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ZERO OVERSTAYING: NEW HOPE AFTER THE BIRTH OF LAW NUMBER 22 OF 2022 CONCERNING CORRECTIONS

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ABSTRACT

In practice, the release of detainees by law has not been optimal, and it results in overstaying. The authority of the head of the detention center to release detainees has diminished, leading to administrative procedures and coordination issues among law enforcers. This study addresses and analyzes the problem, exploring improvements following the enactment of Law 22 of 2022 on Corrections. Adopting a normative juridical research approach, it examines the extensive discretion granted by the Criminal Procedure Code to law enforcers, often prioritizing detention without considering alternatives. Inefficient coordination during detainee release, delays in responding to expiration notices, and non-compliant implementing regulations highlight system inefficiency. This causes hesitation in releasing detainees and discomfort with other law enforcement agencies. The Special Prison Planning Team and a stronger correctional system aim to promote collaboration and equal footing. Stricter regulations are necessary to protect detainees' rights on release and provide tailored services.

Keywords: Code of Criminal Procedure; Correctional Institution; Detention Center; Overstaying; Detainee.

1. INTRODUCTION

Unconsciously, for nearly fifty years, the Code of Criminal Procedure (KUHAP) has become the formal criminal law that applies in Indonesia. This legal product is considered an extraordinary work of the Indonesian nation, which is able to replace colonial heritage legal products which tend not to accommodate human rights values (HAM). Moreover, HIR (Herziene Inlandsch Reglement), as a product of colonial law which was in force since independence until the emergency of the Code of Criminal Procedure, was considered no longer in accordance with the character of an independent state.[1] Therefore, the Code of Criminal Procedure was born with the ideals of law enforcement that are humane and far from violence.

However, far from the truth, in practice, the Code of Criminal Procedure often gets tested where its constitutionality is often questioned and becomes the object of judicial review at the Constitutional Court.[2] The Code of Criminal Procedure is listed as the law that is most frequently tested for its constitutionality. In the period from 2003 to 2022, the Code of Criminal Procedure has submitted requests for material tests 76 times[3] , and many of the formulations of the articles have been amended by the Constitutional Court because

1 Ari Wibowo, "Sumbangan Pemikiran Hak Asasi Manusia Terhadap Pembaharuan Kitab Undang-Undang Hukum Acara Pidana(Kuhap)," *Jurnal Media Hukum* 23, no. 2 (2017): 128–36, https://doi.org/10.18196/jmh.2016.0074. hal 128-136.

2 Supriyadi Widodo Eddyno, "Kompilasi Putusan Mahkamah Konstitusi & Perubahan Kitab Hukum Acara Pidana (KUHAP) Indonesia" (Jakarta, 2017). hal 6-36

3 Mahkamah Konstitusi Republik Indonesia, "Tracking Perkara," n.d., https://tracking.mkri.id/index.php?page=web.TrackPerkara&id=7/PUU-V/2007. diakses tanggal 14 Januari 2023

the articles in the Code of Criminal Procedure often cause problems in their application and even contradict various human rights principles.[4] One of the issues that still being debated today and will be the focus point of this paper is the inefficiency of the provision regarding the release of prisoners by law (PTDH) which causes detainees to overstay at the State Detention Center (Rutan).

As is known, detention is the authority given to each institution in the judicial process.[5] Detention is carried out when law enforcers feel subjectively concerned that the suspect or defendant will run away, eliminate and destroy evidence or even commit other criminal acts during the investigation, prosecution, and trial process as stipulated in Article 21 paragraph (1) of the Code of Criminal Procedure. Objectively, the Code of Criminal Procedure stipulates that detention can only be carried out for criminal acts or attempts to commit crimes punishable by imprisonment of five years or more, as well as several other articles which are limited in Article 21 paragraph (4).[6]

The basis of detention is taking over the right to independence of someone who may not have been proven guilty by a court.[7] However, in the interest of inspection, the Code of Criminal Procedure gives law enforcers the right to detain if a suspect or defendant "is strongly suspected" of being the perpetrator of a crime and there is "sufficient evidence."[8] Because detention is based on the subjectivity of law enforcers, the risk of power abuse is enormous.[9] For this reason, the Code of Criminal Procedure stipulates specific time limits for detention at each stage, starting from the investigation to trial.

Table 1. Maximum Detention Time Limits

Inspection Level	Detention Time	Extension of Detention Time
Investigation	20	40
Prosecution	20	30
Court Trial Level 1	30	60
Court Trial Appeal Level	30	60
Court Trial Cassation Level	50	60

Source: Code of Criminal Procedure

The provision of a maximum time limit for detention is an effort to protect suspects or defendants from power abuse by law enforcement. This is because in General Comment No. 35 Article 9 of the International Covenant on Civil and Political Rights (ICCPR), in paragraph 11, it is stated that detention is said to be unlawful if it is carried out not on the basis and procedures established by law. Meanwhile, detention that is carried out beyond the time limit is not only arbitrary, but it also violates the law.[10] The existence of a time

4 Aida Mardatillah, "Sejak MK Berdiri, Ini UU Yang Terbanyak Diuji Dan Dikabulkan," 2018, https://www.hukumonline.com/berita/baca/lt5a50a563ae78e/sejak-mk-berdiri--ini-uu-yang-terbanyak-diuji-dan-dikabulkan/ diakses tanggal 13 Januari 2023.

5 Edy Sunaryo Berutu, "Penangkapan Dan Penahanan Tersangka Menurut Kuhap Dalam Hubungannya Dengan Hak Asasi Manusia," *Lex Crimen* VI, no. 6 (2017). hal 6

6 Republik Indonesia, "Undang-Undang Nomor 8 Tahun 1981 Tentang Kitab Undang-Undang Hukum Acara Pidana (KUHAP)" (1981).

7 Padian Adi Salamat Siregar, "Syarat Objektifitas Dan Subjektifitas Penangguhan Penahanan," *DE LEGA LATA: Jurnal Ilmu Hukum* 4, no. 1 (2019): 175–88, https://doi.org/10.30596/dll.v4i2.3175. hal 177

8 Berlian Simarmata, "Menanti Pelaksanaan Penahanan Dan Pidana Penjara Yang Lebih Humanis Di Indonesia," *Jurnal Mahkamah Konstitusi* 7 No 3 (n.d.): 70–96.

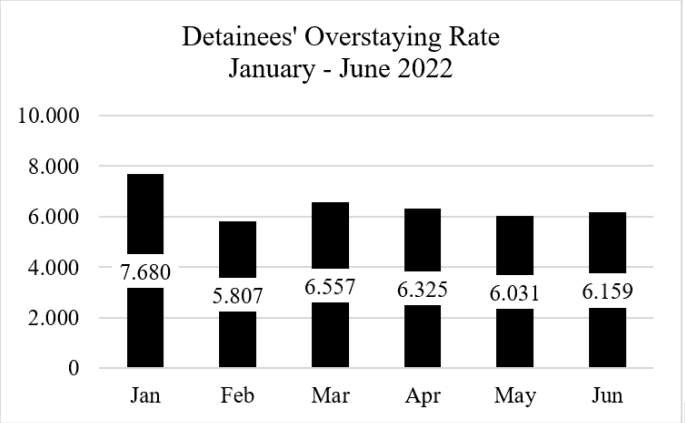
9 Ni Made Liana Dewi, "Batas Waktu Penyampaian Tembusan Surat Perintah Penahanan Kepada Keluarga Tersangka," *De'Jure: Jurnal Kajian Hukum* 05 (2020). hal 63

10 ICCPR, "General Comment No. 35 on Article of 9 of the International Covenant on Civil and Political Rights, on

limit for detention is a form of embodiment of the principle of legal certainty, where the implementation of the law must be adjusted to its sound so that the community can ensure that the law is implemented. However, the value of legal certainty itself must be considered in relation to positive legal instruments and the role of the state in actualizing it.[11] Therefore the Code of Criminal Procedure has set specific and restricted time limits for detention and extensions. Hence, there is no longer any negotiation to carry out detention beyond the time limit regulated by law. Even the Code of Criminal Procedure provides a guarantee that if the detention period exceeds the maximum time limit set, the suspect or defendant must be released with valid reasons, namely for the sake of the law.

Different in law, different in practice. It is apart from the paradigm of law enforcement, which is still patterned as punishment. The release of detainees for the sake of law, which causes illegal detention, is still a polemic in the empirical setting. This is one of the causes of overstaying of prisoners in Correctional Institutions (Lapas) / State Detention Centers (Rutan).[12] Suspects or defendants who should be acquitted by law are still being detained only because of administrative matters. As a result, overstaying is one of the factors that cause overcrowding in correctional institutions/detentions. Even the overcrowded condition has become an old story whose solution is still in the process of finding a bright spot.[13]

Graph 1. Overstaying Rates for January-June 2022



Source: Directorate General of Corrections

Based on data from the Directorate General of Corrections, until mid-2022, the number of overstaying detainees will reach approximately 6,000 people.[14] This is, of course, very concerning because not only is the issue of human rights being violated as a result of overstaying, but the state also has to spend more funds to pay for food for these detainees. Even the results of research from the Research and Development Institute for the Corruption Eradication Commission stated that as a result of overstaying, the state suffered a loss of IDR 12.4 billion per month.[15] In addition, as a result of being overcrowded, various coaching programs and efforts

the Right to Life" (n.d.).

