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THE FULFILLMENT OF PRISONERS' RIGHTS BY ESTABLISHING PRIVATE PRISONS AS AN ALTERNATIVE TO PRISONER DEVELOPMENT IS REVIEWED FROM LAW NUMBER 22 OF 2022 CONCERNING CORRECTIONS

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Abstract
The problem of prisons in Indonesia has not been resolved until now. There are 3 (three) main problems to date, namely, Overcrowded Prisoners, Lack of Human Resources in Prisons and Large Costs. This greatly affects the rights of prisoners themselves, where the rights of prisoners have been regulated both in International (Standard minimum Rules For The Treatment Of Prisoner) and National provisions (Law Number 22 of 2022 concerning Corrections). This research aims to answer legal problems regarding how the government has been managing prisons and private prisons as an alternative solution to the problems of prisons in Indonesia. To answer the research problem, this study uses a type of normative legal research with a legal approach, concepts and comparisons. The data used are secondary data supported by primary, secondary and tertiary legal materials obtained through literature research or document studies. The results of this study show that in managing prisons, legally Indonesia has made significant improvements and more implemented the human rights system by changing the orientation of retaliation to coaching prisoners. However, in its implementation, the Indonesian government still finds it difficult to implement these noble intentions and until now there are 3 (three) major problems that have not been addressed, namely Overcrowded Prisoners, Lack of Human Resources in Prisons and Large Costs. To be able to implement these noble intentions, there is an alternative solution, namely the implementation of private prisons with the Public Private Partnership system or Hybrid System where this system has been successfully applied in France and produces efficiency for the state.

Keywords: Private Prisons; Alternative Coaching; Fulfillment of Inmates' Rights

INTRODUCTION
Indonesia as a state of law makes the law the highest foothold in carrying out state life, including in maintaining order and peace of the nation's citizens in order to create a conducive climate to realize the goals of independence contained in the country's constitution, namely protecting the entire Indonesian nation and all Indonesian bloodshed, advancing general welfare and educating the nation's life.

The characteristic of the rule of law is the limitation of power contained in the constitution as the highest source of law that provides limits on the division of powers so

that state administration, especially government, concentrates on realizing the goals of the state so that it is carried out properly, according to the outlines contained in the constitution as law from all sources of law in making policies and implementing laws so that the law is in accordance with its functions and objectives, namely justice, certainty and expediency. Subekti argues that the law serves the purpose of the state, which is to bring prosperity and happiness to its people, in serving the cause of the state by organizing justice and order, so that human rights can be well protected.

The purpose of the country can be achieved if our nation has a high level of civilization and is implemented consistently, high civilization can be measured from the level of crime in a country that is low or can be handled optimally, so that the human rights of every human being are upheld by every human being who lives on the earth of Indonesia.

Crime fighting is one of the country's main missions to protect its people. Any attempt by the state to deal with these crimes is known as criminal policy. According to Barda Nawawi Arief, efforts or policies to prevent and handle crime include the field of *criminal policy consisting* of policies or efforts for social welfare (social welfare policy) and policies or efforts for community protection *(social defense policy)* (Barda Nawawi Arief, 2018).

Criminal policy as an attempt to deal with crime, has its main objective for the protection of society and its ultimate goal of ensuring the general welfare. To achieve this goal, two main approaches to criminal policy can be used, namely penal and non-penal. The approach commonly used by the state is the penal approach, as it can provide guidance not only to lawmakers but also to the criminal justice system that implements laws.

Herbert L. Packer in his book *The Limits of The Criminal Sanction* quoted by Barda Nawawi Arief, discussing the issue of criminal sanctions in tackling crime states (Barda Nawawi Arief, 2018):

1. Criminal sanctions are necessary, we cannot live in the present or the future without crime.
2. Criminal sanctions are the best tools or means that already exist, which we have to deal with great and immediate dangers.
3. Criminal sanctions are at one time the main or best guarantor and one day the primary threat to human freedom itself. He, is a guarantor when used sparingly, carefully and carelessly and forcibly.

Given that law is a legal product born from the political process, it must be ensured that its manufacture must be in line with the needs of criminal law implementation, both in the formal and material processes so that criminal law politics becomes a tool that determines whether future legal needs are in accordance with the needs of criminal law that upholds human rights.

In the implementation of criminal law politics, criminal sanctions are known to be imposed by the judiciary on violators of the law. The existence of this criminal sanction

cannot be released with the existence of criminal law regulations. The existence of criminal sanctions that fall into the severe category is expected to achieve the goal of criminal policy to protect the community. One of the most commonly used criminal sanctions is imprisonment. This prison sentence is the most frequently used criminal sanction in various countries, because it is considered effective enough to provide a deterrent effect.

