

The Resolution of Overcrowding as a Form of Convention against Torture Implementation to Achieve Security Stability in Prisons and Detention Centers in Indonesia

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Abstract

This research addressed the resolution of overcrowding as a form of implementing the Convention Against Torture to achieve security stability in prisons and detention centers in Indonesia. Errors in the calculation of prisoner numbers that did not align with the size of detention cells led to the phenomenon of overcrowding. In other words, such conditions could be deemed as torture against inmates. Despite Indonesia's ratification of the Convention Against Torture through Law Number 5 of 1998, torture in sentencing remained a major concern. The aim of this study was to examine the causes and impacts of overcrowding, analyze the phenomenon of overcrowding in Indonesian prisons and detention centers in accordance with the Convention Against Torture, and propose solutions to overcrowding as an implementation of the Convention Against Torture. The research employed a qualitative method with a normative legal approach to comprehend and interpret existing legal provisions and evaluate their implementation, thereby identifying the alignment between applicable law and its implementation. Primary data sources consisted of legislative regulations arranged according to the hierarchy of legal norms. Secondary legal materials included textbooks authored by eminent legal scholars, legal journals, academic opinions, legal cases, jurisprudence, and recent symposium outcomes relevant to the research topic. This study found that the Indonesian government endeavored to expand detention space to minimize torture and suffering that could occur in overcrowded cells, thereby facilitating the achievement of the goals of the Convention Against Torture.

Keywords: *Overcrowded prisons, Convention Against Torture, Indonesia.*

INTRODUCTION

The desire of every human being sometimes clashes with one another, often resulting in conflicts that lead to criminal acts (Director General of Ministry of Law and Human Rights, 2020). Issues regarding violence-related crimes remain an ongoing debate as long as political ideologies seeking self-interest persist, with such cruel actions believed to have occurred since the dawn of human civilization (Ilham, 2020). Numerous studies have shown that violence is deeply rooted in societal life, as evidenced by the continued discourse among scholars throughout history (Coa, 2020). Reports on these criminal practices have been documented by various non-profit organizations worldwide such as Amnesty International, Human Rights Watch, Freedom House, and Associazione Antigone, indicating that such violent acts have been persistently utilized by nearly all countries globally over the past three decades (Hapsari, 2022). This phenomenon persists because many nations are influenced by the notion that historically-rooted violent acts remain relevant and are integral to the authoritarian nature of these countries (Windar et al., 2022).

A controversial aspect highlighted in reports on these criminal practices is the revelation that not only authoritarian regimes engage in such acts; even countries known for upholding Human Rights are implicated in acts of violence (Windar et al., 2022). Moreover, despite efforts

by various NGOs to protest against these practices, they often lack sufficient power to effectively combat torture, likened to a cancer that has spread throughout society. Some reports also indicate that annually, democratic countries vocal about Human Rights commit numerous acts of violence and torture under the pretext of protecting victims (Hapsari, 2022).

From an anthropological perspective, criminal acts in society remain taboo; however, in practice, widespread violence is frequently abused by contemporary democratic governments as an outlet for repression, often lacking empathy or sympathy towards victims of torture (Hapsari, 2022). Therefore, violence is directly intertwined with societal life, often justified under the guise of larger interests, such as the war on terror (Antonio, 2019). Violence has a long history dating back to ancient times, with various forms of violence legitimizing after the tragic terrorist attacks on September 11, 2001, which destroyed the World Trade Center (WTC) in New York, USA (Andrea, 2014).

Consequences for perpetrators of criminal acts include their removal from social life and placement into correctional institutions (prisons), pivotal institutions in addressing crime and violence and a subsection of criminal justice (Sianturi, Purba, Mukidi, 2022). In this stage, termed as "atonement" and rehabilitation, despite being isolated from society, inmates are required to fulfill tasks as stipulated by correctional institutions to enhance their skills, physical fitness, and spirituality (Evans, 2023). Therefore, aside from their obligations, inmates also deserve their rights to be fulfilled during their period of punishment.

Issues within correctional institutions include the erosion of prisoners' rights to be treated as human beings (Hutabarat, 2017). New inmates often face violence from fellow inmates in the same cell due to their criminal actions. Ironically, torture within correctional institutions frequently goes unnoticed by authorities, gradually becoming an accepted tradition (Nafja, 2023). Additionally, there is uncertainty regarding whether such violence results from negligence or deliberate actions (Mortiz, 2023).

