



# Indonesian Prison System: An Analysis of Constitutive Penology Amidst the Crisis of Overcapacity Based on Islamic Law

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## Abstract

*The Indonesian correctional system normatively emphasizes prisoners' rehabilitation and social reintegration as stipulated in Law Number 22 of 2022 on Corrections. However, its implementation still faces serious challenges due to a lack of a strong philosophical foundation. Rehabilitation programs tend to be formalistic and uniform, without considering the social context or the individual needs of prisoners. This study aims to reassess the philosophical foundations of the Indonesian correctional system through a theoretical approach to constitutive penology. The research is conducted using a qualitative approach with a literature study method. Data is analyzed descriptively-analytically through a review of legal literature, philosophy, and critical penology. The theory of constitutive penology is used as an analytical tool to understand corrections as a product of social relations and power structures, rather than merely an administrative legal mechanism. The research findings indicate that the Indonesian correctional system does not fully reflect rehabilitation values. Social reintegration is still understood narrowly and does not involve the community in the social recovery process. This study concludes that the reform of the correctional system must begin with a holistic philosophical reconstruction, oriented towards restoring dignity and equally and sustainably involving the social participation of ex-convicts.*

**Keywords:** Penitentiary, Social Reintegration, Critical Penology.

## Introduction

The Indonesian correctional system is an integral part of the national criminal justice system, which fundamentally aims not only to provide a deterrent effect but also to rehabilitate offenders so that they can reintegrate into society normally (Saputra & Isnawati, 2022). Correctional facilities in Indonesia serve as places for the rehabilitation of prisoners during their sentences, so the facilities provided aim to prepare them to return and adapt to society after serving their time (Wike & Rustanto, 2021). This is reflected in the mandate of Law Number 22 of 2022 concerning Corrections, which states that corrections are based on respect for human dignity and aim to achieve social reintegration. This principle shifts the penal approach from a retributive model to a rehabilitative and restorative one. However, implementing this principle in the field often experiences distortions and does not achieve the ideal goals that have been normatively set.

Empirically, various data show that the Indonesian correctional system faces serious structural and functional issues. Based on the World Prison Population List edition 14 as of May 1, 2024, Indonesia ranks 8th in the world with 265,000 inmates, demonstrating a very high prison density, after Thailand and before Mexico. (Int, 2024). On the other hand, the recidivism rate in Indonesia in 2023 showed a decrease compared to the previous year, from 6.07 percent to 3.55 percent, although this figure is still considered relatively high (Miardi et al., 2025). This fact shows that social reintegration has not been functioning optimally and strengthens the cycle of repeated incarceration. The high number of prisoners and the still significant rate of recidivism indicate that the Indonesian prison system has not been able to effectively carry out its rehabilitative functions, thus requiring comprehensive reforms to ensure that social reintegration proceeds sustainably and is not merely an administrative formality.

The problems faced by correctional institutions in shaping the character and personality of prisoners include suboptimal development programs, low participation of prisoners, as well as the limitations of staff and inadequate supporting facilities (Rahmat et al., 2021). Overcapacity in prisons can cause various follow-up problems because the number of staff such as pharmacists, doctors, psychologists, psychiatrists, and other functional personnel is not proportionate to the number of inmates requiring services. To address overcrowding in Indonesia, alternative criminal policies that are restorative, such as community-based correction or open prisons, are needed, which not only provide a deterrent effect but also support social rehabilitation and equip inmates with work skills to strengthen the assimilation process (Hamja, 2022). The conditions of correctional institutions facing structural and functional challenges indicate the need for a transformation of sentencing policies towards a more restorative approach so that the character development of inmates can be carried out effectively and humanely.

