

The Idea of Privatization and Self-Financing of Prison Management in Positive Law and Islamic Law

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Abstract

This research aims to explore the basics of the idea of abolishing criminal justice in Indonesia and possible alternative solutions to problems that arise in prisons, especially from a theoretical perspective and comparison with Islamic law and customary law. The legal research method in this research is normative (doctrinal), research activities carried out include inventorying, explaining, interpreting and systematizing and broadcasting all Islamic law and customary law, which are related to the idea of abolishing prison sentences. The results of the research show that imprisonment is not recognized in the Islamic view, whereas currently imprisonment is acceptable only as long as the punishment provides a lot of benefits or kindness or benefits to society. Thus, imprisonment is not an absolute in the view of Islamic law. Based on the inventory of customary law as the original unwritten law of the Indonesian nation, no form of imprisonment was found. Therefore, without imprisonment, customary law can be enforced to maintain order and create justice in Indonesian society. From this analysis, especially related to the study of Islamic law and customary law, it is concluded that imprisonment can be considered for abolition if its shortcomings are more dominant than its benefits. Apart from that, the Indonesian Government should provide a forum for the idea of

privatizing correctional institutions in the sense that the management of correctional institutions is carried out by private parties on a non-profit basis.

Keywords: Islamic law; privatization; self-financing; prison management; positive Law

Introduction

The idea of abolishing prisons emerged as a result of poor prison conditions, which affected the quality of life of prisoners. Apart from that, the issue of human rights violations in prisons is also strengthening. Prison conditions throughout the world are currently very worrying. More than 124 countries are experiencing overload conditions, the number of convicts exceeds prison capacity. This has resulted in increased violence and death rates in prisons. In general, prisons experience deficiencies in the provision of health services, with inmates' health being neglected. Chronic underfunding of the criminal justice system is a central issue for most prisons.¹ In Indonesia, overcapacity in prisons occurs in almost all provinces. There are only 8 provinces that do not exceed capacity, the remaining 25 provinces experience excess capacity. This condition will make it difficult to realize the idea of correctional institutions as a place for rehabilitation of convicts. Over Capacity will result in prison implementation being less effective.² *International Criminal Justice Reform* noted that there were several phenomena that emerged regarding the condition of excess capacity, among others: the large number of possible transactions to meet basic needs that are made into commodities in the facility, increase in the number of prisoners using narcotics, there is illicit trafficking of narcotics in detention centers and prisons in Indonesia, prisons/correctional institutions and detention centers become incapable of carrying out their correctional functions, coaching is not running optimally, the lack of fulfillment of prisoners' basic needs, including health services, and there is no certainty for inmates sentenced to death regarding the time of execution.³

This research will examine the idea of abolishing imprisonment from the perspective of local wisdom, both through Islamic law and customary law, so that compared to previous research, this research has authentic novelty. This is shown by the limited number of researchers or other articles studying the same problem, one of the few is an article with the title "Hazairin and the Elimination of Short Imprisonment Sentences", written by Ninik Zakiyah which was published in the Al-Ahkam Journal, volume 26 number 2 October 2016 Ninik

¹ <https://www.penalreform.org>, "Prison Conditions: The Issue - Penal Reform International," <https://www.penalreform.org>, 2022.

² Rugun Romaida Hutabarat, "Problematika Lembaga Pemasyarakatan Dalam Sistem Peradilan Terpadu," *Jurnal Muara Ilmu Sosial, Humaniora, Dan Seni* 1, no. 1 (2017): 42–50.

³ Institut for Criminal Justice Reform, "Masalah Pemasyarakatan: Solusinya Tidak Hanya Dari Pemasyarakatan," <https://icjr.or.id>, 2022.

Zakiyah's article only examines the abolition of short prison sentences from a hazairin perspective, thus there are two things that are different when compared to this article, namely the focus of the study is only on short prison sentences, while this article examines prison sentences in general, then the theory used only using Hazairin's ideas, more broadly this article uses a local wisdom perspective which is based on Islamic law and customary law, not just Hazairin's ideas.

The aim of this research is as an alternative to the movement to reform prison sentences in Indonesia, so that prison sentences can improve by paying attention to human rights. However, on the other hand, it is also possible to abolish prison sentences if improvements to prisons are deadlocked, of course this abolition is interpreted as providing alternative sanctions based on local wisdom, such as Islamic law and customary law. The legal research method in this research is normative (doctrinal). Research activities carried out include inventorying, explaining, interpreting and systematizing and broadcasting all Islamic law and customary law, which are related to the idea of abolishing prison sentences. The research approach is oriented towards a conceptual approach, although it does not exclude other approaches. A conceptual approach can be found through studies of local wisdom, both through Islamic law and customary law, as well as looking at the hazairin concept related to the abolition of imprisonment. Therefore, the identification of related issues or problems in this research is related to the urgency and rationality of abolishing prison sentences from the perspective of Islamic law and customary law, especially in Indonesia?