The dynamics of the development of criminal law, especially in providing sanctions for perpetrators of criminal acts, raises very complex dynamics and problems. Considering that many prisons are experiencing overcapacity due to increasing crime. Based on information from the Directorate General of Corrections as of July 14, 2021, the data obtained by the total population of LAPAS amounted to 271,231 people from the capacity of 132,107 prisons, which means that over capacity reached 105% (Fauziah et al., 2022).

Therefore, a fundamental change is needed at the normative level so that the provision of criminal sanctions can adjust to the times. Along with the development of criminal law, prison sentences have undergone various changes towards more humane punishment. In ancient times when convicts were regarded as outcasts and treated inhumanely, their necks and hands tied in chains to inflict physical suffering, this method has slowly been abandoned. The prisoner is regarded as a human being as well and treated humanely. Penalties place more emphasis on rehabilitative functions with the primary objective of treating the offender and placing him back into society through some combination of coaching, education and training (Miethe & Lu, 2005). For this reason, an inmate who is considered a "lost person" must get guidance from the state in order to return to social life.

Improvements in the treatment of prisoners began to be concretely implemented since *the Standard Minimum Rules for the Treatment of Prisoners* initiated at *the United Nations Congress on The Prevention of Crime and The Treatment of Prisoners on* August 30, 1955. *The Standard Minimum Rules for the Treatment of Prisoners* affirm more humane treatment of prisoners regardless of race, color, sex, birth, and other status. This regulation covers all aspects of improving the institution of Corrections and the treatment of prisoners which includes minimum standards in facilities, hygiene, clothing, bedding, food, health services, religious services, entertainment, social relations, and treatment of Correctional Officers.

One of the criminal sanctions given to prisoners is imprisonment where legal subjects are restricted in their right to freedom, imprisonment as a criminal sanction is also used in Indonesia. Article 10 of the Criminal Code states that imprisonment is one of the main crimes (Moeljatno, 2021).

The state's reliance on imprisonment to deal with crime can sometimes spell trouble. The use of criminal law policies to tackle crime actually leads to the criminalization of public actions, which usually leads to excessive criminalization. According to Mahrus Ali, overcriminalization is generally conceptualized in relation to criminalization, its various forms include recriminalization of an act that has been prohibited by another law,

formulation of offenses without adequate requirements of offender guilt, criminalization of irreproachable acts, formulation of offenses that do not meet the principle of *lex certa*, criminalization of purely administrative offenses, criminal threats are not proportional to the seriousness of delicacies, and excessive enforcement of criminal law by law enforcement (Ali, 2018). This excessive use of criminal law is contrary to the nature of criminal law as the *ultimate remedium*.

The problem of overcrowded, the number of escaped prisoners, the lack of budget and the lack of prisoner development facilities still cannot be resolved until now and there are still many ex-convicts who repeat crimes or crimes (recidivists). Penitentiary, which is part of an integrated criminal justice system, is certainly an important part of the success of criminal law in tackling crime. As the final position, we cannot forget the role of the Penitentiary. A single failure caused by the formation of inmates in the Penitentiary will hamper the efforts of other criminal justice subsystems since investigations and investigations, prosecutions and trials to address crime. The government should focus on facilities that support the development of inmates as it does in other criminal justice subsystems. Facilities, human resources, and policies are important aspects of law enforcement success.

This overcapacity makes it problematic in fulfilling the rights of prisoners in implementing correctional law. This is an important point that is always discussed by criminal law experts in various corners of the country. If the Penitentiary carries out its services humanely and comfortably, then the formation will be able to run optimally. The only suffering inmates experience in the penitentiary system is the loss of independence, while maintaining their other rights.

The government should be able to try several alternatives to handling crime in favor of prisoners. Penitentiary management must also be considered in making improvements. Alternative efforts made by the state to improve the performance of prisons are to hand them over to the private sector or open outside participation in the process of managing prisons. This places the responsibility of caring for and fostering prisoners not only on the government but also on society, including the private sector. Several countries have used the concept of private prisons including America, Britain, France, Australia, the Netherlands. But in Indonesia, the concept of private penitentiary certainly requires in-depth analysis before being introduced in efforts to foster prisoners.

