

# Instrumental and Political Explanations in the Implementation of Various Prison Public-Private Partnership (PPP) Models

Original Article

**Sani Siti Aisyah<sup>1\*</sup>, Adrianus Meliala<sup>2</sup>, Iqram Sulhin<sup>3</sup>**

<sup>1-3</sup>Department of Criminology, Faculty of Social and Political Science, University of Indonesia, Indonesia

Email: <sup>1)</sup> [sani.sitiq1@ui.ac.id](mailto:sani.sitiq1@ui.ac.id)

**Received : 12 October - 2024**

**Accepted : 20 November - 2024**

**Published online : 23 November - 2024**

## Abstract

This study highlights that the practice of Public-Private Partnership (PPP) in prison, based on the experiences of various countries such as the United States, England, Australia, France, Japan, and Canada, does not have a single pattern. The diversity of PPP practice patterns in prison is identified by this study in various prison PPP models consisting of: 1) the "private governance" model; 2) the "hybrid management" model; 3) the "service infrastructure" model; and 4) the "contracting out certain limited functions" model. Through a literature study combined with an analysis of policy design theory, this study explains that the diversity of prison PPP models is based on a diverse implementation process in which there are various considerations for the implementation of each model. The various considerations for the implementation of those models are generally grouped into instrumental and political explanations. The implementation of the "private governance" model is a political and administrative decision. The implementation of the "hybrid management" and "service infrastructure" models are administrative decisions with political support. The implementation of the "contracting out certain limited functions" model is an administrative decision.

**Keywords:** Public-Private Partnership (PPP) Model, Correctional Institution, Prison Privatization, Political and Instrumental Explanation

## 1. Introduction

Internationally, Public Private Partnership (hereinafter referred to as PPP) in prison (or correctional institution) has been introduced by governments as an alternative procurement methodology to obtain better results from the construction, management and operation of prison (Liu & Wilkinson, 2015). Over the past few years, various countries (including low-income countries) have shown increasing interest in the potential benefits of PPP in prison sector (Allen & English, 2013). PPP has been introduced and used for prison construction and management in several countries such as England (National Audit Office (NAO), 2003), United States (Gilroy et al., 2010; Schneider, 1999; Stephenson, 2019), Australia (English & Baxter, 2010; O'Neill et al., 2020), Canada (Buitenhuis, 2013), France (Bergere, 2016) and Japan (Leighton, 2014). Prison PPP is government contracts with private sector prison operators or service vendors to provide a variety of different corrections services, ranging from financing and operating prison to providing a variety of inmate services (e.g. health care and food) and administrative or operational support functions (e.g. facility maintenance, transportation and information technology) (Gilroy et al., 2010).

Prisons are part of a country's social infrastructure network that is very important and useful in the structure of society. The social value of prisons in the structure of society lies in



efforts to control crime by improving the criminal tendencies of criminals. Building, managing and operating prisons is very important to support a country's criminal justice system (Liu & Wilkinson, 2015). The social value of prisons will be obtained optimally if prison infrastructure, both physical facilities and services, are well available and optimally managed. According to (Liu & Wilkinson, 2015), the achievement of the main objectives of prison services can be achieved largely depending on the performance of prison asset delivery and management.

The specific characteristics of prison infrastructure provision are relevant to the involvement of private sector. As a social infrastructure, prison consists of hard infrastructure (buildings and facilities) and soft infrastructure (prison services). The provision of prison infrastructure (both hard and soft) requires considerable human and budget resources. Prison construction usually involves a relatively large initial capital investment, high maintenance and operational expenses and generates significant budget allocations from general tax revenues (National Audit Office (NAO), 2003). The provision of prison services usually requires large capital expenditures and high operational costs (Liu & Wilkinson, 2015). The provision of prison infrastructure has special characteristics, namely that it cannot only rely on government capabilities. The involvement of multiple groups outside the government is very much needed in the provision of prison infrastructure, including the private sector which has advantages in budget resources and various expertise. The management of prison services is quite complex due to the variety of tasks carried out by prisons, such as preventing escapes and riots; providing food and health services; re-entry or reintegration of prisoners, etc., all of which require coordination of various institutions and organizations (Cabral & Saussier, 2013).

In fact, private sector involvement in prison (the use of PPP in prison) does not have a single pattern. The diversity of prison PPP is described by various types of cooperation agreement structures between the public (government) and the private sector in providing prison services (Grimsey & Lewis, 2007), various models of private participation in prison services (Cabral & Saussier, 2013), various spectrums of PPP in prisons (Allen & English, 2013), or correctional institution PPP models (Aisyah et al., 2024a, 2024b). Although all of these sources have presented the diversity of prison PPP models, none of the five have elaborated on the reasons behind the diversity of prison PPP models that can be shown by the implementation process which includes various considerations. The reasons or drivers for the operationalization of private prisons have been elaborated by several studies such as Jing, (2010); Nicholson-Crotty (2004); Price & Riccucci (2005), but private prisons are one form of prison PPP model. The reasons for implementing other prison PPP models have not been elaborated by any study. Therefore, this study will examine the reasons behind the diversity of prison PPP models by elaborating the implementation process with various considerations based on the experiences of several countries.

## 2. Literature Review

When deciding whether to involve the private sector in correctional services, policymakers may consider how private involvement affects issues such as prison overcrowding, costs, correctional goals, and flexibility of the correctional system (Y. Kim & Price, 2014); they may also consider various political factors, such as political culture (Price & Riccucci, 2005). Private involvement in prisons is known in much of the literature with the terminology of prison privatization which is indicated by the existence of private prisons (such as D.-Y. Kim (2022); Y. Kim & Price (2014); Price & Riccucci (2005)) or PPP in prisons (such

as Cabral & Saussier (2013); Liu & Wilkinson (2015); Oshima (2016); Schneider (1999); Stephenson (2019)). The elaboration of considerations or causes of private involvement in prisons is found in studies that use the terminology of prison privatization or private prisons.

