

The Role of Criminal Law in Reforming The Criminal Justice System: A Case Study of Handling Prison Overcrowding

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ABSTRACT

Overcrowding in Indonesian prisons is a structural problem in the criminal justice system that reflects the repressive nature of criminal law policy. Data from the Directorate General of Corrections (Ditjen PAS) shows that the occupancy rate of prisons exceeds 200% of the ideal capacity, violating the rights of prisoners as guaranteed in the 1945 Constitution and Law Number 12 of 1995 concerning Corrections. Overcrowding has an impact on the increase in violence, the spread of disease, and the failure of coaching programs. One of the main causes of this condition is a punishment policy that focuses too much on imprisonment without considering alternatives such as decriminalization and restorative justice. Most prisoners come from minor criminal cases, including drug abuse in the category of users who are more appropriate for rehabilitation. This policy not only burdens the state budget but also increases recidivism. Studies from various countries show that a rehabilitation-based punishment system is more effective in reducing crime. Therefore, criminal law reform through regulatory revision and the application of alternative punishment are crucial steps in overcoming overcrowding and creating a more equitable correctional system.

Keywords: Criminal Law; Justice System Reform; Prison Overcrowding

INTRODUCTION

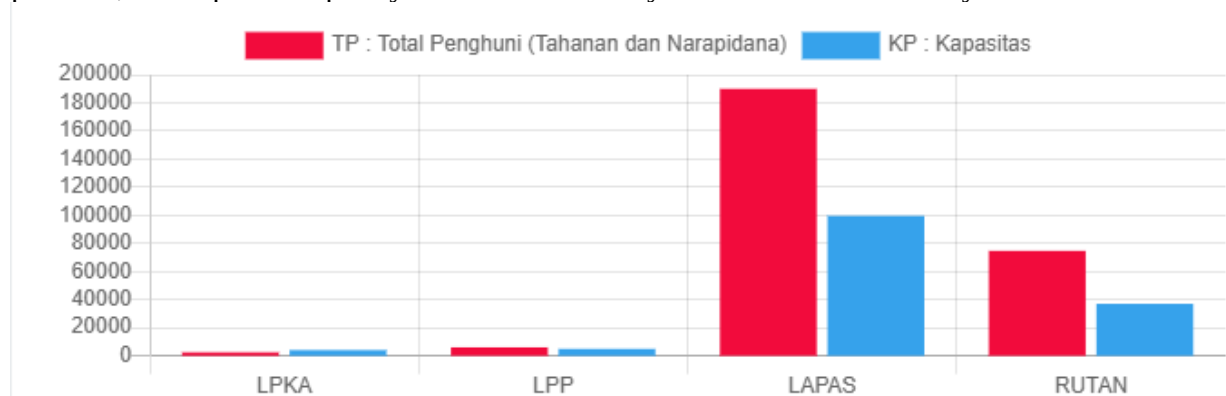
Overcrowding in correctional institutions (Lapas) is not just an administrative issue, but a structural problem in the criminal justice system that reflects the repressive nature of criminal law policy. According to data from the Directorate General of Corrections (DGC), prison capacity in Indonesia is far beyond the limit, with occupancy rates reaching more than 200% of ideal capacity. This condition not only violates the human rights of prisoners guaranteed in Article 28G of the 1945 Constitution and Law Number 12 of 1995 concerning Corrections, but also contributes to the increasing level of violence, the spread of disease, and the failure of development programs.¹ Thus,

¹ Terry, M. (2022). Pemenuhan Hak Atas Kesehatan Narapidana di Lembaga Pemasaryakatan Kelas IIA Tarakan. *Skripsi*. Universitas Borneo, Tarakan.

overcrowding must be understood as a consequence of punitive policies that tend to punish excessively without considering other alternatives such as decriminalization or restorative justice.²

On the other hand, criminal law policies that are still oriented towards imprisonment without considering the effectiveness of punishment also exacerbate this problem. Studies conducted by the Institute for Criminal Justice Reform (ICJR) show that most of the prison population comes from minor crimes, including drug abuse in the user category, which should be more appropriate for rehabilitation rather than imprisonment.³ The excessive use of imprisonment not only burdens the state in terms of budget, but also creates a cycle of recidivism due to the prison environment that does not support the rehabilitation process. Therefore, reform in the criminal justice system, especially through the revision of sentencing policies and the application of alternative punishments such as non-custodial sanctions, is a crucial step in addressing the systemic problem of overcrowding.

