with cooling devices, fans, televisions, and/or other electronic devices (letter i); owning, carrying and /or using electronic devices, such as laptops or computers, cameras, recording devices, mobile phones, pagers, and the like (letter j); carry out electrical installations in residential rooms (letter k). Based on these rules, each prisoner cannot freely own and/or control goods and/or money in the prison as he wishes, even if they have a very adequate economic background. This also applies to Cipinang Penitentiary and Banjarmasin Penitentiary.

Article 5 The Ministerial Regulation above also stipulates that in order to maintain order, Prisoners and Detainees are allowed to bring personal clothing to a maximum of 6 (six) pairs. In Cipinang Prison and Banjarmasin Prison some prisoners sometimes experience deprivation of food that should be obtained and become their rights. This can happen because with the existing food distribution system and the large number of prisoners and the limited number of officers, it is very possible for a prisoner not to get his food ration because their food rations have been taken and consumed by other inmates. Prisoners who do not get food rations are usually because when the food rations reach the block or their room the prisoner is asleep or not in the place and there are naughty and greedy inmates. This often triggers a commotion between them.

While in prison each prisoner must also be able to take care of himself such as bathing, washing clothes, taking food and other personal needs. This can be different when they become independent individuals who make it possible to use the services of other parties to help fulfill their personal activities. For example, preparing towels and bathing necessities, preparing clothes as a substitute for dirty clothes, washing dirty clothes, and ironing them to prepare dishes to eat to drink as long as they can.

Deprivation of heterosexual relationships occurs considering that in prison there is only one sex, male or female. It must not be separated enough that the origin is not related but must be maintained so as not to be able to see or hear each other. Therefore, as long as a person is serving time in a prison, it is not possible for him to have sex heterosexually, normatively in Indonesian positive law this is based on the provisions of

Article 12 paragraph (1) letter b of the Law of the Republic of Indonesia Number 12 of 1995 Concerning Corrections to formulate that "*In the context of fostering prisoners in prison, a classification based on sex*" means that there is no possibility that male and female prisoners will be placed in one block or room at the same time, even if they are husband and wife. Looting heterosexual sexual relations can cause tension, anxiety and make it easy to increase emotions.¹⁵

Deprivation of autonomy is intended that a prisoner every heart does not have the discretion to determine the activities to be carried out, including making important and fundamental decisions in his life as long as they undergo imprisonment in prison. The behavior of prisoners who are outside the provisions made by the correctional institution are seen as deviations and can be sanctioned. Every prisoner's needs are determined by others. With this condition, it seems as if every prisoner cannot determine his own destiny. It can be exemplified about when he will eat, bath or sport, which can no longer be as humble as they are, because they have been strictly regulated by prison officers on behalf of prison institutions. Sykes said that they had been bound by ties in the form of rules and orders that were arranged to monitor the behavior of prisoners at any time in detail.¹⁶

Deprivation of autonomy by inmates is often said to be the most miserable or unpleasant thing.¹⁷ This is because many of the details of prisoners' lives revolve around hours of sleep, to the daily work known to many rules made by prison officials.¹⁸ In the perspective of criminal objectives and fostering of prisoners, deprivation of autonomy that is too large will be a factor in the obstacles to criminal objectives and fostering prisoners.

Deprivation of security is intended that a prisoner never feels safe and must always be alert to the dangers that threaten at any time from other prisoners around him. This feeling is not only felt by first-time prisoners but also for the residivists. But those who tend to have this feeling are inmates who feel themselves well and don't like to attack or make a fuss. This is because they prisoners must occupy a room and must

¹⁵ SYKES, THE SOCIETY OF CAPTIVES, *supra* note 13, at 215-216.

¹⁶ *Id.* at 218

¹⁷ *Id.* at 189

¹⁸ *Id.* at 220

sleep and other activities in the news together with individuals, many of whom have cruel, vicious, brutal and evil characters. The danger that threatens is not only when they are in the room, but also when they are outside the room in a block or prison environment, because they have to interact with individuals, many of whom are criminals. In the prison there are officers who supervise, but it is very ineffective because the number of officers is very small compared to the number of prisoners. Many cases show a commotion caused by the loss of food or items possessed by inmates and those taken by fellow inmates. Prone to lost property or the existence of security confiscation of property owned because the correctional institution does not provide a kind of wardrobe or locker for every prisoner who has a security key. The goods that are owned or brought into the Correctional Institution are placed on the sidelines of rooms that have space gaps or hung and fastened on the walls of buildings. This is compounded by the condition that many prisoners cannot be fully accommodated in the room, even though they are normatively recorded in a particular room, but this is only for the sake of calculation and also when they have to sleep at night. During the day they are outside the room looking for a place that is considered comfortable, including in the hallways and the courtyard terrace of the mosque. Fear of insecurity is not only related to ownership of goods but also body and soul, because among them many prisoners are not reluctant to use physical force to solve their problems.