There are two main types of explanations for the causes of prison privatization, namely instrumental and political (Jing, 2010; Nicholson - Crotty, 2004). Instrumental explanations refer to the argument that governments privatize for higher operational efficiency and effectiveness, namely for cost savings, for needed capital and expertise, and to do better with less money (Salamon, 1989 in Jing (2010)). Meanwhile, political explanations refer to the argument that politicians privatize because of the desire to have a smaller government, a preference for market-based government, a desire to reward political allies, antipathy towards trade unions and regional and global policy transfer (Pierson, 1994 in Jing (2010)).

Nicholson-Crotty (2004) mentioned that instrumental factors of prison privatization consist of legislation limiting spending and taxes, capital debt restrictions, corrections as a percentage of total spending and prison overcrowding; while political factors include state ideology, labor unions, the existence of enabling laws (legislation), and the power of the governor. Meanwhile, instrumental factors of prison privatization mentioned by Jing (2010) consist of pragmatic demands to overcome prison overcrowding and demands for cost savings that can be explained by the proportion of correction spending, tax and spending limits and operational costs per prisoner; while political factors include state policy liberalism, regional differences, and the level of labor unions.

With different terminology, Wacquant (2009) explains instrumental factors with the term "material force" and political factors with the term "ideological force". There are two forces that unite to encourage the revival of private imprisonment, namely ideological and material forces (Wacquant, 2009). In the context of the United States, Wacquant (2009), explains the two forces. The first force, which is ideological, is the strengthening of the privatization doctrine regulated by neoconservative think tanks and widely conveyed by the mainstream media and established parties which is seen in the consistency of the transfer of public mission implementation to companies and charitable organizations. The second force, which is material, is seen in the utilization of private sector capacity to finance, design, build and manage prisons needed by the state amidst the problem of limited fiscal and human resources (employees).

Nicholson-Crotty (2004), Wacquant (2009), and Jing (2010) explain these instrumental and political factors as determining variables for prison privatization (the terminology they use to refer to private prison). However, there has been no study that explains these factors in relation to the implementation of various prison PPP models. Referring to Aisyah, et al. (2024a & 2024b), the prison PPP model does not have a single pattern considering the experiences of various countries that have implemented it. Aisyah et al. (2024b) state that the prison PPP model consists of: 1) the "private governance" model (has been implemented in the United States, England, Canada and Australia); 2) the "hybrid management" model (has been implemented in Japan and France); 3) the "service infrastructure" model (has been implemented in Victoria, Australia and Ontario, Canada); and 4) the "contracting out certain limited functions" model (has been implemented in England). Characteristics of terminology of prison privatization indicated by the existence of private prison refer to the PPP prison model of "private governance" (Aisyah et al., 2024b).

### 3. Methods

This study uses a literature study method combined with an analysis of ideas from policy design theory (Ingram, 1997). Referring to Schneider (1999), one of the ideas of policy design theory is that policy design theory recognizes that policies emerge from complex contexts involving dynamic interactions between political forces, social constructions (events, people, facts), and the reasons used to justify various policy choices. The author explores various sources of literature (books, journals, etc.) that contain information related to the reasons or driving factors for the implementation of the prison PPP model using an exploratory approach.

Through content analysis, the researcher found various data on the driving factors for the implementation of the "private governance" model which in various sources is referred to as prison privatization or private prisons. Meanwhile, information on the drivers or causes of the implementation of the "hybrid management" model, the "service infrastructure" model, and the "contracting out certain limited functions" model was not found by the author in studies that examined the prison PPP model. Four models of prison PPP have indeed been elaborated by Aisyah et al., (2024a, 2024b), but both of them did not examine the considerations for implementing the four prison PPP models.

To explain the considerations for implementing the prison PPP model other than "private governance", the author conducted a comparative analysis of data related to the existence of the four prison PPP models (obtained through the experiences of various countries that have implemented them) based on the similarities and differences in characteristics between the four prison PPP models. The similarities and differences in characteristics of the four prison PPP models can be seen in the study by Aisyah et al. (2024b).

### 4. Results and Discussion

Implementation of various prison PPP models can be understood through various considerations which are grouped into instrumental and political explanations.

#### 4.1. Instrumental Explanation

##### 4.1.1. Demand for improving prison condition

Demand for improving prison condition stems from the phenomenon of increasing prison populations and overcrowding, so the context of improving prison conditions is related to demands to overcome prison overcrowding. Jing (2010) calls it a pragmatic demand to overcome prison overcrowding. The increase in prison populations and overcrowding has caused other forms of crisis, including bad prison conditions. To improve bad prison conditions, overcrowding must be addressed, one of which is through the construction of new prisons. This logic of thinking can be applied to the prison PPP model that involves the private sector in prison development, namely the "private governance", "hybrid management", and "service infrastructure" model. Furthermore, this logic of thinking will be proven by data on population increases and overcrowding in countries that have implemented the three prison PPP models in question.

The increase in prison population and overcrowding is one of the factors that is a prerequisite for the emergence of privatized imprisonment (R. Harding, 2001; R. W. Harding et al., 2019). Prison overcrowding has undoubtedly contributed to the realization of an effective private involvement landscape in prison (Daems & Vander Beken, 2018). In the 1970s, there was an increase in the prison population in the United States (Wacquant, 2009). The number of offenders being put in prison with longer sentences has increased since the

1970s due to a series of tough policies and practices against drugs and crime (D.-Y. Kim, 2022). The increasing use of prison sentences, especially in the United States, has led to the formation of new institutions (new prisons) (Daems & Vander Beken, 2018). Because the construction of new prisons cannot keep up with the growth rate of the prison population, prison overcrowding occurs. Mass incarceration and prison overcrowding ushered in the United States into the era of prison privatization (Moore, 1998 in D.-Y. Kim (2022)).