The Indonesian Minister of Law and Human Rights expressed his hope that there would be no corruption in prison management. As is known, corruption is a scourge in prisons. Illegal transactions often occur in detention centers and prisons, even just to meet basic needs that should be met in accordance with statutory provisions.⁴ One of the big problems with Indonesian prisons, as pointed out by the Ministry of Law and Human Rights, is the high level of abuse of authority by prison administrators in the form of extortion and returns from public services provided by prisons, which has an impact on the funding borne by prisoners. Hazairin's idea to abolish prison sentences is not only based on sociological facts that there are many bad things in the implementation of prison sentences, it is also based on considerations of the "Cost and Benefit" Financing Principle of the implementation of prison sentences using State funds, which should be used for other activities, such as What is meant by the Indonesian Constitution regarding the State's obligation to "care for the poor and neglected children."⁵ Apart from the hazairin idea, it is also worth paying attention to local wisdom.

⁴ Institut for Criminal Justice Reform, "Masalah Pemasyarakatan: Solusinya Tidak Hanya Dari Pemasyarakatan."

⁵ Valentina Shanty, Adwani Adwani, and Azhari Yahya, "Indigenous Sanction of Expulsion in Central Aceh District (Human Rights Perspective)," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 13, no. 2 (2018): 254, <https://doi.org/10.19105/al-ihkam.v13i2.1828>.

This article attempts to explore the basics of The Idea of Privatization and Self-Financing of Prison Management in Positive Law and Islamic Law and the possibility of alternative ways to resolve problems that arise in prison, especially from a theoretical perspective and making comparisons with Islamic law.

The Rationality of Imprisonment in Indonesia

In ancient Greece, conditions in prisons, which were separate and isolated buildings, were very bad. The prisoners would be chained using simple wooden blocks and locked inside. In ancient Roman times, prisons were extremely inhumane. Prisoners were placed in underground cells which tended to be small, dark and cramped.⁶

In Indonesia, prisons have only been known since the implementation of Wetboek van Strafrecht in the Nederlands Indische. The prison was built based on the "New Prison Regulations", (Gestichten Reglement) Stbl. 1917 No. 708, which came into force on January 1 1918 based on Article 29 WvS. then "Stafgevangenissen" or criminal prisons and "Huizen van Bewaring" or detention centers were established⁷.

The urge to establish prison as a form of criminal sanction is based on several reasons. The facts show that there are several behaviors that are often found in correctional institutions as deviant behavior, including:

1. Prisons where sexual deviations occur: the phenomenon of "homo boola bui" (homosexual), besukan pants (functional trousers for masturbating when getting a visit), "eentogan" and "memerian" behavior (sexual relations between inmates and their wives at the discretion of the officers but not through the leave program to visit family), misuse of permission to go to the hospital but use it to visit his wife and so on.
2. The behavior of "submarine" (Java), "gangangan" (North Sulawesi), "wongkito" (South Sumatra) is a title given to officers who are willing to become residents' helpers to fulfill all their needs, including financial and security services.
3. Behavior withholding sentences: namely maintaining prisoner status for fear of being transferred to another place (another block or another prison).
4. Smuggling of prohibited items (sharp weapons, narcotics, liquor and so on).
5. Making sharp weapons from various materials such as iron, wood, toothbrushes.
6. Grouping based on ethnicity or place of residence, which can create vulnerabilities because it can trigger conflict between groups.

⁶ <https://study.com/learn/lesson/prisons-history-characteristics-purpose.html>, "Prisons History Characteristics Purpose," <https://study.com/learn/lesson/prisons-history-characteristics-purpose.html>, 2022.

⁷ <https://www.suarapemredkalbar.com>, "Dari Penjara Ke Sistem Pemasarakatan (Dirgahayu Pemasarakatan Ke-58)," <https://www.suarapemredkalbar.com>, 2022.

7. Illegal trading/black market/loan sharking behavior carried out by prison inmates but received "backing" from officers.⁸

Another reason for the need to abolish prisons is the fact that prison reform has not worked. Several reasons reform will not work. First, prisons are tools of racist oppression. They do not protect prisoners but perpetuate fear of the racialized "other." Second, detention is made into a business, the government and private companies are given incentives to keep prisoners in prison. Finally, Critical Resistance points out that reform too often strengthens the prison industrial complex. In the 1970s, reformers attempted to end the indeterminate sentences (i.e. twenty years and life) that kept people in prison. This resulted in prison being implemented without a time limit.⁹

The movement to abolish prison sentences is important because it not only puts forward the idea of abolishing prison sentences but also provides ideas about alternatives to prison sentences themselves.¹⁰ Building the idea of a prison abolition movement is based on nine perspectives on the idea of prison abolition, namely;

1. Imprisonment is morally reprehensible and untenable and must be abolished.
2. The abolition message requires "honest" language and new definitions, not ruling definitions
3. reconciliation, not punishment, is the appropriate response to criminal acts.
4. rejecting the psychological pressure of being "accepted" by people in the prison system in order to perpetuate an oppressive system.
5. Abolitionists were "allies" of prisoners rather than traditional "helpers."
6. Abolitionists recognized that empowering prisoners and former prisoners was essential to changing the prison system
7. Citizens are the source of institutional power to abolish the prison system
8. There is a need for a community change approach because crime is primarily a consequence of the structure of society
9. Abolitionists believe that only in caring communities can corporate and individual redemption occur.¹¹

The idea of linear prison abolition developed along with the idea of transformative justice. Transformative justice means handling and resolving conflicts to the root of the problem so that conflicts and the losses they cause

⁸ By Ahmad and Rifai Rahawarin, "(TRISISA) CRIMINAL LAW (Major Criminal Studies Specifically Death Penalty)" 8 (2018): 99–141.