Based on the description of the background of the study, this research is needed to add insight related to the conception of the development of prisons oriented towards the fulfillment of human rights, the researcher wants to pour this paper in the form of a thesis with the title "Fulfillment Of Prisoners' Rights With The Establishment Of Private Prisons As An Alternative To Prisoner Development In Terms Of Law Number 22 Of 2022 Concerning Corrections"

The specific purpose to be understood and described in this study is to know and analyze the concept of application of state-monopolized penitentiary institutions in the formation of prisoners to the rights of prisoners. To find out and analyze private prisons

as an alternative to prisoner development using Law Number 22 of 2022 concerning Corrections and Government Regulation Number 57 of 1999 concerning Cooperation in the Implementation of Formation and Guidance of Correctional Assisted Citizens.

RESEARCH METHOD

This study used normative legal research. Normative legal research is legal research conducted by collecting library materials that are studied by conducting literature. Normative legal research uses deductive thinking (withdrawal thinking). Conclusions can be drawn from generally accepted and correct data. Conclusion making is based on the object of analysis in a qualitative way, namely referring to legal norms and regulations.

This type of normative legal research may use more than one approach (Abraham, 2023). The approach used in this study is *Statute Approach, Conceptual Approach* and *Comparative Approach).*

RESULT AND DISCUSSION

Some opponents of prison privatization include the government and legal experts who consider the state's handling of prisons to be the most ideal, and disagree with the involvement of others in running prisons. Those who are pro-privatization of prisons are legal and government experts who consider the role of the government unsuccessful in running prisons and the most effective way is to hand over the prisons to private parties.

This debate continues. Some legal experts look at the philosophical side of Correctional Institutions, while others focus on the implementation of Private Correctional Institutions that have been running for several years. The following will explain some of the debates that often arise about the privatization of prisons, including:

The function of the state in punishment

Against the idea of the state or government that must absolutely handle or regulate all matters concerning prisons is put forward by the government and some legal experts, where according to these circles the penitentiary is a form of state sovereignty in carrying out punishment. Penitentiary is inseparable from an integrated criminal justice system. This is the basic function of the state to carry out law enforcement. Depriving citizens of their freedom by placing them in prisons can only be done by the state. Other punitive parties, especially those involving the deprivation of liberty as a human right, are a form of arbitrariness.

The American Bar Association states, "*incarceration is an inherent function of the government and that the government should not abdicate this responsibility by turning over prison operations to private industry*" (Amir, 2018).

These jurists also linked the practice of private prisons to the theory of the social contract. Society abides by the law, because of the agreed social contract, that if we break the law then we are willing to get sanctions given by the state. The community entrusts the enforcement of the law to the state, because the community believes that the law will protect the community.

Although the Private Penitentiary only handed over the administrative system to the

private sector, it was also an offense. This administrative system is inseparable from the entire Penitentiary system. Running the administration, which is a function of the state, has historically been a central role that only state administrators should perform. These functions cannot be delegated to other parties. In essence, only the state has the authority to carry out punishments, especially those concerning the freedom of citizens.

Proponents of privatization say that no ideology has been violated in punitive functions not carried out by the state. The practice of punishment is something that can be delegated by the state to other parties. The most important thing is accountability. Punishment still does not lose its function as long as the practice of punishment is something that can be delegated by the state to other parties. Penalties do not lose their function as long as the sanctions imposed come from an independent judiciary. Penitentiaries that are given contracts to swatsa still receive supervision from the state so that state functions are not abolished entirely.

Quoting Logan's opinion in his book entitled "*Private: Cons and Pros*", Logan expressed his opinion regarding the function of the state in carrying out punishment as follows:

"Whatever reasons may exist for placing the power to punish in the hands of the state, the major point is that it must be transferred; it does not originate with the state. The power and authority of the state to imprison, like all its powers and authority, are derived from the consent of the governed and may with similar consent be delegated further. Because the authority does not criginate with the state, it does not attach inherently or uniquely to it, and can be passed along to private agencies" (Logan, 1990).

Logan added that the role of the state basically comes from the people. The punitive function that exists in the state is not attached to the government, so it can be delegated. The punitive function is under the control of the state because of the consent of the people, and with the consent of the people can be delegated to other parties, including to private parties.

Logan then emphasized the theory of *the rule of line*, as long as everything is governed by law, then no law is broken.

"Any legitimate governmental authority may be further delegated, through the government, to private agents. This assumes the existence of a legitimate and representative government so that the chain of authority is unbroken from its original source-the people. In short, the state does not own the right to punish. It merely admusters it in trist, on behalf of the people and under the rule of law. There is no reason why salary trusters cannot be designated, as long as they, too, are ultimately accountable to the people and subject to the same provisions of law that direct the state" (Logan, 1990).