11 E. Fernando M. Manullang, *Legisme, Legalitas Dan Kepastian Hukum* (Prenadamedia Group, 2016). hal 124

12 Terdapat beberapa Lembaga Pemasyarakatan (Lapas) yang ditunjuk sebagai Rumah Tahanan berdasarkan Surat Ketetapan Menteri Kehakiman RI nomor M.04.UM.01.06 tahun 1983 tanggal 16 Desember 1983

13 Sanusi Has, *Pengantar Penologi : Ilmu Pengetahuan Tentang Pemasyarakatan Khusus Terpidana*, 1976. Tercatat sejak tahun 1859 kondisi *Overcrowded* sudah terjadi. Situasi Overcrowded pertama kali terjadi di Penjara Bangkalan yang pada saat itu hanya berkapasitas 60 orang tetapi dihuni oleh 360 orang. Kondisi tersebut mengakibatkan timbulnya pemberontakan dan pelarian yang dilakukan oleh 76 orang tahanan dengan menyerang penjaga.

14 "Focus Group Discussion MAHKUMJAKPOL 'Penanganan Masalah Overstaying Tahanan, 17 Juni 2022'" n.d.

15 Matius Alfons, "37.080 Tahanan Overstay Rugikan Negara Rp 12 Miliar Per Bulan," Detik News, 2019, https://news.detik.com/berita/d-4475927/37080-tahanan-overstay-rugikan-negara-rp-12-miliar-per-bulan. Diakses 3

to rehabilitate detainees cannot run optimally.[16]

In order to reduce overstaying conditions, various efforts have been made, starting from strengthening the rules regarding the release of detainees by law as stipulated in Articles 24 to 28 of the Code of Criminal Procedure, which are further regulated in implementing regulations, namely in Article 19 paragraph (5) of Government Regulation No. 23 of the year 1983 until technically it has been stated in Regulation of the Minister of Law and Human Rights Number M.HH-24.PK.01.01.01 YEAR 2011 concerning Release of Detainees by Law. Both in Government Regulation No. 23 of 1983 and in Regulation of the Minister of Law and Human Rights Number M.HH-24.PK.01.01.01 of 2011, the authority to release detainees by law is an authority that is inherently owned by the Head of the Detention Center.[17] However, in practice releasing detainees by law is not as easy as turning the palm as mandated in the several legal instruments above. The head of the detention center often has difficulty implementing these provisions. This is due to various reasons, one of which is a regulatory inconsistency which results in different perspectives for law enforcers in practice, which leads to violations of a person's right to independence.

Based on the results of research conducted by the Center of Detention Studies (CDS) in 2011, it was found that several internal regulations of the Ministry of Law and Human Rights which regulate the Release of detainees by law are not in line with the provisions stipulated in the Code of Criminal Procedure.[18] In fact, the Code of Criminal Procedure strictly requires the Head of Detention Center/Prison to release detainees who have passed their term of detention without any conditions. However, this rule is different from the internal regulations of the Ministry of Law and Human Rights, which require approval from the Police, Prosecutors, and Courts who carry out detentions. Therefore, Regulation of the Minister of Law and Human Rights Number M.HH-24.PK.01.01.01 of 2011 was issued as an effort to resolve these differences.[19] Regulation of the Minister of Law and Human Rights Number M.HH-24.PK.01.01.01 of 2011 is considered to be more stringent in regulating the release of detainees by law by not requiring certain things for the Head of Detention Center to release detainees. However, more than 10 years after the entry into force of the Minister of Law and Human Rights, the condition of overstaying has not improved with the high rate of overstaying in detention centers/ correction centers. Therefore, it is felt that there is a need for different solutions and approaches to solving this problem.

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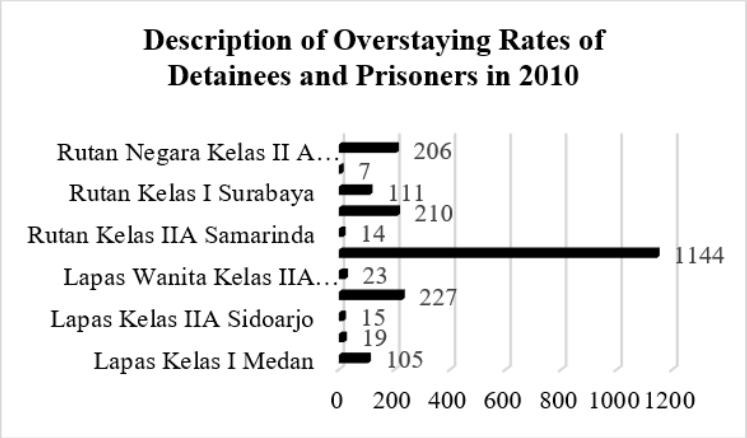
16 Supriyadi Widodo Eddyono, *Ancaman Overkriminalisasi, Dan Stagnasi Kebijakan Hukum Pidana Indonesia: Laporan Situasi Hukum Pidana Indonesia 2016 Dan Rekomendasi Di 2017*, *Institute for Criminal Justice Reform*, 2017.

17 Republik Indonesia, "Peraturan Pemerintah No 27 Tahun 1983 Tentang Pelaksanaan Kitab Undang-Undang Hukum Acara Pidana" (n.d.). Dalam Pasal 19 Angka 7 PP 23 Tahun 1983 disebutkan bahwa Kepala Rutan demi hukum mengeluarkan tahanan yang telah habis masa penahanan atau perpanjangan penahanannya. Sebelum hal tersebut terjadi dalam penjelasan Pasal tersebut dikatakan bahwa agar terhindar dari pengeluaran demi hukum Kepala Rutan memperingatkan kepada pejabat yang secara yuridis menahan sebelum masa tahanan tersebut habis. Demikian pula dalam Permenkumham M.HH-24.PK.01.01.01 Tahun 2011 yang memuat ketentuan yang sama hanya saja menambahkan kata "Kepala Lapas" selain Kepala Rutan yang wajib mengeluarkan Tahanan Demi Hukum. Dengan pengecualian terhadap kejahatan tertentu yang telah dikualifikasikan.

18 Center for Detention Studies, "Penahanan Tidak Sah & Masalah Overstaying Di Rumah Tahanan Negara Dan Lembaga Pemasyarakatan" (Jakarta, 2011). hal 60-80

19 Center for Detention Studies.

Graph 2
Overstaying Rates of Detainees and Prisoners in 2010



Source: CDS 2011

The author identifies at least there are still a number of problems that are the cause of why overstaying still occurs,

a. First, the letter of notification of the expiration of the detention period submitted by the detention center/correction center to the Law Enforcement Officers (APH) of the detention center is often not responded to quickly, as a result, the detention extension letter is often received late by the correctional institution/detention center.

b. Second, the reason for the length of time an excerpt of the decision was received by the prosecutor's office caused a delay in the execution process which resulted in a delay in the rights that should have been obtained by a detainee.

c. Third, the use of the SPPTI application has not been maximized, and there is an unpleasant feeling between APHs. The head of the detention center/correction does not seem to have the courage to release detainees for the sake of the law because they feel reluctant towards the detainees.

The Directorate General of Corrections, which is at the end of the criminal justice system chain, has the consequence that its position as the Directorate General of Corrections can only be "passive." In that matter, so far, the detention center/correction center, in carrying out its duties and powers, has been very dependent on other APH agencies. Because of this, it often seems that the root of various problems in the bad criminal justice system in Indonesia rests on the shoulders of the Directorate General of Corrections. For example, the problem of punishment, which has a very punitive style which, is the root of the overstaying-overcrowded problem.

The emergence of Law 22 of 2022 concerning Corrections last August brought new hope. The issue of strengthening correctional institutions in the integrated criminal justice system is an interesting matter to discuss, particularly related to their role in resolving issues regarding the release of detainees for the sake of law, which is the cause of overstaying in detention centers/correction centers. At the beginning of this article, the author tries to invite the reader to discuss the importance of reflecting on the essence of detention. Then, in the second part of this article, it discusses the issue of the Release of detainees by law from the point of view of the integrated criminal justice system, and in the final part of the discussion, this article discusses new hopes for the issuance of Law 22 of 2022 concerning Corrections in resolving the ineffective release of detainees for the sake of law causing of overstaying of prisoners.

2. METHOD

This research is a normative juridical research that focuses on the analysis of law as a norm, principle, rule, and dogma. In this normative method, research focuses on qualitative descriptions by linking the issues discussed with relevant laws and regulations, doctrines, jurisprudence, and legal principles. This study uses a statute approach to analyze various laws and regulations[20] which regulate the mechanism for releasing detainees by law. Sources of data for this study were obtained through a literature study which included secondary data such as primary, secondary, and tertiary legal materials relating to the legal issues discussed in this study. [21]

3. DISCUSSION

The Importance of Reflecting on the Essence of Detention

In essence, everyone has the right to freedom of body, mind, and conscience[22] , including the freedom to move. The restraint on these rights is a very sad thing. Therefore, it is important to incorporate clear and firm protection of these rights into legal instruments. Then it becomes the full responsibility of the state, although in practice, due to certain purposes, such as in the trial of criminal cases, the right to independence may be temporarily limited.[23]

Detention is the act of taking someone's freedom of movement by force. In the criminal justice system, detention is the authority of law enforcement officials to force someone to stay in a certain place for a certain period of time, in addition to other forced measures such as arrest, search, confiscation, and wiretapping.[24] According to the Code of Criminal Procedure, detention refers to the placement of a suspect or defendant in a certain location for a certain period of time by investigators, public prosecutors, or judges through certain decisions.[25]

Unlike the HIR, which previously mixed the term detention with arrest and temporary detention, in the Code of Criminal Procedure, the term detention is simplified and more clearly outlined. It is even accompanied by clarity regarding the conditions, the party authorized to make the detention, and the time limit determined in a limited manner.[26] In terms of law enforcement, this is very important because during the HIR period, the Head of the District Court could still extend the detention period indefinitely, which made detained suspects feel they had no legal certainty. Therefore, this is a benchmark for the progress of law enforcement.[27]

Meanwhile, the purpose of detention can be seen based on the level of the trial process. At the investigative stage, detention is carried out to assist investigative purposes, as well as detentions are carried out during the prosecution process and the trial process at court.[28] Not without conditions, the Code of Criminal Procedure provides conditions for law enforcement officials to make detentions. Detention cannot be applied to all crimes, the Code of Criminal Procedure has regulated which crimes allow for detention, both in general

