

## **Formulation of The Separation of Correctional Institutions from The Ministry of Law and Human Rights to Realize Legal Expediency in The Governance of Government Institutions**

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**Abstrak:** *The discussion on the separation of correctional institutions from the Ministry of Law and Human Rights has become an increasingly important topic in the context of effective and efficient governance. This research aims to explore the formulation of the separation of correctional institutions from the Ministry of Law and Human Rights as an effort to realize legal expediency in the governance of government institutions. The approach used in this research is normative juridical. The normative juridical approach is an approach that is carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research. The results of the analysis show that the separation of correctional institutions from the Ministry of Law and Human Rights has the potential to increase effectiveness and accountability in the governance of government institutions, as well as strengthen the protection of human rights. However, the process is also faced with a number of challenges, including inter-agency coordination, resource allocation, and changes in organizational culture. This research makes an important contribution to understanding the importance of separating the penitentiary from the Ministry of Law and Human Rights in the context of realizing legal expediency in governance. The resulting policy implications can serve as a foundation for better decision-making in formulating and implementing future reforms to the governance of correctional institutions*

**Keywords:** *Segregation of prisons; Legal expediency; Governance*

### **INTRODUCTION**

The State of Indonesia is a State of Law as stated in the 1945 Constitution of the Republic of Indonesia in Article 1 Paragraph (3), which reads "The State of Indonesia is a State of Law".<sup>1</sup> The law must be able to provide protection for human rights, especially for Indonesian citizens. So, if you look at it based on its duties, the actions of the government and the people must be based on the law. As a state of law, Indonesia must fulfill the concept that this country is a state of law based on constitutional, adheres to the principles of democracy, and recognizes and protects human rights with impartial and free justice. This means that society must carry out government functions based on the laws set out in the 1945

Constitution. This means that the application of a law means forcing its citizens to comply with the law. Any act that is considered a crime will have punitive consequences. In this case, Indonesia has the consequence of punishment which is separated into 5 types, namely Death Penalty, Imprisonment Penalty, Confinement Penalty, Fine Penalty and Demand Penalty, where this punishment is carried out through the Correctional Institution.<sup>2</sup>

Correctional Institution is an institution that currently faces a lot of problems, so there needs to be accountability in identifying the problems faced by the community described in this case, namely regarding the effectiveness of its management. In general, community institutions are responsible for recognizing the

<sup>1</sup> Undang-Undang Dasar Negara Republik Indonesia 1945

<sup>2</sup> Kitab Undang-Undang Hukum Pidana, Kuhap Dan Kuhp, Jakarta:Redaksi Sinar Grafika, Cet. 13, 2014. Pasal 10

rights of detained individuals and the safety of prisoners. Not only that, the penitentiary system is also responsible for the social, mental and physical needs of prisoners.<sup>3</sup>

The correctional institution is a place to carry out guidance for prisoners and correctional students. Guidance is carried out to prepare correctional prisoners to become good citizens and to restore the unity between them and society. This process begins with detention, followed by the collection of documents and evidence related to the crime, and finally, depending on how serious the case is, there will be multiple trials. After the various hearings, there will be a judgment hearing, where the suspect will be sentenced to several months or even several years. The final stage after conviction is moving to a correctional institution, also known as a correctional facility, or prison.

The penitentiary is a public service institution. In this regard, the Directorate General of Corrections is directly responsible for coordination with the Minister of Law and Human Rights of the Republic of Indonesia. The Directorate General of Corrections is also responsible for the line of coordination for the Regional Offices of the Ministry of Law and Human Rights (Kanwil Kemenkumham) in each province. These Regional Offices are then directly responsible for the operation of Correctional Centers, Correctional Institutions, and State Detention Centers.<sup>4</sup> In each province, there are several correctional institutions operating under the auspices of the Regional Office of the Ministry of Law and Human Rights. Correctional institutions such as Correctional Institutions (LAPAS), State Detention Centers (RUTAN), and Correctional Centers (BAPAS) have correctional technical service units. In relation to the main function of correctional institutions, which is to represent correctional to prisoners and correctional students.

