

# The Influence of Court Decision toward Overcapacity in Surabaya Detention Facility

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Abstract: The Database System of Directorate General for Penitentiaries of Indonesian Ministry of Law and Human Rights states that the detention facility located in Surabaya has been overcapacity. Based on the data, it is found that the overcapacity reaches 461%. Prisoners with drug cases are among the dominant population in this prison. This normative study describes the legislation and regulation on the detention facility (*Rumah Tahanan*) as well as the factors causing the overcapacity related to drug cases by exposing the results of court decisions and analyzing them. This Research shows the factors that cause the problem of overcapacity are court decisions that lead to imprisonment of drug convicts.

## 1 INTRODUCTION

The penitentiaries' Overcapacity problem is now in the spotlight of the world. Drugs abuse should be the focus to deal with since it is very difficult to eradicate. Overcapacity due to different criminal decisions. This is because the settlement of criminal problem becomes a barometer of justice in criminal law and law enforcement. Criminal law is often referred to as punishment derived from the word punishment.

According to Dr. Abdullah mabruk, criminal law as part of the whole law applied in a country that carried out the basis and rules to (kuliahhukum.com, 2018):

1. Determine which actions may not be carried out, which are prohibited, accompanied by threats or sanctions in the form of certain crimes for those who violate the prohibition.
2. Determine when and in what ways those who have violated the prohibition can be imposed or punished as a threat.

3. Determine in a certain way how to impose the offense if someone is suspected of having violated the prohibition.

According to Sudarto, the crime itself is the grief of someone who violates the provisions of the law (criminal law), intentionally to feel grief. Simons defines Crime as a condition linked by criminal law to a violation of a standard issued by a court decision for someone who is guilty (pengertianahli.id, 2018). The most important part of the criminal law is the law or the criminal justice system. The criminal justice system includes the type of criminal procedure, the way to execute it, including the rules for reducing the addition and exclusion of criminal convictions for criminal law. Of the rules, how to implement them, a country can judge how its government is against the people themselves or against foreigners who have violated the criminal law in Indonesia.

Based on data from the Directorate General Corrections, the number of residents of the Surabaya detention facility is as follows:

Table 1: Based on data amount of inmates.

No	Period	Detainee						Prisoner						Detainee & Prisoner	Capacity	% Over Capacity
		DL	DP	TD	AL	AP	TA	DL	DP	TD	AL	AP	TA			
1	January	2185	164	2349	54	3	57	309	5	314	3	0	3	2723	504	440

2	February	2127	191	2318	60	2	62	268	3	271	4	0	4	2655	504	427
3	March	2122	134	2256	46	2	48	280	5	285	7	0	7	2596	504	415
4	April	2109	149	2258	39	2	41	400	7	407	17	0	17	2723	504	440
5	May	2282	174	2456	54	1	55	343	7	350	5	0	5	2866	504	469
6	June	2174	134	2308	47	0	47	336	6	342	2	0	2	2699	504	436
7	July	2282	156	2438	26	0	26	356	2	358	4	0	4	2826	504	461
8	Agust															
9	Septembe															
10	October															
11	November															
12	December															

TDL : Male adult detainee	TDP : Female adult detainee
TAL : Male juvenile detainee	TAP : Female juvenile detainee
NDL : Male adult prisoner	NDP : Female adult prisoner
NAL : Male juvenile prisoner	NAP : Female juvenile prisoner

Source:

<http://smlap.ditjenpas.go.id/public/grl/detail/monthly/upt/db62ca60-6bd1-1bd1-8ad0-313134333039>, accessed on 04 July 2018

Explanation of the table above the detainee is a person who is in detention, where detention is the placement of a suspect by investigators, prosecutors or judges. While detainees are convicted on the basis of judicial decisions that have permanent legal force. Up to June 2018 over capacity was 439%. When the number of dwellings has exceeded the capacity of the home of detention. This overcapacity ensures that the rights to meet the needs of detainees in order not to be optimal, such as health, medicine, sanitation, monitoring of violence that occurs in detainee and prisoner, are less optimal. For example, prisoners can sleep or alternately sleep in a sitting position because the occupied space does not match the specified capacity. The problem of overcapacity is not a new problem, but it has long been a problem that has not been solved so far. over capacity that Surabaya prisoners often yield are mostly drug cases. What is the court's decision on drug issues in overcoming overcapacity? And does the decision about the drug cases also influence the overcapacity of detention facility?

