GEVANGENEN
JURNAL KAJIAN LEMBAGA PEMASYARAKATAN

Volume 2 Nomor 2 November 2026
E-ISSN: 3109-3027 || P-ISSN: 3109-3035
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PUBLIC SERVICE OF CORRECTIONAL INSTITUTIONS WITHIN THE PARADIGM OF MODERN CRIMINAL LAW AND STATE ADMINISTRATIVE LAW

Francois Geny Ritonga[1] Chris Anggi Natalia Berutu[2] Mawar Valentina[2] Arther Efflin Sugiarto[3]

[1]*Universitas Kristen Indonesia, Indonesia, Jakarta, email: francois.geny@uki.ac.id*
[2]*Universitas Kristen Indonesia, Indonesia, Jakarta, email: cberutu@gmail.com*
[3]*Universitas Kristen Indonesia, Indonesia, Jakarta, email: arthereffin@gmail.com*
[4]*Universitas Kristen Indonesia, Indonesia, Jakarta, email:. mwrvlntina27@gmail.com*

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GevangeNen: Jurnal Kajian Lembaga Pemasyarakatan Vol. 2 No. 2 (2026): 067-075.

Submission Date: 07-10-2026 *Publication Date: 31-11-2026*

Abstract: *Discussions regarding sentencing and the administration of correctional institutions remain a central topicin the criminal justice system. Correctional services are administered by the government as part of the law enforcement process. In the context of Administrative Law, it is the law that governs the legal relationship between the government and citizens; in this case, it is carried out by correctional institutions, or "Lapas," whose role is to provide rehabilitation for inmates. Modern law enforcement emphasizes a punishment system oriented toward a retributive approach that is also grounded in rehabilitative and restorative approaches. This study is a normative legal study using a statutory approach and drawing on secondary data in the form of primary, secondary, and tertiary legal sources. This study shows that modern law enforcement—through the punishment and rehabilitation of prisoners—must be consistent with the concept of the rule of law as viewed from the perspective of administrative law.*

Keywords: *Correctional Facility; Punishment; Public Service.*

Abstrak: *Pembahasan mengenai pemidanaan dan penyelenggaraan lembaga pemasyarakatan tetap menjadi topik utama sistem peradilan pidana. Pemasyarakatan diselenggarakan oleh pemerintah sebagai bagian dari proses penegakan hukum. Dalam konteks Hukum Administrasi Negara merupakan hukum yang mengatur hubungan hukum antara pemerintah dan warga negara, dalam hal ini dilaksanakan oleh Lembaga Pemasyarakatan atau dapat disebut "Lapas" yang keberadaannya menjalankan fungsi Pembinaan terhadap Narapidana. Penegakkan hukum modern menekankan sistem pemidanaan yang berorientasi pada pendekatan retributif yang berorientasi pada pendekatan rehabilitatif dan restoratif. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan perundang-undangan dengan menggunakan data sekunder berupa bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Penelitian ini menunjukkan bahwa penegakan hukum modern melalui pemidanaan dan pembinaan terhadap narapidana harus sejalan dengan konsep negara hukum dilihat dari aspek hukum administrasi negara.*

Kata Kunci: *Lembaga Pemasyarakatan; Pemidanaan; Pelayanan Publik.*

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INTRODUCTION

Social dynamics within society perpetually give rise to various forms of conflict which, if inadequately managed, hold the potential to generate criminal acts. Crime itself is not a static phenomenon, but rather a product of social change encompassing economic, cultural, and structural developments in society. Crime constitutes a manifestation of the failure of social guidance and the weakening of moral regulation within society.[1] It occurs anywhere and at any time in social intercourse. Fluctuations in crime rates depend on societal conditions, as well as political, economic, cultural, and other factors. Society is confronted with a pervasive and deep-seated phenomenon that festers like a pathology within the social body, endangering human life or at the very least inflicting harm.[2] Crime will continue to emerge for as long as social life and human needs exist.