LAPAS is under the auspices of the Ministry of Law and Human Rights in the

criminal justice system which functions to foster and correct convicts (the function of correction) so that convicts return to a normal and productive life in the midst of society. The detention process carried out by two institutions requires both institutions to coordinate well. The prison itself is under the auspices of the Ministry of Law and Human Rights. However, some data in the field shows that prison management is not carried out by the Ministry of Law and Human Rights due to the high number of escaped prisoners and the development of drug factories in detention cells. The increasingly entrenched problem has led some experts to state the need for a discourse on the formation of an autonomous prison management body. Autonomous prisons will also cut many of the bureaucratic levels that have existed so far, thus facilitating the detention process. If autonomous prison management can be closer to the Directorate General of Corrections later with its units and of course it will create a broader and more efficient work program.

The management of prisons carried out by the Ministry of Law and Human Rights at this time is far from optimal. The management of prisons still has many shortcomings starting from the types of prisons that are mixed and the lack of supervision in management makes prisons a new drug field. Prison management must be under an autonomous body directly under the auspices of the president to overcome prison problems. In addition, the formation of an autonomous body of prisons will be able to cut the level of bureaucracy so far.

The purpose of the research is to evaluate the practice of correctional institutions based on applicable laws and regulations, to analyze the importance of separating correctional institutions from the Ministry of Law and Human Rights to realize legal expediency in the governance of government institutions and to find a scheme for separating correctional institutions from the Ministry of Law and Human Rights to realize legal expediency in the

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<sup>3</sup> Vita Nurul Fathya, *Tata Kelola Lembaga Masyarakat : Penerapan Prinsip Akuntabilitas Dalam Manajemen Lembaga Masyarakat*, Journal Of Correctional Issues Vol.1 (2), 2018. Hlm. 105-106

<sup>4</sup> Surat Keputusan Menteri Kehakiman Republik Indonesia Nomor M.01-Pr.07.03 Tahun 1985

governance of government institutions related to legal objectives.

## RESEARCH METHOD

This study employs a normative juridical research method, focusing on the examination of legal principles, theories, and regulatory frameworks relevant to the potential separation of correctional institutions from the Ministry of Law and Human Rights. The normative juridical approach relies on primary legal materials such as laws, regulations, and official policy documents, as well as secondary sources including scholarly literature, expert analyses, and academic commentaries. Data collection is conducted through comprehensive literature review and document analysis to identify the legal basis, conceptual foundations, and governance implications of the proposed institutional restructuring. The collected materials are then analyzed qualitatively using legal interpretation and conceptual analysis to evaluate the potential benefits, challenges, and legal expediency associated with the separation. This method enables the research to systematically assess the regulatory considerations and institutional dynamics relevant to improving the effectiveness, accountability, and human rights protection within the correctional governance system.

## RESULT AND DISCUSSION

### *What is the practice of correctional institutions based on the current legislation*

In the correctional system, prisoners are entitled to spiritual and physical education. They also have the right to worship, establish relationships with other people, including family, and get proper education through print and electronic media. To run the correctional system, the community must work well together. Law number 12 of 1995 on corrections clearly states that there are three components involved in running the correctional system, namely:

1. Prisoners as prisoners.
2. Correctional officers as educators.

3. The community as citizens who receive back former prisoners who have completed their punishment.

The function of the correctional system in Article 2 of Law Number 12 of 1995, namely:

*“The correctional system functions to prepare prisoners to be able to integrate healthily with society, so that they can play a role as free and responsible members of society.”*

The prisoner development process relies heavily on correctional officers as they are the first people to directly interact with prisoners. The goal of correctional facilities is therefore to return prisoners to society so that they can integrate and function again as independent and self-sufficient members of society. Therefore, the role of prisons is to foster and guide correctional prisoners. Article 5 to Article 9 of Law No. 12 of 1995 regulates coaching. See Article 6 paragraph (1), which regulates that the guidance of prisoners is carried out in correctional institutions and provides guidance to prisoners in BAPAS. Furthermore, it is strengthened by Article 7 paragraph (1) of Law No. 12 Year 1995, which stipulates that correctional officers are responsible for carrying out the guidance and mentoring of prisoners.<sup>5</sup>

The general rights that must be obtained for a prisoner are clearly regulated in Article 9 of Law Number 22 of 2022 concerning Corrections, namely prisoners are entitled; 1) Perform worship in accordance with their religion or belief; 2) Receive care both spiritually and physically; 3) Receive education, teaching, and recreational activities and opportunities to develop potential; Receive health services and proper food according to nutritional needs; 5) Receive information services; 6) Receive legal counseling and legal assistance; 7) Receive humane treatment and be protected from acts of torture, exploitation, neglect, violence and all actions that endanger physical and mental; 10) Receive work safety guarantees, wages or premiums for work results; 11) Receive social