20 Jhonny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia, 2010). hal 154-158
21 Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Media Prenanda Group, 2014). hal 58
22 Republik Indonesia, "Undang-Undang Dasar Negara Republik Indonesia Tahun 1945" (n.d.). Dalam pasal 28 I UUD 1945 disebutkan: Hak untuk hidup, hak untuk tidak disiksa, hak untuk kemerdekaan pikiran dan hati nurani, hak beragama, hak untuk tidak diperbudak, hak untuk diakui sebagai pribadi dihadapan hukum, dan hak untuk tidak dituntut atas dasar hukum yang berlaku surut adalah hak asasi manusia yang tidak dapat dikurangi dalam keadaan apapun.
23 Dizal Al Farizi, "Konsep Penahanan Dalam Sistem Hukum Indonesia" 3, no. 1 (2016): 27–56.
24 Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2012). hal 119-124
25 Indonesia, Undang-undang nomor 8 Tahun 1981 tentang Kitab Undang-undang Hukum Acara Pidana (KUHAP). Tempat tertentu sebagaimana dimaksud yakni Penahanan di Rumah Tahanan, Penahanan Rumah dan Penahanan Kota.
26 M.Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP (Penyidikan Dan Penuntutan)* (Jakarta: Sinar Grafika, 2002). hal 164-167
27 Harahap. hal 164
28 Hamzah, *Hukum Acara Pidana Indonesia*.

and specifically, including:[29]

a. In the case of detention of suspects or defendants, only crimes that carry a prison sentence of five years or more can be subject to detention, whether regulated in or out of the Criminal Code. However, it should be noted that if the prison sentence reaches five years or more, then detention can be automatically carried out. (Article 21 Paragraph (4) letter a).

b. Various certain criminal acts which are limitedly regulated in Article 21 Paragraph (4) letter b of the Code of Criminal Procedure. This article is an exception to the general principle in point (a). Even though the sentence is under five years, they are still subject to detention.

The objective conditions of detention are the provisions stipulated by law regarding which crimes can be subject to detention.[30] In this case, law enforcement must comply with these provisions. On the other hand, subjectivity can also be used by law enforcement officials in making detentions, namely if the suspect or defendant is "strongly suspected" of being the perpetrator of a crime and based on "sufficient initial evidence" and there are "concerns" that the suspect or defendant will run away, eliminate or destroy evidence, or commit the same crime again.[31]

During the implementation of the Code of Criminal Procedure, problems in examining criminal cases, especially in the pre-trial detention phase, are often caused by this subjective requirement. It is due to the fact that the measure of the subjectivity of law enforcement officials regarding their concerns about suspects or defendants will find it difficult to rely on clear measurements. Therefore, this condition is very prone to abuse.

After all, even though in matters of upholding criminal law, a person's right to independence is not absolute and can be limited, these restrictions certainly cannot be carried out arbitrarily, let alone carried out in violation of the law.[32] The existence of brief provisions causes law enforcement officials to have unstoppable authority in interpreting detention policies. So that the view that detention is the discretion of law enforcement officials on the basis of subjectivity has led to the growth of a paradigm in practice where law enforcement officials prefer to make detentions under the pretext of speeding up the resolution of cases. As a result, the substantial value of why someone needs to be detained is often overlooked.

In fact, when referring to the word "can" in Article 21 of the Code of Criminal Procedure, detention is not a mandatory thing or a necessity.[33] Moving on from there, if viewed from a grammatical point of view, suspects or defendants do not always need to be detained but can be detained if, indeed, law enforcement officials have objective concerns that the suspect or defendant will run away, destroy evidence, and/or commit the same crime. Therefore, there needs to be caution from law enforcement officials if they choose to detain.

On the other hand, referring to Article 9 of the ICCPR, participating countries are required to provide laws that regulate carefully how states can limit a person's freedom in order to prevent interpretations that are too broad.[34] In line with the above opinion, according to the Constitutional Court, whether or not a suspect or defendant is required to be subject to compulsory detention is based on rationality which is clearly and measurably elaborated through concrete indicators.[35] As is the case with the phrase "sufficient evidence" in the provisions of Article 21 paragraph (1) of the Code of Criminal Procedure, of course, it is not only required for the crime but also applies to the subjective views of law enforcers, in the sense that law enforcers in making detentions need to be based on sufficient evidence that the suspect will run away, commit the same crime, or will destroy the evidence.[36] So ideally, pretrial detention should be the last resort (*ultima ratio*) made by law

29 Berlian Simarmata, "Menanti Pelaksanaan Penahanan Dan Pidana Penjara Yang Lebih Humanis Di Indonesia," *Jurnal Konstitusi* 7, no. 3 (2016): 069, https://doi.org/10.31078/jk733.

30 Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP (Penyidikan Dan Penuntutan)*. hal 166

31 Hamzah, *Hukum Acara Pidana Indonesia*.

32 Maidina Rahmawati and Girlie Lipsky Aneira Br Ginting, *Reformasi Penahanan Dan Penghindaran Penahanan Bagi Pengguna Dan Pecandu Narkotika Dalam RKUHAP* (Jakarta: Institue For Criminal Justice Reform, 2022), https://www.ptonline.com/articles/how-to-get-better-mfi-results. hal 12-15

33 Simarmata, "Menanti Pelaksanaan Penahanan Dan Pidana Penjara Yang Lebih Humanis Di Indonesia," 2016.

34 Human Right Committe, "General Comment No 35 International Covenant on Civil and Political Rights" (2014).

35 Mahkamah Konstitusi, "PUTUSAN Nomor 018/PUU-IV/2006" (n.d.).

36 Konstitusi. Keterangan Ahli Chairul Huda yang disampaikan pada Sidang Mahkamah Konstitusi Nomor 018/PUU-

enforcement officials in resolving criminal cases.

Meanwhile, the phrase "allegedly….. raises concerns…" when compared to the opinion of the European Court of Human Rights in the case of Kavala v. Turkey states that a person cannot be detained without facts, information, and evidence that clearly shows that a person is involved in a crime.[37] Detention is not considered reasonable if the suspicion of committing a crime is only based on the testimony of the victim, which is not supported by facts, information, and other evidence. This is what needs to be paid attention to that the existence of evidence is a very elementary element in order to avoid detention which actually negates the principle of the presumption of innocence.[38] If referring to the Constitutional Court Decision Number 21/PUU-XII/2014, preliminary evidence, as referred to in Article 1 point 14, Article 17, and Article 21 paragraph (1) of the Code of Criminal Procedure, is a minimum of two pieces of evidence as classified in Article 184 of the Code of Criminal Procedure.

One other reason that contributes to the role of why law enforcement officials often easily make arrests is the view that the purpose of criminal law is retaliation or punishment. This view departs from the *Vergeldings Theorien* or Absolute Theory, where punishment is imposed solely because people have committed a crime.[39] So sanctions are seen as retaliation and aim to satisfy the demands of justice. It is in contrast to the *Doel Theorien,* or Relative Theory, where the basic understanding of criminal imposition is to improve mental attitudes, and sanctions are given with the aim that people will no longer commit crimes.[40] Penggunaan teori absolut tersebut terwujud secara jelas dengan penggunaan pidana penjara yang sangat berlebihan. Termasuk penggunaan upaya paksa penahanan dengan dalih memberikan efek jera bagi tersangka atau terdakwa.[41] As a result, the effect that arises from this perspective is the overcrowding of prisons/detention centers.[42] Moreover, this is then exacerbated by the fact that there are still many laws and regulations that contain provisions for imprisonment of more than 5 years.[43] This way seems to provide a gateway for law enforcement officials to carry out detentions based on objective conditions. Not to mention that detention is often carried out by maximizing the time limit given by the Code of Criminal Procedure. Whereas the principle of a speedy trial should be upheld, and everyone who has been detained has the right to be brought before the court immediately.[44]

Therefore, ideally, there needs to be a fundamental change in viewing the purpose of punishment, which is more toward realizing restorative justice.[45] In the context of national policy, the manifestation of these ideas certainly needs to be aligned with the ideals contained in Pancasila, which is the source of the highest values underlying the Indonesian legal system.[46] In addition, according to Umbreit and Coates, there is a need for a more humane approach (*humanize the justice system*) because restorative justice highly respects human dignity.[47] As a result, case resolution can be separated from an approach that focuses on excessive

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1V/2006.

37 Human Right Committe, General Comment No 35 International Covenant on Civil and Political Rights.

38 Martin Ebers, André Janssen, and Olaf Meyer, "Comparative Report," *European Perspectives on Producers' Liability: Direct Producers' Liability for Non-Conformity and the Sellers' Right of Redress*, no. December (2009): 3–73, https://doi.org/10.1515/9783866538627.

39 Zainal Abidin Farid, *Hukum Pidana 1* (Jakarta: Sinar Grafika, 2007).

40 Andi Hamzah, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 1991). hal 178

41 Farizi, "Konsep Penahanan Dalam Sistem Hukum Indonesia."

42 Rully Novian et al., *Strategi Menangani Overcrowding Di Indonesia : Penyebab, Dampak Dan Penyelesaiannya*, *Institute for Criminal Justice Reform (ICJR)* (Jakarta: Institue For Criminal Justice Reform, 2018), https://icjr.or.id/wp-content/uploads/2018/04/Overcrowding-Indonesia_Final.pdf.

43 Novian et al.

44 Ebers, Janssen, and Meyer, "Comparative Report."

45 Ali Sodiqin, "Restorative Justice Dalam Tindak Pidana Pembunuhan : Perspektif Hukum Pidana Indonesia Dan Hukum Pidana Islam Pendahuluan Penyelesaian Masalah Tindak Pidana Di Indonesia Telah Diatur Dalam Instrumen Prosedur Formil Yang Telah Ditetapkan Oleh Negara . Atur," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 49, no. 1 (2015): 65.