The tendency of the criminal justice system that still prioritizes imprisonment as the main solution actually worsens the condition of overcrowding and hampers the effectiveness of prisoner rehabilitation. In line with modern punishment theory that emphasizes aspects of restorative justice, many countries have shifted from retributive-based punishment systems to more humanist and effective approaches, such as community service, penal mediation, and diversion programs for minor offenders. However, in Indonesia, criminal law policy still shows imbalances, where regulations such as the Narcotics Law No. 35/2009 still criminalize drug users without providing a significant portion of rehabilitation options. This has resulted in a high number of prisoners with drug abuse cases, which according to data from the Directorate General of Corrections reaches more than 50% of the total prison population. Instead of solving the problem, this repressive policy creates a vicious cycle in the correctional system.



Source : SDP Public

The figure above shows the comparison between the total population (detainees and prisoners) and the available capacity in various types of correctional institutions in Indonesia, namely LPKA (Lembaga Pembinaan Khusus Anak), LPP (Lembaga

² RIO AGUS, S. E. T. I. A. W. A. N. (2024). *Kebijakan Penegakan Hukum Tanpa Penjatuhan Pidana Untuk Mengurangi Over Crowded Penghuni Lembaga Pemasyarakatan* (Doctoral Dissertation, Universitas Lampung).

³ Fauziah, E., Fatrika, S., & Pratiwi, U. D. (2022). Keselarasan Lembaga Penegak Hukum dalam Implementasi Restorative Justice bagi Penyalahguna Narkotika di Indonesia. *Jurnal Kajian Stratejik Ketahanan Nasional*, 5(1), 6.

Pemasyarakatan Perempuan), LAPAS (Lembaga Pemasyarakatan), and RUTAN (Rumah Tahanan). The red color represents the total number of inmates, while the blue color shows the available capacity. From this graph, it can be seen that the number of residents in LAPAS and RUTAN far exceeds the available capacity, with a particularly striking imbalance in LAPAS, where the total population is almost double the capacity. Meanwhile, in LPKA and LPP, although there is an excess of residents over capacity, the difference is less significant than in LAPAS and RUTAN. This indicates that overcrowding is a serious problem, especially in LAPAS and RUTAN, which requires alternative sentencing policies and justice system reforms to reduce overcrowding in correctional institutions.

In addition, overcriminalization policies set out in various laws and regulations further narrow the space for equitable criminal justice reform. Articles in the Draft Criminal Code (RKUHP) actually expand the criminalization of various actions, including actions that should be resolved outside of criminal channels. For example, articles on insulting the government or moral offenses that have broad interpretive limits, have the potential to increase the number of individuals entering the criminal justice system, lead to imprisonment, and exacerbate overcrowding conditions. If criminal law reform is not directed at reducing reliance on imprisonment and emphasizing more on rehabilitation-based punishment and social reintegration, the overcrowding crisis will continue and threaten the sustainability of the correctional system in Indonesia.⁴

Reform of the criminal justice system in addressing prison overcrowding must begin with a revision of criminal law policy that has been oriented towards retribution-based punishment. An approach that only prioritizes imprisonment has proven ineffective in reducing crime rates, but instead worsens correctional conditions and increases recidivism rates. According to a report by the Institute for Criminal Policy Research (ICPR), countries with criminal justice systems that adopt diversified sentencing policies such as the Netherlands and Norway show much lower recidivism rates than countries with strict imprisonment systems. This proves that criminal law reforms that focus on rehabilitation and social reintegration are more effective in preventing repeat crimes. Therefore, the revision of the Corrections Law as well as the strengthening of alternative sentencing schemes such as social work sentences, restorative justice, and more flexible parole should be a top priority in Indonesia's criminal justice reform.

Furthermore, the reform of the criminal justice system must include improvements to upstream punishment mechanisms, particularly in the judicial process and prosecution policies.⁵ Currently, the practice of criminal law in Indonesia still tends to provide prison sentences even for minor crimes that should be resolved through alternative mechanisms such as penal mediation or diversion. Data from the Institute for Studies and Advocacy for Judicial Independence (LeIP) shows that the majority of cases submitted to the district courts end in imprisonment, without considering other options that are more proportional. In fact, in the modern criminal law system, restorative justice-based approaches have proven to be more effective in reducing the burden on the justice

⁴ Aini, K., & Wibowo, P. (2022). Implementasi Grand Design Penanganan Overcrowded Pada Lembaga Pemasyarakatan Kelas IIA Sibolga. *Innovative: Journal Of Social Science Research*, 2(1), 145-152.