Torture is not a new issue; rather, it has become a tolerated culture within correctional facilities (Hananto, 2019). According to the 2023 report from the National Commission on Human Rights (Komnas HAM), Indonesia has adopted the Anti-Torture Convention through Law Number 5 of 1998, yet violence by security forces remains a significant concern (Komnas HAM, 2023). Syafridatati and Saputra (2016) note that, in the context of torture, the inadequacy of legal instruments often leaves victims feeling trapped. Torture linked to violations of the Criminal Code (KUHP) is viewed as a fundamental breach of human rights, shifting responsibility from the state to individuals as perpetrators, thereby fostering a culture of impunity.

To prevent the ongoing occurrence of torture, the prohibition of torture has been enshrined in the Convention Against Torture (Human Rights Watch, 2021). This Convention mandates that ratifying states must explicitly prohibit and avoid torture, as well as any cruel, inhuman, or degrading treatment or punishment under all circumstances (Avisa, 2024). The dissonance between the Convention Against Torture and the phenomenon of overcrowding in correctional institutions indicates a need for further analysis to achieve security stability within prisons.

RESEARCH METHODS

This research employs a qualitative method with a normative juridical approach, focusing on the analysis of prevailing legislative regulations, legal doctrines, and principles relevant to this study. Legal materials utilized consist of secondary data obtained from literature research, including both primary and secondary legal sources arranged according to the hierarchy of legal

norms (Saputra & Isnawati, 2022). In this study, primary legal materials used pertain to sentencing provisions. Secondary legal materials encompass textbooks authored by renowned legal experts, legal journals, opinions from academics, legal cases, jurisprudence, as well as recent symposium outcomes relevant to the research topic, specifically addressing issues of overcrowding in correctional institutions and the implementation of the Convention Against Torture in Indonesia.

Normative juridical analysis is conducted to comprehend and interpret existing legal provisions and evaluate their implementation, thereby identifying the alignment between applicable law and its enforcement. The findings of this analysis are subsequently synthesized to address the research questions and achieve the predetermined research objectives (Suganda, 2022).

RESULT AND DISCUSSION

The Causes and Impacts of Prison and Detention Center Overcrowding in Indonesia

According to Novian (2018), overcrowding in prisons and detention centers is caused by sentencing policies that tend to favor imprisonment as a punitive measure, excessive penalties for minor offenses, victimless crimes, and excessive pre-trial detention. Additionally, factors such as complex administrative procedures, inadequate assimilation and reintegration processes, limited access to legal counsel for suspects or convicts, as well as institutional issues, human resources, and infrastructure constraints, also contribute to the problem of overcrowding. Consequently, the increasing number of individuals incarcerated exceeds the limited capacity of prisons and detention centers, exacerbating the issue of overcrowding.