46 KuatPuji Prayitno, "RESTORATIVE JUSTICE UNTUK PERADILAN DI INDONESIA (Perspektif Yuridis Filosofis Dalam Penegakan Hukum In Concreto)," *Jurnal Dinamika Hukum* 12, no. 3 (2012): 407–20, https://doi.org/10.20884/1.jdh.2012.12.3.116.

47 Prayitno.

formality, which only seeks fault without thinking about how to place the problem in its context.[48] So that the understanding referred to in the end creates logical consequences for the meaning of a crime which is no longer seen as a conflict between the perpetrators of crime and the state, which in the end must be given sanctions, but it is restored through other types of sanctions that depart from the imprisonment model.

As a restraint on a person's freedom of movement, detention creates a conflict between two principles between a person's right to move versus the public interest in public order.[49] Therefore, even if detention is forced to be carried out, of course, it must be based on complex considerations by measuring the interests of the individual and the state that has authority. The justification for pre-trial detention applies to extraordinary cases on the grounds that there is evidence and real risk.[50] However, it is also necessary to think about a mechanism for periodic evaluation of the legality of the detention. For example, the International Covenant on Civil and Political Rights (ICCPR) requires participating countries to implement a periodic review mechanism for further detention:[51]

> *"Aside from judicially imposed sentences for a fixed period of time, the decision to keep a person in any form of detention is arbitrary if it is not subject to periodic re-evaluation of the justification for continuing the detention."*

Meanwhile, in the context of national law, the pattern of supervision over the legality of pre-trial detention is only provided through the Pretrial mechanism. Similar to the *Rechter Commissaris* institution in the Netherlands and the Pre Trial institution in the United States, pretrial is a horizontal monitoring of the application of the principle of presumption of innocence.[52] Pretrial itself is a court action in trying and deciding the legitimacy of various forced measures, one of which is detention either at the request of the suspect or defendant or reporter or his family or legal adviser.[53]

According to Andi Hamza, the establishment of the Pretrial was intended as a reflection of habeas corpus, which is highly related to the substance of human rights.[54] However, along with the pre-trial process, the formation of which is intended to be a place for complaints of human rights violations, and in reality, it only becomes a place for mere administrative supervision.[55] As is the case in detention cases, the Pretrial does not try the substance of the objective or subjective requirements that are used as reasons for detention. Likewise, with the condition of sufficient preliminary evidence, the Pretrial does not try in depth the evidence used as the basis for determining the suspect and detention, including the validity of the acquisition (Exclusionary

48 Prayitno.

49 Rahmawati and Ginting, *Reformasi Penahanan Dan Penghindaran Penahanan Bagi Pengguna Dan Pecandu Narkotika Dalam RKUHAP*.

50 United Nations, "Chapter 5: Human Rights and Arrest, Pre-Trial Detention and Administrative Detention," *Human Rights In The Administration Of Justice: A Manual On Human Rights For Judges, Presecutors And Lawyers*, no. 9 (2003): pp. 159-212.

51 ICCPR, General comment No. 35 on Article of 9 of the International Covenant on Civil and Political Rights, on the Right to Life.

52 Supramono Linggama, "PELAKSANAAN PEMERIKSAAN PRAPERADILAN BERKAITAN DENGAN MASALAH PENAHANAN BAGI TERSANGKA OLEH PENYIDIK MENURUT UU NO. 8 TAHUN 1981," *Lex Crimen* VII, no. 5 (2018): 112–18.

53 Fachrizal Afandi, "Perbandingan Praktik Praperadilan Dan Pembentukan Hakim Pemeriksa Pendahuluan Dalam Peradilan Pidana Indonesia," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 28, no. 1 (2016): 93, https://doi.org/10.22146/jmh.15868.

54 Mosgan Situmorang, "KEDUDUKAN HAKIM KOMISARIS DALAM RUU HUKUM ACARA PIDANA," *De Jure* 18, no. 30 (2018): 433–44.

55 Rahmawati and Ginting, *Reformasi Penahanan Dan Penghindaran Penahanan Bagi Pengguna Dan Pecandu Narkotika Dalam RKUHAP*.

Rules)[56]. Meanwhile, in terms of its frequency, a Pretrial is submitted post factum or when the forced effort has occurred.

These weaknesses are then tried to be accommodated in the Draft Code of Criminal Procedure by presenting a Judge in the Preliminary Trial mechanism that replaces the Pretrial institution.[57] Adopting the tradition of the Continental European justice system, the Judge in Preliminary Trial has broader powers compared to the Pretrial. This authority is given to officials to assess the course of investigations, prosecutions, and other powers.[58] In the RKUHAP, the extension of detention must be approved by the Judge in a Preliminary Trial. Unfortunately, the initial decision to detain still rests with the investigating authorities and the public prosecutor. This causes the urgency of detention to go unnoticed. The Judge in Preliminary Trial only determines whether or not the extension of detention proposed by the investigator and public prosecutor is necessary. In addition, when referring to the detention provisions in the RKUHAP, there is no periodic evaluation mechanism that is so significant that it can assess detention. In addition, apart from depending on the periodical evaluation process of certain authorities, it is also important to give suspects or defendants the right to test the legitimacy of their detention.[59] Hence, the improvement of the RKUHAP should be able to touch on this issue, considering that guarantees for the protection of human rights during the process of settling criminal cases are important.

Another important thing that also becomes a concern is seeking alternatives other than detention. If referring to international human rights legal instruments, such as the ICCPR, Article 9, it states that pre-trial detention must be used as a last resort.[60] Participating countries must seek to provide other alternatives to detention. Pre-trial detention should not be something that must be applied to all cases without regard to the conditions of each.[61] Other alternative forms, such as suspension of detention, guaranteed attendance at trial, use of electronic wristbands, and other alternative measures, must be prioritized.[62]

So far, other alternative forms of detention regulated in the Code of Criminal Procedure consist of city detention, house arrest, and suspended detention. Referring to Article 22, the severity and unseverity of detention can be seen by the type of detention. Detention in Detention Center is the heaviest, followed by house arrest and city detention. In house arrest, a detainee can only stay at home day and night with strict supervision, while in city detention, a detainee can still roam around the city.[63] Therefore it is quite reasonable if a detainee hopes to get a transition to a lighter type of detention. However, the opposite can also happen because this is entirely the authority of investigators, public prosecutors, and judges. It's just that the provisions on the transfer of types of detainees in the Code of Criminal Procedure do not explain whether someone who is detained can apply for a change of type of detention. However, *a contrario*, in the absence of a prohibition, a detainee may apply for a change in the type of detainee, and law enforcement officials, with their considerations, may transfer the detainee. In addition, without being asked by a detainee, law enforcement officials, with their authority, can change the type of detention.

Meanwhile, another type of alternative is suspension of detention. According to the Code of Criminal Procedure, suspension of detention is the release of a detainee before the expiration of the detention period.[64]

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56 Lembaga Bantuan Hukum Jakarta, "Mengenal 'Exclusionary Rules,'" 2014, https://bantuanhukum.or.id/mengenal-exclusionary-rules/. Exceclusionary Rules merupakan istilah dalam sistem hukum Amerika Serikat tentang pencegahan perolehan alat bukti yang dilakukan sewenang-wenang atau melawan hukum.

57 Devi Kartika Sari, Prija Djatmika, and Faizin Sulistio, "Analisis Yuridis Kedudukan Hakim Pemeriksa Pendahuluan Sebagai Upaya Pembaharuan Lembaga Praperadilan Dalam Sistem Peradilan Pidana Di Indonesia," *Kumpulan Jurnal Mahasiswa Universitas Brawijaya* 5, no. 3 (2020): 248–53.

58 Dalam Pasal 111 RUU KUHAP Hakim Pemeriksa Pendahuluan berwenang untuk menetapkan dan memutuskan sah atau tidaknya upaya paksa seperti penangkapan, penahanan, penggeledahan, penyitaan atau penyadapan.

59 United Nations, "Chapter 5: Human Rights and Arrest, Pre-Trial Detention and Administrative Detention."

60 Republik Indonesia, "UU No. 12 Tahun 2005 Tentang Pengesahan International Covenant on Civil and Political Rights (Kovenan Internasional Tentang Hak-Hak Sipil Dan Politik" (n.d.).

61 Human Right Committe, General Comment No 35 International Covenant on Civil and Political Rights.

62 Human Right Committe.

63 Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP (Penyidikan Dan Penuntutan)*.

64 Indonesia, Undang-undang nomor 8 Tahun 1981 tentang Kitab Undang-undang Hukum Acara Pidana (KUHAP).

The existence of a suspension of detention makes a detainee released from a legal and official detention period.[65] Suspension of detention is the authority of investigators, public prosecutors, or judges in accordance with their authority with or without guarantees of money or guarantees of persons based on specified conditions. The mechanism of suspension of detention is almost similar to the form of an agreement within the scope of civil law where a detainee performs a performance by guaranteeing and complying with predetermined conditions while the other party, namely the law enforcement agency, holds the detainee, performs the performance by rewarding him by granting a suspension of detention.[66] Therefore, in Article 31 of the Code of Criminal Procedure, suspension of detention can be made at the request of a suspect or defendant, and the request is granted by law enforcement officers who legally detain with conditions and guarantees that have been determined. In practice, the guarantee referred to is in the form of money or personal guarantees. The amount of bail money is not regulated clearly in the Code of Criminal Procedure, nor is the mechanism for the guarantor if the guaranteed prisoner escapes. Yahya Harahap said the guarantee was optional. Without bail, suspended detention remains lawful.