⁵ Narindrani, F. (2020). Penyelesaian Korupsi Dengan Menggunakan Restoratif Justice. *Jurnal Penelitian Hukum De Jure*, 20(4), 605-617.

system and increasing recovery for victims and perpetrators.⁶ Thus, the reform of the criminal justice system must include a paradigm shift among law enforcement officials to no longer make prison the main solution, but rather optimize a fairer and more humane case resolution mechanism.

An evaluation of criminal law policy in the context of prison overcrowding must consider how the current criminal justice system still focuses on a punitive approach without considering its long-term effectiveness. Case studies from various countries show that a punishment system that prioritizes rehabilitation and alternative sentences,⁷ For example, Germany and Portugal have been able to reduce prison overcrowding and recidivism rates. In contrast, in Indonesia, although regulations such as the Corrections Law have been amended, the implementation of these policies is still limited due to the lack of coordination between law enforcement officials and the criminal justice system.⁸ Data from the Institute for Criminal Justice Reform (ICJR) shows that although the concept of restorative justice has been adopted in several policies, its application at the court level is still minimal, especially in cases with minor penalties that should be resolved outside the conventional punishment path.

Furthermore, in reviewing the effectiveness of regulations, it is important to see the impact of overcriminalization policies that continue to expand the categories of criminal acts that can be charged with imprisonment. A study by the Institute for Studies and Advocacy for Judicial Independence (LeIP) revealed that one of the main causes of overcrowding is the high number of prisoners from minor criminal cases, such as drug abuse for personal use and petty theft cases, which should be resolved through diversion or rehabilitation mechanisms. Unselective legal policies in implementing imprisonment will only worsen the condition of the correctional center without providing a long-term solution in reducing the crime rate. Therefore, criminal justice reform does not only need to formally update regulations, but also ensure a paradigm shift in the law enforcement system to be more oriented towards restorative justice and the effectiveness of rehabilitation.

METHOD

This research uses a descriptive qualitative research method, which aims to provide an in-depth description of the role of criminal law in the reform of the criminal justice system, especially in dealing with the problem of overcrowding in correctional institutions (lapas). This method was chosen because it can describe phenomena systematically and critically based on data obtained from various legal sources and the practice of punishment policy in Indonesia.

In this research, data is collected through library research, which includes an analysis of relevant legislation such as the Criminal Code, Criminal Procedure Code, Corrections Law No. 12 of 1995, and Narcotics Law No. 35 of 2009. In addition, secondary data was obtained from reports from relevant institutions, such as the

⁶ SH, R. A. U., Marsha, M. M. K. D. G., & Gusmiranda, A. I. R. S. F. (2024). REKONSTRUKSI SANKSI PIDANA DALAM PERSPEKTIF RESTORATIVE JUSTICE. *JURNAL MOTIVASI PENDIDIKAN DAN BAHASA*, 2(2).

⁷ Hayuningtyas, W. (2024). Pertimbangan Hukum dalam Penentuan Penuntutan dan Pemidanaan (Studi Persepsi Jaksa dan Hakim dalam Putusan No. 2/Pid. Sus-ANAK/2023/PN Pwt). *Jurnal Kajian Hukum dan Sosial (JKHS)*, 1(1), 72-82.

⁸ Silalahi, H., Sahlepi, M. A., & Sidi, R. (2024). Penerapan Hukuman Alternatif untuk Pelaku Kejahatan Ringan Sebagai Upaya Dekongesti Lembaga Pemasyarakatan. *JIIP-Jurnal Ilmiah Ilmu Pendidikan*, 7(5), 4657-4665.

Directorate General of Corrections (Ditjen PAS), the Institute for Criminal Justice Reform (ICJR), the Institute for Studies and Advocacy for Judicial Independence (LeIP), as well as various academic research and scientific journals. The analysis is conducted using a juridical-sociological approach, which examines how criminal law is applied in practice and its impact on the criminal justice system and correctional conditions in Indonesia.

The results of this analysis are expected to provide more effective policy recommendations in addressing overcrowding, by considering the application of restorative justice, alternative sentencing, and correctional policy reform as part of a more just and humane criminal justice system.