The problems in the correctional system in Indonesia are inseparable from the weak conceptual and philosophical foundations that should underpin its implementation, where rehabilitation programs are often standardized and administratively oriented without considering individual needs, social backgrounds, and structural dynamics that impact reintegration. This has led to an epistemic void that needs to be revisited to ensure whether this system truly rests on the values of social justice and understands reintegration as a

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comprehensive and participatory process rather than just a bureaucratic routine. Correctional systems focus on social reintegration and restorative justice while upholding human rights, rehabilitation, and community participation to restore inmates as whole and productive members of society.

In the theoretical context, the Constitutive Penology approach developed by Henry and Milovanovic offers a new, more critical and reflective perspective in understanding crime and the penal system. This theory rejects conventional penology approaches focusing on social or biological determinism. It replaces them with a constructionist approach that views crime and punishment as outcomes of social relations, ideology, and power structures. From this perspective, social reintegration is not just about returning individuals to society, but also about efforts to reconstruct social relationships, eliminate stigma, and encourage fairer structural transformation (Henry & Milovanovic, 2000). This theory provides a relevant conceptual framework to critique the policies and practices of Indonesia's correctional system, which are still top-down and repressive.

The principles of rehabilitation and reintegration in the Indonesian correctional system, as stated in Law Number 22 of 2022 concerning Corrections, have a philosophical foundation in line with Islamic law. Both emphasize the goal of sentencing for recovery, behavioral improvement, and restorative justice. In Islamic law, offenders are punished and guided to repent, improve themselves, and return to being productive members of society, so sentencing is not only retributive but also educational and corrective. Thus, the approach that places inmates as subjects of correctional treatment aligns with the spirit of Islamic law that prioritizes humanity, forgiveness, and social recovery (Fauzan, 2022).

This gap is the basis for the urgency of this research. The lack of in-depth and systematic studies examining the philosophical foundations of the Indonesian correctional system about social reintegration from the perspective of constitutive penology indicates a significant scientific void that needs to be filled. Without a solid philosophical understanding, correctional policies risk remaining trapped in a cycle of technocratization, reproduction of disparities, and social alienation of former inmates. This research aims to explore and analyze the philosophical foundations of the correctional system in Indonesia with an emphasis on the application of social reintegration principles, assessing the alignment between normative values of correctional practices and actual practices in correctional institutions through the approach of constitutive penology theory, as well as formulating conceptual and policy recommendations based on transformative justice to support dignified and sustainable social reintegration.

### **Methods**

This research adopts a normative legal approach, focusing on literature studies and secondary data to understand the legal framework within the correctional system. Law No. 22 of 2022 is used as primary legal material, especially in analyzing fundamental principles such as humanity, protection, and non-discrimination, as well as the functions of correctional services,

such as services, training, and social reintegration. Secondary legal materials are used to strengthen the understanding of the normative context. Within the framework of Constitutive Penology Theory, legal norms such as the rights of inmates and assimilation programs in the rehabilitation process are examined. The data were analyzed qualitatively by organizing and systematically grouping information to explore the consistency of norms in supporting social reintegration. The Corrections Law is considered to have included strategic policies such as skill training and special treatment for vulnerable groups that align with the goals of social reintegration. Within the framework of constitutive penology, programs such as pre-release leave are interpreted as a process of reconstructing the identity of inmates through meaningful social interactions. This research emphasizes the need for strengthening legal policies to create inclusive reintegration and create fair and harmonious social relations post-sentencing.

### **Results and Discussion**

The Indonesian correctional system juridically prioritizes rehabilitation principles, respect for human rights, and social reintegration, as stated in Law Number 22 of 2022 concerning Corrections. A Pancasila-based correctional system demands full recognition of inmates as religious beings who possess human rights, instills values of love for the homeland, and fulfills their socio-economic rights based on the philosophical foundation of criminal penalties grounded in the principles of humanity, education, and justice (Safitri et al., 2021). Normatively, sentencing is no longer aimed at retribution, but rather at restoring the offender through rehabilitation and reintegration processes. This reflects a paradigmatic shift towards a corrective and restorative approach. However, in practice, this philosophy has not yet been fully implemented. Prisons and detention centers in Indonesia are experiencing acute overcapacity, with an overcrowding ratio exceeding 200% (World Prison Brief, 2024), which directly impacts the effectiveness of coaching.