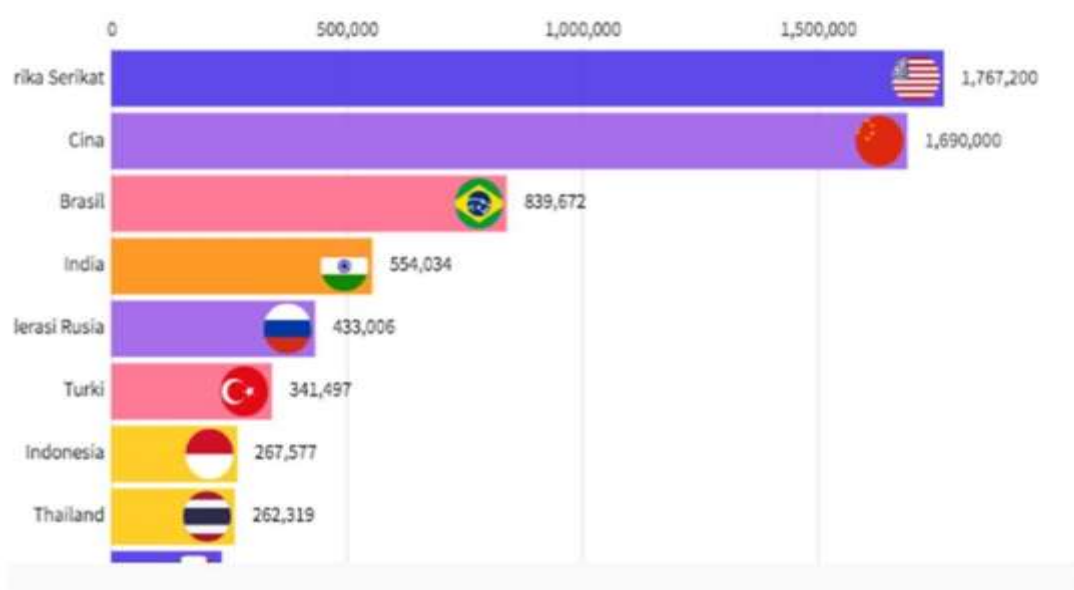


Figure 1. Countries with the Highest Prison Population as of November 2023
(Source: World Prison Brief, 2024)

Based on data from the World Prison Brief, Indonesia ranks among the top ten countries worldwide with the largest prison/detention center populations, standing at seventh out of 223 countries in terms of prison population size in 2023 (Maharani, 2023).

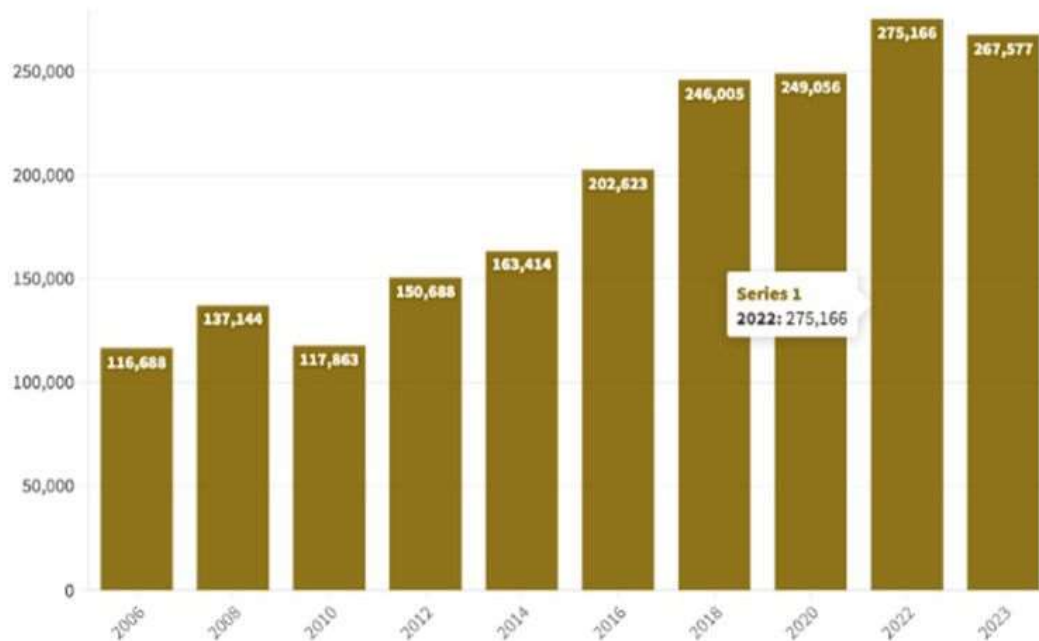


Figure 2. Trends in Prison Population in Indonesia

(Source: Directorate General of Corrections, Ministry of Law and Human Rights, 2023)

According to data from the Directorate General of Corrections, Ministry of Law and Human Rights (Ditjenpas Kemenkumham), the prison population in Indonesia reached its peak in 2022, totaling 275,166 individuals. The majority of these inmates were involved in drug-related offenses, comprising 120,042 drug users and 15,176 individuals engaged in trafficking, distribution, possession, or production of narcotics. Additionally, there were 132,367 inmates imprisoned for general criminal cases and 4,632 for corruption-related offenses. Furthermore, 504 individuals were detained for terrorism-related offenses, and 259 for human trafficking. The prison population also included 161 inmates convicted of illegal logging and 141 for money laundering (Anissa, 2023).