Regarding security appropriation, one prisoner said that "*the worst thing about prison is having to live with other prison people*".¹⁹ In prisons with inmates over the population (over population) prisoners tend to experience more severe security appropriation, this is because they have to live with fellow inmates with a greater number of people with a very diverse character. One contributing factor is because the prison has limitations in the availability of residential rooms for prisoners so that it is unable to carry out the mandate of the provisions of Article 12 paragraph (1) letter c. concerning the old classification of criminal sentences and letter b. about the type of crime.

Furthermore, generally related to various deprivation incidents experienced by prisoners in prison with overpopulation or overcrowded

¹⁹ *Id.* at 189

stated in the Minister of Law and Human Rights Regulation of the Republic of Indonesia Number 11 of 2017 Concerning the Grand Design of Overcrowded Handling in State Detention Centers and Corrections emphasized and highlighted that almost all of Indonesia experiences overcrowded problems, and the impact of this of course can be predicted including the creation of poor occupant health conditions in correctional institutions/detention (some cases lead to death), the psychological atmosphere of the chaotic occupants so emotional easily, easily offended and easily offended and resulting in frequent conflicts between residents such as riots and fights.

The above conditions with more deprivation as well as violence experienced by prisoners will become a criminogenic factor and frustrate the goals of prisoners' training and rehabilitation and create recidivism.²⁰ This is reinforced by a study conducted by Gaes & Camp (2009)²¹ and also Bench & Allen (2003)²² which among others stated that the hard life of prisoners in prison does not encourage the creation of deterrence later when the person is free, but can lead to more crimes.

DEPRIVATION OF PRISONERS IN OVERPOPULATED CORRECTIONAL INSTITUTIONS IN THE VICTIMOLOGY PERSPECTIVE

Victimology is the science that conducts scientific studies of victims in all aspects. At least related to the problem of prisoners who experience various deprivations in correctional institutions with overpopulation, in the perspective of victimization there are two things that can be studied.

²⁰ M. Keith Chen & Jesse M. Shapiro, Do Harsher Prison Conditions Reduce Recidivism? A Discontinuity-based Approach, 9 AMERICAN LAW AND ECONOMICS REVIEW. 1, 15-18 (2007).

²¹ Gerald G. Gaes & Scott D. Camp, *Unintended consequences: experimental evidence for the criminogenic effect of prison security level placement on post-release recidivism*. 5 J EXP CRIMINOL. 139, 143-155 (2009).

²² Lawrence L. Bench & Terry D. Allen, *Investigating the stigma of prison classification: An experimental design*. 83 PRISON JOURNAL. 367, 374-379 (2003).

The first is related to various aspects of victims' problems, and the second is to create a system to reduce the suffering of victims.

The study of various aspects of the problem of victims, then put forward in advance about the limitations of victimization and victim at the same time in this case refers to the limits given by Andrew Karmen that those who say bring Victimology is the scientific study of the physical, emotional, and financial harm of people suffer because of illegal activities.²³ In fact, Karmen emphasized that in this case about the victim is any physical, emotional, financial suffering from someone caused by activities that are not in accordance with the provisions. In general prison conditions with overpopulation conditions experienced by almost all prisons throughout Indonesia as stated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 11 of 2017 Concerning the Grand Design of Overcrowded Handling in State Detention Houses and Penitentiaries, these conditions lead to new problems among them are not maximally fulfilled the basic rights of every prisoners or inmates. It was even further stated that other impacts arising from overcrowded conditions included the emergence of irregularities, flight, riots, fires, drug smuggling, and violations of human rights. When human rights are violated, it means that there are victims of human rights violations, which in this case are individual prisoners who did not obtain their basic rights while serving prison sentences. In the condition of