⁹ Education Justice Project. *Initiatif of Education An illionis. Prison Abolition.* <https://educationjustice.net>, "Education Justice Project. *Initiatif of Education An Illionis. Prison Abolition.* <https://Educationjustice.Net>," Education Justice Project. *Initiatif of Education An illionis. Prison Abolition.* <https://educationjustice.net>, 2022.

¹⁰ Thomas Ward Frampton, "The Dangerous Few: Taking Prison Abolition Seriously and Its Skeptics," *Harvard Law Review* 135, no. 8 (2022): 2013–52.

¹¹ "Instead of Prisons Nine Perspectives for Prison Abolitionists," n.d.

do not occur again in the future. Transformative justice asks us to take responsibility together to resolve the violence that occurs.¹² Transformative justice is related to socio-political and economic issues in handling crime.¹³ The issue of handling crime from an economic, social, political and cultural perspective is one of the studies of criminology, especially critical or radical criminology. Critical criminology argues that crime is socially situated and dependent on particular historical, cultural, and political norms. Furthermore, critical criminology opposes punishment or retributive-based justice systems and supports restorative and transformative ones.¹⁴ Apart from that, it is also known as peaceful criminology, which is sponsored by Coklin. Peace criminology considers crime as a product of social structures that place some groups in a disadvantageous position, which results in group grudges against other groups.¹⁵

An example that can explain the meaning of transformative justice is, if a 14 year old boy from a poor neighborhood robs a shop at 02.00, the shop is already closed. Transformative justice will not only look at the crime of robbery, but why the boy did it. Was the boy kicked out of his home by a homophobic father? Does the boy need money for food, clothing and shelter? Whereas restorative justice only addresses specific conflicts between victims and perpetrators, transformative justice seeks to use conflict as an opportunity to address larger socio-political injustices.¹⁶

Prison Law in Islamic Criminal Law

Prison institutions have only been known since 1000, at the beginning of the history of civilizations such as Islamic countries, namely in the Mesopotamia and Egypt regions. The prison originally functioned as a place of detention built as an underground room. At that time, imprisonment was not a form of punishment that could be imposed by a judge. Prisons were places of temporary detention for offenders until they were sentenced to death or slavery. There are three main functions of prisons in Islam, namely,¹⁷ First, *istidhar*, which means that prison serves to clarify the condition/status of the person being imprisoned, so that it is known whether he is entitled to receive this punishment or not, for example a person who does not want to pay a debt when it is due can be imprisoned until he pays his debt or until his condition is known that he is having difficulty pay debts, when it is discovered that he is in a difficult condition, then he should not be imprisoned. Second, *Ihtiyath* (precautionary function), one of the goals of prison is to detain the accused in the context of caution. Sometimes prison is a precautionary measure so that the suspect does

¹² “Instead of Prisons Nine Perspectives for Prison Abolitionists.”

¹³ Conflict Review, “Peace & Conflict Review Volume 6 , Issue 1 An Overview of the History and Theory of Transformative Justice” 6, no. 1 (2011): 1–10.

¹⁴ Review.

¹⁵ Reviews.

¹⁶ Reviews.

¹⁷ Rokhmadi, *Hukum Pidana Islam* (Semarang: CV. Karya Abadi Jaya, 2015).

not run away from his charges, sometimes prison is a precautionary measure until the suspect's status is clear, sometimes prison is a precautionary measure to prevent a crime from occurring for someone who is strongly suspected of committing it. Third, uqubah (punishment), Islam views prison as a type of takzir punishment. Takzir is a sanction whose level is determined by the Caliph. In fiqh studies, the discussion of prison is an inseparable part of takzir. Jarimah-jarimah which is not a jarimah qishash diyat and hudud is subject to the punishment of takzir. Examples include theft that does not meet the nisab (the minimum standard for stolen property), or theft of fruit from the tree.¹⁸

Apart from takzir, the types of sanctions in Islamic criminal law are, Jarimah hudud, namely criminal acts that have the form and limits of punishment in the Al-Quran and Sunnah of the Prophet Muhammad saw; The forms of criminal sanctions in the judimah hudud consist of:¹⁹

1. Qisas, namely punishment in the form of retribution that is similar to the action. Qisas is imposed on deliberate murder, the perpetrator can be qisased by the victim's guardian in the same way; intentional abuse of the perpetrator can be carried out by the victim in the same way, such as cutting off the hand, injuring the eye;
2. cut off the hands of thieves;
3. stoning for married adulterers and 100 lashes for unmarried adulterers;
4. lashing 80 times for those accused of adultery without producing four witnesses;
5. death penalty or being crucified or having the legs cut off with arms crossed or being expelled for robbers;
6. caning those who drink liquor;
7. death penalty for apostates