The goal of the correctional system is to improve the quality of prisoners and foster children as well as to ensure protection through the expansion of functions that include services, guidance, community mentoring, care, security, and observation (Asmawati, 2022). Community counselors play a role in the social reintegration process of correctional clients through social research from the time of rehabilitation to reintegration, using a four-dimensional approach that includes individual, family, community, and government aspects (Sari, 2021). Moreover, the report from the Directorate General of Corrections (2023) reveals that more than 60% of inmates do not receive a planned reintegration program before their release. This gap reflects that the Indonesian correctional system does not yet have a strong philosophical and operational foundation to ensure the success of social reintegration. To better understand the issues of the penitentiary system, a theoretical approach that can read the social and structural dimensions of sentencing is needed.

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Because Islamic criminal law aims to achieve welfare in this world and the hereafter through the fulfillment of basic obligations sourced from God's commands, every individual is required to carry it out for the sake of creating overall welfare for society (Yudianto, 2012). Because it aims to protect society from harmful actions, ta'zir functions to maintain the security and order of the community by prosecuting violations. Through the enforcement of consequences for criminal actions (Usammah, 2019), Ta'zir plays a role in educating the public about the law, increasing legal awareness, and encouraging compliance with norms, thereby creating a harmonious social environment.

Correctional institutions serve as the spearhead of the criminal justice system after the Police, Prosecutors, and Courts, which are responsible for mentoring inmates based on the Pancasila, since they receive convicted individuals subjected to prison sentences (Puspitasari, 2018). By focusing on rehabilitation and restorative justice, reforms to the criminal justice system not only reduce prison overcrowding but also improve the rehabilitation process and engage the community in crime resolution (Karimullah, 2023). Thus, the update of the correctional system through a rehabilitative and restorative approach not only aligns with the mandate of Pancasila in the guidance of prisoners but also strengthens the role of prisons as transformative institutions, not just places of isolation.

Milovanovic and Henry view constitutive penology as a penal policy that results from a discursive process, namely an understanding of the offender. Certain aspects of reality are selected and formally shaped through language in this process, while other elements are ignored or considered deviant. They also state that penal policy is a social construction that is formed based on justifications or rationalizations that are socially constructed (Milanovic & Henry, 1991). Constitutive penology presents an alternative discourse for social justice through three main approaches, namely the integration of prisons with society, the dismantling of myths about the penal system, and a holistic response to crime that goes beyond mere punishment (Aisyah, 2018). Constitutive penology emphasizes that crime is a social construct, so reintegration must respect the identity and rights of inmates, not just be an administrative procedure.

The willingness of the convict's family to act as a guarantor is crucial in the reintegration process, as they are fully responsible for the convict during the program while also meeting their psychological and financial needs, considering the convict's inability to be independent in the early stages of reintegration (Davis et al., 2013). In practice, the independence coaching program includes personality development and independence aimed at improving the quality of inmates so that they do not reoffend, even though it is hindered by overcrowding; it is considered adequate based on the decrease in recidivism rates (Mochamad Naufal Adisaputra & Mitro

Subroto, 2022). Effective reintegration requires synergy between family support as a guarantor of financial psychology during critical stages and systematic prison rehabilitation programs such as those at Cibinong Prison, which, despite being hindered by overcapacity, have proven to reduce recidivism through the enhancement of the inmates' self-capacity.

Transparency and accountability based on independent oversight and public participation are the foundation of public trust and a guarantee of the protection of the human rights of inmates so that they can quickly reintegrate into society (Aji Singgih Pangestu & Budi Priyatmono, 2025). Support for social reintegration post-release through job assistance, psychosocial support, and education on rights is crucial to combat stigma and break the chain of discrimination against former prisoners (Dewi et al., 2024). Transparency and accountability supported by independent oversight and public participation form the basis for human rights protection and public trust, which need to be complemented by support for social reintegration post-release so that former inmates can be free from stigma and discrimination.