The adverse impacts of emerging crimes must be resolved through established legal mechanisms. Such mechanisms are provided by the state to uphold public order, justice, and legal certainty through criminal law enforcement. Criminal law enforcement serves as the state's primary instrument for maintaining order, justice, and legal certainty amidst societal life. Within the context of a state governed by the rule of law (*rechtsstaat*), criminal law functions not merely as a repressive apparatus to punish offenders, but also as an instrument of social engineering that reflects the living values of justice within society.[3] To achieve the state's goals and ideals of public welfare and prosperity, driving the machinery of governance requires administrative organs or apparatuses operating in accordance with their respective functions and authorities.

Indonesia is a state based on law (*rechtsstaat*), not on mere power (*machtsstaat*). The General Elucidation of the 1945 Constitution explicitly affirms this principle, establishing the supremacy of law in Indonesia. As a rule-of-law state, Indonesia adopts law as a foundational principle aimed at realizing order, security, justice, and welfare for its citizens. Criminal law enforcement faces fundamental challenges in realizing an ideal social order. Principally, in responding to the phenomenon of crime, the state has historically relied upon penal policies oriented toward deterrence and retribution (punitive approach). This approach rests on the assumption that imposing custodial sentences (imprisonment) will effectively suppress crime rates. Sentencing constitutes the principal mechanism within the criminal justice system for enforcing legal norms violated by offenders. By imposing criminal sanctions, the state affirms that every violation of the law carries clear and measurable legal consequences.

The rule-of-law concept positions law as the primary foundation in the administration of governance and as a binding guideline for every action taken by state officials in

[1] Soerjono Soekanto. (2015). Kriminologi: Suatu Pengantar. Jakarta: Rajawali Press, hlm. 100-120.
[2] Martiman Prodjohamidjojo. (1997). Memahami Dasar-Dasar Pidana Indonesia 2, Jakarta: Pradnya Paramitha, hlm. 2.
[3] Apriliani Rahmalillah, and Hajairin. 2026. "Penegakan Hukum Pidana Terhadap Pelaku Kejahatan Kecil Dalam Prespektif Sosiologi Hukum: Studi Kasus Nenek Pencuri Buah Kakao". *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4 (1):1934-43.

exercising their authority. The nexus between government administrative law and criminal law constitutes a vital aspect of the national legal system, particularly in supervising and sanctioning the acts of public officials in governance.[4] Government administrative law functions as a normative instrument governing the procedures for the exercise of authority by public officials, providing supervisory mechanisms over state administrative actions,[5] and delivering public services in the execution of administrative governance alongside the application of public service principles.

Corrections (*Pemasyarakatan*) aims to rectify criminal conduct (corrective action) while rehabilitating offenders so that they do not reoffend upon reintegrating into society. Correctional Institutions (*Lembaga Pemasyarakatan*, hereinafter *Lapas*) serve as institutions capable of implementing national legal transformation by prioritizing humanistic and equitable principles aligned with modern criminal law. Furthermore, *Lapas* can fulfill the objectives of resocialization and rehabilitation for offenders, thereby fostering positive impacts within community life.

METHODOLOGY

This study employs normative legal research. Normative legal research is legal inquiry conducted by examining library materials (secondary data). It is designated as normative legal research or library-based legal research (alongside sociological or empirical legal research, which primarily examines primary data).[6] According to Peter Mahmud Marzuki, normative legal research is a method designed to establish legal clarity in order to resolve the legal issues under investigation. The function of normative legal research is to provide legal argumentation or juridical responses when ambiguity or obscurity arises within promulgated statutory provisions.[7] The approaches utilized are the statutory approach (*statute approach*), which examines relevant legislation, and the conceptual approach (*conceptual approach*). The data used in this study consist of secondary data derived from primary, secondary, and tertiary legal materials. Primary legal materials encompass statutory regulations governing sentencing, the correctional system in Indonesia, and state administrative law. Secondary legal materials comprise textbooks, scholarly journal articles, research findings, and legal doctrines. Tertiary legal materials consist of legal dictionaries and encyclopedias used to clarify legal terminology employed in this research.[8]