In United States, demands for prison improvement stem from judicial intervention. Referring to D.-Y. Kim (2022), prison overcrowding in the United States worsens physical conditions, lack of basic needs of prisoners, violence and other problems. In 1983, 40 states and the District of Columbia were the targets of prisoner litigation in court to improve prison conditions (US Department of Justice, 1984 in D.-Y. Kim (2022)). Faced with increasing prison populations, incarceration costs, and judicial intervention, the federal and state governments in the United States began to enact prison privatization laws (D.-Y. Kim, 2022).

In England and Australia, which lack an equivalent constitutional basis for judicial oversight, major Royal Commission-style inquiries highlighted the deteriorating condition in prison that had been worsening for years (Johnston, 1991 in R. W. Harding et al. (2019)). Despite the absence of judicial intervention, calls for improvement in prison condition were met in both the UK and Australia with private involvement. Privatization appeared to offer a safety valve for some of these problems (R. W. Harding et al., 2019). Driving the use of private prisons in Australia was rising rates of incarceration in the 1980s which led to prison overcrowding and the demand for new infrastructure to increase capacity and replace ageing and unfit-for-purpose infrastructure (Sands et al., 2019). Prison overcrowding in the UK was a result of the overuse of imprisonment during the 1980s and the inability of governments to significantly expand prison capacity due to budget constraints (Cornwell, 2021). Prison population in England soared between 1993 and 1998 and in the same period, the number of prisoners “contracted out” to the commercial sector jumped from 198 to 3,707 (Wacquant, 2009).

Based on the explanation that has been presented, it can be stated that the demand for improving prison condition, which originates from the demand for the construction of new prison, is an instrumental factor in the establishment of private prisons in the United States, England and Australia (choosing the “private governance” model). The demand for improving prison condition can also be identified as an instrumental factor in choosing the “hybrid management” and “service infrastructure” models. Countries that implement “hybrid management” model (France and Japan) and “service infrastructure” model (Victoria, Australia and Ontario, Canada) experience problems with increasing prison populations and overcrowding and are demanding to build new prison.

In France, demands for improving prison condition came from the Council of Europe Committee entrusted with enforcing the European convention on the prevention of torture and inhuman or degrading treatment (Wacquant, 2009). 13,000 new prison beds were built and operated by private companies (in the 13,000 Program announced in 1987) to address the problem of overcrowding during a time of budget constraints (Thibault, 1995 in Cabral & Saussier (2013)). In Japan, Mine Rehabilitation Program Center (one of PPP prisons using the “hybrid management” model) was established to alleviate the problem of prison overcrowding, deteriorating treatment environments and increasing staff workload due to overcrowding. In Ontario (Canada), increase in prison population and overcrowding has occurred since 1996 and is still happening when the provincial government plans to build prisons using the alternative PPP method (Buitenhuis, 2013) whose characteristics refer to the “service infrastructure” model. Prison expansion projects, including new prisons built after 2006, are

justified by the government by claiming that they can overcome overcrowding (Buitenhuis, 2013).

In implementing of “contracting out certain limited functions” model, demands for improving prison conditions may remain an instrumental driving factor. Prison conditions that must be improved are specific, namely not demanding improvements in prison conditions by building new prison. Demands for improvements in prison conditions can come from bad prison conditions in certain service aspects, for example, aspects of accommodation services (prison building maintenance) or education and training (showing service aspects in correctional services) and food services (showing amenity aspects in correctional services).

#### **4.1.2. Demands for cost savings**

Demands for cost savings are usually related to cost restrictions for prison construction and operation. Increasing prison populations and overcrowding automatically lead to increased budget requirements for prison construction and operation. Ideally, when the prison population increases and overcrowding occurs, the government also increases the budget for prison construction and operation. However, in reality this is not the case, where there are various considerations, including the fiscal limitations experienced by the state. In the context of Victoria (Australia), O’Neill et al. (2020) said that the state experienced financial difficulties in the early 1990s, which was when the state implemented prison privatization. In the context of United States, Jing (2010) said that the budget crisis was one of the driving forces for states to privatize prison. The budget crisis was not only caused by the increasing number of prisoners, but also the increasing operational costs per prisoner (per inmate operating cost, PIOC) (Jing, 2010).

Prison privatization is driven by fiscal pragmatism (promise of cost savings) (Macaulay, 2013). Even R. W. Harding et al. (2019) revealed that the motivation for budget efficiency is the main driving force behind prison privatization in United States. England also chose PPP for prison construction and operation mainly for financial reason (Van Herk, 2016).

The explanation that has been presented shows that the demand for cost savings due to cost restrictions for prison construction and operation is the driving force for choosing the “private governance” model. Because countries that implement the “hybrid management” and “service infrastructure” model experience population growth and overcrowding as well as budget constraints when implementing each of these prison PPP models, state cost restrictions for prison construction and operation also occur in these countries. Thus, the demand for budget savings is also the driving force for choosing “hybrid management” and “service infrastructure” model. The choice of the “contracting out certain limited functions” model is also very likely driven by the demand for budget savings in providing certain services in prison.

#### **4.1.3. Impetus of private involvement**

Impetus for private involvement is driven by a combination of demands for improving prison condition and demands for cost savings. Roughly speaking, private involvement in prisons is done for budget reasons and to improve the quality of prison and prison services (including preparing prisoners for successful reintegration) (Daems & Vander Beken, 2018). Due to spending cuts and tight budget controls, financial means are not always available to design, build, finance, manage and maintain prisons (Daems & Vander Beken, 2018). Referring to the National Audit Office (NAO) (2003), it takes a lot of money to build and operate prisons. When there is a state policy to limit the budget, both for the construction and operation of prison, private involvement is a solution to carry out prison construction and operation. The private sector can offer a solution when the state is short of cash (Daems & Vander Beken, 2018).