Overcrowding in prisons and detention centers has potential negative impacts, such as disruptions to effective rehabilitation programs, increased risks of inmate escapes, prison riots, drug trafficking controlled from within prisons, arson incidents instigated by inmates, extortion practices by prison officials, and other security-related risks (Supriadi, 2017). These issues stem not only from negligence in management by prison officials or infrastructure limitations but also from the overall complexity of the system and its implementation in practice (Jazuli, 2021).

Indonesian prisons and detention centers also face security concerns. Currently, the national security officer-to-inmate ratio stands at 1:36, significantly below the international standard of 1:15 (Directorate General of Corrections, 2021). This condition heightens the risk of insecurity and potential mass conflicts within prisons and detention centers due to inadequate handling.

The Convention Against Torture addresses the phenomenon of overcrowding in Indonesia.

Indonesia has demonstrated a strong commitment to the prohibition of torture by ratifying the Convention Against Torture through Law No. 5 of 1998. This commitment signifies Indonesia's dedication to ensuring compliance with the norms outlined in the convention, thereby legally binding the country to its provisions. This step aligns with Article 2 of the Convention and General Comment No. 2 of 2008, which assert that each state party must take legislative, administrative, judicial, or other measures to prevent acts of torture within its jurisdiction (Komnas HAM, 2022).

However, there are still shortcomings in existing norms concerning torture, such as the absence of a clear definition of what constitutes torture, insufficient mechanisms for effectively enforcing the right to be free from torture, ambiguity in sanctions for perpetrators, and lack of clarity regarding compensation for torture victims. Legislatively, there is currently no explicit legal provision defining the criminal offense of torture. In the Indonesian Criminal Code (KUHP), the offense that most closely resembles elements of torture is assault as regulated under Article 351, or coercion to confess or provide information in criminal cases or cases of official misconduct as regulated under Article 422 of the KUHP (KontraS, 2020). However, in practice, these provisions do not specifically encompass all elements of torture as defined in the Convention Against Torture (UNCAT).

Elements	Convention Against Torture (CAT)	351 KUHP	422 KUHP
Subjects	Individual who has knowledge or consent from an official, or from an individual acting in an official capacity, whether it be a public official or others, in accordance with their official capacity.	Anyone	Public officials
Actions	Intentionally causing significant suffering, whether physical or mental.	Intentionally inducing feelings of discomfort (suffering), pain, injury, or harm to someone's health.	In the context of criminal cases, using pressure or violence.
Purpose	Receiving information from someone or a third party, imposing punishment on an individual for their own actions or the actions of a third party or actions suspected to have been carried out by them or a third party, or engaging in intimidation or coercion, or for any reason based on discrimination in any form.	Causing someone to feel discomfort (suffering), pain, experience injury, or damage to their health.	To obtain a confession or information by means of coercion or enticing the individual.

Tabel 1. Comparison between Convention Against Torture (CAT), Article 351 of the Indonesian Criminal Code (KUHP), and Article 422 of the Indonesian Criminal Code (KUHP)

(Source: Modified by Author)

From the analysis above, it can be concluded that the offenses of assault and official misconduct under the Indonesian Criminal Code (KUHP) do not fully encompass all elements of torture as outlined in the Convention Against Torture (CAT). Assault generally involves acts causing suffering or discomfort to others, whereas the concept of torture entails severe suffering with specific purposes and may involve state officials or be conducted with their knowledge or consent (Abidin, 2017). The use of the offense of assault in the context of torture may diminish direct or indirect involvement of state officials in such crimes, thereby reducing the offense to a common crime among civilians (KontraS, 2020).

Acts of violence are not limited to open spaces but can also occur in enclosed spaces, such as overcrowding within prisons (KontraS, 2020). Overcrowding constitutes a form of torture within prisons or correctional institutions that can affect human rights, social welfare, and the overall security of inmates (ICJR.com).

Overcrowded prison conditions can provide opportunities for practices of torture and inhumane or degrading treatment (Latifah, 2019). In reports and evaluations conducted by CAT, Indonesia has been highlighted for issues of overcrowding in its prison and correctional system (Saputra & Isnawati, 2022). Contributing factors to overcrowding include law enforcement policies that tend to incarcerate offenders, particularly in cases involving narcotics offenses that often result in large numbers of suspects and convicts. Additionally, inadequate facilities and slow legal processes also contribute to the accumulation of detainees and prisoners within the correctional system (Sunarjo, 2016).