Data collection techniques were conducted through library research by gathering, classifying, and inventorying legal materials pertinent to the research problem. The

[4] Alendra, Muhammad Al-Haadi Nugraha, Suwandi, Yandri Ardianto, Jumi'il Husno, and Hendro Yuwono. 2026. "Disharmoni Antara Hukum Administrasi Pemerintahan Dan Hukum Pidana Dalam Penanganan Penyalahgunaan Wewenang Pejabat Publik". *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4 (4):5394-5410. https://doi.org/10.61104/alz.v4i4.6488.
[5] *Ibid*,.
[6] Soerjono Soekanto dan Sri Mamudji. (2009). Penelitian Hukum Normatif Suatu Tinjauan Singkat. Jakarta: Raja Grafindo, hlm. 15.
[7] Peter Mahmud. (2010). Penelitian Hukum. Jakarta: Kencana Prenada, hlm. 35.
[8] Soekanto, S., & Mamudji, S. (2015). Penelitian Hukum Normatif. Jakarta: Rajawali Pers, hlm. 13-15.

collected legal materials were subsequently analyzed qualitatively using a descriptive-analytical method—namely, by systematically describing statutory regulations and doctrines relating to sentencing effectiveness and restorative justice, and subsequently analyzing the alignment between legal norms and their implementation within the Indonesian correctional system. Data analysis was performed using legal syllogism, comprising a major premise (legal norms), a minor premise (legal facts or cases), and a conclusion drawn from both premises to answer the research questions.[9]

RESULTS AND DISCUSSION

According to Prof. Sudarto, drawing upon the view of Mezger, criminal law is defined as legal rules that attach to an act fulfilling specific statutory elements a legal consequence in the form of criminal punishment (Sudarto, 2013). Punishment constitutes suffering or affliction (*nestapa*); thus, linked to the foregoing definition, criminal law is the body of law governing the infliction of suffering imposed upon individuals who violate existing legal norms and satisfy specified conditions.[10] Furthermore, R. Soesilo defines a criminal offense as an act prohibited or mandated by statute which, if committed or omitted, renders the perpetrator or omitter liable to criminal punishment.[11] Classical legal theory, particularly retributive theory, has historically been invoked to support the notion that suffering-based punishment forms the foundation of criminal sanctions. However, the objectives of contemporary criminal law (including Indonesia's New Criminal Code) have shifted from merely inflicting suffering toward serving as instruments of rehabilitation and restoration.

Criminal law, as an instrument of social control, encompasses diverse objectives that have evolved alongside the progression of human civilization. One of the most fundamental and contentious paradigms in criminal law is the concept of retribution or retaliation. Retributive justice positions proportionate retaliation as the primary purpose of sentencing, standing in contrast to utilitarian approaches that emphasize crime prevention or offender rehabilitation.[12] The outdated paradigm of sentencing that places primary emphasis on punitive infliction must be replaced by prioritizing an approach capable of realizing substantive justice and greater humanism for the broader benefit of society.

Eddy O.S. Hiariej and Topo Santoso annotate that sentencing guidelines constitute a framework or reference utilized by judges in determining the appropriate sentence to be imposed upon a defendant proven guilty in a criminal case. Sentencing guidelines are

[9] Marzuki (2019), op. Cit., hlm. 70-75.
[10] https://rechtsvinding.bphn.go.id/articles/285, dikutip pada 3 September 2026.
[11] R. Soesilo. (1984). Pokok-Pokok Hukum Pidana Peraturan Umum dan Delik-Delik Khusus. Bogor: Politae, hlm. 4.
[12] Lengkong, L. Y., Saragi, P., & Sianipar, A. W. (2025). Komprehensif Tentang Hukum Pidana Balasan Dan Implikasinya. Honeste Vivere, 35(2), 274–284. https://doi.org/10.55809/hv.v35i2.585

regulated under Article 54 paragraph (1) of the National Criminal Code.[13] This provision stipulates in essence that in adjudicating a criminal offense, the court must consider: the degree of culpability (*mens rea*) of the offender; the motive and purpose of committing the offense; the inner attitude of the offender; whether the offense was premeditated or unpremeditated; the manner in which the offense was committed; the offender's conduct and attitude following the commission of the offense; the personal history, social circumstances, and economic condition of the offender; the impact of the sentence on the offender's future; the impact of the offense on the victim or the victim's family; forgiveness granted by the victim and/or the victim's family; and/or the legal values and sense of justice living within society. For corporate defendants, sentencing guidelines are governed by Article 56 of the National Criminal Code.[14]