By looking at the forms of criminal sanctions contained in Islamic criminal law, several characteristics are clearly visible, including:²⁰

1. Criminal sanctions in Islamic criminal law clearly reflect the concept of absolute punishment theory or retaliation. This is clearly confirmed in the Al-Quran Surah Al Maidah verse 45, which states: And We have decreed for them in it (At-Taurat) that soul (recompense) with soul, eye with eye, nose with nose, ear with ear, tooth with Teeth and wounds (even) have Qisash. Whoever renounces (his qisas right) then renounces that right (becomes) atonement for his sins. Whoever does not decide matters according to what Allah has revealed, then they are wrongdoers.

¹⁸Moh. Mufid Abdul Basith Junaidy, Nurlailatul Musyafa'ah, Syamsuri, *Hukum Pidana Islam Indonesia* (Rajawali Buana Pusaka, 2020).

¹⁹ Otto Yudianto, "Eksistensi Pidana Penjara Dalam Perspektif Hukum Islam Dan Hukum Adat," *DiH: Jurnal Ilmu Hukum* 8, no. 15 (2012), <https://doi.org/10.30996/dih.v8i15.260>.

²⁰ Alfitri, "Konflik Hukum Antara Ketentuan Hukum Pidana Islam Dan Hak-Hak Sipil?," *Jurnal Konstitusi* Volume 7, no. April 2010 (2010): 100–138.

2. Punishment for certain criminal acts such as adultery is considered more because the criminal act itself is a violation of God's command. So it's not because other people's moral feelings are offended
3. Known or acknowledged forgiveness by the victim which is the basis for eliminating qisas. This is confirmed in Surah Al-Baqarah verse 178: O you who believe, qisas is obligatory upon you regarding those who are killed, free people with free people, slaves with slaves and women with women. So whoever receives forgiveness from his brother, let (the one who forgives) follow it in a good way, and let (the one who is forgiven) pay (diat) to the one who forgives in a good way (too). This is a relief from your Lord and a mercy. Whoever exceeds the limit after that, he will have a very painful punishment.
4. The introduction of jarimah ta'zir means that judges are given freedom to determine sanctions for criminal acts that are not expressly regulated in the Al-Quran and Hadith. This concept actually demands that a judge must be free and honest with the aim of upholding justice in society or that there is flexibility in determining sanctions ;

The characteristics of Islamic criminal law actually contain ideas in modern criminal law, despite the fact that Islamic countries themselves do not fully implement Sharia criminal law. According to N.J. Coulson because :²¹

1. Hadd punishments for certain crimes, such as cutting off hands for theft and stoning for adultery, are unacceptable from a humanitarian perspective;
2. Murder in Islamic criminal law is seen as an individual loss, so that punishment depends on the victim's family who can demand the death of the killer or receive compensation or release both. This is no longer tenable for a modern State;
3. Outside of hadd violations, Islamic criminal law gives almost unlimited freedom to judges to determine criminal acts and punishments. This power is not liked by Islamic communities who are familiar with western criminal law ideas;
4. From Jarimah Ta'zir, criminal sanctions in Islamic criminal law are actually more developed. It is proven that in Jarimah Ta'zir it is possible for judges to impose detention, but the detention of criminals is carried out after prison. It is clear that in the ta'zir Jarimah, other sanctions imposed by the judge were then developed in accordance with current developments. In reality, although qadis in determining sanctions follow the times, nowadays qadi courts are often seen as obstacles to holders of political power. The qadi court as the only route for implementing sharia law is faced with political authorities who do not want to hand over judicial power completely to the qadi. There is a reason why qadi courts do not fully exercise judicial power, namely because qadi decisions often differ from one place to

²¹ Alfitri.

another, and often not even in one place. This arises because it depends on the individual qadi's knowledge of the Koran. Qadis essentially view themselves as the voice of local customary law;

5. In terms of political interests, what is expected from the qadi court is that the qadi court should apply sharia criminal law which has been adapted to the political views of the authorities. Apart from political interests, the view of the qadi as the voice of local customary law is studied in the context of judicial power in Indonesia. In fact, the position of the qadi court is very interesting, because the tasks carried out by the qadi are essentially almost the same as the duties of the judicial power specified in Article 5 paragraph (1) of Law 48 /2009, namely, "Judges and Constitutional Justices are obliged to explore, follow and understand the legal values and sense of justice that exist in society". In the context of Jarimah Ta'zir, it is very possible in Islamic criminal law for Qadi to impose detention sanctions, but in the context of the Al-Quran and Hadith, criminal sanctions in Islamic criminal law, especially for Jarimah Hudud, do not recognize the form of imprisonment. This can be understood considering that the concept of imprisonment is a concept that was born in the western world, so that in the Islamic world, when the revelation of Allah SWT was received by the Prophet Muhammad SAW, they did not recognize prison as a place to punish criminals. Imprisonment involves placing the convict in prison or correctional institution.