## 2. DISCUSSION

Crimes involving the main criminal cumulation in a crime are special crimes. Such as economic crime, corruption, drug crime. Specific types of criminal acts, together with the legal basis, include (arifcutomoblog.wordpress.com, 2018):

1. A criminal act of corruption
  - a. RI Law No. 28 of 1999 on Freedom of Corruption, RI Law No. 20 of 1991 on
  - b. Eradication of Corruption, RI Law No. 30 of 2002 on the Commission to eradicate corruption
2. Criminal acts of illegal logging RI Law No. 41 1999 on illegal logging
3. Offenses in the fisheries sector RI Act No 45 of 2009 on fisheries
4. Offenses in the household RI Law No. RI Law. NO. 23 of 2004 concerning domestic violence
5. Crime against child protection RI Law No. RI
6. Law. NO. 23 of 2002 on child protection
7. Criminal acts relating to consumers RI Law No. RI Law. NO. 8 of 2009 on consumer protection

8. Crime of illegal mining (illegal mining) RI Law No. RI Law. NO. 4 of 2009 concerning Mineral and Coal extraction
9. Crime of information technology (cybercrime) RI Law No. RI Law. NO. 11 of 2008 on information technology

Special crime acts that strongly influence the survival capacity of Surabaya are related to narcotics and psychotropic crimes. The issue of narcotics has long been a problem in this country whose development has been very significant and has spread from the city to the village. Users ranging from ordinary people, civil servants, artists, pilots, law enforcers. Act No. 35 of 2009 is an extension of Law No. 7 of the Republic of Indonesia No. 7 of 1997. This reform is carried out because narcotics are considered to be transnational crimes carried out with a high modus operandi, advanced technology and a strong network with fantastic amounts. In addition, Narcotics betrays young people and millennial generation. In general, narcotics are a type of substance that can cause certain effects for people who use it by inserting it into the body. Narcotics can have certain effects on the body of the user, including (slissey.wordpress.com, 2018):

1. Affected consciousness
2. Offer encouragement that can influence human behavior.
3. The effects can be:
  - a. Soothing
  - b. Stimulators (no sex stimuli)
  - c. Cause hallucinations

Law No. 35 of 2009, the Narcotics classified into three (3) categories, namely:

1. Group I
2. Narcotics type commonly known to the public, such as marijuana, methamphetamine, cocaine, opium, heroin, etc.
3. Group II
4. Types Narcotics the type commonly known to the public, such as morphine, pertidin etc.
5. Group III
6. Types The type of narcotics that is generally known to the public is codeine etc.

Act No. 35 of 2009 to repeal Law No. 22 years 1997 on narcotics and not repealed law no. 5 of 1997. Earlier confirmation repeals law No. 5 of 1997 on the nature of the psychotropic class I and class II,

because it is designated as an anesthetic class I and class II on Law No. 35 of 2009.

Order enforcers in Indonesia often use Article 111 and 112 in Law No. 35 of 2009 on narcotics to carry out drug use in prison. According to Article 111 that:

1. Anyone who is to unlawfully or against the law to plant, maintain, possess, store, control, or offers Narcotics Group I in the form of plants, shall be punished with imprisonment of at least 4 (four) years and a maximum of twelve (12) years and criminal fine of at least Rp. 800,000,000.00 (eight hundred million rupiah) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiah).
2. In the case of actions to plant, maintain, possess, store, control, or offer Narcotics group I in the form of plants referred to in paragraph (1) a weight of more than 1 (one) kilogram or more than 5 (five) hulls, the offender must be sentenced to life imprisonment or imprisonment of five (5) years and a maximum of 20 (twenty) years and maximum sanction referred to in paragraph (1) 1/3 (one-third).
  - a. According to article 12 that:
    1. Anyone who possesses, stores, controls, or offers Narcotics Group I unlawful or unlawful, shall be punished with imprisonment of at least 4 (four) years and a maximum of twelve (12) years and a fine of at least USD, 800,000,000.00 (eight hundred million rupiah) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiah).
    2. In the case of actions possessing, storing, controlling, or offering Narcotics Group I not plants as referred to in paragraph (1) the seriousness of more than five (5) grams, the offender shall be punished with life imprisonment or imprisonment of five (5) years and a maximum of twenty (twenty) and maximum sanction in paragraph (1) 1/3 (onethird)

The significant data on narkotic and distributors can be found in the following table:

No	Periode	Amount Special						Total	Amount Special Crime							Total
		SK T	CBS	CMB	CMK	MNG	PBS		KOR	NKB	NKP	TE R	LOG	TRA	PCU	