Addressing Overcrowding as an Implementation of the Convention Against Torture to Achieve Security Stability in Prisons and Correctional Facilities in Indonesia

Torture has become a culture allowed to thrive within correctional institutions (Praditya, 2019). Observing numerous instances of torture and to preempt its ongoing perpetuation, the prohibition against torturing detainees has been elevated to the Convention Against Torture (Human Rights Watch, 2021). In general, this convention imposes obligations on ratifying states to prohibit and prevent torture, as well as cruel, inhuman, or degrading treatment or punishment in all circumstances (Avisa, 2024).

Quoting the explanation regarding the Convention Against Torture above, it is evident that the treatment of torture or cruel and inhuman punishment is prohibited under any condition (Komnas HAM, 2022). This elucidates that despite prisoners being individuals punished for crimes committed, their status and rights as humans necessitate upholding their dignity through humane treatment, a principle that must be adhered to by correctional institutions (Sinlae, 2016).

From the obligations outlined in the Convention Against Torture, the phenomenon of overcrowding in correctional institutions constitutes a deviation and violation of what has been promised (Komnas HAM, 2022). The condition of overcrowded correctional institutions can be regarded as torture because it restricts the movement of detainees, affecting their physical and mental well-being (Dirjen Kemenkumham, 2020). Therefore, the resolution of the overcrowding phenomenon in correctional institutions needs further analysis to achieve the goals of the Convention Against Torture in Indonesia.

Overcrowding is one form of torture (Rully et al., 2018). Torture occurring within prisons has become a tolerated culture (Syahdiyar, 2020). Considering the numerous examples of torture and to prevent its continuation, the prohibition against torturing detainees has been elevated to the Convention Against Torture (Human Rights Watch, 2011). In general, this convention stipulates that ratifying states must cease and prevent torture, as well as cruel, inhuman, or degrading treatment or punishment in all situations (Avisa, 2024). Therefore, addressing the issue of overcrowding is highlighted as crucial, requiring the development of comprehensive

strategies based on data and public support, and the necessity for the Indonesian government to design an action plan to address overcrowding (UNODC, 2010).

From this perspective, there are several practical steps that can be taken to address the issue of overcrowding, as stipulated in Minister of Law and Human Rights Regulation No. 11 of 2017 concerning the Grand Design for Handling Overcrowding in Detention Houses and Correctional Institutions. These steps include improving regulations, enhancing institutions to improve facilities and infrastructure, and empowering human resources (Rully et al., 2018; Karimah, 2022).

Firstly, there is a need for regulatory improvement aimed at reducing the number of detainees, which includes current discourse on criminal policy reform, including the revision of the Criminal Procedure Code (KUHAP), the Draft Criminal Code (RKUHP), and other draft laws (Kemenkumham, 2022). Although controversial, the RKUHP and KUHAP advocate for changes in sentencing approaches that can help address overcrowding (Novian et al., 2018). A focal point of these changes is the pre-trial detention requirements, which are a significant discussion in both laws. According to the Institute for Criminal Justice Reform (ICJR) (2020), the Criminal Procedure Code (KUHAP) already provides alternatives to detention, but their implementation is hindered by subjective law enforcement policies. Therefore, regulatory improvements that support changes in sentencing approaches are necessary.

According to Sari (2022), the Draft Criminal Code (RKUHP) advocates alternative criminal policies that do not involve imprisonment, but rather involve supervision and community service sentences. The discussion of the RKUHP also opens up wide opportunities to expand the criteria for alternative sentencing, including criteria for community service and supervision sentences, and the preparation of mechanisms for their implementation (Kemenkumham, 2022). Furthermore, it emphasizes the importance of supporting the enactment of the Prosecutor's Bill and the Corrections Bill being discussed by the Ministry of Law and Human Rights together with the Indonesian House of Representatives (DPR RI), which potentially supports the concept of restorative justice. This concept can be fully implemented in regulations governing the functions of each institution, such as courts, prosecutors, and police (Directorate General of Corrections, 2018).