²³ ANDREW KARMEN, CRIME VICTIMS: AN INTRODUCTION TO VICTIMOLOGY 1-20 (2013). Meanwhile, Newburn explained that victims of crime had also come to the attention of the United Nations which in 1985 in the Declaration of Fundamental Principles of Justice for Victims of Crime and Abuse of Power formulated the notion of victims of crime as: (1) are people, individually or collectively, has suffered loss, including physical or mental injury, emotional suffering, economic loss or substantive impairment of human rights, through acts of omission (not implementing) that violate the criminal law applicable to Member States, including the laws that formulate abuse of power as a crime; (2) A person, who can be considered a victim, according to this Declaration, regardless of whether the perpetrators of the violations can be suspected, arrested, sentenced or imprisoned, regardless of the familial relationship between the perpetrators and the victims. The definition of 'victim' if possible, also includes, immediate family or immediate family of dependents of direct victims, who suffer losses, who are involved in efforts to help victims of stressful crime to prevent victimization. See TIM NEWBURN, CRIMINOLOGY 53-67 (2007); MATTHEW HALL & PAMELA DAVIES (EDS), PALGRAVE STUDIES IN VICTIMS AND VICTIMOLOGY 67-76 (2019); Dana Pugach, Anat Peleg, & Natti Ronel, *Lingual injury: Crime victims between the criminal justice system and the media*. 24 INTERNATIONAL REVIEW OF VICTIMOLOGY. 3, 10-15 (2018); Sandra Walklate, et al. *Victim stories and victim policy: Is there a case for a narrative victimology?*. 15 CRIME, MEDIA, CULTURE. 199, 204-208 (2019); Nathan Birdsall, *Intimate Partner Violence Victimology: Factors Affecting Victim Engagement with the Police and Criminal Justice System*. DISS (2018).

correctional facilities that are so large the number of overpopulation, as happened in Banjarmasin Penitentiary, Muslim prisoners when in the room is very difficult to get the right to perform the prayers of *Maghrib* and *Isha* prayers due to insufficient space to perform prayers and very limited water for water ablution facility. It can be further explained that due to the tightness of the inmates' room, it can occur from 50 people who enter the room at night, there are up to 5 people who have to stand from night to morning, because there is no room left to just squat let alone lay down body on the floor or a place to sleep.²⁴

Some things from correctional institutions that cannot be done properly in accordance with existing provisions and cause suffering for a prisoner in this case are the provisions of Article 12 of Law Number 12 of 1995 concerning Corrections, especially paragraph (1) letters c and d related to classification of the length of the sentence imposed and the type of crime. Other provisions that cannot be carried out properly and cause suffering for prisoners are a number of correctional principles, as stated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 11 of 2017 Concerning the Grand Design for Overcrowded Handling in State Detention Centers and Corrections. The fourth principle of the correctional principle states that the state has no right to make them worse or worse than before being convicted of a crime. One way is between them not to mix inmates with students who commit serious crimes with light ones and so on. Studies conducted by Listwan et.al (2013)²⁵ highlighted that prisoners' conditions in their placement make conditions uncomfortable, among others, when it is not appropriate

²⁴ For more comprehensive comparison, please also see Bahder Johan Nasution Usman & Elizabet Siregar, *Fenomena Over Kapasitas Lembaga Pemasyarakatan Studi Kebijakan Hukum Pidana Terhadap Penyebab dan Upaya*. 1 PROSIDING SEMINAR HUKUM DAN PUBLIKASI NASIONAL (SERUMPUN). 18, 19-24 (2019); Jemmy Hatmoko, *Tinjauan Yuridis Terhadap Perlindungan Hak Azasi Manusia kepada Narapidana di Lembaga Pemasyarakatan Kelas IIA Batam yang Berkaitan dengan Over Kapasitas*. DISS (2019); Sofa Azammusyadah, *Dampak Negatif dan Upaya Penyelesaian Over Kapasitas Lembaga Pemasyarakatan (Studi Kasus di Lapas Klas I Malang)*. DISS (2018); Iskandar Wibawa, *Pidana Kerja Sosial dan Restitusi Sebagai Alternatif Pidana Penjara dalam Pembaharuan Hukum Pidana Indonesia*. 24 MEDIA HUKUM. 96, 98-100 (2018); Margo Hadi Pura & Raden Yulia Kartika, *Perlindungan Hukum Terhadap Narapidana yang Menjadi Korban Over Population Berdasarkan Undang-Undang Nomor 12 Tahun 1995 Tentang Pemasyarakatan*. 3 JURNAL HUKUM MEDIA BHAKTI. 65, 70-73 (2019); Ramdhan Kasim, *Dehumanisasi Pada Penerapan Hukum Pidana Secara Berlebihan (Overspanning van het Straftrecht)*. 2 JAMBURA LAW REVIEW. 1, 15-20 (2020).