Further provisions regarding procedures for implementing guarantees are regulated in Chapter X PP 27 of 1983. Determination of the amount of bail for suspension is the authority of each official who carries out judicial detention and is deposited in the district court clerk's office. Then if the detainee who escapes for more than three months is not found, the bail money goes to the state treasury.[67] Meanwhile, if the bail is a person and if the detainee runs away after three months not found, the guarantor pays an amount of money determined by the official at each level of examination. However, in practice, the suspension of detention is not carried out through an accountable mechanism. Often the bail money is not returned even though the suspect or defendant has not violated the terms or promises previously determined.[68] This is because both the KUHAP and PP 27 of 1983 as implementing regulations do not stipulate in detail how much money and the juridical consequences for the guarantor in terms of guaranteeing a person. As a result, this authority returns to the respective law enforcement officers. Often this alternative to detention, which should be regulated by a clear mechanism, instead depends on the discretion of law enforcement officials. This has resulted in problems where law enforcers are sometimes not objective in giving suspension policies. Some things should have been suspended but were not suspended, and vice versa; as a result, this has resulted in discriminatory practices. Meanwhile, from the side of law enforcement, this will also pose risks. Therefore, in addition to the importance of a clear mechanism, another approach is also needed in assessing the objectivity of a suspension of detention which is not only from a juridical perspective.

In practice, detention should not be seen as something that must be carried out by law enforcement officials. The detention policy should be returned to its essence, namely as a last resort that law enforcers can take for rational reasons to help settle cases. Not all cases need to be detained. Even with the serious consideration that detention must be carried out, suspects should not have to wait for the detention time limit to expire or even be extended to be immediately examined in court. Law enforcement officials should be careful and need to uphold the principle of presumption of innocence and protection of human rights. In order to reduce the risk of human rights being violated, periodic evaluations of detention or alternative options other than detention really need to be pursued. For example, General Comment No 39 Article 9 of ICCPR recommends alternatives to detention in the form of suspended detention, electronic bracelets, or other alternatives according to other conditions that make detention unnecessary.[69] In the Code of Criminal Procedure, provisions regarding alternatives to detention in detention centers consist of a suspension of detention with money or person guarantees, city detention, or house arrest. It's just that in practice, this is still very rarely implemented, considering that it has not been supported by technical regulations that are really able to regulate procedures, implementation requirements, and so on. In other words, detention in prisons/detention centers or the police or prosecutor's office is still the prima donna chosen by law enforcers.

65 Salamat Siregar, "Syarat Objektifitas Dan Subjektifitas Penangguhan Penahanan."
66 Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP (Penyidikan Dan Penuntutan)*.
67 Republik Indonesia, Peraturan Pemerintah No 27 Tahun 1983 tentang Pelaksanaan Kitab Undang-Undang Hukum Acara Pidana.
68 Simarmata, "Menanti Pelaksanaan Penahanan Dan Pidana Penjara Yang Lebih Humanis Di Indonesia," 2016.
69 Human Right Committe, General Comment No 35 International Covenant on Civil and Political Rights.

Likewise, when it comes to periodic evaluations, the concept adopted by the current Code of Criminal Procedure with the pre-trial mechanism still lacks substantial values regarding the legality of detention. Even though the pre-trial mechanism carried out by the Code of Criminal Procedure has been institutionalized by the judge's authority, it is carried out only at the initiative of the detained party, and this tends to be administrative in nature, in the sense of not assessing substantially why a person needs to be detained. In fact, if referring to international human rights instruments, periodic reviews of detention must be carried out automatically at appropriate and continuous intervals. For example, in Abdulkhakov v. Russi, the European Court of Human Rights recommends periodic evaluations to be carried out with a maximum interval of 2 months.[70] This is not visible from the pre-trial mechanism in the Code of Criminal Procedure, which is *post factum* in nature. Thus, putting the submission of periodic evaluations on the initiative of the person being detained is not enough, it is necessary to have authority from the authorities, in this case, an independent party, namely the judge, who automatically both procedurally and substantially carries out his duties in carrying out this evaluation.[71]

Overstaying in the Eyes of the Criminal Justice System

The idea of the Criminal Justice System was first introduced by Frank Remington in 1958. This idea places more emphasis on criminal justice on administrative mechanisms by positioning all components of law enforcement in an equally important position.[72] This moved from the paradigm of law enforcement in the United States, which initially focused heavily on a law enforcement approach by making the police the main component of law enforcement. As a result, this is considered a failure because it creates a contradiction where on the one hand, order management needs to be upheld even though it violates human rights. Meanwhile, on the other hand, the law that is used to enforce order, apart from providing limitations on the powers of law enforcement officials, also provides protection for human rights.[73]

Meanwhile, according to Romli Atmasasmita, the system has a striking feature which focuses on the coordination and synchronization of all components in criminal justice consisting of the police, prosecutors, courts, and correctional institutions. In its implementation, this system involves a process of checks and balances on the use of power by the criminal justice component. In addition, the effectiveness of crime prevention is a priority compared to the efficiency of case resolution. While legal instruments are used as a tool to perfect *the administration of justice.*[74]

Theoretically, the *Criminal Justice System* consists of several models. In "*The Limits of The Criminal Sanction*," Packer divided it into two, namely the *Crime Control Model* and the *Due Process Model*. Even though, in practice, the two models do not appear to be fully followed by every country, the model was born from observing judicial practices in various countries, including the management of criminal justice in the United States.[75] In addition, the polarization of the two models is not absolute.[76] The most striking difference between the two models lies in the objectives of administering criminal justice. *The Crime Control Model* views the purpose of administering criminal justice as simply to suppress perpetrators (*Criminal Conduct*). Meanwhile, *the Due Process Model* places more emphasis on the importance of limiting powers in criminal

70 Thea Coventry, "Pretrial Detention: Assessing European Union Competence under Article 82(2) TFEU," *New Journal of European Criminal Law* 8, no. 1 (2017): 43–63, https://doi.org/10.1177/2032284417699291.

71 ECHR, "EUROPEAN CONVENTION OF HUMAN RIGHTS" (n.d.). Dalam Article 5 yang dimaksud otoritas independen ialah yang terlepas dari lembaga eksekutif, jaksa maupun penasehat hukum.

72 Remington dan Ohlin menyampaikan bahwa melalui Criminal Justice System peradilan pidana dipandang sebagai hasil interaksi antara peraturan perundang-undangan, praktik administrasi dan sikap tingkah laku sosial. Sistem tersebut merupakan proses interaksi yang dipersiapkan secara rasional dan efisien untuk memberikan hasil tertentu dengan skala keterbatasannya. Yesmil Anwar and Adang, *Sistem Peradilan Pidana (Konsep, Komponen, Dan Pelaksanaannya Dalam Penegakan Hukum Di Indonesia)* (Bandung: Widya padjadjaran, 2011).

73 Anwar and Adang.

74 Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer* (Jakarta: Kencana, 2010).

75 Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford California: Stanord University Press, 1968). Dikutip dalam Anwar and Adang, *Sistem Peradilan Pidana (Konsep, Komponen, Dan Pelaksanaannya Dalam Penegakan Hukum Di Indonesia)*.

76 Michael Barama, "MODEL SISTEM PERADILAN PIDANA DALAM PERKEMBANGAN," no. 8 (2016): 8–17.

justice and providing protection for human rights. *The Due Process Model* was born on the antithesis of the Crime Control Model, which is based on the presumption of guilt and tends to be more repressive. Meanwhile, in the due process model, the value of the justice system adheres to the presumption of innocence, whereby the case settlement process is carried out in a formal adjudicative manner by objectively seeking facts. In this case, a suspect or defendant during an examination is heard openly and gets the opportunity to refute or deny the accusations leveled against them.[77]

As stated above, the model of the criminal justice system initiated by Packer is only a value system that appears in the practice of administering criminal justice. Including in Indonesia, the good values of the Due Process Model try to be poured into the Criminal Justice System in Indonesia, although this does not rule out the possibility that there are still many negative values from the Crime Control Model that are still contained in the Code of Criminal Procedure. As in the detention phase, the absolute discretion of the investigator to be able to carry out detention only on objective and subjective conditions without supervision is a characteristic of the Crime Control model.

The Indonesian Criminal Justice System (SPPI) can be seen from how the Code of Criminal Procedure, as a formal criminal law, regulates the implementation of criminal justice in Indonesia. In the Code of Criminal Procedure, the criminal justice system in Indonesia is carried out by components of the police, prosecutors and district courts, and correctional institutions.[78] The Code of Criminal Procedure has outlined the duties and authorities of these components. The police have the position ofinvestigators, the Prosecutor's Office as the public prosecutor and executor of executions, the Supreme Court, according to its level, has the position as an agency that is authorized to try, while correctional institutions have the task of coaching prisoners. This division of tasks of authority is known as "functional differentiation." With this division of tasks and authority, it is hoped that the four component institutions will be closely bound from one institution to another during the criminal case settlement process.

However, in practice, this is far from expectations. Adhering to the principle of functional differentiation in the Code of Criminal Procedure actually makes the criminal justice process, especially in the investigation-prosecution stage, not integrated and instead fragmented.[79] This is very evident when looking at how the Code of Criminal Procedure regulates the relationship between investigators and public prosecutors in the pre-prosecution phase. Going back and forth between case files causes the case settlement process to be far from efficient. Not to mention that it is supported by legal regulations that do not clearly regulate, so often, the Notice of Commencement of Investigation (SPDP) that should be submitted to the public prosecutor as soon as possible is actually not carried out. This causes delays in the process of settlement of cases (undue delay), even under certain conditions, many cases are lost (deponers). So that the suspect's rights to legal certainty and access to a speedy trial are not fulfilled.[80]

This also happened in cases of overstaying of prisoners as a result of the implementation of the Release of detainees by law, which was not carried out in accordance with the provisions desired by the Code of Criminal Procedure. A prisoner still has to languish in detention, and his rights are violated. Even though the provisions in Article 24 Paragraph (4), 25 Paragraph (4), 26 Paragraph (4), 27 Paragraph (4), and 28 Paragraph (4) of the Code of Criminal Procedure clearly instruct the Head of Detention Center to expel detainees by law if the maximum period of detention is exceeded in each inspection phase.

