

The Urgency of Intergrated Justice System for Restorative Justice Regulation: A Solution to the Prison Overcapacity in Indonesia

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Abstract

The overcapacity of prison in Indonesia has been a problem in Indonesia's law system. Restorative Justice is one of the solutions that the law maker and officers in the law system offer to the society. Ironically, restorative justice has not been regulated properly in the criminal procedural law but only in the law No. 11 of 2012 about Juvenile Justice System. The application in general is regulated seperately by three different legal subsystems, namely Police, Prosecutor, and Supreme Court. The unharmony of the regulation without a standing regulation shows the absent of the certainty of law. This paper will use normative legal research with statutory and conceptual approach to analyze current regulation and legal vacuum (rechtsvacuum) in restorative justice as part of criminal procedural law. The urgency of regulation of restorative justice as legal substance will also provide integrated system for the legal structure and finally establish restorative justice as part of legal culture in Indonesia.

Keywords: Restorative Justice, Integrated Justice System, Prison Overcapacity.

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I. INTRODUCTION

According to data from the Directorate General of Corrections of the Ministry of Law and Human Rights of the Republic of Indonesia (Kemenkumham) as of 12 September 2021, the capacity of prisons in 33 Regional Offices (LKkanwil) is for 134,835 thousand people,

but the number of residents reaches 271,007 people. This means that there is an overcapacity of 136,173 prison inmates or double the total (101%). This is a phenomenon that occurs in all prisons in Indonesia. Prisons in Riau recorded the largest overcapacity, reaching 230.42%. The capacity of the prison only reaches 4,067 people but is inhabited by 13,438 people. Next, prisons in North Kalimantan and East Kalimantan (still combined) have overcapacity of 218.2%. With a capacity of only 3,977 people, prisons in that area are inhabited by 12,655 people (Viva, 2022).

Overcrowding causes various problems and the lack of success of correctional programs. The correctional program cannot run properly and effectively because there are too many residents. This causes riots and drug trafficking in correctional institutions/detention centers, and disease transmission. Many occupants fled because the ratio of the number of occupants and security officers was unbalanced. All of this then increased the possibility of repeat crimes (recidivism) due to failures in the coaching process.

Various losses and violations of human rights must be faced by convicts who are serving their sentences. The spread of the Covid 19 virus that has gripped the general public is becoming increasingly unavoidable in overcapacity prisons because there is no possibility to implement physical distancing. One of the government's efforts is through Regulation of the Minister of Law and Human Rights Number 10 of 2020 and Decree of the Minister of Law and Human Rights Number M.HH-19.PK/01.04.04 concerning Expulsion and Release of Convicts and Children Through Assimilation and Integration in the Context of Prevention and Control of the Spread COVID-19 (Kanwil Sulawesi Selatan, 2022). Expulsion and Release of Prisoners and Children through Assimilation and Integration in the Context of Prevention and Mitigation of the Spread of COVID-19 reaps many pros and cons from various groups. The community's fear of the possibility of recidivism increased significantly due to the lack of monitoring and assistance provided to ex-convicts who were released through the assimilation and integration.

Factors causing the overcrowding of inmates in correctional institutions occur not only because of the increase in crime but also due to the penal system (Mulyono, 2016). The unsatisfactory solution from the government's actions has prompted the need for a new breakthrough in the Indonesian legal system so that it can immediately resolve the problem

of overcapacity in prisons. Restorative Justice is one of the designs that is expected to help the legal system in Indonesia to increase the effectiveness of punishment and find other solutions besides punishment in the form of imprisonment.

Restorative Justice is based on the basic principle that criminal behavior not only violates the law, but also injures victims and society (Adiesta, 2021). Every effort to overcome the results of criminal behavior must involve the perpetrators as well as the aggrieved parties, including providing what is needed for victims and perpetrators in the form of assistance and support (Rocky, 2022). The Restorative Justice approach is a thought for the development of the criminal justice system which has so far been sidelined from the existing mechanisms in the criminal justice system. On the other hand, the Restorative Justice approach is also a framework for thinking that is actually quite old and can be used in response to a crime by law enforcers (Ningsih, 2003).