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<sup>5</sup> Saputra, Ferdy. Peranan Lembaga Pemasyarakatan Dalam Proses Penegakan Hukum Pidana Dihubungkan Dengan Tujuan

Pemidanaan. *Reusam: Jurnal Ilmu Hukum*, 2020, 8.1: Hlm. 7

services; 12) Receive or refuse visits from family, advocates, companions and the community; 12) Receive or refuse visits from family, advocates, companions and the community; 12) Receive or refuse visits from family, advocates, companions and the community.<sup>6</sup>

If prisoners meet requirements such as good behavior, actively participating in activities, and having a reduced risk, they are entitled to the above rights. Thus, they will receive the rights listed in Article 10. Prisoners remain human beings with human rights that have been established against them even though they have been sentenced. Law No. 39/1999 on Human Rights also regulates the protection of prisoners' human rights.

Indonesian Law No. 22 of 2022 on Corrections provides the legal basis for establishing correctional institutions. It is a subsystem of criminal justice that carries out law enforcement in the area of treatment of detainees, children, and prisoners. With the repeal of Law No. 12 of 1995 on Corrections, this penitentiary is no longer in accordance with the previous law.<sup>7</sup>

By implementing the correctional law, correctional institutions not only carry out punishment, but also aim to make correctional prisoners realize their mistakes, improve themselves, and not commit criminal acts again so that they can be accepted back by society, participate in development, and live reasonably as good and responsible citizens. In conducting guidance in correctional institutions, the following matters should be considered: 1. building pattern and layout; 2. quality and quantity of officers; 3. prison management; 4. welfare of officers; 5. facilities and coaching facilities; 6. budget; 7. natural resources; and 8. quality and coaching program.<sup>8</sup>

After all, prisoners are individuals who have potential that can be developed. They have the ability to change their lives to become more

productive and live their lives better than before serving their sentence. Coaching cannot go well due to poor prison conditions and poor outcomes. depends on how legislation, government regulations, and ministerial regulations regulate the involvement of third parties in the coaching of prisoners, which makes it more difficult for prison officers to provide coaching, especially in terms of involvement in self-reliance programs.

### ***The urgency of separating correctional institutions from the Ministry of Law and Human Rights to realize legal expediency in the governance of government institutions***

The process of coaching prisoners is carried out in correctional institutions under the guidance of correctional officers and the Ministry of Justice and Human Rights, based on laws and regulations such as Law Number 12 of 1995 concerning Corrections and applicable Coaching Concepts. According to Article 1 paragraph (1) of Law Number 12 of 1995 concerning Corrections, what is meant by correctional is an activity to carry out correctional guidance based on systems, institutions and methods of guidance which are the final part of the punishment system in the criminal justice system. The goal is achieved through rehabilitation education and reintegration of prisoners. Correctional serves as the center of the implementation of the principle of protection. In terms of prisoner development, the development system is designed to assist and direct prisoners towards a better future. as outlined in the ten basic principles, which are then used as the basis for implementing the correctional system in Indonesia. Therefore, coaching is an attempt to change the pattern or order. Coaching is any effort to educate, guide and direct an activity in various ways and efforts through an orderly and neatly organized process to achieve

<sup>6</sup> RI, UU. No.22 Tahun 2022, Pasal 9

<sup>7</sup> LPN Karang Intan, Undang-Undang Nomor 22 Tahun 2022: Era Baru Pemasyarakatan”, diakses melalui <https://lpnkarangintan.kemenkumham.go.id/berita->

utama/undang-undang-nomor22-era-baru-pemasyarakatan/ pada tanggal 23 agustus 2022

<sup>8</sup> Maryani, Desy. Faktor-Faktor Penyebab Tidak Tercapainya Tujuan Pemidanaan Lembaga Pemasyarakatan Di Indonesia. *Jurnal Hukum Sehasen*, 2015, Hlm. 8-9

***The urgency of separating correctional institutions from the Ministry of Law and Human Rights to realize legal expediency in the governance of government institutions***

maximum goals.<sup>9</sup> As stated in Article 5 of Law Number 12 of 1995 concerning Corrections.

In addition, the provision of rehabilitation programs, work programs, industrial-based prisons, and scholarships for prisoners can also be carried out optimally which aims to improve skills and knowledge. When prisoners are released from prison, it is expected that they will leave their old habits and switch to new jobs that involve the skills they have learned while in prison.