²⁵ *Supra* note 11, at. 144-168

to place those mixed with other prisoners so that they feel pressured and cause tension, this triggers a criminal offense again when they later leave, it means that the person becomes a recidivist and criminal and criminal objectives are not achieved. Furthermore, Sutherland, Cressey, & Luckenbill (1992) emphasized that false management and a lot of deprivation can also have negative effects in the form of mutual learning about the values and techniques of committing crime.²⁶

In Cipinang Penitentiary, for example the classification is related to the placement of prisoners in a room or block only for convicted terrorist, drug and corruption cases. This means that in addition to criminal cases that can occur, for example convicts of road traffic criminal cases, can be placed simultaneously in one room with convicted criminal cases of murder, theft or fraud.

CREATING A SYSTEM TO REDUCE VICTIMS' SUFFERING

In correctional institutions, especially with overpopulation conditions have caused victims in this case the prisoners who suffer as a result of the government in this case especially the correctional institution which is unable to carry out adequately some of the provisions contained in the Correctional Act as well as several principles part of the 10 (ten) correctional principles. The main and very basic factor is the limitations of infrastructure as well as the facilities of prison facilities in this case the minimal number of prisoners' rooms and also the facilities inside which are intended for the residence of prisoners while serving prison sentences compared to the large number of prisoners as residents. The high overpopulation rate seen from the perspective of victimization has created victims and in the perspective of criminology can be a criminogenic factor as well as from the perspective of criminal law, a factor that impedes criminal aims and criminalization. Added from the perspective of human rights, there has been a violation of human rights by the inability of the prisoners to perform worship properly, especially Muslims to perform the

²⁶ EDWIN HARDIN SUTHERLAND, DONALD RAY CRESSEY, DAVID F. LUCKENBILL, PRINCIPLE OF CRIMINOLOGY 145-168 (1992)

maghrib and *isha* prayer and evening prayers due to limited facilities and infrastructure in the room.

This problem has been going on for a very long time and conditions have worsened since many drug convicts entered the population in the prison. This condition must not be allowed and must take steps that are measurable and have a solid legal basis.

The Government in this matter the Ministry of Law and Human Rights has tried to make efforts related to this matter as stated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 11 of 2017 Concerning the Grand Design for Overcrowded Handling in State Detention Centers and Corrections Institutions, State Gazette of the Republic Indonesia No.969, 201. Some of the emphasis in the regulation is actually very good for example by regulating efforts to reduce the supply of prisoners or inmates into prisons/detention centers and accelerate the release of prisoners/detainees with reintegration programs in accordance with the provisions of the legislation laws that apply. Some of the strategies adopted are adopting the United States of America through the "front end" policy or prison avoidance programming and the "back end" alternatives policy. Implementation of the "front end" or prison avoidance programming, among others, is done by providing restitution, conditional crime, and by intensifying forms of house arrest or city arrest and providing alternative penalties (for example community services). Whereas the "back end" alternatives can be done with parole, and remission.

The above policy means there are several methods to be achieved include: *first*, limiting the placement of people in correctional institutions/detention; *second*, diverting placement of people in prisons/detention; *third*, accelerate the placement of people in prisons/detention; and *fourth*, making prisons/detention centers as a placement facility for people.

If the policy can be implemented effectively, overpopulation will result in obstacles in achieving criminal and criminal penalties and avoiding the emergence of victims of human rights violations. However, it seems that this has not been integrated in the national legal system, so that within the framework of criminal law enforcement each sub-system within the criminal justice system is still struggling with their respective paradigms.

Another method that can be done is to make and determine restorative justice as part of the national legal system and determine drug users not to be included in prison but they are included in rehabilitation institutions.

CONCLUSION

The research concluded and highlighted some points concerning to victimization of inmates or prisoners in the context of overcapacity and overpopulated correctional institution in Indonesia. The main thing is the problem of overpopulation in almost all correctional institution in Indonesia should be related to the human rights. Some basic rights, such as rights for health, rights of expression, right to life in proper place, and rights to worship have been violated by overpopulated correctional institutional condition in Indonesia. The victimization for prisoner or inmates in many cases were occurred very seriously. In fact, the Standard Minimum Rules for the Treatment of Prisoners has regulated how the prisoners treated.

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Quote

Prison is a recruitment
center for the army of
crime. That is what it
achieves.

Michel Foucault