RESULTS AND DISCUSSION

Analysis of Criminal Law Policy in Handling Prison Overcrowding

1. Imprisonment Orientation in Criminal Law Policy

Criminal law policy in Indonesia still adheres to a retributive approach that prioritizes punishment in the form of imprisonment, even though the social and economic impacts are increasingly burdening the state. This orientation is evident in various existing regulations, such as in the Criminal Code (KUHP) and Law No. 35/2009 on Narcotics, which tend to prioritize imprisonment as the main sanction.⁹ This approach is rooted in the view that imprisonment can have a deterrent effect on offenders. However, many studies have shown that prisons are not always effective in preventing crime. Instead, prisons provide little guidance, and may even worsen the behavior of inmates, especially those convicted of minor crimes. In many cases, individuals incarcerated for minor offenses often leave prison armed with criminal skills, not rehabilitation, with the potential to re-engage in crime.

A criminal justice system that relies on imprisonment as the primary punishment also ignores more effective and humane approaches, such as alternative sentencing and rehabilitation. The overuse of prisons not only leads to overcrowding, but also adds to the burden on the state budget.¹⁰ Data from the Directorate General of Corrections shows that prison capacity in Indonesia has exceeded 200%, with many prisons overcrowded with prisoners from narcotics cases, minor crimes, to social offenses. Most of them could be solved with rehabilitation, or even just coaching through non-prison sanctions.¹¹ According to a report by the Institute for Criminal Justice Reform (ICJR), more than 50% of Indonesian prison inmates are caught up in drug cases, most of whom are users, not dealers. This confirms that the prison-focused sentencing policy is disproportionate to the type of offense committed.

⁹ Bhakti, J. W., & SH, J. W. B. (2021). *Penerapan Hukum Pidana Dalam Penjatuhan Sanksi Rehabilitasi Bagi Pencandu Narkotika Berdasarkan Undang-Undang Nomor: 35 Tahun 2009 Di Kota Jambi* (Doctoral dissertation, Universitas Batanghari).

¹⁰ Sembiring, E. J., & Wibowo, P. (2022). Overcrowded Pada Rumah Tahanan Negara Dan Lembaga Pemasyarakatan Di Indonesia. *Jurnal Pendidikan dan Konseling (JPDK)*, 4(6), 1814-1818.

¹¹ Mubarakah, A. F., & Larasati, N. U. (2023). Konflik Antar Narapidana di Lembaga Pemasyarakatan Kelas I Cipinang dalam Perspektif Subkultur Penjara. *Deviance Jurnal Kriminologi*, 7(2), 157-171.

Moreover, this imprisonment orientation not only exacerbates overcrowding but also creates new problems in the correctional system. Prolonged detention makes prisons overcrowded places, with limited facilities and health services.¹² These conditions worsen the welfare of prisoners and increase the potential for violence within prisons, which in turn worsens security and order within correctional institutions. It was also found that many prisoners are denied their basic rights, such as access to education or skills training, due to limited space and resources.¹³ In fact, the main purpose of the correctional system is rehabilitation, not just imprisonment, to prepare prisoners to return to society better equipped.

Reform of the criminal justice system in Indonesia needs to shift the focus from a retributive approach to a rehabilitative and restorative approach that is more oriented towards recovery. Countries such as Norway and the Netherlands that have successfully reduced overcrowding levels with more humane policies show that rehabilitation-based approaches are more effective in reducing crime rates.¹⁴ In Indonesia, the application of restorative justice and alternatives to punishment such as community service, diversion, and drug rehabilitation can be a solution to replace imprisonment for minor and non-violent offenders.¹⁵ As such, criminal law reform in Indonesia needs to balance the application of fair punishment and the need to provide reparation for offenders, thereby not only reducing prison overcrowding, but also creating a more equitable and efficient justice system.

1. Contribution of Regulation to Prison Overcrowding

Criminal law regulations in Indonesia often exacerbate the problem of overcrowding in prisons, especially in relation to the application of penalties for drug abuse offenders. The Narcotics Law No. 35/2009 does not clearly distinguish between drug users and dealers, so many users who should receive rehabilitation are instead sentenced to imprisonment.¹⁶ This is due to an approach that focuses on punishment, rather than rehabilitative problem solving. According to research conducted by the Institute for Criminal Justice Reform (ICJR), more than 50% of prison inmates in Indonesia are drug offenders, the majority of whom are users, not dealers.¹⁷ This policy creates a double

¹² Bastian, N. S., Mastur, M., & Pudjo, U. (2020). *Proses Penyidikan Tindak Pidana Narkotika (Studi Kasus Di Badan Narkotika Nasional Provinsi Jawa Tengah)* (Doctoral dissertation, Universitas Wahid Hasyim).