According to R. Soesilo, criminal punishment (*pidana*) is an unpleasant sensation (suffering) imposed by a judge through a judicial verdict upon a person who has violated criminal statutory law. Under this definition, suffering-based punishment forms the core of criminal sanctions. Nevertheless, the psychological burden induced by such suffering and pressure does not necessarily deter offenders; rather, it carries the potential to drive them toward committing further offenses (recidivism). Consequently, the criminal justice system requires a new, more humanistic and equitable paradigm, as the purely punitive approach fails to address the underlying social and moral issues giving rise to criminal behavior.

The position of state administrative law is closely intertwined with other branches of law, including criminal law. Criminal sanctions stipulated within State Administrative Law must not conflict with the criminal sanctions regulated under Criminal Law. According to R. Abdoel Djamali, state administrative law comprises legal regulations governing administration—namely, the legal relationship between citizens and their government that enables the state to function.[15] Additionally, Poedjosewojo explains that state administrative law constitutes the entire body of legal rules governing how the state, in its capacity as sovereign authority, conducts operations to fulfill its public duties.[16]

Accordingly, the sentencing process must align seamlessly with the correctional function. Pursuant to Article 1 of Law Number 22 of 2022 concerning Corrections,[17] Corrections is defined as a criminal justice subsystem that administers law enforcement in the field of the treatment of detainees, juveniles, and correctional inmates (*warga binaan*).

The new paradigm referred to herein is the restorative justice approach, which no longer views criminal punishment as an instrument of retribution, but rather as a means of

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[13] https://www.dandapala.com/opini/detail/pedoman-pemidanaan-ikhtiar-penegakan-hukum-pidana-berkeadilan-dan-humanis, dikutip pada 3 September 2026.
[14] *Ibid*,.
[15] R. Abdul Djamali. (1998). Pengantar Hukum Indonesia. Jakarta: RajaGrafindo, hlm. 95.
[16] Muhamad Sadi Is, Kun Budianto. (2021). Hukum Administrasi Negara. Jakarta: Kencana, hlm. 75.
[17] Republik Indonesia, *Undang-Undang tentang* Pemasyarakatan, Undang-Undang RI Nomor 22 Tahun 2022, LN Tahun 2022 Nomor 165, TLN Nomor 6811.

recovery for victims, offenders, and society. A Correctional Institution (*Lapas*) is an institution or facility that performs the function of rehabilitating convicts. Beyond rehabilitation, *Lapas* forms an integral component of the integrated criminal justice system, playing a vital law enforcement role in upholding public security and order. This crucial law enforcement function is inseparable from the support of adequate correctional facilities and infrastructure.[18] Moreover, the existence of *Lapas* constitutes part of law enforcement in the context of service delivery, rehabilitation, and guidance aimed at social reintegration. Specifically, rehabilitation for Correctional Inmates (WBP) comprises two dimensions: personality rehabilitation (*pembinaan kepribadian*) and self-reliance/vocational rehabilitation (*pembinaan kemandirian*).[19] Meanwhile, reintegration emphasizes placing the convict within the correctional facility at the center of institutional care and rehabilitation. The reintegration model strives to foster behavioral transformation through interaction with prevailing societal value systems, aiming to restore the unity of the relationship between the convict and society.[20]