1	January	2	18	0	0	3	2	25	106	776	1182	0	0	8	2	0	2074
2	February	2	13	0	0	0	8	23	96	748	1177	0	0	9	2	0	2032
3	March	3	30	0	0	2	15	50	88	762	1195	0	0	9	2	0	2056
4	April	4	21	0	0	5	8	38	84	837	1299	0	0	13	1	0	2234
5	May	2	24	0	0	0	4	30	60	882	1385	0	0	19	2	0	2348
6	June																
7	July																
8	Agust																
9	September																
10	October																
11	November																
12	December																

Source : [http://smslap.ditjenpas.go.id/public/krl/detail/monthly/upt/d\\_b62ca60-6bd1-1bd1-8ad0-313134333039](http://smslap.ditjenpas.go.id/public/krl/detail/monthly/upt/d_b62ca60-6bd1-1bd1-8ad0-313134333039), accessed on 03 July 2018

SKT : Sick Inmate	NKB : Drugs Seller/ Drugs agent
CBS : Conditional Furlough	NKP : Drugs user
CMB : Furlough before release	TER : Terrorist
CMK : Furlough to visit family	LOG : Illegal Logging
MNG : Amount of inmate who is dead	TRA : Human Trafficking
PBS : Parole	PCU : Money Laundry
KOR : Corruption	GNS : Genocide

The number of users of the user or d dominates from other cases. The high drug users and drugs - illegal drugs led to many being put in prison, resulting in overcapacity detention facility. Paradigm importing drug users to prison is not the correct paradigm that there should be criteria for drug users to enter a rehab clinic. Drug users must be subject to Article 127 of Law No 35 of 2009 on narcotics. In article 127, paragraph 3 explains that the abusers mentioned in paragraph (1) can be demonstrated or proven to be the victim of drug abuse, abusers will undergo medical rehabilitation and social rehabilitation. Whereas Article 54 of the Narcotics Act states that "drug addicts and victims of drug use needed to undergo medical rehabilitation and social rehabilitation", so it does not recognize rights abusers to receive rehabilitation. In article 127 of the Narcotics Act was originally abusers are guaranteed rehabilitation later became the subject can be trapped and lose the proper rehabilitation or unless it can be proven that the victims of the drug.

Very difficult to prove perpetrators as victims, because they have to look at the beginning of the use of narcotics and drug users also evidence that drug users are being lured, deceived, and / or threatened to use narcotics, which is based on Article 54 of the Law 35 of 2009 on narcotic drugs.

With regard to the authority to report based on the law no 35 of 2009 on narcotics is still facing a problem that reporting is the rules necessary to drug addicts and families, as well as threats to the addict or criminal and the parents, which is based on article 128 of the Law 35 of 2009 on narcotics. If the reporting is compensated without criminal prosecution. Criminal prosecution should be a last option if there is no other effective method. Therefore, it would be better to motivate drug users and their families due to the large number of arrests and incarceration of people due to the case of narcotics, psychotropic and addictive substances extended to overcapacity detention facility. Act No. 35 of 2009 strengthens the authority of BNN

(National Narcotics Agency) and increasing penalties and fines, there are still problems according to Erfen Suwangto Gustiawan among others:

1. This excessive authority of BNN without the supervision of external institutions / institutions.
2. the destruction of evidence in a faster way than the Criminal Code has the potential to cause violations of transparency and the right of suspects to clarify the truth of the data presented by the investigator.
3. Serious criminal sanctions that do not distinguish between sanctions between illegal drug traffickers and users

The decisions to equalize between the user and the distributor is in conflict with the theory of victimology according to Gustiawan Erfen Suwangto. Users who are considered criminals cannot identify crime victims. The police often have charged circulation article in accordance with Article 78 of Law No. 2 of 1997 and the sale in accordance with Article 82 of Law No. 2 of 1997 on drug users caught by the police. This must condemn the users / addicts to rehabilitation in accordance with Article 85 of Law No 22 of 1997 and the Circular of the Supreme Court. 7 of 2009. The practice disrupting lawlessness of the police as an example of extortion, asking for bribes, torture and sexual abuse have been. As described Researcher MAPPI FHUI Adam Cendy that the Criminal law and the Narcotics Act provide a room for researchers, prosecutors and judges to reduce overcapacity by introducing addicts and victims of drug abuse to medical and rehabilitation institutions social (tribunnews.com, 2018). Therefore, judges should investigate and decide case by pointing out narcotics rehabilitation places closest to the suspect's condition with the consequences to see addicted drug users as punishment should undergo proper treatment and expert care. Rehabilitation is not used by users, which is more than once carried out by the police. Penalties for people who do not report the crime of drug parties or together with drug users that need to be reviewed.