PPP is attractive to governments because it offers a way for expensive prison facility construction to be funded through private capital and therefore off the government's balance sheet (Allen & English, 2013). In PPP, payments are spread over a long period of time and the government does not have to provide the entire budget at once (Van Herk, 2016). Countries that embrace the private sector do not have to incur the high costs associated with building new prisons, but can spread those costs out over many years (Mason, 2013).

In addition to capital restrictions for prison construction, R. W. Harding et al. (2019) also stated that increasing concerns about the recurring costs of increasing prison operations were also a prerequisite for the emergence of privatization of imprisonment in United States (representing the "private governance" model). As stated by National Audit Office (NAO) (2003), large costs are not only needed in prison construction, but also for prison operations. Moreover, with the increase in prison population which directly increases prison operating costs. Temperament at that time, related to the government's interest in implementing prison PPP, was that the private sector could almost always carry out service tasks more cost-effectively than public sector (R. W. Harding et al., 2019). The assumption arose that private companies imprison people at a lower cost than public institutions and that private companies do so under better conditions (Daems & Vander Beken, 2018). According to R. W. Harding et al. (2019), this assumption is not far from the minds of politicians and bureaucrats in United States, England, and Australia.

The explanation that has been presented shows that choice of "private governance" model contains the motivation to improve quality of all services in prison and achieve budget efficiency in the entire scope of work in prison construction and operation. Based on this narrative, an argument can be drawn up that choice of "hybrid management" model contains the motivation to improve quality of prison construction and most services in prison operations (except management and administration and correction services in the order aspect) and achieve efficiency in the scope of these services. Then, choice of "service infrastructure" model contains motivation to improve quality of prison construction and maintenance and achieve efficiency in prison construction and maintenance. Choice of "contracting out certain limited functions" model contains the motivation to improve quality of certain services and achieve budget efficiency in the provision of certain services.

#### 4.1.4. Managerialism culture

Referring to Nicholson-Crotty (2004), administrators in the process of making prison PPP contract focus on efficiency and effectiveness criteria in prison. Demand for budget efficiency in prison construction and operation is inseparable from influence of managerialism culture in public administration which is often known in the terminology of new public management (NPM). The mantra adopted for NPM includes terms and techniques such as "performance measurement", "key performance indicators", and "cost effectiveness", which are the linguistic foundations of managerialism (Cornwell, 2021). One important practice for NPM is involving government contracts with private sector for the provision of infrastructure and various goods and services (Lapsley, 1999 in English & Baxter (2010)). PPP is expected to provide more effective and efficient infrastructure and services than conventional public procurement process (Andon, 2007 in English & Baxter (2010)).

The existence of managerialism culture accompanied implementation of "private governance" model in United States, England and Australia. By the mid-1980s, criminal justice institutions in United States (including prison) had developed a managerialist and business-like ethos that emphasized economy, efficiency and effectiveness in the use of resources (Garland, 2001). According to Garland (2001), the most widely publicized aspect of this new business ethos was the rapid privatization and commercialization of criminal justice,

first in United States and then from the mid-1980s onwards in England. Specialist prison services, including the construction and management of prisons, were increasingly contracted out to commercial companies (Garland, 2001).

Concept of managerialism is called Cornwell (2021) with concept of systems management. According to him, systems management entered Europe from its origins in United States in the early 1990s and brought with it a new culture of business management that focused primarily on the delivery of public sector services. Underlying the concept of systems management is the belief that public services can be delivered more efficiently if the organizations responsible for providing those services are run as if they were profit-seeking companies (Cornwell, 2021). In England Prison Service, the managerialist creed was manifested in various ways during the 1990s such as the agenda of reducing prison monopolies as seen in the preparation and drafting of the Criminal Justice Bill (Cornwell, 2021). When the Criminal Justice Act 1991 was passed, England had the authority to implement “private governance” model.

Referring to Sands et al. (2019), implementation of “private governance” model in Victoria (Australia) was also accompanied by managerialism culture that was felt since the start of the Kennett government in 1992. The agenda of private involvement in Kennett government's public services is reflected in the Infrastructure Investment Policy for Victoria which is the basis for planning the construction of three new prisons with “full service” contracts (private prison) (Sands et al., 2019). The existence of managerialism culture in Victoria (Australia) is not only identified as accompanying the existence of “private governance” model, but also “service infrastructure” model under the Partnership Victoria policy. Partnership Victoria is a new government policy (at that time under the Bracks Government) for financing and developing public infrastructure which emphasizes value for money (VfM) and a strict procurement process (O'Neill et al., 2020).

Since choice of the four prison PPP models is always related to desire to realize effectiveness and efficiency in prison construction and/or operation, managerialism culture becomes an instrumental driving factor in implementation of the four prison PPP models. What differentiates them is the scope of tasks that are the authority of the private sector. The demand for effectiveness and efficiency in prison construction and/or operation in which there is private involvement comes from the existence of managerialism that is embedded in public administration.

#### **4.1.5. PPP Regulation**

PPP regulation refers to the regulation of private sector involvement in provision of public infrastructure in various sectors (not only prison) which can be in the form of law or special programs. Examples of PPP laws are Justice System Framework Act 2002 in France and Promotion of Private Finance Initiative (PFI) Act 1999 in Japan. Special programs of PPP are exemplified by Infrastructure Investment Policy for Victoria and Victoria Partnership in Victoria (Australia) and Alternative Finance Procurement (AFP) in Canada.

In France, prison PPP contracts are based on Justice System Framework Act 2002, which was previously based on Public Prison Service Act 1987 (Bergere, 2016). According to Bergere (2016), enactment of the law was motivated by urgency and lack of justice sector facilities (including prison). The law opened up public procurement to contracts covering all components, including financing, with the aim of facilitating and accelerating the implementation of a large-scale prison development program involving the construction of 13,200 prison beds (Bergere, 2016). In Japan, there is Promotion of Private Finance Initiative (PFI) Act 1999 which according to Leighton (2014) is intended to improve social infrastructure

in Japan. With this law, prison PPP in Japan is focused on improving social infrastructure of prison as “rehabilitation centers” (Leighton, 2014).