¹³ Darmayatra, M. A. (2024). Strategi Komunikasi Petugas Pemasyarakatan Dalam Proses Pembinaan Narapidana Yang Menjalani Asimilasi di Lapas Terbuka Lombok Tengah. *Jurnal Intelek Dan Cendekiawan Nusantara*, 1(2), 1367-1389.

¹⁴ Reda Manthovani, S. H., Adnan Hamid, S. H., Mh, M. M., Hasbullah, S. H., Wibisana, A. W., Sh, M. H., ... & SH, M. (2022). *Restorative justice terhadap praktik penanganan perkara pidana di Indonesia*. Publica Indonesia Utama.

¹⁵ Nasional, B. P. H., & RI, K. H. D. H. (2023). bphn. Retrieved March 3rd.

¹⁶ Pasaribu, A. S. (2024). *PENEGAKAN HUKUM TERHADAP PECANDU DAN PENYALAHGUNA NARKOTIKA MENURUT UNDANGUNDANG NOMOR 35 TAHUN 2009 TENTANG NARKOTIKA (Studi Putusan Pengadilan Negeri Kisaran Nomor 296/Pid. Sus/2021/PN. Kis)* (Doctoral dissertation, Magister Hukum, Universitas Islam Sumatera Utara).

¹⁷ Wahyuno, F. T. (2023). Relevance of Sanctions Prison Crime Against Narcotics Abuser. *DELICTUM: Jurnal Hukum Pidana Islam*, 2(1), 12-12.

burden: first, it increases the number of prisoners who could have been rehabilitated, and second, it worsens the overcrowding of prisons.¹⁸

The burden posed by the implementation of the Narcotics Law No. 35/2009 is even clearer when looking at the fact that prisons in Indonesia are already overcapacity, meaning that this policy not only fails to achieve the goal of rehabilitation, but also worsens the quality of corrections itself. Imprisoning people who use drugs not only increases overcrowding, but also provides no solution to the problem of drug abuse itself. A report by the Institute for Research and Advocacy for Judicial Independence (LeIP) suggests that a more humane and rehabilitation-based approach for people who use drugs could reduce the burden on prisons and increase the chances of recovery for individuals. Without clear distinctions in the law, people who use drugs remain trapped in an imprisonment system that is incompatible with their rehabilitation needs.

On the other hand, the Criminal Procedure Code (KUHAP) also contributes to prison overcrowding with its lack of application of alternative sentencing mechanisms. In practice, many misdemeanor cases result in imprisonment, even though there are other more appropriate punishment options, such as fines, community service, or rehabilitation. The use of imprisonment as the primary punishment for minor offenses such as petty theft or administrative offenses has unnecessarily increased the prison population. For example, data from the Directorate General of Corrections shows that more than 60% of prison inmates are convicts of cases with minor penalties that could have been resolved in a more proportional and effective manner.

The lack of application of alternative punishment mechanisms in KUHAP shows a gap in the implementation of punishment policy. Countries with more progressive criminal justice systems, such as Norway and the Netherlands, have long prioritized diversification of punishment, which does not only rely on imprisonment as the main solution. In these countries, mechanisms such as social work, rehabilitation, and restorative justice have proven effective in reducing prison overcrowding and improving social reintegration for offenders. Therefore, Indonesia needs to conduct a thorough evaluation of the implementation of existing criminal law mechanisms, introduce more sentencing options that are more appropriate to the type of offense, and encourage the implementation of rehabilitation policies for drug offenders to reduce prison overcrowding.

2. Lack of Implementation of Restorative Justice in the Criminal Justice System

The implementation of the concept of restorative justice in the Indonesian criminal justice system is still fairly limited, although there have been efforts to integrate it through regulations such as Supreme Court Regulation (Perma) No. 2 of 2012 concerning Diversion in Juvenile Cases. Diversion provides an alternative to resolving juvenile cases in a way that does not involve imprisonment, but focuses more on restoring and improving the behavior of the offender.¹⁹ However, despite the existence of regulations governing this matter, many law enforcement officials are still reluctant to apply restorative justice

¹⁸ Ikhsan, K. (2022). The Relevance between the Determination of Prison Penalties in Formulated Policies and the High Overcapacity in Correctional Institutions: Relevansi Antara Penetapan Pidana Penjara Dalam Kebijakan Formulasi Dengan Tingginya Kelebihan Kapasitas di Lembaga Pemasyarakatan. *Al-Mizan (e-Journal)*, 18(2), 289-310.