This research on Restorative Justice will be one of the new breakthroughs in the field of law in Indonesia. This concept will not only help reduce overcapacity rates in prisons throughout Indonesia, but will also help the development of the Indonesian legal system to become more advanced following developments in both the world's legal system and increasing population numbers. This research is expected to help legislators in researching the concept of Restorative Justice so that it can soon become positive law that will help with Indonesian legal problems.

II. RESEARCH METHOD

This paper is based on the results of normative legal research using a statutory approach and a conceptual approach. These two approaches are used to build arguments in answering the legal issues raised in this study. The statutory approach is used to examine all laws and regulations related to the concept of Restorative Justice in the criminal justice system in Indonesia.

A conceptual approach that departs from the views of experts and doctrines in the field of law is used to explain concepts for which conceptual definitions cannot be found in regulations. To discuss the issues raised in this study legal materials were used, both in the form of primary legal materials and secondary legal materials. The primary legal materials used include Law Number 8 of 1981 concerning the Criminal Procedure Code and several other laws related to Restorative Justice. Other primary legal materials will also be obtained

by interviewing several relevant state agencies, such as prosecutors, judges and the National Police to obtain maximum research results and be on target.

Secondary legal material includes legal literature that is relevant to the legal issues discussed. Apart from that, non-legal materials were also used to support this writing, such as news in print and online media. The research materials that have been collected are then processed and analyzed qualitatively with the techniques of legal reasoning and argumentation, such as legal construction and legal interpretation. Furthermore, the overall research results are presented descriptively in the form of narrative descriptions.

Data collection in this study will use an interview system with related parties, a method of comparing law with other countries through legal literature. The data will be analyzed and processed into a paper which will then be published as a journal which is expected to become one of the literatures that helps and encourages the implementation of Restorative Justice and able to provide solutions in reducing overcapacity rates in Correctional Institutions in Indonesia.

III. DISCUSSION

Restorative Justice as Law Concept

Criminal prosecution in Indonesia still views the concept of crime as an independent event; there is a mistake that must be accounted for; in this way the problem is solved. Mistakes can only be redeemed by undergoing suffering so that one's eyes are directed to the past, not to the future (Rommelink, 2003). According to Bagir Manan, Indonesian law enforcement can be said to be "communis opinio doctorum", which means that law enforcement is now deemed to have failed in achieving the goals required by the law (Priyatno, 2007).

Restorative justice contains the meaning that is: "a rapprochement and redemption of mistakes that the perpetrators of a crime (their families) want to carry out against the victims of the crime (their families) (peace efforts) outside the court with the intent and purpose that legal problems that arise as a result of the occurrence of these criminal acts can be resolved properly by achieving agreement and agreement between the parties (Arief, 2022). The main principle of Restorative Justice can occur with the participation of victims and perpetrators, residents can participate as facilitators in resolving cases, so that there is a guarantee that children or perpetrators will no longer disturb the harmony that has been

created in society (Herlina, 2004). In applying the principles of Restorative Justice, every country depends on legal system is used in each country.

According to Kelli Muddell and Sibley Hawkins, reparative justice measures seeking to remedy, in some way, the wrong done to victims as a result of human rights violations subjected to them (Muddell, 2018). This is of course in harmony and/or in line with the concept of Restorative Justice where the concept of Restorative Justice aims to empower victims, perpetrators, families and communities to correct an unlawful act by using awareness and conviction as a basis for improving social life explaining that the Restorative concept Justice is basically simple (Rosidah, 2014).

The presence of Restorative Justice as one of the legal concepts that is developing and starting to be applied in Indonesia following other countries that have previously applied this concept is expected to bring a new wind to the concept of Indonesian law. Restorative justice is a process by which all parties involved in a particular violation come together to resolve collectively how to deal with the consequences of the violation and the implications for the future (Marshall, 1999).