In looking at the issue of overstaying, the author tries to depart from a fundamental view of how the Code of Criminal Procedure constructs patterns of relations between law enforcement agencies as a sub-system of the criminal justice system. In the detention phase, the coordination relationship between the sub-systems can be seen from how prisons/detention facilities facilitate other law enforcement agencies such as the Police, Prosecutors' Office, and Courts by providing facilities and infrastructure specifically intended for

77 Atmasasmita, *Sistem Peradilan Pidana Kontemporer*.
78 Hamzah, *Hukum Acara Pidana Indonesia*.
79 Keterangan Luhut Pangaribuan selaku Ahli dalam sidang Perkara Mahkamah Konstitusi Republik Indonesia, "Putusan Mahkamah Konstitusi Nomor 130/PUU/XIII/2015" (n.d.).
80 Mahkamah Konstitusi Republik Indonesia. Putusan Mahkamah Konstitusi menyatakan bahwa SPDP wajib diberitahukan paling lambat 7 hari kepada penuntut umum, pelapor dan korban.

a suspect or defendant who is undergoing the process of settling a criminal case (detention). This coordination relationship begins when the Head of the Detention Center receives detainees from other law enforcement officials accompanied by a valid basis for detention which is then checked and matched with the identity of the detainee along with other administrative actions.[81] While placed in a prison/detention center, the care of a detainee becomes the full authority of the correctional institution/detention center. The coordination relationship re-occurs when detainees are released due to 1) trial purposes, 2) transfer of type of detainee, or 3) suspension of detention. In addition to the release, coordination relationships also occur when a detainee is released because 1) detention is no longer needed, 2) the sentence handed down is in accordance with the term of detention served, and 3) the release of detainees by law.[82]

Specifically on the issue of the Release of detainees by law, the coordination relationship between the Head of Correctional Institutions/Detention Centers and other law enforcement officials continues when a detainee is close to reaching the maximum term of detention. According to Article 19 Paragraph 6 of PP 27 of 1983, the head of the correctional institution/detention center is obliged to notify law enforcement officers who carry out judicial detentions about the expiration of the detention period with the hope that a letter will be issued or a stipulation of an extension of detention. Meanwhile, if the letter or determination is not submitted to the Correctional Institution/detention center and the detention period has exceeded the maximum time limit, then by law, a detainee must be released. It is in this phase that coordination relationships often do not work as they should and become one of the causes of overstaying. Orders for extensions that are delivered late place the Correctional Institution/detention center in a problematic situation. When Correctional Institutions/detention centers continue to carry out detentions, illegal and arbitrary detention occurs. However, on the other hand, when the Head of Correctional Institutions/Detention Centers chooses to release detainees, it is as if there is a sense of reluctance toward law enforcement officials who are legally detaining them.

When talking about authority, according to the Code of Criminal Procedure, the Head of the Detention Center has the authority to release detainees for the sake of the law purely and consistently. According to Yahya Harahap, the existence of the phrase "for the sake of law" (*van rechtswege*) implies an action that does not require certain conditions, including administrative action.[83] Therefore, ideally, when the detention period is over, according to law, the authority of the Head of Correctional Institutions/Detention Centers is automatically born to release prisoners.[84] However, apart from these provisions, in practice, the authority to release prisoners by law that belongs to the Head of Correctional Institutions/Detention Centers is actually bound by certain conditions, which make it difficult for the Head of Correctional Institutions/Detention Centers to exercise their authority. For example, there is an obligation to notify the apparatus that is carrying out a judicial detention 10 days before the expiration of the detention period, as stated in PP 27 of 1983, especially in the elucidation of Article 19 paragraph (7). The additional conditions above are seen as softening the authority of the Head of the Detention Center.[85] Indirectly, the existence of these conditions indicates the view that the head of the detention center cannot immediately release detainees without permission from law enforcement, who is legally responsible. Even though the absolute value of this requirement is paradoxical, in the sense that even if the head of the correctional institution/detention center does not carry out the requirement, there is no definite consequence whether this authority will then be lost.

If it is reconstructed from the series of issued regulations governing the authority to release detainees for the sake of law owned by the head of the detention center, it can be seen that the regulations that have existed, in fact, do not reflect what the Code of Criminal Procedure aspires to.

81 Surat penahanan yang sah sebagaimana dimaksud merupakan surat perintah penahanan yang dikeluarkan oleh penyidik dan penuntut umum. Sementara pada fase pemeriksaan pengadilan surat tersebut berupa surat penetapan.
82 Indonesia, Undang-undang nomor 8 Tahun 1981 tentang Kitab Undang-undang Hukum Acara Pidana (KUHAP).
83 Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP (Penyidikan Dan Penuntutan)*.
84 Harahap.
85 Harahap.

Table 2. History of Legislation that Regulates the Release of Detainees by Law

Wire Letter of the Head of Prison Service No. J.H.1/25 20 February 1952	*You actively participate from time to time, helping to warn prosecutors or judges who have kept people in prison if it is felt that you may have forgotten in what you can roughly guess, that the sentence to be meted out to a detainee there may be approximately one that will not exceed the length of time of detention.*
Instruction of the Minister of Justice No. J.C.5/19/18 of 1964 concerning the Release of Detainees	*……release any person whose detention has not been extended utilizing a valid detention order after notifying in advance that he will be released to the agency detaining him.*
Wire Letter No. J.H.1/1027 concerning Detainees Who Have Not Had An Extension of Warrant	*....in this regard, based on an agreement between the Prison Party and the Prosecutor's Office, the detainee in question is removed from the prison register (letter A) as released, but by handing him over directly to the prosecutor's office to then be detained again with a new detention order from the Prosecutor, who is obliged to carry out further investigation, whether or not an extension of the detention period is necessary for the new detention order.*
Wire letter from the Director General of *Bina Tuna Warga* No DDP.3.3/13/13	*....Regarding detainees whose detention warrants have expired but have not been extended, request that a warrant for extension of detention be issued....with confirmation from you that if within ten days after your request a warrant has not been issued for extension of detention, the detainee concerned will be handed over to the prosecutor's office because the LP, given that these considerations, cannot be detained any longer.*
Regulation of the Minister of Justice of the Republic of Indonesia No. M.04-UM.01.06 of 1983 concerning Procedures for the Placement, Care of Detainees, and Orders of State Detention Houses	Detainees whose detention period has expired and there is no letter of extension of detention, even though ten days earlier the State Detention Center (Rutan) notified the detaining agency and it turns out that the detention period has not been extended, the detainee is released by law after consulting with the detaining agency (article 28 paragraph 1).
Circular letter of Director General of Corrections Number: E.203.PK.02.03 of 1987 concerning extension of detention and release "By the Law."	Containing doubts about the previous circulars, namely MA/PAN/368/XI/1983 and E1-UM.04.11-227. In essence, it reaffirms that the Head of Detention Center/Correctional Institution continues to remind and coordinate with law enforcement officers who are legally detaining and continue to make detentions even though the detention period is over if: a. The letter of application for extension has been sent by the correctional institution/detention center b. In cases of criminal acts of rape, narcotics, smuggling, murder, and criminal acts which receive the attention of the public/mass media, to remain detained even though the detention period has expired and continue to consult with the authorities in detaining in accordance with the level of trial; c. based on the verdict stating that the defendant remains in detention or is in detention to be used as a guide while waiting for the Stipulation Letter from the authority.

Law Enforcement Coordination Meeting (RAKORGAKUM) between the Supreme Court, the Minister of Law and Human Rights, the Attorney General's Office, and the Police of the Republic of Indonesia: Number: M.HH-35.UM.03.01 TAHUN 2010 Synchronizing the Management of the Criminal Justice System in Realizing Equitable Law Enforcement	This regulation contains the subject matter that regulates the pattern of synchronizing words of action between law enforcers to address a number of issues, including the issue of overstaying. In essence, there is agreement on the need for integration and synchronization of law enforcement efforts.

Sumber: CDS Tahun 2011[86]

Therefore, it is not surprising that in practice, views are born and formed that seem to reduce the authority to release detainees for the sake of law owned by the Head of Correctional Institutions/Detention Centers even though regulations at the level of laws, namely the Code of Criminal Procedure, have strictly regulated this authority to be carried out without requiring certain actions. However, history records that various implementing regulations that have been issued are different. From a theoretical point of view, the formation of implementing regulations ignores the principle of *lex superior derogate legi inferiori* because it conflicts with higher regulations.[87] From the various implementing regulations above, it can be seen that the authority of the Head of Correctional Institutions/Detention Centers is always regulated in a weak position because they depend on other law enforcers. This is not comparable to the burden of responsibility imposed on the physical care of a detainee with guaranteed protection of his human rights.

In 2011 the problem of disharmony in implementing the regulations above was tried to be resolved by establishing Regulation of the Minister of Law and Human Rights Number M.HH-24.PK.01.01.01 of 2011, which specifically regulates the mechanism for releasing detainees by law. The Minister of Law and Human Rights was formed by expressly initiating the principle of protecting human rights and guaranteeing the realization of legal certainty for detainees.[88] Various deficiencies of the previous implementing regulations, including reaffirming the authority to release prisoners by law which belongs to the Head of Correctional Institutions/Detention Centers, are trying to be perfected. Even though this provision still requires the head of the correctional institution/detention center to notify in writing the end of the detention period to other law enforcers 10 days before the end of the detention period. However, there is a new clause which at least provides confirmation of the obligation of the Head of the Correctional Institution/Detention Center to expel detainees who have finished their prison terms accompanied by administrative sanctions if this is not carried out. Likewise,the release of detainees in certain cases which have raised concerns for members of the public where the release of detainees requires coordination with the Chief Justice of the High Court. The absence of a response to coordination from the Head of the High Court obliges the Head of Correctional Institutions/ Detention Centers to release detainees by law.