In this case, the theory of legal expediency initiated by Bentham also applies, which views the law as based on the principle of utility.<sup>10</sup> This law has two main points, namely:

- a. The legal consequence is to prevent future repetition of the crime of conviction.
- b. This punishment gives satisfaction to the victim and others.

Correctional Institution as the spearhead of the implementation of the principle of pengayoman is a place to achieve these goals through education, rehabilitation and reintegration. In line with the role of the Correctional Institution, it is appropriate that Correctional Officers carry out the task of coaching and safeguarding Correctional Prisoners in the Law set as Functional Officials of Law Enforcement. Coaching in the Penitentiary can be carried out in a comprehensive manner against prisoners. Because medical therapy and social rehabilitation of prisoners in order to provide benefits in the recovery of prisoners.

Correctional Institution is one of the important components in the criminal justice system that has the most strategic function and potential to improve the prisoners to be fostered so that those who have committed crimes are expected not to repeat their crimes.<sup>11</sup>

The planned separation scheme is that the Penitentiary will be separated from the Ministry of Law and Human Rights. This separation is carried out so that the Correctional Institution can have the authority to decide on sentences for prisoners in prison according to their daily lives. As in the new Criminal Code, the death penalty can be carried out if it has passed 10 years of probation.<sup>12</sup> If the prisoner behaves well during these 10 years then he will be released from the death sentence that he has been sentenced to. This good behavior decision will be issued with the approval of the Head of the prison.

This is a problem, so in this case the Penitentiary must be separated into a separate institution. The separation of the Correctional Institution into its own ministry is also so that there are institutional benefits. In addition, the Ministry of Law and Human Rights oversees too many Director-Generals, with 11 Director-Generals under the authority of the Ministry of Law and Human Rights. The number of units under the Ministry of Law and Human Rights will certainly be ineffective. So that this is also a reinforcement for the Correctional Institution to stand alone as a new institution.

All legal institutions should be institutions that are able to carry out their functions without being affected by any bias of interest, including any single institution. The position and role of law enforcement agencies have been regulated in law. Although sometimes there is an overlap of authority given so that it shows the ambiguity between institutional positions.

Referring to the theory of separation of powers Montesquie (1748) states that power in

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<sup>9</sup> Situmeang, Sahat Maruli Tua, and Ira Maulia Nurkusumah. "Kajian Hukum Kekerasan Berbasis Gender Online Dihubungkan dengan Tujuan Pemidanaan dalam Perspektif Negara Hukum Pancasila." *Res Nullius Law Journal* 3, no. 2 (2021): 162-177.

<sup>10</sup> Salle, S. *Sistem Hukum dan Penegakan Hukum*. CV. Social Politic Genius (SIGn), 2020.

<sup>11</sup> Walukow, Julita Melissa. "Perwujudan Prinsip Equality Before The Law Bagi Narapidana Di Dalam Lembaga Pemasyarakatan Di Indonesia." *Lex et Societatis* 1, no. 1 (2013).

<sup>12</sup> Muhamad, Marchell Nabil. "Transformasi Pidana Mati Dalam Kitab Undang-Undang Hukum Pidana Baru." *Jurnal Mahasiswa Indonesia* 1, no. 01 (2023).

the state must be separated into three powers, namely:<sup>13</sup>

- 1) Legislative power that makes laws
- 2) The executive power that executes the laws
- 3) The three judicial powers that exercise judicial power.

This theory is used to formulate the formulation of the separation of correctional institutions from the ministry of law and human rights. If the penitentiary institution is separated from the ministry of law and human rights, then there will be clear authority related to the rules in the penitentiary institution. The separation can also increase the effectiveness of the performance of the prison itself, because prisoners spend their detention time in prison, so the Correctional Institution certainly knows well the character of the individuals in it.

## CONCLUSION

The formulation of the separation of the Penitentiary Institution from the Ministry of Law and Human Rights is needed as an effort to the effectiveness of guidance and consideration of executions sentenced to prisoners. The separation of power can bridge the Correctional Institution to have authority over decisions related to sentences imposed on prisoners. This is because the decision on a release letter must be approved by the Correctional Institution and the death sentence can be evaluated if there is a letter of good behavior recommended by the Correctional Institution. In addition, the separation of the Correctional Institution from the Ministry of Law and Human Rights can also increase the effectiveness of the management of the existing prisoners.

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<sup>13</sup> Suparto, Suparto. "Teori Pemisahan Kekuasaan dan Konstitusi Menurut Negara Barat dan Islam." *Hukum Islam* 19, no. 1 (2019): 134-149.