
Implementation of The Concept of *Restorative Justice* in Overcoming *Over Capacity* in Correctional Institutions

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ABSTRACT

The concept of restorative justice as a form of out-of-court settlement is needed to overcome various problems beyond the capacity of prisoners in prisons. Because the overcapacity of prisoners can cause many kinds of problems that exist in correctional institutions. Overcapacity in correctional institutions is influenced by several factors, one of which is the high rate of imprisonment used in existing regulations. The application of the concept of restorative justice can reduce the use of imprisonment to overcome overcapacity in correctional institutions. The research method of legal writing is normative legal research. Restorative justice policies are regulated by international legal instruments and national laws. The results of the study show that the policy of building restorative justice in combating prisoner overcrowding has been contained in the 2000 Vienna Declaration, the Minimum Standard Rules for the Treatment of Prisoners, Law No. December 1995 on Corrections, Perkapolri No. 6 of 2019, Perjak No. 15 of 2020, MARI Badilum Decree No. 1691/DJU/SK/PS.00/12/2020). The implementation of the concept of restorative justice aims to overcome overcapacity in correctional institutions.

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I. INTRODUCTION

Correctional Institution abbreviated (lapas) is a place to provide guidance to prisoners and correctional students in Indonesia. Before the term Lapas was recognized in Indonesia, the place was called a prison. The Institute for Criminal Justice Reform reports that the capacity of detention centers and correctional institutions to accommodate prisoners in Indonesia continues to rise until it reaches 223% as of January 2022. Based on the correctional database system as of January 13, 2023, the number of prisoners and detainees in Indonesia amounted to 273,522 people. The details are 226,514 prisoners and 47,008 detainees.

Prison overcrowding is caused by a number of factors, such as high crime rates, high detention rates under current regulations, and an imbalance between prison length and existing infrastructure. The concept of restorative justice as a means of resolving cases outside the court is needed to overcome the problem of overcapacity in prisons. Criminal policy according to Barda Nawawi Arief is a policy that determines an act that was not originally an offense to become an offense. Criminal policy does not only include the formulation or formulation of punishable behavior, but also how the policy or legislation is synthesized into a harmonious and integrated policy into a unified Criminal Law system.¹

Romli Atmasasmita provides a definition that the criminal justice system is an integral part of law enforcement or law enforcement that contains legal aspects and focuses on efforts to overcome crime and aims to achieve legal certainty.² George Applebey explains that alternative dispute resolution is an experiment in finding new models of problem solving, new applications of old methods, new forums for problem solving, different emphases in legal education. Eva Achjani Zulfan provides a definition of Restorative Justice as a concept of developing the criminal justice system by prioritizing the fulfillment of a sense of justice for victims and perpetrators who are deemed unable to be fulfilled by the current criminal justice system.

Based on the explanation that has been presented, it can be understood that Restorative Justice is an effort to resolve criminal cases by involving the role of the community, victims, and perpetrators in achieving justice for all parties, so that it is hoped that the condition can be resolved as before the crime and overcome the situation of tolerance of the perpetrator. Indonesian criminal law is currently in the process of reform. Forms of innovation that exist in criminal law in Indonesia are provisions relating to the perspective of criminal law in achieving justice, restoring the situation after a crime is committed. The criminal justice system concept of restorative justice is different from punitive justice (which emphasizes justice over retribution) and restorative justice (which emphasizes justice over reparation).

The development of the prisoner development system in Indonesia was first initiated by Saharjo as the minister of justice at the time. Sahardjo explained the new prisoner development system with the term "Correctional System" as the purpose of punishment that includes human rights in a speech conferring the title of Doctor Honoris Causa in the field of Law entitled "Banyan Tree of Pengayoman".³

Soedjono Dirdjosisworo provides a definition of prisoners, namely ordinary people who are separated from other people by judges to carry out sentences for violating applicable regulations.⁴

The concept of imprisonment applied by correctional institutions also aims to protect the homeless and provide opportunities for them to live as good citizens, useful for society. This goal is regulated by prison law. Prisoners serving criminal sentences are required to have rights under the Corrections Act. Prison overcrowding occurs in correctional institutions leading to ineffective supervision by correctional officers and leading to failure to achieve the purpose of the sentence, therefore it is important to take long-term and short-term measures to improve the situation beyond the capacity of the inmates.⁵

Based on research conducted by Perkasa (2020), the results are that by optimizing the guidance of prisoners in correctional institutions can reduce Overcapacity in prisons. In an effort to reduce the population in correctional institutions, the role of the government is needed such as the provision of non-institutional punishment such as the provision of conditional punishment, restitution, and treatment of restorative justice programs.

The difference between this article and previous research is the solution to overcapacity. In this article using the concept of Restorative Justice while in previous research, namely optimizing the guidance of correctional prisoners. In research conducted by Perkasa (2020). Then in research that has been conducted by

¹ Barda Nawawi Arief, *Kapita Selekta Hukum Pidana*, (Bandung, PT. Citra Aditya Bakti, 2010,) hlm. 254.

² John Kenendi, *Kebijakan Hukum Pidana (penal policy) dalam sistem penegakan hukum pidana*, (Yogyakarta, Pustaka Belajar, 2017,) hlm. 7

³ Gunadi dan Oci Sanjaya, *Penologi Dan Pemasarakatan*, (Sleman, Budi Utama, 2015), Hlm. 1

⁴ Adami Chazawi, 2010, *Pelajaran Hukum Pidana Bagian 1*, Jakarta, Raja Grafindo Persada, Hlm. 59.