The birth of Regulation of the Minister of Law and Human Rights Number M.HH-24.PK.01.01.01 of 2011 should be a solution to solving the problem of overstaying. But what happened was the opposite. The heads of correctional institutions/detention centers are still largely reluctant to release detainees for the sake

86 Center for Detention Studies, "Penahanan Tidak Sah & Masalah Overstaying Di Rumah Tahanan Negara Dan Lembaga Pemasyarakatan."

87 Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP (Penyidikan Dan Penuntutan)*.

88 Kemenkumham RI, "Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor M.HH-24.PK.01.01.01 Tahun 2011 Tentang Pengeluaran Tahanan Demi Hukum" (n.d.).

of the law. Various reasons accompany this problem, and the most obvious is that there is still bad feeling from the Heads of Correctional Institutions/Detention Centers for law enforcers who legally detain.[89] Heads of Correctional Institutions/Detention Centers tend not to have the courage to release detainees. This bad feeling grows from practices that are carried out on an ongoing basis where the Head of Correctional Institutions/ Detention Centers prefers to maintain good relations with other law enforcers by not releasing prisoners who have ended their detention period.[90] Even further than that, there is an assumption that correctional institutions/ detention centers are only places where detainees are taken care of so that the release of detainees requires the approval of the detainee, of course, is not appropriate because the Code of Criminal Procedure strictly regulates the authority of detention centers as a place for temporarily placed detainees. In fact, normatively, this authority is strong enough as a basis for releasing detainees. In practice, the Head of Correctional Institutions/ Detention Centers has carried out the procedures as mandated by PP 27 of 1983 and its derivative regulations. Such as notifying the expiration of the detention period through letters 10,3,1.

However, returning to the basic problem, the non-optimal pattern of relationships formed between one sub-system and another in the criminal justice system is the cause of the existing problems that are still surfacing. Even though letters 10,3,1 have been submitted, the Correctional Institution/detention center often has to wait for an answer through a complicated administrative process. Not infrequently, the notification letter does not receive a quick response.[91] Let's say in the case that the court's decision has not yet been issued, which is the basis for the prosecutor's office to carry out the execution, the correctional institution/detention center is indirectly forced to wait for the letter to be issued. Meanwhile, on the other hand, the Prosecutor's Office argued that the delay occurred outside of its authority. In fact, it is not uncommon for the court to state otherwise that the excerpt of the decision has been submitted to the Attorney General's Office.[92]

Meanwhile, the author is of the view that the lack of courage in the leadership of correctional institutions/ detention centers in carrying out the process of releasing detainees who have ended their detention period is nothing but a wrong perspective due to legal norms that have long ago been inconsistently regulated. As a result, in practice, this becomes a habit and ultimately forms a problematic perspective. According to Yahya Harahap, the existence of provisions governing the obligation of the Head of Correctional Institutions/Detention Centers to consult beforehand is a form of "intervention" against the authority possessed by the Head of Correctional Institutions/Detention Centers, which should be pure and consistent.[93] This is because the series of implementing regulations of the Code of Criminal Procedure that were once in force, as mentioned above, directly soften the authority of the Head of Correctional Institutions/Detention Centers. Finally, the view was formed that releasing detainees for the sake of the law still needs to get the green light from law enforcers who hold them legally. In the end, there were concerns about worsening relations between law enforcement. On the other hand, continuing to detain a detainee whose term of detention has expired is, of course, arbitrary and violates human rights. In addition, the pattern of poor coordination between law enforcers reflects that the criminal justice system is not running optimally. Even though the criminal justice system should run well, it really depends on the synchronization and coordination between components in criminal justice.[94] In addition, the position as a sub-system of the criminal justice system that provides detention facilities for prisoners,

89 Edi Sumarsono dkk, "Desain Analisis Kebijakan Terhadap Isu Pengeluaran Tahanan Demi Hukum "Analisis Terhadap Pelaksanaan Pasal 6 AYAT [3] Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor : M.HH-24. PK.01.01.01 TAHUN 2011 Tentang Pengeluaran Tahanan Demi Hukum"" (Jakarta, 2022).

90 Keterangan ini disampaikan pada kegiatan webinar Opini Kebijakan "Pembaharuan Tata Kelola Implementasi Pengeluaran Tahanan Demi Hukum dalam Mengatasi Overstay di Rumah Tahanan Negara dan Lembaga Pemasyarakatan" yang diselenggarakan oleh Balitbang Hukum dan HAM dan Kantor Wilayah kementerian hukum dan HAM Kalimantan Selatan pada 11 April 2023.

91 Disampaikan dalam FGD Kajian Analisis Terhadap Pelaksanaan Pasal 6 AYAT [3] Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor : M.HH-24.PK.01.01.01 TAHUN 2011 Tentang Pengeluaran Tahanan Demi Hukum" tanggal 24 November 2022 Edi Sumarsono dkk, "Desain Analisis Kebijakan Terhadap Isu Pengeluaran Tahanan Demi Hukum "Analisis Terhadap Pelaksanaan Pasal 6 AYAT [3] Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor : M.HH-24.PK.01.01.01 TAHUN 2011 Tentang Pengeluaran Tahanan Demi Hukum"."

92 Edi Sumarsono dkk.

93 Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP (Penyidikan Dan Penuntutan)*.

94 Atmasasmita, *Sistem Peradilan Pidana Kontemporer*.

correctional institutions/detention centers has a position that needs to be considered equally important in the criminal justice process. This is because the course of the judicial process, from investigation to execution, cannot be separated from the role of correctional institutions/detention centers.

Discourse on improving communication and coordination that runs on criminal justice systems or processes, especially among law enforcers, surfaced when this system was brought to the use of technology and information. One of President Jokowi's policies in the realm of law and human rights carries the establishment of an Information Technology-Based Integrated Case Handling System (SPPT-TI), which was later initiated by the Coordinating Ministry for Politics, Law and Security. This IT-based system seeks to create a more accountable and transparent criminal justice system through a mechanism for exchanging case files between law enforcement by replacing physical documents with electronic ones. [95] The exchange process was carried out by integrating data from systems that previously existed in each agency, such as e-Investigation Management belonging to the Police, Case Management System (CMS) belonging to the Attorney General's Office, Case Tracing Information System (SIPP) belonging to the Supreme Court and the Correctional Database System (SDP) belonging to the Directorate General of Corrections. The data exchange referred to amounted to approximately 12 documents for the National Police, one of which was the SPDP, 18 documents for the Prosecutor's Office, one of which was the Complete Notification of Investigation Results (P-21), 16 documents for the Supreme Court, one of which was a Copy of the Decision, and 5 documents for the Directorate General of Corrections, one of which Notice of Expiration of Detention Period (SPHMP).[96]

The exchange of documents in the SPPT-TI answers geographical problems, which have been an obstacle experienced by law enforcement officials in submitting administrative documents for handling criminal cases. As is the case the reason that the location of one agency is far from another, which is the cause of late submission of extension letters to correctional institutions/detention centers. Apart from that, so far, the operation of the SPPT-TI in its implementation is still facing several obstacles, as there is no uniformity of technical implementation in the field.[97] In addition, the existence of application systems for each agency is a separate obstacle because in inputting data at SPPT-TI, you still have to wait for the completion of the input process for each internal application. As a result, in practice optimizing the use of SPPT-TI still has to depend on personnel from each law enforcer. Therefore, optimizing the use of SPPT-TI needs to be improved through the delegation of understanding to the lowest level. In the sense that the memorandum of understanding on the use of SPPT-TI, which has become a commitment among law enforcers at the highest level, needs to be delegated to law enforcers down to the lowest level, which incidentally is the executor of criminal justice practices.

New Hope, Birth of Correctional Law

A new era of correction was born after the publication of a new Correctional Law, namely Law No. 22 of 2022. The issuance of this new law gave rise to several new provisions which were not previously accommodated in Law 12 of 1995. As is the case with the issue of strengthening correctional institutions in terms of their position in the criminal justice system and process.[98] This is explicitly contained in the preamble to the new law, which states that correctional facilities are an inseparable part of the integrated criminal justice

95 Humas Kemenpolhukam, "Menko Polhukam: SPPT-TI Membuat Administrasi Penegakan Hukum Lebih Transparan Dan Akuntabel," n.d., https://polkam.go.id/menko-polhukam-sppt-ti-membuat-administrasi-penegakan-hukum-lebih/. Diakses 20 Februari 2023

96 Humas Pengadilan negeri Sei Rampah, "Pengadilan Negeri Sei Rampah Ikuti Sosialisasi Implementasi Sistem Penanganan Perkara Pidana Terpadu Berbasis Teknologi Informasi (SPPT-TI)," n.d., https://pn-seirampah.go.id/.

97 Edi Sumarsono dkk, "Desain Analisis Kebijakan Terhadap Isu Pengeluaran Tahanan Demi Hukum "Analisis Terhadap Pelaksanaan Pasal 6 AYAT [3] Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor : M.HH-24. PK.01.01.01 TAHUN 2011 Tentang Pengeluaran Tahanan Demi Hukum"." Hal tersebut disampaikan pula oleh Menteri Kemenpolhukam pada acara Penandatanganan Nota kesepahaman dan Pedoman Kerja Bersama SPPT-TI

98 Rofiq Hidayat, "Ini 11 Poin Penting Substansi UU Pemasyarakatan Terbaru," Hukum Online, 2022, https://www.hukumonline.com/berita/a/ini-11-poin-penting-substansi-uu-pemasyarakatan-terbaru-lt62c6d22f40ec8/. diakses 13 Februari 2023

system.[99] Therefore, the emergence of the issue of correctional reinforcement presents a bright spot for the implementation of the correctional system in the criminal justice process. It is due to the fact that in the previous conditions as a sub-system and its position at the end of a series of law enforcement processes, the position of the correction is often forgotten.[100] In fact, when referring to the goals of punishment in the contemporary era, the position of correction is very, very important in realizing the process of social reintegration of prisoners.