In Victoria (Australia), there is Infrastructure Investment Policy for Victoria which accompanies the existence of “private governance” model and Victoria Partnership which accompanies the existence of “service infrastructure” model. The practice of prison PPP in Victoria (Australia) before 2000 (referring to “private governance” model) was influenced by enactment of Corrections Act 1986 amendments and dissemination of Infrastructure Investment Policy for Victoria guidelines by Victorian Department of Treasury and Finance (English & Baxter, 2010). The Infrastructure Investment Policy for Victoria allows for establishment of private prisons (English & Baxter, 2010) which will make private contractors responsible for corrections services and accommodation with monitoring being the responsibility of Corrections Victoria (Sands et al., 2019).

Practice of PPP prisons after 2000 in Victoria (Australia) was heavily influenced by Partnerships Victoria (Sands et al., 2019). Partnerships Victoria was announced in June 2000 (initiated by the Bracks Labor Government after being elected in late 1999) following a review of the Victorian government’s contract audit and a coroner’s inquiry into the deaths of five prisoners at the privately run Port Phillip Prison (O’Neill et al., 2020; Sands et al., 2019). Under Partnerships Victoria, the Bracks Government built new prisons using PPP methods that were characteristic of the “service infrastructure” model described by Sands et al. (2019) and O’Neill et al. (2020) as a PPP method with a design, construction and financing contract for facilities and limited services such as maintenance. Instructively, the contractual arrangements did not provide for private management of prisoners (English & Baxter, 2010).

The existence of “service infrastructure” model in Canada, referring to Buitenhuis (2013), is accompanied by Alternative Finance Procurement (AFP). Toronto South Detention Center (TSDC) and the South West Detention Center (SWDC) were built through a new form of PPP called Alternative Finance Procurement (AFP) (Buitenhuis, 2013). Buitenhuis (2013) statement regarding the new form of PPP is intended to differentiate it from the form of PPP previously used by the Ontario Government, namely a form of PPP whose characteristics refer to the “private governance” model.

#### **4.1.6. Implementation result of “private governance” model**

The existence of “service infrastructure” and “contracting out certain limited functions” model is adaptation result of the implementation of “private governance” model (Aisyah et al., 2024a). In this adaptation, there are considerations regarding results of “private governance” model implementation. The results of this implementation include evidence of results of improving prison conditions and results of budget efficiency in private prison. The results of improving prison conditions are related to evidence or arguments about the poor performance of private prison. Meanwhile, the results of budget efficiency are related to evidence that budget efficiency can be achieved faster with private involvement in certain services compared to private involvement in all services in prison.

Based on experience of Victoria (Australia), one of the evidences of poor performance of private prisons is shown by the death of 5 prisoners in one of private prison. In 1999, a coroner's inquiry was conducted into the deaths of 5 prisoners in the privately run Port Philip Prison as part of a government contract audit review (O’Neill et al., 2020; Sands et al., 2019). The “service infrastructure” model in Victoria (Australia) was developed due to dissatisfaction with the operation of private prisons under previous government (Grimsey & Lewis, 2007).

Based on experience of Ontario (Canada), argument of poor prison performance was presented by the government in power at that time. The Liberal Party government ended privatization in Central North Correctional Centre (private prison) because of private prison

performance was worse than the performance of the Central East Correctional Centre (public prison) (Buitenhuis, 2013). Ontario (Canada) government deliberately created a pilot project to build private and public prisons simultaneously to conduct an “apple to apple” comparison within the framework of the prison privatization experiment.

Based on England experience, evidence of poor performance of private prisons is shown in the case of the takeover of Birmingham Prison (one of the private prisons) by the government from a private operator. The UK Ministry of Justice has taken over the management of Birmingham Prison from its contractor G4S and returned responsibility for operation of the prison to the government after a thorough inspection of the prison (Grierson, 2018). HM Chief Inspector of Prison (2012) inspection of Birmingham Prison in 2012 revealed several poor records such as high positive drug test results and drug packages, an unsatisfactory regime for vulnerable prisoners, very few prisoners involved in useful activities. The England experience also shows that budget efficiency results are instrumental factors in choosing "contracting out certain limited functions" model. Market testing, which was used to determine the establishment of private prison, was abandoned in 2012 because workforce restructuring and private involvement in certain services proved to be a faster way to achieve cost reductions (Skinns & Skinns, 2016).

## 4.2. Political Explanation

### 4.2.1. Law that legaliza private prison

Implementation of “private governance” model is possible when there is a legal basis that legalizes private prison. As stated by Nicholson-Crotty (2004), the creation of a contract to establish private prison is political and administrative decision. Administrators can create private prison contract only if there is a special law that legalizes it.

Based on experience of various countries, laws that legalize private prison include Criminal Justice Act 1991 in England and Corrections Act 1994 in Australia. Referring to Cornwell (2021), Criminal Justice Act 1991 authorizes the British Government to involve private sector in the full operation of prison. Corrections Act 1994 Victoria (Australia) allows the minister responsible for prison in Victoria to make agreements for the construction of prisons by the private sector (Sands et al., 2019). In United States, there is also a special law that allows the establishment of private prison. Referring to D.-Y. Kim (2022), the federal and state governments in the United States began to enact laws for the privatization of prisons when they faced with increasing prison populations, imprisonment costs and court interventions that had occurred since 1983.

### 4.2.2. Politic actor

After being legalized by the law that allows private prison, implementation of “private governance” model is largely determined by decisions of policy makers. The decision of policy makers to contract out the implementation of their policies to private sector is a political decision (Henry, 1995 in Price & Riccucci (2005)). The decision of policy makers is inseparable from the influence of private prison companies and labor unions.