Again, Logan emphasized that the role of government is a representation of a system that comes from one source, namely society. The state carries out punishment, because it is handed over trust and responsibility on behalf of the people and under the rule of law. So there is no reason to prohibit other parties from doing the same, as long as they have responsibility to the people and are subject to the same rule of law.

Regarding the doctrine of non-delegation, Rachel Antonuccio gave the view that the doctrine of non-delegation only applies to legislative functions, and does not explicitly prohibit some government functions from being delegated to private parties. Only the legislative function in issuing legal policies cannot be delegated to any party, because this function is a representation of the community.

Improving the quality of prisons is more important than ideology. As long as the penitentiary is run cheaper and better, then the purpose of punishment can be achieved. Even in other parts of the justice system have involved private parties, such as *community-based correction* and *bounty hunters*. In America, the involvement *of private investigators* or private detectives is a common thing to do to help police duties.

Efficiency

Opponents say that claims that Private Prisons are more efficient than State-run Prisons are untrue. Private prisons make savings by cutting budgets for labor. Ironically, private prisons pay a high price for the salaries of executives at the company. The largest expenditure for labor in private prisons is precisely to pay salaries, benefits, and bonuses to its executives. The income received by executives in these Private Correctional Institutions is actually greater than the income received by public officials who manage State-run Prisons.

Another waste carried out by the private sector is when carrying out market activities. Various kinds of market activities carried out by private companies such as corporate restructuring, mergers, acquisitions, and stock offerings to the stock exchange (IPO) demand large costs. In market activities, companies cannot do it alone, companies engaged in Private Correctional Institutions must involve other parties in carrying out market activities, such as notaries, legal consultants, financing consultants, and others. When restructuring for an IPO or acquisition, companies must ask for *due diligence* which requires large costs.

Meanwhile, proponents of privatization claim to be able to run prisons cheaper and better. Market competition and freedom from complicated bureaucracy make the private sector more efficient than the public service sector. There are reasons that cause the private sector to be considered more efficient, namely (Roth, 2004):

a. The existence of market competition causes private parties to use incentives. Competition that exists between companies causes competition that requires companies to offer cheap costs but with better service. Meanwhile, if the Penitentiary is handed over to public administrators, there is a monopoly from public administrators who actually allocate budgets freely and inefficiently. This competition also encourages the company to increase innovation. With this innovation, one company is superior to other companies.
b. The private sector is freed from *"red tape*" and more flexible management. This benefits the private sector because there are no costs incurred for bureaucratic affairs, and rigid procedures, the private sector can move more responsively because there are no strict bureaucratic rules, so that the workforce can work more productively.
c. The private sector makes savings through labor. The private sector tends to control the

costs incurred in staff operations rather than reducing building operating costs. Reduction in labor costs can be achieved by reducing the number of employees. Using a design that supports the management of prisons with a small workforce, and prioritizes the use of technology, such as the use of surveillance cameras. Private Prisons also reduced administrative officers, using only one-third of the administrative officers used by State-run Prisons.

Accountability

Opponents of private prisons say accountability in private prisons is worse than state-run prisons. This delegation of public functions to private parties is a mistake. There was a system error that decided the supervisory function of private parties. Starting from a contract between the state and a private party, so that the contract limits the relationship between the state and the Penitentiary. The state is only responsible up to the contractual agreement, after which the state has limited control over the contracted penitentiary.

Quoting Logan's opinion on criticism of the accountability of Private Prisons:

"Critics claim that contracting reduces accountability because private actors are insulated from the public and not subject to the same political controls as are government actors. Also, critics charge, contracting diffuses responsibility; Government and private actors can blame the other when something goes wrong. Further, contracting may encourage the government to neglect or avoid its ultimate responsibility for prisons; Supervision may Slacken's"(Logan, 1990).

According to Logan, the private party has no public accountability, because this private party is separate from the public, and political control has no effect on it. Other critics also point to weak responsibility if prisons are handed over to the private sector. If something goes wrong, the private sector and the government will throw responsibility at each other. It even encourages the government to neglect its inherent responsibilities towards staffing.

McDonalds, on the other hand, expressed its opinion on the accountability of prisons in general:

"*Unfortunately, control over public correctional facilities in many places is neither as direct or effective as the idealized model of the unbroken chain of command suggests..... Political and administrative controls over correctional administration are excessively fragmented; too many correctional agencies are insulated from the higher levels of government, which has given administrators room to wield broad discretionary powers; and administrators have resisted being held accountable for their performance..."* (Logan, 1990)

Mcdonalds considers Correctional Institutions to have weaknesses in accountability because there is no ideal and effective model in the surveillance system. Political and administrative control over the Penitentiary seems to be dysfunctional because of the distance between the Penitentiary and the supervisory institution above it. This triggers broader discretion from Correctional Officers, and away from supervision, so there is no accountability for the performance of the Correctional Institution.