The birth of the Correctional Law is considered to carry the mission of strengthening the correction system which does not only cover Correctional Institutions which in fact are at the mouth of criminal justice (post-adjudication) as stated in the previous Correctional Law. This can be seen from how Law No. 22 of 2022 defines the meaning of correction. In this law, correctional facilities are defined as a subsystem of criminal justice that carries out the implementation of law enforcement in the field of services for prisoners, children and assisted citizens.[101] Dari definisi tersebut terlihat jelas bahwa pemasyarakatan tidak hanya diartikan sebagai suatu kegiatan pembinaan yang diberikan terhadap warga binaan pemasyarakatan belaka, melainkan diperluas termasuk terhadap tahanan maupun anak. Oleh karena itu, maka sudah sewajarnya paradigma pelayanan dan pembinaan terhadap tahanan merupakan bagian integral dalam kerangka pengaturan di bidang pemasyarakatan. Lagi pula, dalam praktik fungsi pemasyarakatan pada kenyataanya tidak hanya bekerja pada fase purna adjudikasi, melainkan memberikan pelayanan pengelolaan barang sitaan dan barang rampasan, pembinaan terhadap WBP, anak didik pemasyarakatan dan klien serta menyelenggarakan pelayanan sekaligus pembinaan terhadap tahanan. Oleh karena itu sebagai sebuah sub sistem, sistem pemasyarakatan juga sebenarnya juga menjangkau tahapan pra adjudikasi, adjudikasi hingga purna adjudikasi.[102]

In Law 22 of 2022, the provisions regarding the detention or, in this case, detainee services are confirmed by being regulated more comprehensively compared to Law 12 of 1995. Because the previous law only regulated detainee services in two articles, and even that was delegated to lower regulations.[103] In the new law, prison services are regulated more clearly in Articles 19 to 27, which are part of the correctional function. The process referred to is detainee service, the process of which starts from the time the detainee is received to the process of releasing the detainee either on the grounds that a decision has been made that has been inkracht or expulsion by law due to the expiration of the detention period.

The expansion of the scope of correctional arrangements that are more broadly governing matters of detention raises positive expectations. Thus, ideally, the detention phase is as important as the other phases as the other phases. Likewise, with the expansion of the reach of correctional institutions within the criminal justice system, which covers the entire course of the law enforcement process, the position of the Director General of Corrections should be given an equally important place with other law enforcement agencies.

In relation to the problematic mechanism for releasing detainees by law, strengthening the position of the Directorate General of Corrections in the criminal justice system and affirming arrangements regarding detainee services in Law 22 of 2022 should place the position of the Head of Correctional Institutions/ Detention Centers in a more central position. The ideas that formed the background to the formation of Law 22 of 2022, philosophically, have reconstructed its position in the criminal law enforcement series, so it is only natural that a more progressive paradigm shift emerges from the Head of Correctional Institutions/Detention Centers regarding their position and authority in issuing detainees by law. In addition, the adherence to various principles in the administration of the correctional system, as stipulated in Article 3 of Law 22 of 2022, requires changes to the implementation of the correctional system. Among them are the humanitarian principles that

99 Republik Indonesia, "Undang-Undang Nomor 22 Tahun 2022 Tentang Pemasyarakatan" (n.d.). Lihat Konsideran.

100 VIDYA PRAHASSACITTA, "LAPAS, TERMINAL AKHIR SISTEM PERADILAN PIDANA YANG TERLUPAKAN," Binus University, Business Law, 2018, https://business-law.binus.ac.id/2018/07/25/lapas-terminal-akhir-sistem-peradilan-pidana-yang-terlupakan/. Diakses 18 Februari 2023

101 Republik Indonesia, Undang-Undang Nomor 22 Tahun 2022 tentang Pemasyarakatan.

102 Markus Marselinus Soge and Rikson Sitorus, "Kajian Hukum Progresif Terhadap Fungsi Pemasyarakatan Dalam Rancangan Undang-Undang Pemasyarakatan," *Legacy : Jurnal Hukum Dan Perundang-Undangan*, no. 4 (2022): 12–26.

103 Haryono Haryono, "Implikasi Perubahan Undang-Undang Pemasyarakatan Terhadap Perlakuan Tahanan, Anak Dan Warga Binaan Pemasyarakatan," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 1 (2021): 613, https://doi.org/10.30641/kebijakan.2021.v15.613-632.

mandate respect for human rights and the dignity and worth of a detainee, children, or penitentiary residents (WBP). In addition, based on the principle of "the loss of independence is the only suffering,." The state is not allowed to let someone get bad treatment and suffer more than before his independence was deprived.[104] Therefore, the Head of Correctional Institutions/Detention Centers is required to carry out their authority professionally by adhering to applicable legal norms without hesitation to release prisoners whose detention periods have expired.

Meanwhile, within the scope of regulation, the loophole to further strengthen the position of the Head of Correctional Institutions/Detention Centers in releasing detainees for the sake of law can be set forth in more detail in government regulations governing detainee services as mandated in Article 27 of Law 22 of 2022. Article 27 mandates the establishment of government regulations governing detainee services within the period of issuance of Law 22 of 2022. It is in this article that the mechanism for the release of detainees by law is regulated more comprehensively and firmly, which can become a guideline for the Head of Correctional Institutions/Detention Centers in exercising their authority. If reflecting on the case where there is an obligation to submit the SPDP based on a clear timeframe after the Constitutional Court decision No 120/PUU-XIII2015, then it is possible that there is also a need for provisions regarding clear timeframes in which the extension notification letter is not responded to by law enforcement after it expires, so within the detention period (for example 1 x 24 hours) the detainee is released by law regardless of the detaining party. Meanwhile, another alternative that can be considered to improve the provisions governing the release of detainees by law at this time is to impose sanctions that are more severe than those that are purely administrative in nature. In the sense that it is possible to have ethical sanctions that can be applied in accordance with the provisions regarding employment regulations.

4. CONCLUSION

Discourse on the problem of overstaying is still occurring, so now it is necessary to start by reflecting again on the essence of detention. As part of a coercive measure, detention causes suffering to someone who has been deprived of their right to freedom before being found guilty by a court decision. In the Code of Criminal Procedure, the subjective conditions, which are the reasons for law enforcement to make detentions are very risky to be misused because they provide such broad opportunities for discretion. Therefore, with the existence of such broad powers, detention, which is essentially carried out to assist the process of examining cases, is considered pragmatically a necessity. The point of view of law enforcers who easily make arrests is certainly very oriented towards the view that law enforcement is a form of retaliation. Whereas in international human rights instruments, detention must be carried out on the basis of measured rationality, and even if it is carried out, it needs to be accompanied by a periodical evaluation process regarding the legitimacy of the detention. In the Code of Criminal Procedure, the pretrial mechanism as an evaluation effort is not sufficient to fulfill the rights of a detainee because it is carried out post factum, does not say why substantial detention needs to be carried out or in the sense that the examination mechanism tends to be administrative in nature. Likewise, with the provision of the need for other alternatives besides detention. Provisions on suspension of detention, transition to city detention, or house arrest need to be maximized and perfected by formulating a clear implementing regulation so that it can be used as an alternative to detention.

From the point of view of the criminal justice system, the occurrence of overstaying of detainees is none other than due to the non-optimal relationship or pattern of coordination between the criminal justice sub-systems, namely the police, prosecutors, courts, and correctional facilities. This can be seen from the findings that the law enforcement agencies that detain (other sub-systems) often do not respond to letters of notification of the expiration of the detention period submitted by the Head of Correctional Institutions/Detention Centers.). As a result, the delay in coordination has left the head of the Correctional Institutions/Detention Centers in a dilemma between releasing prisoners for the sake of the law or continuing to carry out detention under the pretext of maintaining good relations with other law enforcers. The factor that often causes the Head of Correctional Institutions/Detention Centers to be reluctant to release detainees for the sake of law is due to a

104 Republik Indonesia, Undang-Undang Nomor 22 Tahun 2022 tentang Pemasyarakatan.

sense of reluctance towards the detainees even though, juridically, this authority has been explicitly mandated in the Code of Criminal Procedure. Not without reason, this was formed as a result of the inconsistency of a series of implementing regulations from the past, which actually softened the pure and consistent authority of the Head of Correctional Institutions/Detention Centers to foster a problematic perspective in practice. Thus, by optimizing the use of the SPPT-TI, it is hoped that the problem of coordination patterns between law enforcement agencies can be resolved, as long as it is technically capable of touching down to the lowest level of executors.

The issuance of Law 22 of 2022, which promotes correctional strengthening in the criminal justice system, should be a bright spot for the implementation of the correctional system. Law 22 of 2022 places the correctional system as part of the criminal justice system. The consequences of this provision certainly need to be seen that correctional is a sub-system that is as important as other sub-systems in the criminal justice system. In addition, Law 22 of 2022 defines the correctional system as not only limited to coaching prisoners (post-adjudication) but strengthens its role in the pre-trial and trial phases. The expansion and strengthening of the scope of the correction has the consequence that detention becomes a phase that is as important as the other phases. Moreover, services for detainees are regulated separately in Law 22 of 2022 and allow for a more comprehensive technical regulation through government regulations that have been mandated in the a quo law. Thus, after the enactment of Law 22 of 2022, the position of the Head of Correctional Institutions/ Detention Centers can be more central in using their authority in issuing detainees by law. This, of course, also needs to be supported by adjustments in implementing regulations that strengthen the authority of the Head of Correctional Institutions/Detention Centers themselves.

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