Prisoners who commit crimes of theft or abuse and trafficking of narcotics in prisons will be handed over to law enforcement according to the applicable laws and regulations, while disciplinary violations or petty crimes will be resolved through sanctions outside the prison (Yusrizal, 2024). One of the steps in the reform of criminal law is to formulate alternative punishments to imprisonment in the form of surveillance penalties that combine imprisonment with supervision and community service (Afifah Firdaus & Indra Yugha Koswara, 2024). Law enforcement against prison prisoners is differentiated based on the level of violations. At the same time, criminal reform encourages the use of alternative penalties such as supervised sentences to make the penal system more proportional and humane.

From the perspective of the constitutive penology developed by Milovanovic and Henry, the penal and reintegration system is viewed as a social construct shaped by power relations and dominant ideologies. In this context, the placement of the family as the primary guarantor in the reintegration process demonstrates how the responsibility for individual recovery is shifted from the state to the private sphere. However, not all families have the psychological and economic capacity to support this process. This reflects how the discourse on reintegration is shaped by normative assumptions that do not fully reflect social realities.

The success of the mentoring program in Cibinong Prison in reducing recidivism rates, despite overcapacity conditions, demonstrates the potential for a more humane approach. Constitutive penology encourages a holistic approach to crime that relies on detention and provides space for rehabilitation and recognition of individual dignity. Transparency and accountability through independent oversight and public participation are essential prerequisites for ensuring that the human rights protections for inmates are truly implemented. Furthermore, differentiating legal handling based on the degree of offense and efforts to

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formulate alternative penalties, such as supervision penalties, indicate a shift towards more proportional sentencing. Constitutive penology sees this as a counter discourse against the old repressive system. The synergy between family support, prison rehabilitation, and public involvement is a technical strategy and part of the effort to build a more just and inclusive penal system.

The following are the principles outlined in Article 3 of Law No. 22 of 2022 on Corrections, adjusted according to the theory of constitutional penology;

1. Protection is a fundamental principle of correctional systems that provides protection and guidance to inmates, children, and community members so that they can return to being productive members of society while also preventing recidivism through integration. (Akmal, 2020) The protection principle creates a sense of security for offenders, victims, and the community by prioritizing the active role of probation clients and community involvement as the key to successful social reintegration to recover public order.
2. Non-discrimination in the correctional system must ensure equal treatment for all prisoners, children, and clients without discrimination based on ethnicity, race, religion, nationality, political party, social status, economic status, or gender, especially in the provision of remission, assimilation, and access to rehabilitation facilities. (Cahyani, 2024) In implementing non-discrimination of conditional rights according to Law 22/2022 in the Bangli Narcotics Prison, equal access is guaranteed for all inmates. Still, administrative delays, particularly in remission and parole, create injustice and fail to achieve the goals of a penal system based on restorative and rehabilitative justice.
3. Humanity through correctional institutions plays a role in fostering and guiding inmates to be able to create and contribute positively to society after completing their prison sentence (Pratama et al., 2021). Social support, especially from family and self-resilience, are essential factors in the psychological well-being and successful social reintegration of prisoners in Indonesia, as age, ethnicity, and self-acceptance influence their ability to adapt and recover from stress during detention until they return to society (Fathoni et al., 2024).
4. Gotong royong, according to Article 3, letter d of the Correctional Law, requires active collaboration between inmates, officers, law enforcement, the government, and society to create an effective correctional system that ensures social reintegration and participatory justice beyond correctional institutions.
5. Independence in Law 22/2022 emphasizes the development of the potential of inmates through systematic training, education, and assimilation to create personal social

independence and prevent recidivism after release as a form of transformation from detention to rehabilitation. In Islam, the rehabilitative approach, the ta'zir punishment aims to correct the behavior of offenders so they can reintegrate into society and prevent repeating mistakes.