On the contrary, private parties claim that the system they implement is more accountable than public administrators. First, market processes will result in competition that encourages better improvements. Second, with the supervision of the government on the private sector, the *check and balance* system is more maintained than the government that controls itself. Then privately run prisons will attract higher attention from various parties such as the media, legal observers, and the public as a whole.

One way to increase the accountability of private prisons is to regulate them in contracts between the state and the private sector. In the contract clause, for example, several things can be included that give the state a dominant position. For example, the Tenesse Private Correctional Institution contract states, *"must agree that the state may cancel the contract at any time after thefirst year of operation, without penalty to the state, upon giving ninety (90) days' written notice"* This example of a contract clause gives the government a dominant position, because the government can cancel the contract at any time in the event of a violation committed by a Private Correctional Institution.

Accountability of the private sector must be better because openness in business is one of the important factors. Bad publicity actually has the potential to reduce the company's stock price on the stock market. This can have bad implications, because it weakens the company's business in the stock market so that to support existing market activities, the company must increase their accountability to the public.

Government policies must also support accountability of the prison sector. With the policy, the public can participate in supervising the implementation of prisons by the private sector. In terms of contracts, increased accountability is realized from the supervision of the process of realizing contract clauses. If the contract is not successfully realized by the private sector, then the contract can switch and have adverse implications for the company's business.

Profit Motive

The profit-seeking motive is one of the weaknesses in the Private Penitentiary system. Private Penitentiary becomes an institution that only aims to seek profit and results in poor management of prisoners. Private Penitentiary managers do not care about the human rights of prisoners, this results in an increase in violence, riots and escaped prisoners.

The influence of this profit-seeking motive also results in the private sector having no responsibility for social goals. Private companies have no financial interest in government programs to focus on the interests of society through crime prevention and education of inmates so as not to become recidivists later in life. Their responsibility is only operational and does not attach importance to the purpose of coaching other than the realization of existing contracts. This is what triggers privately run prisons that have no social benefits for the community.

The motive to seek maximum profit also makes the private sector cut the budget in the management of prisons. One of the budget cuts is to eliminate training for staff, so that staff in private prisons are untrained staff. In addition to cutting budgets through staff,

Private Correctional Institutions also cut budgets for inmate services such as food, treatment and training.

Research at the Minessota Private Penitentiary states that the quality, effectiveness, and safety carried out by Private Correctional Institutions are at the level below those of State-run Correctional Institutions. This is due to unprofessional staff because they are paid lower wages than staff in State-run Correctional Institutions. Private Penitentiary management companies cut salaries for staff for efficiency and profit-maximizing reasons. But this strategy actually worsens the services carried out by staff who come into direct contact with prisoners. The staff in the field do not attach importance to excellent service because the income they get is only a small amount.

However, the profit-seeking motive according to pro-privatization parties is irrelevant if it is considered to thwart the purpose of punishment. A clear distinction must be made between the profit-seeking motive for which the business is intended and the convict purpose embodied in the Penitentiary. The desire to seek profit is the same as the basic desires of other parties, such as politicians, officials, and the public who must have personal motives.

If the company only aims to seek profit, without considering excellent service, it can backfire on the company. Penitentiaries can be neglected, which can trigger conflict. This situation is actually detrimental to the company. So that the profit motive will support each other with the aim of punishment. Because the private sector will try to achieve the best service in order to maintain the benefits they get.

This profit-seeking motive should be seen as *a convenience motive*. Logan said that in the market mechanism, the profit-seeking motive can act as a convenience motive. Logan states*"Businesses must often sacrifice their own convenience if that will increase their profit. Businessmen understand that to sustain any competitive enterprise, it is generally necessary to satisfy some needs other than one's own".*

This motive can improve private services because of the desire to provide the best to others without thinking about self-interest. Even they will sacrifice their own interests to increase profits. Competitively, sacrifice may be necessary to meet the needs of others rather than oneself.

Private Prisons as an alternative to the development of prisoners using Law Number 22 of 2022 concerning Corrections and Government Regulation Number 57 of 1999 concerning Cooperation in the Implementation of Formation and Guidance of Prison-Assisted Citizens

In this discussion, the author tries to discuss Private Institutions as an alternative to the problem of prisons in Indonesia. As explained by the author in the previous discussion, there are 3 (three) major problems that occur in prisons in Indonesia today, including *Overcrowded* Prisoners, Lack of Human Resources in Prisons and Large Costs with Management that is not optimal.