In the context of United States, Price & Riccucci (2005) stated that private prison companies can influence decision makers at the state level to privatize prison. Private companies are political actors in that they seek to influence law, regulation, and public opinion, all of which have implications for the financial success of the company (Burkhardt, 2019). With their large financial capacity, private companies often lobby elected officials who will have an impact on private prison. Private prison companies, including CCA and The GEO

Group, have spent millions of dollars on lobbying and campaign contributions, both at the state and federal levels in United States (Mason, 2013).

Labor unions are also seen as important players in decisions to privatize government operations (Price & Riccucci, 2005). According to Price & Riccucci (2005), union power politics (such as union support for political candidates, political contributions, and lobbying) can influence government decisions to privatize. In England and Australia, prison union issues have been identified as a driving force behind the establishment of private prison. Growing impatience by governments with perceived union barriers has been identified by R. Harding (2001) and R. W. Harding et al. (2019) as a prerequisite for prison privatization. Prison officers and their unions are seen as obstacles to introducing new employment methods, prisoner programs, etc. (Le Vay, 2015). Privatization has been used to curb the power of the public workforce and has been an effective strategy for saving money on wages and curbing social rights (Daems & Vander Beken, 2018). The emergence of private prisons in the UK (at that time) was focused on addressing a more pressing problem, namely what was perceived to be the intransigence of prison officer unions (Allen & English, 2013; Newburn, 2010).

Implementation of “hybrid management” and service infrastructure” model also depends on the decision of policy makers. As explained by (Aisyah et al., 2024a), the existence of “hybrid management” model is the result of adaptation from considerations of the implementation of the “private governance” model in United States. The existence of “hybrid management” model, both in France and Japan, is influenced by the spread of the implementation of “private governance” model (Aisyah et al., 2024a). However, the two countries did not immediately choose “private governance” model. Both countries want to have more control over prison by not allowing private involvement in custody service. According to Cabral & Saussier (2013), French government changed its initial plan of full privatization (referring to “private governance” model) to partial transfer (referring to “hybrid management” model) due to several political discussions. Japanese politicians saw the benefits of Western-style privatization, but did not blindly follow the trend started by British Prime Minister Thatcher or American President Regan (Leighton, 2014). So, it can be said that the determinant of choosing “hybrid management” model is the policy maker's decision not to implement “private governance” model and to adapt to it.

The influence of policy makers' decisions to implement “service infrastructure” model is demonstrated by experiences of Victoria (Australia) and Ontario (Canada). In 2000, there was a change in the political environment in Victoria (Australia) where one of the signs was the election of Bracks Government which meant a different approach to PPP adopted by Victoria (English & Baxter, 2010). The different approach to PPP in Victoria according to English & Baxter (2010) refers to “service infrastructure” model. In Ontario (Canada), the initial implementation of “service infrastructure” model in 2006 was carried out by decision of liberal government elected after the end of the previous government. The prison PPP model implemented in Ontario (Canada) by the previous government was “private governance” model represented by the establishment of private prison. Since 2006, the liberal government's approach to prison delivery has been to maintain public operations and ownership, but use a certain form of PPP to provide prisons through the Alternative Finance Procurement scheme (Buitenhuis, 2013).

#### 4.2.3. Politic culture

Prison privatization in United States (referring to “private governance” model) is a result of the rise of political trends in conservatism in social control and neoliberalism in economic policy since the 1970s (Jing, 2010). Conservative social control, according to Jing (2010), attributes the causes of crime more to individual rational choices than to adverse social

conditions, so this philosophy requires a punishment-centered custody state as the primary form of crime control and uses widespread criminalization and tightening punishment and corrections administration. As a result, criminal justice policies directly cause an explosion in the prison population, which in turn causes overcrowding and increased budget pressures (Jing, 2010). Meanwhile, the rise of neoliberal economic policies encourages the formation of a minimal and indirect state apparatus. Neoliberal ideology requires the state to shift government spending to the private sector and encourages the government to seek cost efficiency by turning to the private sector (Jing, 2010).

Are the implementation of other prison PPP models influenced by these two political trends? The increase in prison population and overcrowding in countries implementing models other than “private governance” is evidence of the existence of a conservative political trend in social control. The extent of criminalization efforts in countries can be identified as a characteristic of conservative social control that causes an increase in prison population and overcrowding. However, the government's abdication of social responsibility in prison rehabilitative efforts is doubtful in the three prison PPP models other than “private governance”. As stated by Jing (2010), the philosophy of conservative social control views individuals as being responsible for their behavior so that conservative social control policies abdicate the government's social responsibility, ignore rehabilitative goals and apply severe punishments.

The three prison PPP models other than “private governance” have the potential to not release their main responsibilities in rehabilitative efforts because management and administration in prisons remain the authority of government (prison authority), not the private sector. With this prison management and administration, the prison authority controls all implementation of services in prisons, including correctional services. Although the private sector is involved in fulfilling correctional services in the aspect of amenity and/or service (in “hybrid management” and “contracting out certain limited functions” model), this model positions the prison authority as the controller of these correctional services. This means that conservatism in social control (especially in the treatment of prisoners) in the three prison PPP models is doubtful.

However, another characteristic of conservatism in social control in the three prison PPP models cannot be denied with the increase in prison population and overcrowding in countries that implement those prison PPP models. Criminalization efforts and the imposition of prison sentences are within the scope of the authority to determine criminal sentences, while rehabilitative efforts aimed at prisoners are within the authority to implement criminal sentences (the authority of correctional institutions or prisons). The characteristic of conservatism in social control is more inherent in the criminal justice apparatus that has the authority to determine sentences compared to the apparatus that implements sentences in the correctional system. When the characteristic of conservatism in social control is not identified in the treatment of prisoners in the implementation of prison sentences, it is necessary to further identify the possibility of political trends in social control other than conservatism that do not ignore the rehabilitative goals of prison.