6. Proportionality in the correctional system aims to achieve justice, so the rehabilitation of law offenders is not only focused on public protection but also on fulfilling the rights and interests of the convicted individuals so that they can return as valuable members of society (Saputra & Isnawati, 2022). The principle of justice in Islamic criminal law transcends mere formal legal norms as it contains transcendental values that harmonize rights, obligations, and social harmony based on divine principles (Sodiqin, 2021).
7. The loss of independence is the only suffering, prison sentences are given to offenders as an effort to protect society from crimes that are considered very serious or extraordinary (Purnomo et al., 2022). In Islam, one must consider *maslahah*, meaning rational goodness that brings benefits and prevents harm, therefore the consideration of sound reasoning must align with the objectives of Sharia (*maqasid shari'ah*) in establishing laws (Jayusman et al., 2022). Because ta'zir provides clear sanctions and aims to create a deterrent effect, this reduces the potential for future violations, encouraging individuals to be more cautious in their actions.
8. Professionalism requires every practitioner in corrections, including officers, mentors, and assessors, to work with high competence, integrity, and adherence to the code of ethics, laws, and functional position standards.

It is interesting to examine how Law No. 22 of 2022 reconstructs the power relations of the penal system through its progressive principles, namely protection that involves victims and the community in creating a sense of collective security, cooperation that deconstructs prison hierarchies into shared responsibility, and independence that transforms inmates from passive objects into empowerment subjects, all reflecting the essence of constitutional penology about law as a transformative social practice. However, the contradiction is evident in the non-discrimination distorted by bureaucracy, such as the delay in remission at the Bangli prison, which perpetuates structural injustice. At the same time, the promise of losing freedom as the sole suffering collapses in the face of prison overcapacity and the lack of rehabilitation facilities. Here, this law serves as a dialectical mirror: on one hand, it has succeeded in shifting the retributive paradigm to a participatory restorative one, but on the other hand, it is shackled by systemic legacies that reproduce inequalities. The real challenge lies not in the legal text but in the deconstruction of bureaucratic power and the reconstruction of a collective awareness that socialization is a joint project.

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Social reintegration in the correctional system emphasizes the restoration of fair and balanced relationships by ensuring the human rights of all parties and restoring the dignity of inmates through guidance so that they are accepted back by society and the victims (Asmawati, 2022). However, the reality in Indonesia shows that ex-prisoners still face various forms of stigma, discrimination, and social marginalization. The lack of specific legal protection, minimal empowerment programs, and the disconnection between correctional institutions and communities cause many ex-prisoners to struggle to adapt, which in turn increases the risk of recidivism. Thus, the constitutive penology theory can help uncover the structures of injustice in the correctional system, while also serving as a basis for redesigning a fairer and more transformative reintegration policy.

Effective rehabilitation programs play an essential role in building the resilience and psychological well-being of inmates as they help them cope with stress, boost their self-confidence, and prepare for challenges during and after their imprisonment (Lo et al., 2020). The psychological well-being and resilience of inmates are influenced by various variables such as age and ethnicity, the quality of relationships with family, as well as the existence and effectiveness of rehabilitation programs that support their mental recovery and preparation for social reintegration (Masinambouw et al., 2022). Security and order in correctional facilities are key to the success of prisoner rehabilitation, as a safe and orderly environment allows prisoners' rights to be fulfilled and supports the smooth implementation of rehabilitation programs through effective organization management and the provision of good facilities (Muhammad Syahdiyar, 2020).

Overcapacity in correctional facilities hinders the effectiveness of rehabilitation programs because it triggers unlivable living conditions and violent behavior, thus increasing investment in mental health infrastructure and training service personnel is needed, although the main challenge still lies in the implementation of the program itself (Nkosi & Maweni, 2020). The issues of correctional institutions in shaping character and personality from a sociological perspective include the implementation of development programs that are not yet optimal, low interest of inmates in participating in development, limitations of technical personnel, lack of motivation among staff, inadequate competencies of officers, and insufficient facilities and infrastructure (Mufti & Riyanto, 2023).