In such conditions, it is doubtful whether the function of prisons as a place of

formation has fulfilled the rights of prisoners as well as human rights and the function of prisons as a place of formation that replaces the prison system can be achieved, namely carrying out the mission so that they can live again reasonably and responsibly. As in Law Number 22 of 2022 concerning Corrections, by socializing convicts to become good and useful citizens.

To further obtain the results of a deeper study, the author will connect these 3 (three) problems by comparing legal systems in several countries that use private prisons. Then, the author compares these results with the theories that the author uses.

United States

Internal problems faced by prisons in every state of the United States are policy-making methods and sources of funds flow in maintaining and running facilities, such as water, electricity, infrastructure improvements, and others. Therefore, the federal government as a framer of statutory policy cooperates with private companies to fix loopholes in the United States legal system (Wade-Olson, 2019).

In the North American model, and in accordance with the specific laws in each state, private operators can be involved in all dimensions of Penitentiary services, from the construction of new facilities to full operation and management, which includes housing, assistance for inmates. monitoring and security activities. More than 30 North American states have inmates held privately. At the end of 2004, more than 150 facilities were staffed by private operators in the United States, with 98,901 inmates representing 6.6% of the national inmate population (Cabral & Azevedo, 2008).

In general, private operators charge the government (their end customers) a daily rate for each inmate. In this way, their financial performance depends on the number of "workdays" they can fulfill, so there is a strong incentive to keep the Penitentiary at full occupancy rate.

The advantage offered by private companies in managing prisons is a change in policy-making methods. Private companies as partners of private cooperation are not constrained by a bureaucratic administration system that takes a long time because there is a right to run the management of prison facilities independently so that various complaints and actions needed in overcoming various problems that are present can be resolved quickly, appropriately, and do not cause further harm to all parties. In 1979, the territory of Virginia, which is one of the states in the United States, made reforms in the party that manages the Penitentiary (Bosworth, 2017).

The change starts from the infrastructure of the Penitentiary which is in every Penitentiary in Virginia has poorly maintained and even unclean conditions that cause it is not good in terms of health of the prisoners. Infrastructure improvements start from repairing lights from each side of the Penitentiary which has several dark spots (*black spots*), updating the shape of the room including various furniture in it such as tables, chairs, pillows, bathrooms, bookshelves, improving the shape of the kitchen so that it is truly hygienic including the type of food and drink given to prisoners that can improve the mood of the residents to various facilities in the institution Correctional facilities such as libraries, basketball courts, training courses that can be useful before returning to

society all have the purpose of filling time so that the level of stress experienced by prisoners can be reduced (Bosworth, 2017).

Private companies in Virginia that carried out a major overhaul in the first and second years began to feel the positive aspects for prisoners in the latter second year where especially prisoners long before the management of the penitentiary was taken over by private companies could feel the difference in the positive impact that occurred during their time as prison prisoners. Not only making changes in the form of objects, private company partners also pay attention to the formation of a comfortable and safe environment in the form of training for warden guards to humanize prisoners by not committing violence by carrying batons or conducting intensive communication sessions between individuals and groups so as to build healthy social relations between human beings (Andreescu, 2017).

The private sector has several alternative options as an effort to obtain sources of funds, among others, can use funds originating from the company based on the Corporate Social Responsibility (CSR) Program. The source of funds from CSR programs is different from corporate cash which may be obtained from profits, bonds, and mortgages because these funds have been separated from the beginning so that they cannot interfere with the company's activities with one another.

The next source of funds flow is funds originating from investors with company expansion agreement contracts with statements stated in the company's prospectus before the cooperation program takes place. The contract agreement is explained to avoid disputes between investors and private companies because investor liability is only as much as the number of shares they own in a company. If someone has more shares, then the level of liability he has for the refund if something happens is the company's top priority (Novisky et al., 2021).

French

In contrast, in the French model, the government remains responsible for maintaining, controlling, and occasionally punishing prisoners. Private operators can build correctional facilities and provide dormitories only for inmates (food, clothing, hygiene, etc.) and certain reintegration services. Civil servants perform security and management tasks. Private participation was introduced in France in 1987 in response to the overcrowding of prisons. The government's original intention was for the private sector to provide 13,000 new beds. Another 4000 places were added later. According to the Direction de Administration Pénitentiaire (2005) there are 23 Penitentiaries under hybrid *management* (private and public agencies) in France. Penitentiary employees who are not part of the civil service make up only about 20% of the staff (Cabral & Azevedo, 2008).