Imprisonment is not recognized in the Islamic view, whereas currently imprisonment is acceptable only as long as the punishment provides a lot of benefit or goodness or benefit to society. Thus, imprisonment is not an absolute in the view of Islamic law.

Prison Law in Customary Criminal Law

The failure of prisons to achieve their goals of punishment has resulted in the emergence of the idea of not using this type of sanction again. D Indonesia's experience shows that Indonesian society was once in a state of order, order and harmony. At that time, the three Indonesian nations still used their original law, namely customary law. Customary law is customary law in Indonesia. Customary law as the original law of the Indonesian nation applies in Indonesia to this day, although it is not as perfect as before Indonesia was visited by foreign nations either motivated by spreading religion or visited by other nations with the motivation to carry out trade which ultimately became colonialism.

In Indonesia, the idea of abolishing prisons has philosophical, theoretical and normative support in customary law. Customary law does not recognize the institution of sanctions as a juridical consequence of unlawful acts committed by citizens. Acts that violate customary law are recognized as acts that destroy the balance in society, so that efforts to restore this balance require

a customary reaction. Customary reactions are not legal sanctions aimed at perpetrators of acts against the law/perpetrators of acts that destroy the balance in society. A customary reaction is an effort made by society to restore the balance that has been damaged due to acts against the law/acts that disturb the balance in society.

Based on these limitations to customary reactions, we cannot find prison sanctions in customary law. Several forms of customary legal sanctions that can be given by the Traditional Head to the perpetrator include:

1. "Compensation for "immaterial" losses in various forms such as being forced to marry a girl who has been defiled.
2. Payment of "customary money" to the affected person is in the form of a sacred object as compensation for spiritual losses.
3. Salvation (sacrifices) to cleanse society of all supernatural impurities.
4. Embarrassment cover, apology.
5. Various forms of corporal punishment to the death penalty.
6. Exile from society and placing people outside the legal order.

The sanctions above start from social sanctions to sanctions for individual perpetrators which aim at resolving problems in indigenous communities and achieving balance within them.²²

This traditional reaction does not recognize sanctions in the form of imprisonment, which are imposed on perpetrators. Traditional reactions are solely aimed at ensuring that harmony in society can return to the way it was before the violation/act against the law occurred. Likewise, Balinese society is a society that is known to be very strong in obeying its customary laws. Bali also has a customary law called *awig-awig*. Strengthening *awig awig* is carried out by including it in Bali Provincial Regulation Number 3 of 2003. For example, in the *awig-awig* adopted by the people of Pakraman Village, Bali, there are several traditional reactions, namely; Apologize: Apologize. Penalty: Monetary fine. Kerampang: Confiscation of property. Kasepekang: Not spoken to within a certain time. Kaselong: Expelled from his village. Prayascita Ceremony: Village clean ceremony²³. Based on these facts, Balinese traditional law does not recognize prisons.

The Dayak tribe on the island of Kalimantan formulates customary reactions to several customary violations so that sanctions are imposed for wrongdoing/mistakes committed, such as if you hit them, you are subject to a

²² Maria Ulfah, "Customary Sanctions as Criminal Sanctions in Positive Law and *Ius Constituendum*," *Revitalization of Customary Criminal Law and Contemporary Criminology*, 2018.

²³ Monica Ayu Caesar Isabela, "Examples of Customary Law in Indonesia and Their Sanctions," *Kompas.Com*, 2022, [https://nasional.kompas.com/read/2022/06/09/04000041/examp-law-adat-di-indonesia -and-the-sanctions](https://nasional.kompas.com/read/2022/06/09/04000041/examp-law-adat-di-indonesia-and-the-sanctions).

fine. Sanctions here are adjusted to the condition of the perpetrator. In the event that the perpetrator is a person who is not financially capable, the amount of the fine that must be paid is adjusted to his ability to pay. In principle, traditional reactions do not have to be cruel²⁴

As for the offenses regarding the maintenance and management of coral reef ecosystems, these are regulated by the 2001 awik-awik, which stipulates The sanctions are as follows;

1. Throwing anchor in a prohibited place Rp. 15,000,-
2. Fishing in prohibited zones
 - a. Mourami net Rp. 1,000,000,-
 - b. Mogong Net Rp. 100,000,-
3. Planting seaweed in prohibited zones is subject to sanctions demolition
4. Archery of fish in the prohibited zone is subject to a fine of Rp. 15,000,
5. Fishing in prohibited zones is subject to a fine of Rp. 10,000,
6. Throwing anchor in a prohibited zone is subject to a fine of Rp. 50,000,
7. Diving in the prohibited zone is subject to a fine of Rp. 5,000,000,²⁵

Apart from that, in the Rejang customary law in Bengkulu Province, we do not find legal sanctions in the form of imprisonment. The sanctions or customary reactions that are usually imposed for a violation of customs on the Rejang ethnic group are;