Although imprisonment is common in modern legal systems, its existence is debated in Islamic law, which prioritizes restorative justice through hudud, qiyas, and ta'zir, so that imprisonment not explicitly regulated can be adapted as a form of ta'zir (Khasanah et al., 2024). Due to its high flexibility and educational purpose, deterring effect, and maintaining order, ta'zir

punishment in Islam is applied adaptively based on the type of violation committed (Vichi Novalia et al., 2024). With the requirements such as the perpetrator's responsibility, the intention to commit the violation, valid evidence, understanding of the law, and proportionality of the punishment, implementing ta'zir in Islam aims to ensure justice and effectiveness in law enforcement (Misran, 2021). Although general imprisonment exists in modern legal systems, the flexibility of ta'zir in Islam, with its conditions that ensure justice and effectiveness, offers a more restorative and adaptive approach to law enforcement, allowing imprisonment to be adapted as ta'zir.

Although Law 22/2022 offers a philosophical breakthrough through the principles of cooperation and protection that ideally democratizes the penal system, the reality on the ground buries this aspiration in bitter paradoxes such as overcapacity of 300% and the practice of buying and selling remission in overcrowded prisons, turning rehabilitation into mere mass security, while the Integrity Zone ends up being a certification wall without a real transparency mechanism. Constitutive penology stumbles in the middle of the road when the state shifts the burden of reintegration onto the shoulders of marginalized families without structural interventions to address overcriminalization or the budget imbalance that allocates Rp5.1 trillion for the construction of new prisons, instead of community-based rehabilitation. This is where the true revolution must begin by deconstructing macro policies that trap correctional systems in punitive logic, before the discourse of joint projects can truly become collective action.

Although imprisonment is the main form of punishment in modern positive legal systems, Islamic law views criminalization through the lens of restorative justice that emphasizes rehabilitation, not merely retribution. In this context, imprisonment, which is not explicitly mentioned in the Qur'an or Hadith, can be understood as part of the ta'zir form, which is a type of punishment that is flexible and entrusted to the judge's *ijtihad* to adjust to social conditions, the type of violation, and the goals of rehabilitation. Ta'zir punishment allows for forms of punishment that educate, provide a deterrent effect, and maintain public order, while still taking into account principles of justice such as the existence of valid evidence, the moral responsibility of the perpetrator, the intent to commit an offense, and proportionality between the offense and the sanction. Thus, the adaptation of prison sentences within the framework of ta'zir makes such punishments more legitimate and functional from the perspective of Islamic law, as long as they are carried out by the conditions and principles of sharia that guarantee the protection of human rights, social balance, and legal effectiveness.

## **Conclusion**

The transformation of the Indonesian correctional system demonstrates a progressive direction by prioritizing the principles of rehabilitation, humanity, and social reintegration, as reflected in Law No. 22 of 2022. However, the reality shows that these principles have not been

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fully implemented due to various structural obstacles, such as overcapacity, a lack of effective rehabilitation programs, and discriminatory bureaucracy. The concept of constitutive penology offers a critical theoretical framework that can dismantle the social constructs and power relations that shape the penal system and promote a more participatory, holistic, and just approach by involving the community, families, and incarcerated individuals as active subjects in the recovery process. From the perspective of Islamic law, the existence of imprisonment that is not explicitly regulated can still be accommodated through a flexible and contextual ta'zir approach. Based on the objectives of welfare, justice, and prevention, ta'zir allows for forms of punishment that are proportional and educational, as long as they are carried out with attention to moral and legal requirements such as the perpetrator's responsibility, intent, and valid evidence. This approach aligns with the spirit of prison reform that prioritizes rehabilitation and restorative justice. Therefore, integrating Islamic values and constitutional penology principles can serve as a conceptual basis for building Indonesia's more just, humane, and socially relevant penal system.

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