In addition, it does not pay attention to the intentional / accidental element in drug offenses. He also the element of intent to entangle people who do not intend to commit narcotic crime include cases of coercion, insistence and ignorance in the use of narcotics. However, according to Adam Cendy that law enforcement officers tend to impose a prison sentence for the suspect / suspect / convicted drug / user to maximize. As an example of maximizing hukum Cendy Adam also explained that

incarceration does not solve the problems of drug users and often fails to produce a deterrent effect on the community. in addition, poor supervision in detention facility. For example:

1. Prisoners Circulating drugs in Salemba reception center secured by Cempaka Putih Sector Police on 25 September 2017 at 6.30 pm WIB.

Source :  
<https://news.detik.com/berita/3665451/takkapok-napi-ini-masih-edarkan-narkoba-di-rutansalemba>, accessed on 03 July 2018

2. The National Narcotics Agency takes up the head of the Purworejo detention center in connection with a syndicate of drug cases by four prisoners of drugs because of the convenience of drug trafficking in prison by Kristian Jaya Kusuma prisoners.

Source:  
<https://www.liputan6.com/news/read/3229749/ini-lahkepala-rutan-purworejo-yang-terima-uang-dari-napinarkoba>, accessed on 03 July 2018

3. Arrest of officers Warden of drug suppliers in detention centers Tanjung Redeb, Berau, East Kalimantan because they are supplier of methamphetamine to the cell.

Source:  
<https://www.merdeka.com/peristiwa/sipirpemas-ok-narkoba-ke-rutan-berau-dididik-uang-rp-180-juta-disita.html>, accessed on 03 July 2018

With the emergence of drug in the community and without causing a deterrent effect for drug users / traders in the cell, it is necessary to find the right solution to tackle the problem.

The decision following drug users:

1. Decision 1 Year in Prison for drug users by the suspect Devina Olivia and Maria mahdalena

Source:  
<http://jejakrekam.com/2017/11/02/hakimvonis-setahun-kurungan-wanita-cantik-penggunanarkoba/>, accessed on 03 July 2018

2. The Supreme Court Decision No. 1524 K / PID.SUS / 2015

Source:  
<https://putusan.mahkamahagung.go.id/putusan/41c242c202b4360d4b9b0c6d4f0ec33b>, accessed on 03 July 2018

3. South Jakarta Court Decision No. 65 / Pid.Sus / 2015 / PN.Jkt.Sel

Source:  
<https://putusan.mahkamahagung.go.id/putusan/4101a38aa69791ee6a21b55b3b46c62c>, accessed on 03 July 2018



4. Decision 4 Years in Prison and a fine of 800 million rupiah Artist Jennifer Dunn (arrested three times)

Source:

<https://www.liputan6.com/citizen6/read/3570280/sebelum-divonis-4-tahun-penjara-jennifer-dunn-santaihadiri-sidang-putusan>, accessed on 03 July 2018

5. The decision of the court in Surabaya 5 years 6 months in prison and a fine of one million rupees for Susetyo HARIWANTO (arrested for the first time) No. 2285 / Pid.Sus / 2015 / PN.Sby

Source:

<https://putusan.mahkamahagung.go.id/putusan/54ac0594e48861e4924bf19b9ae87d2b>, accessed on 03 July 2018

The above decisions that the prosecutor often tends to maximize imprisonment by making appeals and cassation. Where we need to look at decisions that make decisions that reduce the overcapacity of prisoners by rehabilitating users / addicts. Often we see the news on television celebrated artists can be rehabilitation, while ordinary people afflicted by drug cases often do not get rehabilitation so that people believed it was possible because of the money or the irresponsible person who use these gaps to get money or other things, there should be no difference in punishment between the artist / official / ordinary community. Moreover, we must see as for the victims who are forced, deceived, threatened or framed by the individual or his own friends so the defense is very difficult because there must be evidence. As explained above for the evidence, it is very difficult, so the integrity of the judge is necessary to look carefully and with conscience. The judge must maximize the use of medical and social rehabilitation penalties to overcome the overcapacity of prisoners. While the government must increase the number of rehabilitation places for drug users so that it can help deal with the overcapacity of detention facility.

### 3 CONCLUSIONS

To overcome overcapacity requires the support of different authorities. In addition, it is necessary to socialize the problems, supervision and possible human rights violations caused by law No. 35 of 2009 affecting the overcapacity of detention facility

and the socialization of places to rehabilitate drug users. There must be clarity and there is no confusion in these rules and does not discriminate the penalties imposed by drug users.

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