¹⁹ Ghoni, M. R., & Pujiyono, P. (2020). Perlindungan hukum terhadap anak yang berhadapan dengan hukum melalui implementasi diversifikasi di Indonesia. *Jurnal Pembangunan Hukum Indonesia*, 2(3), 331-342.

mechanisms, preferring conventional channels that tend to lead to imprisonment. This shows that the implementation of restorative justice in Indonesian criminal justice practice has not been fully optimized and is still limited to certain cases, especially in juvenile cases.

In many cases, especially those involving minor offenses or crimes that do not have a wide impact on society, judges and prosecutors tend to prioritize imprisonment rather than seeking solutions through penal mediation or other diversification of punishment. Restorative justice, which prioritizes meeting between perpetrators and victims to reach a mutual agreement, is often not fully implemented, although it can be a better solution in certain cases.²⁰ The Institute for Research and Advocacy for Judicial Independence (LeIP) notes that the application of restorative justice can reduce overcrowding in prisons and provide more proportional justice, as it provides space for settlements outside the formal justice system without compromising the rights of victims. This is also in line with the principle that justice is not only to punish, but also to repair the relationship between the offender and the victim.

In addition, the application of restorative justice can play an important role in creating a more humane and effective correctional system. With mechanisms such as penal mediation and parole, prisoners can be given the opportunity to serve sentences that are more appropriate to the level of crime committed, while reducing prison overcrowding. According to a report from ICJR (Institute for Criminal Justice Reform), countries with justice systems that prioritize restorative justice, such as Norway and Canada, have succeeded in reducing recidivism and overcrowding in prisons.²¹ In Indonesia, measures such as diversion for juveniles, as well as expanded application of penal mediation in adult criminal cases, can help reduce reliance on imprisonment, potentially making the criminal justice system more equitable and efficient.

Criminal Justice System Reform as an Alternative Solution to Overcrowding

1. Diversification of Sentencing as an Alternative to Imprisonment

Diversification of punishment as an alternative to imprisonment is an important issue in criminal justice system reforms that aim to reduce reliance on imprisonment as the main punishment. The growing problem of prison overcrowding in many countries, including Indonesia, shows that a punishment system that relies too heavily on imprisonment not only risks worsening the social conditions of prisoners, but also contributes to the waste of state resources. Alternative sentencing systems that prioritize rehabilitation and reintegration of offenders into society, such as community service, parole, and progressive fines, offer solutions to address this problem. Countries such as the Netherlands and Norway have long implemented such systems, which have been proven to reduce crime rates and accelerate the rehabilitation of offenders, without adding to the already overcrowded prison system.²²

²⁰ Manullang, H., Sitanggang, R., Sidauruk, S., & Sinaga, E. (2020). Penyelesaian Tindak Pidana Biasa Bermotif Ringan Dengan Restoratif Justice Sebagian Bentuk Upaya Pembaharuan Hukum Pidana. *Nommensen Journal of Legal Opinion*, 64-77.

²¹ Lestari, R. A., Rivanie, S. S., & Soewondo, S. S. (2023). Implementation of Restorative Justice for Narcotic Abusers: A Case Study in the Takalar Public Attorney's Office. *SIGn Jurnal Hukum*, 5(1), 207-220.

²² Mubarak, H., & Yulianti, Y. (2023). Peluang Dan Tantangan Era Baru Sistem Pemidanaan Indonesia. *Restorative: Journal of Indonesian Probation and Parole System*, 1(1), 46-54.

This policy not only reduces prison overcrowding, but also provides opportunities for offenders to improve their behavior through participation in social projects that have a positive impact on society. Research conducted by the National Institute for Criminal Justice Research in the Netherlands shows that the implementation of alternative sentencing can significantly reduce recidivism rates. This is because offenders are given the opportunity to continue interacting with the community and improve themselves, rather than being isolated in prison which tends to worsen their psychological condition.