⁵ Marsudi Utoyo, 2015, *Konsep Pembinaan Warga Binaan Pemasarakatan Analysis Of Prisoners Guidance To Reduce Level*, Lampung. *Jurnal Ilmu Hukum Pranata Hukum*, Vol. 10 No. 5 Hlm. 40

Zulfa & Almond (2022) has a difference, namely examining the optimization of the Restorative Justice approach to drug abuse.

II. RESEARCH PROBLEMS

1. How is the Implementation of the Concept of Restorative Justice in Efforts to Overcome Overcapacity in Correctional Institutions?

III. RESEARCH METHODS

In this research, the type of research that the author uses is normative research. The approach used by the author is the statute approach method. The data used by the author is secondary data which includes primary legal materials, secondary legal materials, and tertiary legal materials. Data collection techniques in this research using library research method, namely by searching, recording, reviewing, analyzing, reading, and quoting from library data. The data analysis method used is the descriptive method, which is a method that uses a way of describing the state of the object and subject of research based on the facts that exist today in a complex manner based on reliable sources.

IV. RESULT AND DISCUSSION

1. Implementation of the Restorative Justice Concept in an Effort to Overcome Overcapacity in Correctional Institutions

The application of the concept of restorative justice is currently needed in overcoming the overcapacity of prisoners in correctional institutions. Law enforcement based on the concept of restorative justice in tackling overcapacity of prisoners in correctional institutions cannot be carried out by one agency alone but requires synergy between law enforcement agencies.

Efforts to overcome overcapacity that can be done by Correctional Institution are one of them by increasing capacity, but these efforts cannot run optimally if they are not balanced with the renewal of applicable regulations. The application of the concept of restorative justice in regulatory reform is considered to be able to overcome overcapacity that occurs because law enforcement agencies since the investigation stage can provide alternative solutions to criminal cases that focus on the interests of victims and perpetrators, not focused on retaliation against victims by being fostered in correctional institutions.⁶

The concept of restorative justice in overcoming overcapacity in correctional institutions in practice is currently still not able to run optimally. This is because there are obstacles at every stage of the criminal procedure experienced by law enforcement. Among them:

a. Investigation

The concept of restorative justice in criminal law is a form of legal reform in resolving criminal offenses outside the trial. This will have a positive impact on the justice-seeking community, because not all criminal cases must be resolved through trial. The National Police as one of the state institutions that has the authority to conduct investigations in criminal acts plays an important role in the application of the concept of restorative justice to overcome overcapacity. This is done by referring to the Circular Letter of the Chief of the Indonesian National Police Number SE / S / VI / 2018 concerning the Application of Restorative Justice in the Resolution of Criminal Cases and Regulation of the Chief of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigation.

b. Prosecution

The application of the concept of restorative justice at the prosecution stage can currently be carried out by public prosecutors based on Prosecutor's Regulation number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice which has been stipulated since July 21, 2020.²¹ This regulation plays a very important role in the application of the concept of restorative justice in overcoming overcapacity in correctional institutions. This is because before the existence of this regulation, if a case has reached the prosecution stage, a public prosecutor cannot stop the prosecution based on the concept of restorative justice, even though peace between the defendant and the victim has been fulfilled so that the criminal case must be examined in trial and receive a criminal decision by the district court judge.

c. Court Examination

Judges play an important role in applying the concept of restorative justice to overcome overcapacity in correctional institutions. This is because judges in the criminal justice system have the authority to decide whether the defendant is guilty or innocent. The judge in leading the trial is required to be able to provide legal certainty for a criminal case, however, the judge is also required to be able to provide a fair decision. This is not an easy thing to do because in practice these two things are often contradictory.

The decision of the district court judge in a criminal case is guided by the applicable laws and regulations according to the type of crime committed, making it possible for the defendant to receive a prison sentence. The application of the concept of restorative justice has been carried out based on the laws and regulations, especially the regulations issued by the Supreme Court. For example, the application of the handling of minor crimes, the handling of criminal cases committed by children with the application of diversion, the handling of cases against female defendants guided by Perma no. 3 of 2017, also related to cases of criminal acts of narcotics abusers not all end in imprisonment but can be placed in Medical Rehabilitation and Social Rehabilitation Institutions. The implementation of the concept of restorative justice in overcoming the overcapacity of prisoners by judges is also carried out by giving decisions that are lower than the demands of the public prosecutor. This is done by judges as a form of application of the concept of restorative justice in the current district court which can also reduce the overcapacity of prisoners that occurs in correctional institutions.

V. CONCLUSION

The implementation of the concept of restorative justice in an effort to overcome overcapacity in correctional institutions is based on the regulation of the head of the Indonesian republic police force number 6 of 2019 concerning criminal investigations, prosecutor's regulation number 15 of 2020 concerning termination of prosecution based on restorative justice, and decision of the director general of the general judicial body of the supreme court of the republic of Indonesia no. 1691/dju/sk/ps.00/12/2020 concerning the implementation of guidelines for the application of restorative justice. The concept of restorative justice is implemented by each law enforcement agency based on the regulations of each agency.

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