1. Apologizing (Minai apologies), this asking for forgiveness act is the lightest form of sanction. Perpetrators who violate the customary laws are obliged to apologize to the victim and to the village community for causing inequality in the community.
2. Butchering a goat. The sanction for slaughtering a goat includes sanction for violation of customary law which is quite severe, because if a goat is subjected to Tentok goat sanction, of course there is also a Sedekeak (entertaining community) sanction.
3. Kedendo (Fine), this sanction applies to all customary violations. The amount of which is determined depending on the violation that has been committed, starting from 2 Rielas, 4 Rials, 6 Rials, 24 Rials, 40 Rials, and 80 Rials, which if converted equals to Rp. 25,000 per 1 Rial.
4. Punjung, usually in the form of tumeric rice in a shape of cone, surrounded by side dishes according to the capabilities of the person concerned, usually there is one fried chicken on top or it can be replaced with other. This

²⁴ I Made Kastama, "Dayak Customary Law: Form, Application and Sanctions for Singers in Pendreh Village, Teweh Tengah District, North Barito Regency," *Belom Bahadat* 8, no. 2 (2019), <https://doi.org/10.33363/bb.v8i2.206>.

²⁵ K BAHRAIN, "Restoration of Sasak Customary Law as a Legal Source in Non-Litigation Dispute Resolution (Study in Gili Terawangan)," 2018, <http://eprints.unram.ac.id/11413/>.

- traditional sanction is usually given to perpetrators that are quite severe and up to serious customs violations.
5. Tepung Setawar (Tabea flour/Setawar Sebesar) is a form of sanctions given to the perpetrators of customary violations with the aim of cooling back the hot situation due to the actions of the perpetrators with a ritual. This sanction is usually carried out by sprinkling water that has flowers drowned in it, on places that are considered polluted or dirty, such as the scene, the house of the traditional leader, the village chief, or the other public places.
 6. Customary law sanction in form of expulsion from the contractor's place
 7. Letter of agreement, is a mandatory sanction for perpetrators who commit every violation from mild to severe. This letter contains the promise of the perpetrator that he/she will not repeat the same action/mistake and signed by the parties and known by the village official and Syarak apparatus²⁶

Based on the inventory of customary law as the original unwritten law of the Indonesian nation, no form of imprisonment was found. Therefore, without imprisonment, customary law can be enforced to maintain order and create justice in Indonesian society. Sanctions/reactions contained in customary law can resolve conflicts and disputes within society very well, namely restoring balance within society. Based on the basic principles of customary law and the types of sanctions/customary reactions to a violation or dispute, which do not recognize the form of prison, the idea of abolishing prison is something that is very possible in Indonesia.

The Idea of Privatization and Self-Financing of Prison Management

The idea of abolishing prisons is also supported by the facts of corruption and abuse of authority carried out by prison officials, apart from that, bribery by prisoners is a trigger for unequal treatment between prisoners in prison. The implementation of prison sentences carried out in correctional institutions requires quite a bit of funds. This funding is needed to finance the majority of services provided by Correctional Institutions. There are eighty-two (82) types of services carried out by prisons for the benefit of prisoners in accordance with the Decree of the Director General of Corrections. Ministry of Law and Human Rights of the Republic of Indonesia Number: PAS-36.OT.02.02 of 2020 concerning Correctional Service Standards.

Most of these services require funding, all of which must be borne by the State. However, the facts show that this service requires the participation of inmates to fund it. Funding from inmates is certainly an illegal levy, but it has become a habit.

²⁶ "A Renewal Attempt at a Bill in Indonesia's Criminal Law: A Study of the Development in the Norm of Rejang Customary Law," *International Journal of Multidisciplinary Research and Analysis* 05, no. 07 (2022): 1661–65, <https://doi.org/10.47191/ijmra/v5-i7-09>.

Extortion is carried out by block administrators or inmates who have been in prison for a long time. He said that prisoners could be extorted for togetherness money in the hallway or room money. "The costs vary, if directly it can reach IDR 30 million-40 million. "For example, one day in mapenaling (environmental familiarization period) can cost tens of millions, and it depends on which block, it can be Block O, Block J, Block K, Block L, the prices are different," he said. Apart from that, other forms of extortion are used to execute sentences²⁷. The provision of rights which are services at Correctional Institutions (Lapas) and State Detention Centers (Rutan) include the provision of assimilation, remission, Conditional Leave (CB), Leave before Release (CMB), Conditional Release (PB) given to prisoners and services visits to detainees/convicts in prisons/detention centers. Providing rights to detainees/convicts and family visits for detainees/convicts is a form of public service. In granting rights to detainees/convicts, there are still officers who abuse their position to charge fees for administering the rights of detainees/convicts.²⁸ "Not only related to basic facilities, the KuPP report also found illegal transactions related to processing parole rights," said Erasmus in a written statement, Sunday (6/2/2022)²⁹. To be able to sleep in a room with better facilities, inmates have to spend more than IDR 5 million to IDR 25 million. The money was allegedly deposited with prison officers³⁰.