Referring to Garland (2001), orientation of rehabilitative goals in the implementation of criminal punishment is contained in policy framework of penal welfarism. Penal welfarism has become an established policy framework in England and America in the 1970s which has a basic axiom that punishment should be a rehabilitative intervention and not a retributive and negative punishment (Garland, 2001). According to Garland (2001), this basic axiom gives rise to a new network of interrelated principles and practices such as the effectiveness of

prisoners treatment; prison regime that emphasizes the goal of re-education and the importance of reintegrative support after release; and so on.

Analyzing the opinions of Jing (2010) and Garland (2001), the author makes a distinction between influence of political trends in social control for implementation of “private governance” model and implementation of models other than “private governance”. The implementation of “private governance” model is influenced by the political trend of conservatism in determining and implementing criminal penalties. Meanwhile, the implementation of models other than “private governance” is influenced by political trends in social control in the form of conservatism in determining criminal penalties and penal welfarism in implementing prison sentences.

Then, can the neoliberal political trend in economic policy also be confirmed to exist in countries that implement the PPP prison model other than “private governance”? Neoliberal economic policy encourages the formation of a minimal and indirect state apparatus as shown in the characteristics of “private governance” model. The government cannot control daily life in prisons because prison management and administration as well as custody aspects are the authority of the private sector.

The three models other than “private governance” still position the government as the controller of daily prison life considering that management and administration are the authority of the prison authority so that the government's role is direct in prison management. The three models also exclude the order (custody) aspect in prison correction services from the scope of private authority. Therefore, the government's role is not minimal and remains direct in prison management. In managing many prisoners amidst limited staff and budget resources, prison administrators make their own adaptation efforts to remain responsible for achieving correction goals, namely by involving the private sector. These adaptation efforts are considered pragmatically by considering that the private sector can be involved in providing limited services to support the achievement of prison correction goals. Modern prisons require health, education, training, welfare, food, building maintenance, and many others, which are increasingly unable to be provided directly by the government (R. W. Harding et al., 2019). Therefore, it is very natural that the government provides these services indirectly through contracts with the private sector. Thus, the implementation of the three models other than “private governance” is not too influenced by the political trend of neoliberalism in economic policy.

### 4.3. Discussion

The explanation of the various considerations for selecting the prison PPP models, which are grouped into instrumental and political explanations, by themselves provide information about the process of implementing the prison PPP models. The process begins with demands for improving prison conditions caused by the problem of increasing prison populations and overcrowding; and demands for cost savings caused by the limited state budget for prison construction and/or operation. The combination of these two demands encourages the involvement of the private sector in prisons to achieve effectiveness and efficiency in the prison services. The motivation for achieving effectiveness and efficiency to respond to these demands varies according to the four prison PPP models considering the differences in the regulation of the private sector's authority in prisons (construction and/or operation) determined by each prison PPP model.

The difference in the scope of private sector involvement as a place to achieve effectiveness and efficiency in responding to demands for improving prison conditions and demands for cost savings is accompanied by differences in regulations or policies that support the implementation of each prison PPP model. The implementation of “private governance”

model is highly dependent on the law that legalizes private prison. When the law exists (which represents political decision), prison administrators can implement “private governance” model by making and implementing contracts for the establishment and operation of private prisons. Thus, the decision to implement “private governance” model is political and administrative decision. This political decision is influenced by political culture in the form of conservatism in social control and neoliberalism in economic policy.

Meanwhile, implementation of the three models other than “private governance” does not depend on the existence of law that legalizes private prison. The implementation of “hybrid management” and “service infrastructure” model is sufficiently supported by regulations on PPP in the provision of public infrastructure. Implementation of “contracting out certain limited functions” model does not need to be supported by regulations on PPP in the provision of public infrastructure considering that the model does not regulate private involvement in prison development.

In the case of the emergence of “service infrastructure” and “contracting out certain limited functions” model (as result of the adaptation of “private governance” model implementation), the author found that results of “private governance” model implementation became a consideration in choosing “service infrastructure” and “contracting out certain limited functions” model. The results of the implementation in question are in the form of evidence or arguments about the poor performance of private prison and evidence that shows faster achievement of budget efficiency in private involvement in certain services.

With all considerations, implementation of the three models other than “private governance” will depend on the decision of policy makers, whether to implement the model or not. The implementation of “hybrid management” and “service infrastructure” models depend on the administrative decisions of policy makers who receive political support from political actors. This political support is influenced by the culture of penal welfarism which is oriented towards the rehabilitation aspect of prisoners. If the decision to implement the “private governance” model is a political and administrative decision, the decision to implement “hybrid management” and “service infrastructure” model is an administrative decision that receives political support from political actors. The decision to implement “contracting out certain limited functions” model is purely an administrative decision that can be better understood in an instrumental explanation. The absence of private involvement in prison construction, as regulated in the “contracting out certain limited functions” model, may be a factor in the implementation of this model not receiving much attention from political actors. As previously explained, prison construction requires very high capital costs. The large amount of these costs is certainly a special concern among political actors because it involves the burden of large state costs.

## 5. Conclusion

The reasons for diversity of prison PPP models are inseparable from the implementation process of each prison PPP model which is also diverse. In the process of implementing each prison PPP model, there are various considerations. In general, these various considerations can be grouped into the categories of instrumental explanations and political explanations. If the decision to implement “private governance” prison PPP model is political and administrative decision, then the decision to implement the “hybrid management” and “service infrastructure” prison PPP models is an administrative decision that has political support from political actors based on the culture of penal welfarism. The decision to implement the “contracting out certain limited functions” model is purely an administrative

decision that can be better understood in an instrumental explanation. Implementation of the three prison PPP models other than “private governance” can be stated as a form of adaptation by prison administrators to remain responsible for achieving correctional goals amidst limited staff and budget resources.