Similar to Norway, which is known for its more humane and rehabilitative sentencing system, the implementation of alternative sentencing focuses on the reintegration of prisoners into society. Prisons in Norway are designed as places of development, not just punishment, with facilities that support skills training, education, and mental rehabilitation programs. The result of this system is seen in Norway's low recidivism rate, which is one of the lowest in the world. This approach prioritizes close supervision and the integration of various rehabilitation programs that can help prisoners function productively again after release. This confirms that alternative sentencing systems that are more rehabilitative and based on community reintegration can effectively reduce crime rates, without increasing the number of prisons or worsening offenders' social conditions.

However, the implementation of diversified sentencing in other countries, including Indonesia, continues to face a number of challenges. One of the main challenges is the change in society's mindset that tends to see prison as the only effective form of punishment. In addition, an effective supervision system must be implemented to ensure that offenders serving alternative sentences actually carry out these sanctions properly, without violating existing provisions. This requires strengthening oversight institutions and continuous evaluation of programs such as community service or parole. Thus, while alternative sentencing offers a promising solution to reducing prison overcrowding, its success depends on the support of a holistic justice system, as well as a paradigm shift involving the community, law enforcement officials, and correctional institutions.

2. Optimizing Rehabilitation Schemes for Drug Abusers

The current policy approach to punishing people who use drugs in Indonesia still focuses heavily on imprisonment, which is considered the main solution to the problem of drug abuse. However, this approach tends to be ineffective, especially for those trapped in addiction, who need medical and psychological treatment, not just punishment. Drug users, many of whom are individuals with physical and mental impairments due to addiction, cannot be solved by incarceration alone. According to research published by the United Nations Office on Drugs and Crime (UNODC), rehabilitation-focused sentencing can result in higher recovery rates, as this approach allows individuals to return to functioning in society with adequate support.²³

Given these conditions, it is important to introduce alternatives to rehabilitation that are more humane and effective, one of which is by expanding access to rehabilitation outside correctional institutions (Lapas).²⁴ Community-based or outpatient rehabilitation programs provide a more flexible solution for people who use drugs, allowing them to

²³ Pratama, W. A. (2023). *Regulasi Terhadap Penggunaan Kratom (Mitragyna Speciosa) Sebagai Narkotika Jenis Baru* (Doctoral dissertation, Universitas Islam Indonesia).

²⁴ Erna Dewi, E. (2021). *Mediasi Pidana Sebagai Alternative Penyelesaian Perkara Pidana Berbasis Kearifan Lokal*.

undergo rehabilitation without being incarcerated. Research conducted by the WHO shows that community-based rehabilitation involving group therapy, skills training, as well as social support can increase the chances of successful recovery. In addition, outpatient treatment also allows drug users to stay connected to their social environment, which has a big role in supporting long-term recovery.

The importance of introducing rehabilitation outside prisons lies not only in the effectiveness of recovery, but also in reducing overcrowding, which is currently a major problem in Indonesian prisons. Overcrowded prisons cause various problems, such as the spread of disease, violence between prisoners, and lack of attention to rehabilitation. Rehabilitation programs outside of prisons can be a solution to alleviate these burdens, while reducing the very high cost of incarceration. By diverting the majority of drug users who are not involved in other criminal activities to rehabilitation programs, the state can reduce costs and improve the quality of rehabilitation more efficiently, as exemplified by the systems in countries such as Portugal and Sweden, which have successfully integrated drug rehabilitation in their public policies.

Finally, a more rehabilitation-oriented sentencing policy should consider a more holistic approach, taking into account the mental and physical health of drug users. Drug abuse is often rooted in complex psychological, social, and economic factors. Therefore, rehabilitation should include medical support, psychological therapy, and social assistance for social reintegration. According to research published by the National Institute on Drug Abuse (NIDA), this multi-faceted rehabilitation approach is more successful in reducing long-term addiction than a punitive approach. This shows that a criminal justice system that prioritizes rehabilitation is a more humane and effective way to deal with the drug problem in Indonesia.