Application of Restorative Justice in the Indonesian Legal System

The current application of Restorative Justice in Indonesia has not been fully implemented in light criminal acts or known as tipping. This is considered because the criminal system in Indonesia aims to provide a deterrent effect or aims to avenge the actions of victims against perpetrators of criminal acts. The criminal justice system in Indonesia still adheres to the retributive theory where retribution for crimes is more important than the rights of victims. The existing judiciary only focuses on retributive justice in the hope that there will be a deterrent effect on perpetrators without regard to the effectiveness of this judiciary which will cost money, time and energy is wasted, because in fact the tipping can apply the Restorative Justice system to several cases.

At first, the Restorative Justice system was born with the aim of improving the international justice system as well as in Indonesia itself, because actually based on customary law in Indonesia many people have resolved problems by holding deliberations (Kurnia, 2015). The placement of restorative justice in the criminal justice system is also in accordance with the use of the ultimum remedium principle where punishment is only used when other methods no longer work. The application of Restorative Justice needs to be

treated as *primum remedium* so that deliberative mediation can be carried out first, namely by meeting the two parties.

Currently the application of Restorative Justice in Indonesia is only in certain fields and does not apply to all criminal acts. Restorative justice can be applied in the cases of minor criminal acts, in cases of children, in cases of women who are in conflict with the law, and in cases of narcotics. The cases of minor crime or so-called *tipiring* applying Restorative Justice as stipulated in articles 364, 373, 379, 384, 407, and in article 407 of the Criminal Code with a loss not reaching IDR 2,500,000. The application of Restorative Justice, namely the existence of penal mediation, this requires a process in its application because true minor criminal acts in general are criminal offenses (*delicts*) violations which in the Criminal Code are placed in book III and it can be concluded that the nature of *Tipiring* is acts of complaint action Procedures for Investigation of Minor Crimes so that cases can be examined with simpler procedures, penal mediation is one of the solutions in reducing the number of inmates in prisons considering that currently prisons have overcapacity (Nadyanti, 2018).

Restorative Justice is a thought that responds to system development criminal justice by focusing on the need to involve the community and victims who feel excluded from the mechanisms that work in the existing criminal justice system (Yudaningsih, 2014). Indonesia began implementing Restorative Justice with various conditions, namely that the suspect was the first time to commit the crime, the crime was only punishable by a fine or threatened with imprisonment of not more than 5 (five) years, and the crime was committed with the value of the evidence or the value of the loss incurred as a result of a crime not more than Rp. 2,500,000. These conditions are used by the Indonesian justice system to apply Restorative Justice to perpetrators of criminal acts, thereby reducing the existence of a justice system and it is believed to be able to reduce overcapacity in prisons.

In particular, the litigation of child cases has been obliged to apply the Restorative Justice system, because children are the next generation of the nation so in order to create a clean image and prevent mental disorders resulting from prisons, Restorative Justice is believed to be a solution for child cases. The goal is for the perpetrator to admit the act and if possible be responsible too.

Head of the National Police's Criminal Investigation Agency (Kabareskrim)

Commissioner General Agus Andrianto stated that from 2021 to March 2022, the National Police used restorative justice in 15,039 cases. This number increased by 28.3% from the previous year, namely 9,199 cases. On the other hand, in a hearing (RDP) with Commission III of the DPR on March 23 2022, the Deputy Attorney General for General Crimes (Jampidum) of the Attorney General's Office Fadil Zumhana said that 823 cases of general crimes had been prosecuted using a restorative justice approach (KakiBukit, 2022). If we look at the reports that have been submitted by the police and prosecutors, a significant increase has taken place where from 2021 to mid-2022, around 15,862 cases that might become criminal cases have been successfully resolved with restorative justice and reduced the burden on prisons throughout Indonesia.