This information is reinforced by research the author conducted at prisons/correctional institutions in Bengkulu City last year. Prisoners have to spend money regularly every month for "security money". Based on information from former prisoners, security money is related to the security of the prisoners' bodies and belongings. Delays or non-payment of security money result in injuries to prisoners and damage to prisoners' belongings. Strangely, no one knows who the perpetrator is. Apart from that, former convicts testified that to put legal items into prison/correctional institutions you also have to pay. Prisoners have to pay more if they want food in the prison/penitentiary "canteen". Families who want to visit must also prepare more funds to be able to send food to prisoners.

The term private prison refers to the process of transferring the operations of an existing public prison to a nonprofit organization (usually referred to as an asset sale), or the process of contracting with a nonprofit organization to design, build, and operate a new facility. Thus, private prisons

²⁷ "Surya Anta Reveals Various Forms of Extortion in Salemba Detention Center," nd

²⁸ Umar Anwar, "Eradicating Illegal Levies in Public Services in Class I Detention Centers in Bandung," *Journal of Correctional Issues* 1, no. 2 (2018): 61–78.

²⁹ Erfan Maaruf, "ICJR: The Practice of Extortion in Detention Centers is Widespread, Beds Are Even Traded," *okezone.com*, 2022.

³⁰ Agung Sandy Lesmana and Yaumal Asri Adi Hutasuhut, "Inmates pay Rp. 30 thousand for cardboard to sleep, cases of extortion in Cipinang prison due to over capacity?," *Suara.com*, 2022.

are prison and detention facilities built and/or managed by non-profit organizations for the purpose of imprisoning people for net profit.³¹ Several arguments in support of prison privatization include; financial or cost savings arguments, performance arguments, and transparency and accountability arguments³².

The idea of private prisons in England has long been proven by centuries ago when the British government entrusted lawbreakers to churches or other voluntary bodies. The first private prison in the United States opened in 1984 in Huston, Texas. Meanwhile, private prisons in Australia first appeared in Queensland in 1990. To date, they are found in Queensland, New South Wales, South Australia and Victoria.³³

The Australian government considers handing over prison management to the private sector to be more beneficial for all parties, both the government and the prisoners. For example, the government prison in West Australia costs \$270 per inmate every day, while in the private Acacia prison, Perth the cost is only \$182 per inmate.³⁴

In 1979, the Virginia region, which is one of the states in the United States, carried out reforms in the party that manages prisons. These changes start from the prison infrastructure in every prison in Virginia which has conditions that are poorly maintained and even unclean which results in poor health for the prison inmates.³⁵ Infrastructure improvements start from repairing the lights on each side of the prison which have several dark spots (black spots), updating the shape of the room including various furniture in it such as tables, chairs, pillows, bathrooms, bookshelves, improving the shape of the kitchen so that it is truly hygienic including the types of food and drinks given to prisoners can improve the mood of the inmates and various facilities in the prison such as libraries, basketball courts, training courses that can be useful before returning to society, all of which have the aim of filling time so that the level of stress experienced by the prisoners resistance may be reduced.³⁶

Private parties who are partners or who are given the authority to manage prisons have several alternative methods as an effort to obtain funding sources; among other things, you can use funds originating from the company

³¹ "(PDF) Prison Privatization and Contract Facilities," nd

³² "(PDF) Prison Privatization and Contract Facilities."

³³ R Rochmani and S Faozi, "Private Conditional Institutions as an Alternative (Comparative Legal Study)," *Humani (Law and Society...* 12, no. 2 (2022): 317–27, <https://journals.usm.ac.id/index.php/humani/article/view/5305>.

³⁴ "Kriminologi_ Privatisasi Lapas – Fakultas Ilmu Sosial Dan Ilmu Politik – Universitas Indonesia," n.d.

³⁵ Rifqi Arif Maulana, "Kebijakan Pemerintah Terhadap Pengalihan Pengelolaan Lembaga Pemasarakatan Kepada Perusahaan Privat (Studi Kasus Negara Amerika Serikat)," *Amnesti: Jurnal Hukum* 4, no. 2 (2022): 71–78, <https://doi.org/10.37729/amnesti.v4i2.2065>.

³⁶ Maulana.

based on the Corporate Social Responsibility (CSR) Program. The source of the flow of funds originating from CSR programs is different from company cash which may be obtained from profits, bonds and mortgages because these funds have been separated from the start so they cannot interfere with the activities of one company.³⁷ The next source of funding flow is funds originating from investors with company expansion agreement contracts with statements stated in the company prospectus before the cooperation program takes place. The contractual agreement is explained to avoid disputes between each other and between investors in private companies because investors are only responsible for the number of shares they own in a company.³⁸

The Indonesian government plans to transfer the management of prisons to the private sector, as a step to overcome riots that often occur in correctional institutions, such as what occurred at the Sialang Bungkok Detention Center, Pekanbaru. The riots that triggered the escape of around hundreds of prisoners last week were allegedly caused by extortion by guards and the number of residents far exceeding the capacity of the detention center.³⁹ Implementation of the idea of prison privatization is based on at least three scenarios, namely;

1. The state fully finances inmates and the management of prisons/detention centers.
2. The Ministry of Law and Human Rights collaborates with the private sector to utilize prison/detention center resources,
3. The state releases the management of prisons/detention centers to the private sector.⁴⁰

The idea of prison privatization requires certain conditions so that this bad possibility does not occur, namely;

1. Prisons must carry out structural reforms and the Director General of Corrections must be accompanied by other parties in designing and implementing the correctional policy process.
2. Prison management is given the freedom to implement correctional ideas tailored to the needs of the business world
3. Prisoners must be positioned as workers who, apart from having the obligation to work, also have rights such as wages, social security and wages which must be in accordance with humanitarian standards.⁴¹

³⁷ Maulana.