From the comparative description of the Private Correctional System system in the United States and France, the author can conclude that the 3 (three) problems that exist in prisons in Indonesia, namely *Overcrowded Prisoners*, Lack of Human Resources and

Costs, can be overcome with the private prison system both in America and in France even though the application of the system is different where America uses *full privatization*, while France uses *hybrid privatization*.

Then, if the author relates 3 (three) problems of prisons in Indonesia with Human Rights Theory. Quoting Law Number 39 of 1999 concerning Human Rights in Article 1 number 1 explains that:

"Human Rights are a set of rights inherent in the essence and existence of man as a creature of God Almighty and are His gift that must be respected, upheld, and protected by the state, law, government and everyone for the honor and protection of human dignity and dignity".

However, in this study, the author discusses prisoners whose basic rights are limited because of their legal actions that have violated applicable provisions and indirectly harmed a person and/or society. Therefore, as a representative of the above Human Rights Law, the provisions of International and National Law.

In international arrangements quoted from Panjaitan and Simarangkir, contained in the UN Guidelines on *Standard Minimum* Rules for the Treatment of Prisoners (*Standard Minimum Rules For The Treatment Of Prisoners*, July 31, 1957), which include: Register book, Separation of prisoner categories, Accommodation facilities that must have ventilation, Adequate sanitation facilities, Getting water and toilet equipment, Proper clothing and bedding, Healthy food, Right to exercise in the open air, Right to general practitioner and dentist services, Right to fair treatment according to rules and self-defence if deemed indisciplined, No confinement to dark cells and corporal punishment, Handcuffs and prison jackets should not be used by inmates, Right to know applicable regulations and official channels for obtaining information and complaints, The right to communicate with the outside world, The right to obtain reading materials in the form of books of an educational nature, The right to obtain religious services, The right to obtain guaranteed storage of valuables and Notification of death, illness, from family members.

Meanwhile, in national law, quoting from Law Number 22 of 2022 concerning Corrections, Article 9 explains the rights of prisoners including (Hulsewé, 2022): Prisoners have the right to carry out worship in accordance with their religion or belief, have the right to care, both physical and spiritual, have the right to education, teaching, and recreational activities as well as opportunities to develop potential, have the right to get health services and proper food in accordance with nutritional needs, the right to get information services, the right to legal counseling and legal assistance, the right to submit complaints and / or complaints, the right to get reading materials and participate in mass media broadcasts that are not prohibited, the right to humane treatment and protected from acts of torture, exploitation, neglect, violence, and all acts that endanger physical and mental, the right to guarantee work safety, wages, or premiums for the results of work, entitled to social services and entitled to accept or refuse visits from family, advocates, companions, and the community.

Article 38 of Law No. 22 of 2022 concerning Corrections states that based on the

results of the Litmas, prisoners are given guidance in the form of personality coaching and independence coaching. Furthermore, Article 39, self-reliance development as referred to in Article 38 paragraph (1) can be increased to activities to produce goods and services that have benefits and added value.

In Government Regulation Number 57 of 1999 concerning Cooperation in the Implementation of Correctional Assisted Citizens, it is stated in Article 1 paragraph (1) Cooperation is an activity organized by the Minister with related agencies, community agencies or individuals in the context of fostering funds or guidance for Correctional Assisted Citizens, whose activities are in line with the implementation of the correctional system. Article 1 paragraph (2) states, Coaching is an activity to improve the quality of devotion to God Almighty, intellectual, attitude and behavior, professional, physical and spiritual health of prisoners and correctional students. Article 1 paragraph (4) states, Cooperation partners are other relevant Government agencies, community agencies, and / or individuals who collaborate with LAPAS or BAPAS in the framework of coaching or mentoring activities for Correctional Assisted Citizens. Article 1 paragraph (5) states, Wages are remuneration for services provided to Correctional Assisted Citizens who work to produce goods or services.

Still in PP No. 57 of 1999 concerning Cooperation in the Implementation of Construction and Guidance of Correctional Assisted Citizens. Article 2 paragraph (1) states that the Minister can organize coaching cooperation with relevant government agencies, community agencies, and individuals. Article 2 paragraph (2) states, Cooperation with government agencies or parties as referred to in paragraph (1) is held in the context of developing, improving and or expanding coaching. Article 2 paragraphs (3) and (4) states, Cooperation relationships with government agencies are functional and cooperative relationships with community agencies and individuals are partnerships. Article 3 paragraph (1) states, the cooperative relationship of coaching is carried out based on a coaching program to improve the ability and quality of Prisoners and Correctional Students. Article 3 paragraph (2) states, the formation program as referred to in paragraph (1) includes devotion to God Almighty, national and state awareness, intellectual, attitude and behavior, physical and spiritual health, legal awareness, healthy reintegration with society, work skills, and job training and production.