## 6. References

- Aisyah, S. S., Meliala, A. E., & Sulhin, I. (2024a). A Comparison Study in Various Countries. Available at SSRN 4885861.
- Aisyah, S. S., Meliala, A. E., & Sulhin, I. (2024b). *Public-Private Partnership Model of Correctional Institution: A Comparison Study in Various Countries*.
- Allen, R., & English, P. (2013). *Public-private partnerships in prison construction and management*.
- Bergere, F. (2016). Ten years of PPP: An initial assessment. *OECD Journal on Budgeting*, 15(1), 31–123.
- Buitenhuis, A. J. (2013). *Public-private partnerships and prison expansion in Ontario: Shifts in governance 1995 to 2012*. University of Toronto.
- Burkhardt, B. C. (2019). The politics of correctional privatization in the United States. *Criminology & Public Policy*, 18(2), 401–418.
- Cabral, S., & Saussier, S. (2013). Organizing prisons through public-private partnerships: A cross-country investigation. *BAR-Brazilian Administration Review*, 10, 100–120.
- Cornwell, D. J. (2021). *Prisons, Politics and Practices in England and Wales 1945–2020: The Operational Management Issues*. Springer Nature.
- Daems, T., & Vander Beken, T. (2018). *Privatising punishment in Europe?* Routledge Abingdon.
- English, L., & Baxter, J. (2010). The changing nature of contracting and trust in public-private partnerships: The case of Victorian PPP prisons. *Abacus*, 46(3), 289–319.
- Garland, D. (2001). *The culture of control: Crime and social order in contemporary society*. Oxford University Press.
- Gilroy, L. C., Summers, A. B., Randazzo, A., & Kenny, H. (2010). *Public-Private Partnerships for Corrections in California*. Los Angeles: Reason Foundation.
- Grierson, J. (2018). *Why HMP Birmingham has been brought back under state control*. The Guardian. <https://www.theguardian.com/society/2018/aug/20/why-hmp-birmingham-has-been-brought-back-under-state-control>
- Grimsey, D., & Lewis, M. (2007). *Public private partnerships: The worldwide revolution in infrastructure provision and project finance*. Edward Elgar Publishing.
- Harding, R. (2001). Private prisons. *Crime and Justice*, 28, 265–346.
- Harding, R. W., Rynne, J., & Thomsen, L. (2019). History of privatized corrections. *Criminology & Public Policy*, 18(2), 241–267.
- HM Chief Inspector of Prison. (2012). *Report on an announced inspection of HMP Birmingham*. <https://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/birmingham-2012.pdf>
- Ingram, H. M. (1997). *Policy design for democracy*. Lawrence: University Press of Kansas.
- Jing, Y. (2010). *Prison privatization: a study of the causes and magnitude*. (No Title).
- Kim, D.-Y. (2022). Prison privatization: An empirical literature review and path forward. *International Criminal Justice Review*, 32(1), 24–47.
- Kim, Y., & Price, B. E. (2014). Revisiting prison privatization: An examination of the magnitude of prison privatization. *Administration & Society*, 46(3), 255–275.
- Le Vay, J. (2015). *Competition for prisons: Public or private?* Policy Press.

- Leighton, P. (2014). "A Model Prison for the Next 50 Years": The High-Tech, Public-Private Shimane Asahi Rehabilitation Center. *Justice Policy Journal*, 11(1).
- Liu, T., & Wilkinson, S. (2015). Critical factors affecting the viability of using public-private partnerships for prison development. *Journal of Management in Engineering*, 31(5), 5014020.
- Macaulay, F. (2013). Modes of prison administration, control and governmentality in Latin America: Adoption, adaptation and hybridity. *Conflict, Security & Development*, 13(4), 361–392.
- Mason, C. (2013). *International growth trends in prison privatization*. Sentencing Project Washington DC.
- National Audit Office (NAO). (2003). *The operational performance of PFI prisons*. <https://www.nao.org.uk/wp-content/uploads/2003/06/0203700.pdf>
- Newburn, T. (2010). Diffusion, differentiation and resistance in comparative penalty. *Criminology & Criminal Justice*, 10(4), 341–352.
- Nicholson-Crotty, S. (2004). The politics and administration of privatization: Contracting out for corrections management in the United States. *Policy Studies Journal*, 32(1), 41–57.
- O'Neill, D., Sands, V., & Hodge, G. (2020). P3s and social infrastructure: three decades of Prison Reform in Victoria, Australia. *Public Works Management & Policy*, 25(3), 214–230.
- Oshima, K. (2016). Public-private partnerships, dividing operational stage, and optimal governance structures. *Public Organization Review*, 16, 443–459.
- Price, B. E., & Riccucci, N. M. (2005). Exploring the determinants of decisions to privatize state prisons. *The American Review of Public Administration*, 35(3), 223–235.
- Sands, V., O'Neill, D., & Hodge, G. (2019). Cheaper, better, and more accountable? Twenty-five years of prisons privatisation in Victoria. *Australian Journal of Public Administration*, 78(4), 577–595.
- Schneider, A. L. (1999). Public-private partnerships in the US prison system. *American Behavioral Scientist*, 43(1), 192–208.
- Skinns, D., & Skinns, D. (2016). Neo-liberalism and austerity, outsourcing and punishment. *Coalition Government Penal Policy 2010–2015: Austerity, Outsourcing and Punishment*, 201–228.
- Stephenson, A. M. (2019). Private prison management needs reform: Shift private prisons to a true public-private partnership. *Pub. Cont. LJ*, 49, 477.
- Van Herk, E. (2016). *Public-Private Partnership*. Europris Real Estate and Logistics Expert Group.
- Wacquant, L. J. D. (2009). *Prisons of poverty* (Vol. 23). U of Minnesota Press.