Obstacles in the Implementation of Restorative Justice in Indonesia

The development of Restorative Justice is supported by judicial institutions with a Circular Letter from each relevant agency regarding the implementation of Restorative Justice. This certainly has a positive effect with the number of cases using restorative justice increasing. However, it cannot be denied that the implementation of Restorative Justice in Indonesia is still premature and this can be seen from the following obstacles:

1. The implementation of Restorative Justice is only through Agency Regulations without an overriding Law.

At present the laws and regulations that regulate restorative justice are only found in Law No. 11 of 2012 in lieu of Law No. 3 of 1997 concerning the Juvenile Criminal Justice System (SPPA). In the SPPA Law, the process of restorative justice is known as diversion. The obligation to carry out diversion from investigation, prosecution to examination of child cases in district courts is only for children who are subject to imprisonment under 7 (seven) years and are not a repetition of a crime.

The implementation of restorative justice in courts other than children does not yet have a specific law to protect its implementation in the Indonesian justice system. At present the implementation of Restorative Justice only relies on State Police Regulation Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice for the police. The Attorney General's Office relies on Regulation of the Attorney General Number 15 of 2020 and JAM Pidum Circular Number: 01/E/EJP/02/2022 concerning the Implementation of Termination of Prosecution Based on Restorative Justice.

The implementation of Restorative Justice carried out by the prosecutor's office and the police is different from that implemented in SPPA. Article 5 of the SPPA Law states that the Juvenile Criminal Justice System must prioritize the Restorative Justice approach. When compared to article 3 of the Attorney General Regulation Number 15 of 2020 it only states that the Public Prosecutor has the authority to close cases for the sake of law, while the State Police Regulation Number 8 of 2021 does not explain that there is an obligation to carry out Restorative Justice in every possible case.

Restorative justice arrangements that are individually regulated by the prosecutor's office and the police show that the arrangements for the implementation of restorative justice are not well integrated. Differences in the implementation of restorative justice show legal uncertainty in law enforcement. Some differences in the implementation of Restorative Justice by comparing the policies of the prosecutor's office and the police are as follows:

No.	Comparison	Public Prosecutor	Police
1.	Implementing Regulations	Peraturan Jaksa Agung Nomor 15 Tahun 2020	Peraturan Kepolisian Negara Nomor 8 Tahun 2021
2.	Process	Prosecution	Inquiries and investigations
3.	Time limit	14 days	None
4.	Condition	<p>The material requirements regulated in article 5 include:</p> <ul style="list-style-type: none"> a. The suspect is a first time offender; b. Criminal acts are only punishable by fines or threatened with imprisonment of not more than 5 (five) years; and c. The crime is committed with the value of the evidence or the value of the losses incurred as a result of the crime not exceeding Rp. 2,500,000.00 (two million five hundred thousand rupiah). <p>The formal requirements regulated in article 6 include:</p> <ul style="list-style-type: none"> a. There has been a restoration to its original state which was 	<p>The material requirements regulated in article 5 include:</p> <ul style="list-style-type: none"> a. Does not cause anxiety and/or rejection from the community; b. Does not impact social conflict; c. Does not have the potential to divide the nation; d. Not radicalism and separatism; e. Not a repeat offender of a Criminal Act based on a Court Decision; and f. Not a crime of terrorism, a crime against state security, a crime against corruption and a crime against people's lives.

		<p>carried out by the Suspect by means of:</p> <ul style="list-style-type: none"> i. Returning goods obtained from criminal acts to victims; ii. Compensate for the Victim's losses; iii. Replacing costs incurred as a result of a criminal act; and/or iv. Repairing damage caused by a crime; <p>b. There has been a peace agreement between the victim and the suspect; and</p> <p>c. Society responds positively.</p>	<p>The formal requirements regulated in article 6 include:</p> <ul style="list-style-type: none"> a. Peace from both parties, except for Drug Crimes; and b. Fulfillment of victims' rights and perpetrators' responsibilities, except for drug crimes.
5.	Product	Decree of termination of prosecution	Decree of termination of investigation or investigation
6.	Rules for Special Cases	None	<ul style="list-style-type: none"> a. Electronic information and transactions; b. Drugs; and c. Traffic.