Moreover, regulatory improvements are expected to facilitate the reintegration process of several prisoners into society (Kemenkumham, 2022). The government needs to reassess regulations that hinder the release process. According to Novian et al. (2018), there is still injustice in granting remission and conditional release to prisoners, especially in the context of narcotics cases. Government Regulation No. 99 of 2012 concerning the Terms and Procedures for Implementing the Rights of Prisoners does not specify whether these conditions specifically apply to narcotics traffickers or users, although in practice, drug users are often sentenced to five years in prison. While these conditions are important in preventing crime and achieving the desired deterrent effect, in reality, the majority of prisoners today are associated with narcotics cases, so the government should reconsider this Government Regulation.

Secondly, according to the Minister of Law and Human Rights, in the Mahupiki Indonesia Webinar on June 29, 2020, the government has implemented a policy to increase the capacity of prisons/detention centers, although this increase is only about 3,000 people per year, which is disproportionate to the growth in the number of detainees/prisoners increasing by about 27,000 people per year. Nevertheless, increasing capacity remains important to reduce the escalating risk of overcrowding (Saputra & Isnawati, 2022).

In coping with the current constraints of the state budget, the government should consider non-state budget financing alternatives, particularly through the Government Cooperation with Business Entities (KPBU) scheme. KPBU has potential advantages compared to financing through the state budget because it not only reduces the financial burden on the state but also

enhances rehabilitation capacity by developing industries (Ministry of Finance, 2022). According to the Directorate General of Corrections (2017), the KPBU scheme focuses on fostering independence by providing skills training within prisons, including in the agriculture, manufacturing, and services sectors, to prepare prisoners during and after their sentences.

Since 2016, the Directorate General of Corrections has implemented the KPBU scheme for the development of Nusakambangan prison. In this scheme, the private sector is given the opportunity to manage cattle farms involving prisoners, while also building social infrastructure such as facilities and infrastructure, including the expansion of prison space. The goal of this scheme is to provide effective alternative financing amid the increasing constraints of the state budget. However, the construction of prisons through the KPBU scheme has not proceeded smoothly to date, thus it needs to be revised based on the experiences gained at Nusakambangan prison (Ministry of Finance, 2022).

The goal of imprisonment is to establish a law-abiding community system through rehabilitation to realize awareness of crimes, correct mistakes so that they are not repeated when prisoners return to life in society (Mudzakir, 2008). This goal will be difficult to achieve if overcrowding occurs in correctional institutions or detention centers because the potential for violence and torture will increase. Consistent with the points stated in the Convention Against Torture, where torture during imprisonment is prohibited and the definition of torture mentioned in CAT is reinforced through Article 351 of the Criminal Code stating that torture is a condition that causes suffering such as pain and discomfort to others (Rully et al., 2018). Considering the impact of the overcrowding phenomenon in prisons or detention centers, this phenomenon causes discomfort and suffering to detainees, which is a violation of the goals of the Convention Against Torture (Directorate General of Corrections, 2021). Therefore, the expansion of prison space currently being pursued by the Indonesian government can be seen as a concrete step in implementing the goals of the ratified Convention Against Torture, namely to eliminate torture in the sentencing process. Indirectly achieving the goals of the Convention Against Torture will impact the achievement of the goals of imprisonment itself, namely to create a community capable of obeying rules through positive punishment that nurtures and upholds human rights (National Commission on Human Rights, 2021).

CONCLUSION

Overcrowding in Indonesian prisons/detention centers has become a serious issue affecting security stability and human rights. The phenomenon of overcrowding also constitutes a form of torture, contradicting the principles of the Convention Against Torture (CAT) ratified by Indonesia. To address this issue, comprehensive strategic measures are necessary, including regulatory improvements to reduce the number of detainees, increasing prison/detention center capacity through the Government Cooperation with Business Entities (KPBU) scheme, and diversifying financing through non-state budget options. Additionally, enhancing understanding and awareness of human rights and efforts to prevent torture need to be strengthened. With the implementation of these measures, it is expected that the issue of overcrowding can be gradually addressed, thereby improving security conditions within prisons/detention centers and ensuring the human rights of inmates in accordance with the Convention Against Torture.

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