Public service is regulated under Law Number 25 of 2009 concerning Public Services,[21] wherein Article 1 paragraph (1) stipulates that Public Service is an activity or series of activities aimed at fulfilling service needs in accordance with statutory regulations for every citizen and resident regarding goods, services, and/or administrative services provided by public service providers. From this statutory definition, it is evident that the administration of services within *Lapas* and State Detention Centers (*Rutan*) constitutes an integral part of public service, as it is rendered to citizens and residents and encompasses administrative governance as well as the provision of goods and services.[22] As mandated by Law Number 25 of 2009 concerning Public Services, public service providers must deliver services in adherence to the core principles of public service, including: public interest, legal certainty, equal rights, balance of rights and obligations, professionalism, participation, equal treatment/non-discrimination, transparency, accountability, special facilities and treatment for vulnerable groups, timeliness and promptness, as well as accessibility and affordability.[23]

Pursuant to Article 1 point 9 of Law Number 22 of 2022 concerning Corrections, Service (*Pelayanan*) is defined as activities organized to provide protection and fulfillment of rights for Detainees and Juveniles throughout the judicial process. Furthermore, the administration of *Lapas* within the paradigm of modern criminal law involves Community Guidance Counselors (*Pembimbing Kemasyarakatan*) operated by Correctional Centers

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[18] https://setkab.go.id/kondisi-lembaga-pemasyarakatan-di-indonesia-pasca-ditetapkannya-uu-nomor-22-tahun-2022-tentang-pemasyarakatan/, dikutip pada tanggal 30 September 2026.
[19] Umar Anwar dan Rachmayanthy. (2021). Politik Hukum dan Pemasyarakatan: Kebijakan, Tata Laksana, dan Solusi, Depok: Rajawali Press, hlm. 53.
[20] Ibid., hlm. 51-52.
[21] Republik Indonesia, *Undang-Undang tentang* Pelayanan Publik, Undang-Undang RI Nomor 25 Tahun 2009, LN Tahun 2009 Nomor 112, TLN Nomor 5038.
[22] https://www.ombudsman.go.id/artikel/r/artikel--perlunya-pengawasan-pelayanan-publik-di-lapas-dan-rutan, disadur pada tanggal 06 Oktober 2026.
[23] Ibid,.

(*Balai Pemasyarakatan*, or *Bapas*), encompassing assistance (*pendampingan*), guidance (*pembimbingan*), and supervision (*pengawasan*).

The provision of assistance is utilized to fulfill needs and safeguard legal rights during the judicial process, spanning from the pre-adjudication stage through the post-adjudication stage and continuing guidance. The provision of guidance is aimed at equipping inmates to enhance their mental and spiritual quality, intellectual capacity, vocational skills, and self-reliance.

The execution of supervision is aimed at ensuring compliance with stipulated conditions and rehabilitation programs. Based on the foregoing analysis, the institutional function of *Lapas* is indispensable for upholding legal transformation and implementing an effective correctional system orientation within the paradigm of modern criminal law.

CONCLUSION AND RECOMMENDATIONS

The concept of a state governed by the rule of law (*rechtsstaat*) positions law as the supreme foundation in the administration of governance and as a binding guideline for every action of state officials in exercising their authority. The existence of Correctional Institutions (*Lapas*) in Indonesia serves as an institution executing both rehabilitative and public service functions within the correctional system. State Administrative Law plays a vital role in providing mechanisms for supervision and control over the delivery of public services by government apparatuses. The adoption of a restorative justice approach within the modern legal paradigm forms part of the state's response toward realizing its constitutional ideals of public welfare and prosperity. The correctional system in Indonesia has undergone a significant legal transformation following the enactment of Law Number 22 of 2022 concerning Corrections, which affirms a paradigm shift in modern criminal law from retributive justice to restorative justice. This restorative justice is operationalized through the execution of correctional functions, including, inter alia, community guidance (*pembimbingan kemasyarakatan*).

It is recommended that Correctional Institutions play an active role in realizing the effective implementation of correctional functions and public services as a concrete manifestation of legal transformation following the enactment of Law Number 22 of 2022 concerning Corrections, while maximizing the role of community guidance.

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