Significant differences in the implementation of restorative justice in the prosecutor's office and the police can be seen especially in the terms of the implementation of restorative justice itself. The Attorney General Regulation Number 15 of 2020 regulates more specifically the limits of criminal acts that can receive restorative justice, while the State Police Regulation Number 8 of 2021 still regulates things quite ambiguously. This will certainly cause differences in the implementation of restorative justice in the prosecutor's office and the police.

One of the very contradictory rules can also be seen in the State Police Regulation Number 8 of 2021 it allows drug offenders with several conditions to receive restorative justice. Attorney General Regulation Number 15 of 2020 article 5 paragraph 8 (c) clearly states that narcotics crimes are exempt from being able to receive restorative justice.

Rational criminal law enforcement consists of three stages, namely the formulation stage (legislative policy stage), the application stage (judicative policy stage) and the execution stage (administrative policy stage). In this case, the legislative policy stage has been skipped and it directly go to the second stage in the application. The missing part in formulation stage impacts the legal subsystems have different application in restorative justice.

2. The Criminal Procedure Code has not regulated the implementation of Restorative Justice

The main operational reference for the criminal justice system in Indonesia is Law Number 8 of 1981 concerning Criminal Procedure Code (KUHP) which adheres to the concept of functional differentiation. This concept causes the practice of law enforcement to become compartmentalized and fragmentary. Each subsystem of the court has a different perspective and has varying impacts on implementation. The unified justice system that has been described earlier also cannot be implemented due to conflicting interpretations in the implementation of each legal apparatus, especially in different agencies. This shows the urgency for reforming the Criminal Procedure Code to form an integrated criminal justice system is not only needed to harmonize restorative justice arrangements, but also the criminal justice system as a whole.

3. The premature system and officer's skill to support Restorative Justice

In juvenile justice system, the officers in charge for restorative justice must receive special training to be able to handle the case with restorative justice system. However in the other justice system, the officers in the prosecutor office and police do not have a special training as in juvenile justice system. The only justice system that has a riding regulation for restorative justice is juvenile justice system. This shows the unreadiness for Indonesia justice system to provide a proper restorative justice to the people.

The number of cases that need restorative justice keep on increasing day by day as the police officers and prosecutors has provided them even without a proper integrated system and digitalization. One of the main conditions to provide restorative justice is that the case needs to be the first criminal act of the suspect. As it is not recorded as a criminal act because it is not going through the legal system, restorative justice also needs to be recorded with digitalized in integrated system so that people will not misuse the restorative justice because of this premature system.

The Urgency of Integrated Justice System for Restorative Justice

The application of restorative justice in criminal justice system has not been integrated well as the legal substances are not integrated. In criminal law, the State needs to have a form of law enforcement with a model of Integrated Criminal Justice System in a pattern including its substance, structure and legal culture (Adiyaryani, 2021). The absent

of an integrated legal substance will also impact to the other parts like the structure and legal culture. The uncertainty and unharmony in legal implementation show the weak legal system in Indonesia. Barda Nawawi Arief in his book entitled "Problems of Law Enforcement and Criminal Law Policy in Combating Crime" states that in order to carry out law enforcement with certainty and justice, it is necessary not only to reform laws and regulations or legal substance reform but also to reform legal structures reform, and legal culture reform (Waskito, 2018).

IV. CONCLUSION

The implementation of restorative justice in Indonesian legal system has been provided widely. However, without a proper legal substance as the foundation for the application and execution stage, the legal system can not be synchronized. The legal system needs an integrated legal system including the renewal legal substance, structure, and culture in accordance of restorative justice. The need of integrated legal standing can solve the different implementations in restorative justice and provide the society with clear understanding of restorative justice. The integrated legal substance can provide the well accordance legal structure and continue with a society that understand restorative justice as part of their legal culture. When restorative justice has been part of the legal culture, the number of overcapacities in prison is hopefully decrease significantly.

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