3. Application of Restorative Justice and Diversion in the Justice System

The implementation of Restorative Justice (RJ) in Indonesia's criminal justice system offers a more humane and rehabilitative approach compared to the traditional punitive system. RJ emphasizes on restoring relationships between victims and offenders, rather than simply imposing punishment. Under this concept, offenders are expected to acknowledge their mistakes, take responsibility, and repair the harm caused, whether through apologies, compensation, or other restorative measures. In addition, victims are given space to voice the impact of the crime on their lives. This approach has proven to be more effective in preventing offender recidivism, as they are not only punished, but also involved in the healing process. However, although RJ has been accommodated in several laws and regulations, such as in Supreme Court Regulation (Perma) No. 2/2012 on diversion in juvenile cases, its application is still limited and uneven across all types of criminal offenses. This shows that there is a gap between the ideal legal concept and the practice in the field.²⁵

Diversion, as a form of RJ in juvenile cases, aims to divert case resolution from formal justice channels to more educational and rehabilitative alternatives. This is particularly important given that the formal justice system often prioritizes punishment over recovery, which can risk damaging a child's future. Diversion provides an opportunity for children to avoid being stigmatized as perpetrators of crime and focus more on rehabilitation and social reintegration. However, despite regulations governing diversion, its implementation is often hampered by the lack of trained human resources,

²⁵ Kurniasi, R. (2024). Penerapan Restorative Justice Terhadap Anak Yang Menjadi Pelaku Tindak Pidana Melalui Diversi. *Unes Law Review*, 6(4), 10821-10828.

such as professional mediators, as well as limited facilities to support the diversion process. The success of diversion largely depends on the willingness of law enforcement officials to apply this approach consistently and measurably, as well as public awareness of its benefits.

On the other hand, reforms in the criminal justice system need to be made to expand the application of restorative justice beyond juvenile and minor criminal cases. This is particularly important to reduce reliance on imprisonment, which is often ineffective in preventing reoffending and only exacerbates the overcapacity of correctional institutions. Restorative justice can be a better alternative for minor offenses, especially those that do not have a major social impact. However, there are major challenges in its implementation, including resistance from law enforcement officials who are more accustomed to prison sentences, as well as a lack of deep understanding of restorative values. More inclusive and comprehensive policies are needed to support the widespread implementation of RJ, especially in terms of clear guidelines and training for law enforcement officers.

The implementation of restorative justice and diversion in Indonesia must be driven by reforms that include not only regulation, but also a change in the law enforcement paradigm itself. The government needs to improve the capacity and skills of law enforcement officials to be more open to non-criminal approaches. In addition, communities also need to be involved in the resolution process, by strengthening the role of communities in supporting the reintegration of offenders into society. Criminal justice reform that includes education on restorative justice, structuring the justice system, and increasing community participation will open up opportunities for the wider application of RJ and diversion. Amidst the challenges, this could be a more sustainable solution, not only to reduce the prison burden, but also to build a fairer justice system that humanizes all parties involved in the legal process.²⁶

CONCLUSION

The analysis of criminal law policy in handling prison overcrowding shows that punishment policy in Indonesia is still oriented towards a retributive approach, namely punishment through imprisonment, although many studies have shown that imprisonment is not always effective in preventing crime. Instead, prisons often worsen the behavior of prisoners, especially those involved in minor cases, and create new problems such as overcrowding that worsen the welfare conditions of prisoners. A criminal justice system that relies on imprisonment ignores more effective and humane alternatives, such as rehabilitation and non-prison sentencing, which can reduce the burden on prisons. One of the main causes of overcrowding is the imposition of prison sentences for drug users who could be rehabilitated. Criminal law regulations, particularly the Narcotics Law, which do not clearly distinguish between drug users and dealers, exacerbate this problem by increasing the number of prisoners who should not be imprisoned. This policy contradicts the principle of rehabilitation, which is more oriented towards the recovery of the offender. In addition, the lack of application of alternative sentencing mechanisms in the Criminal Procedure Code (KUHAP) further exacerbates overcrowding as many minor offenses lead to imprisonment, when they could be resolved through more proportionate means such as community service or fines. To address this issue, it is important to develop a more rehabilitation-focused and restorative approach. Greater implementation of

²⁶ Riyadi, R. (2023). Diversi dalam Kerangka Restorative Justice pada Penanganan Anak yang Berhadapan dengan Hukum. *Jurnal Syntax Admiration*, 4(9), 894-902.

restorative justice and diversification of sentencing can be a solution to reduce prison overcrowding and provide more proportional justice. However, its implementation in Indonesia is still limited and faces challenges, such as the lack of understanding of restorative values among law enforcement officials. Therefore, there is a need for reform in the criminal justice system that does not only rely on imprisonment, but also develops rehabilitation and social integration programs for offenders, in order to create a more humane, efficient and just correctional system.

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