Based on the provisions of international and/or national law (in Indonesia), it is very clear that with the problem of *overcrowding* prisoners, lack of human resources and costs needed, the Indonesian government has failed to implement the rule of law to provide appropriate places and facilities and provide the maximum possible guidance to prisoners. In terms of this bad record, the government should start evaluating itself to make improvements and start looking for solution options with one solution being to open a private prison (*Privatization*) with a system that is adapted to the provisions of the law in force in Indonesia.

The privatized management system has various alternative solutions in responding to problems that cannot be resolved such as decision-making methods that do not wait

long because they are not hindered by bureaucracy, have various sources of fund flow, *overcrowded* prisoners, improve relationships among prisoners to the effectiveness of Human Resources. Furthermore, what kind of prison system model is suitable to be applied in Indonesia?

Based on the results of the author's study, both conceptually and based on the Correctional Law, the *Public Private Partnership* system, which is a cooperation system between the government and the private sector, is the right choice to be applied in Indonesia. This choice, can also be seen based on the success of France which implemented this system, although this system is more in France better known as the *hybrid system*.

This system can also refute some who think that the state or government must absolutely handle or regulate everything about prisons, where according to these circles prisons are a form of state sovereignty in carrying out punishment. Penitentiary is inseparable from an integrated criminal justice system, this is the basic function of the state to carry out law enforcement.

In the concept of privatization of *the Public Private Partnership* system applied in France, the role of the state or government remains absolute. Where the state or government still controls the management and management of prisons, while other functions of personality development and independence such as education and job training industry and technology, are handed over to the private sector. This cooperation in the privatization system of prisons in France shows the complementary process of prison management between the private sector and the government. This model seeks to create a complement between the advantages possessed by the government and the advantages possessed by the private sector. Private involvement in the prison sector is considered to improve the efficiency and quality of prison management.

On the contrary, in Indonesia today, it still applies a cooperation system between the government and the private sector that is a partnership. As an illustration that the partnership system is more procurement-oriented, for example the procurement of food raw materials, where the private sector plays a role in providing raw materials for the needs of prisoners where later the prisoners will cook in the kitchen supervised by officers. This clearly does not describe system efficiency.

According to the author, the system of cooperation between the state or government and the private sector is much more efficient, for example, tenders are made for laundry, for staple food, for guidance and skills and maybe even for the prison building itself where the government is no longer charged with building new prisons which results in burdening state finances.

This concept can be applied by making legal regulations for special companies to be in charge of regulatory institutions which will later be tendered to get companies that are able to carry out some of the needs of prisons and of course at a lower cost.

CONCLUSION

Penitentiary is regulated in Law Number 22 of 2022 concerning Corrections. The definition of Penitentiary in this Law is an institution or place that carries out the function of coaching prisoners. Meanwhile, prisoners have the definition of convicts who are serving prison sentences for a certain time and for life or death row prisoners who are waiting for the execution of the verdict, who are undergoing formation in prisons. Coaching is an activity held to improve the quality of personality and independence of prisoners and fostered children. Penitentiary institutions have a system, namely the order regarding the direction and limits and the direction of guidance so that fostered citizens realize mistakes, improve themselves and do not repeat criminal acts so that they can be accepted again by the community, play a role in development and can live reasonably and responsibly. From this description, prisons in Indonesia are considered to be good in the regulatory system. However, in practice it is not optimal as the results of research show that there are 3 (three) problems, namely overcrowded prisoners, lack of Human Resources and costs.

Based on the provisions of international law and national law in Indonesia itself, with the problem of overcrowded prisoners, lack of human resources and costs needed, the Indonesian government has failed to implement the rule of law to provide proper places and facilities and provide maximum guidance to prisoners. In terms of this bad record, the government should start evaluating itself to make improvements and start looking for solution options with one solution being to open a private prison (Privatization) with a system that is adapted to the provisions of the law in force in Indonesia. Based on the results of the author's study, both conceptually and based on the Correctional Law, the Public Private Partnership system, which is a cooperation system between the government and the private sector, is the right choice to be applied in Indonesia. This choice, can also be seen based on the success of France which implemented this system, although this system is more in France better known as the hybrid system. This model seeks to create a complement between the advantages possessed by the government and the advantages possessed by the private sector.

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