³⁸ Maulana.

³⁹ "Penjara Indonesia Diserahkan Ke Swasta Untuk Atasi Seringnya Rusuh_ - BBC News Indonesia," n.d.

⁴⁰ Rochmani and Faozi, "Lembaga Pemasayaran Swasta Sebagai Alternatif (Studi Perbandingan Hukum)."

⁴¹ Rochmani and Faozi.

Self-Financing Prison Management.

Apart from the idea of prison privatization, which directs funding for prison management by private parties or non-profit institutions, the costs of which are obtained from prison businesses and donations from companies that have an interest in improving prisoners. So it is also necessary to think about another scheme in administering prisons. This idea was inspired by the implementation of prisons in China, which used prisons as job training centers. As a work training center, prisoners are educated and trained to have certain skills that are useful as a means for prisoners to work to meet living costs both in prison and after returning to society. The slogan "no work no food" in Chinese prisons has become the basis for inmates to work to support their own lives. China's experience in reforming criminals shows that these measures are very effective.⁴²

It is important for criminals to engage in productive and socially useful work;

1. First, productive work helps criminals realize that hard work is needed to live, not laziness and hedonism. For this reason it is necessary to instill the idea of "no work, no food" in their minds. Working gives them a sense of social responsibility, increasing self-discipline.
2. Second, working properly allows them to stay physically healthy, which helps ward off depression, lethargy, demoralization and even thoughts of running away, suicide or further criminal activity.
3. Third, productive work allows prisoners to acquire productive skills and knowledge that are useful for prisoners to earn a living after serving their sentence.
4. Fourth, making prisoners work in situations and formats similar to normal society helps instill the habit of working and collaborating with other people in an organization in society. This is a way to adapt to a normal social environment, in preparation for their return to society.⁴³

Especially for corruption convicts, this idea of prison self-financing can be implemented. Last year's research results showed that. Self-financing for prison implementation is carried out on the basis of the principle of justice. It would be very unfair if a Corruption Convict who was proven to have committed acts detrimental to the State's finances or the State's economy, was then investigated, prosecuted and tried using State finances and then put in prison which was also funded by State finances.

The research results show that corruption convicts and convicts who are financially well off always pay institutional officials to receive services. As a consequence, prisoners get privileges in using existing facilities. Prisoners also

⁴² "Govt," n.d.

⁴³ "Govt."

get better food, because they pay for the food they eat themselves. Likewise with sleeping facilities and other facilities that they bought themselves. Most of the facilities provided by the prison are not used by them.

Based on these facts, it is best to legalize the price of services received by prisoners, so that "bribe money" becomes "donation money" to facilitate the prisoners' needs. It is only fair that those who harm the State's finances and economy must pay their own "education" costs and living costs while in prison. Funds that have been used to fund education for prisoners' living expenses can be used to fund education for "poor, neglected children". The poor and neglected children are national assets who also have the same opportunity to be educated and prepared as drivers of the country's development in the future.

Self-financing or self-financing for prisoners is also carried out at the minimum security stage where prisoners are required to do certain work during their community service period. Self-financing for prisoners is related to living costs and transportation. Likewise, activities include social skills training, self-control training, cognitive restructuring and self-management. The same thing is also done for activities to help marginalized communities, as one of the obligations for prisoners.

Conclusion

The results of the research show that imprisonment is not recognized in the Islamic view, whereas currently imprisonment is acceptable only as long as the punishment provides a lot of benefits or kindness or benefits to society. Thus, imprisonment is not an absolute in the view of Islamic law. Based on the inventory of customary law as the original unwritten law of the Indonesian nation, no form of imprisonment was found. Therefore, without imprisonment, customary law can be enforced to maintain order and create justice in Indonesian society. From this analysis, especially related to the study of Islamic law and customary law, it is concluded that imprisonment can be considered for abolition if its shortcomings are more dominant than its benefits. Apart from being based on universal thinking and global facts, the abolition of prisons in Indonesia is also based on conditional factors in Indonesia, namely; the existence of values, principles and norms of customary law as native Indonesian law in an unwritten form that does not recognize and requires prison sanctions. The Indonesian government provides a place for the idea of prison privatization in the sense that prison management is carried out by private, non-profit parties, which can be done by providing opportunities for private institutions to collect funds from companies and communities who have an interest in improving prisoners. Meanwhile, the idea of self-financing for prisoners' activities in prison is based on the fact that prisoners usually use their own funds to meet their needs and carry out several activities. Based on these facts, it is possible to have a policy to legalize "donations/bribes" from prisoners to meet the needs of prisoners in prison.

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