

The Restorative Justice: A Better Alternative to Reduce Recidivism

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ABSTRACT

Reforming the criminal justice system in Indonesia from retributive to restorative rehabilitative or a model of balance of interests is imperative. Despite the debate around the emergence of a new justice system model, It is providing insights into the current system that could be improved, namely the lack of rehabilitation and retributive theories oriented towards retaliation, assessing guilt, and imposing punishment. The perpetrator's accountability is manifested by the punishment which tends to make the perpetrator not regret his actions. The provision of imprisonment has a negative impact too. One of them is excess capacity in the correctional institutions (Lembaga Pemasyarakatan or LAPAS). Excess capacity in LAPAS is causing the guidance of prisoners to be not optimal. So, the success rate of coaching prisoners to become better human beings even after serving their prison terms is low. In addition, the negative impact that occurs after sentencing is former inmates receive negative stigma from the community. It is prevented the social reintegration process that has resulted in recidivism behavior. Restorative justice is emerging as a judicial concept that emphasizes repair of losses caused or related to criminal acts, namely by involving the perpetrator/victim and other parties involved to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation. In restorative justice, the accountability of the perpetrator is manifested in the form of awareness of his mistakes and assisted in determining the steps. It must be taken in order to restore the situation. So, the goal of building a better society in the future can be realized. The capacity of restorative justice in reducing recidivism using the differential association theory approach and social control theory is the topic of this research discussion. This research is legal research using a conceptual approach.

Keywords: *restorative justice, punishment, recidivism.*

1. INTRODUCTION

Retributive theory in the criminal justice system in Indonesia is oriented towards the concept of criminal punishment. This is seen more as a form of revenge and the accountability of the perpetrator is manifested by imprisonment. Previously, the developing purpose of punishment was considered to have various weaknesses. this is mainly because it is considered not to provide any benefit for the victim and society [1]. The characteristics in the old paradigm of retributive justice which focus on providing punishment for mistakes often make the perpetrator not regret his actions. Criminal theory in the justice system in Indonesia can be divided into three groups, namely a) the theory of retaliation, where this theory becomes a justification for the imposition of suffering in the form of a criminal act against the perpetrator of a criminal act; b) objective

theory, meaning that the goal to be achieved from punishment is to protect injustice and order in society; c) a combined theory that prioritizes retaliation to create public order in society but the punishment imposed must not be heavier than the action taken. The rate of increase in prisoners serving time in prison is a driving factor for the overcapacity of Correctional Institutions (LAPAS). The current politics of criminalization are inappropriate. thus, anyone could easily go to prison. By imprisoning the convict is not only aimed at making the convicted deterrent but also so that the convicted person gets guidance as a provision for the future. This implies low supervision and is not a good factor in the process of coaching prisoners who ultimately achieve the goal of punishment, namely the process of social reintegration. so, it can be accepted back by the community. The lack of maximum function of guidance by LAPAS and

giving negative labels / labels from the community is one of the recidivism behavior factors. The Director General of Corrections at the Ministry of Law and Human Rights of the Republic of Indonesia, Sri Puguh Budi Utami, in a strengthening briefing to build an integrity zone in West Sumatra said that the number of recidivists in Indonesia is still high, namely around 24 thousand people [2].

Restorative Justice is present as a reaction whose criminal sanctions stem from the idea why the punishment was carried out. In retributive theory, criminal sanctions refers to the actions of a person through the imposition of suffering. This is aimed to be a deterrent. Hence, The sanctions are directed at efforts to help him change [3]. The sanctions are more educational [4] and oriented towards community protection [5].

The restorative justice approach is focused more on the settlement of criminal cases by involving the perpetrator, the victim, the family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation. With the support of the application of restorative justice in the Indonesian justice system, it is hoped that it will increase the sense of justice and satisfaction for victims and perpetrators so that it has a positive impact on the rate of recidivism behavior. This study will discuss how restorative justice can have an effect on reducing the rate of recidivism behavior.

2. RESEARCH METHOD

This research is used a normative legal research methodology. The data used are secondary data that obtained through library research. The data are in the form of primary legal materials, namely materials.; secondary legal material in the form of books related to restorative justice; tertiary legal material in the form of a legal research journal that reviews restorative justice. To get the right conclusions, the legal materials are analyzed using the differential association theory approach and social control theory.

The approach used in this research is the statute approach by examining several laws and regulations related to the criminal system and restorative justice in Indonesia and the conceptual approach departs from the doctrines and views in legal science [6].

3. FINDINGS AND DISCUSSION

3.1. *Recidivism with The Differential Association Theory and Social Control Theory Approach*

According to psychological meaning, recidivism in glosarium.org is the repetition of criminal behavior. According to the meaning of sociology recidivism, it is likely that those who are imprisoned and then released. they will most likely return to prison for committing a new crime. It can be defined that a residiv (recidive) is a repetition of a crime by the same perpetrator. Criminal acts previously committed have been punishable and have permanent legal force, and repetition occurs within a certain period of time [7]. Recidivism in the Criminal Code (KUHPs) is stipulated in articles 486-488 that a recidivis can be subject to a penalty with an additional 1/3 of the maximum criminal threat of the criminal act he has committed.

In assessing the cause of a person committing a crime, an analysis of the criminological theories approach can be carried out. This theory is needed to study the reasons why humans are able to violate legal norms. The theoretical concept in criminology is expected to provide solutions to solve problems. In the context of criminology, the assumptions or analyzes has developed boil down to understanding a person's behavior after he has interacted with his group or the surrounding community (significant others) [8].

Differential association theory was first put forward by Edwin H Sutherland in 1934 in his book Principles of Criminology which states that everyone will follow an enforceable pattern of behavior, failure to follow behavior creates disharmony, and which becomes the basic principle that explains crime is culture.

According to Edwin H. Sutherland also in 1947 was emphasized that all behavior is learned, there is no parental inheritance. In principle, the theory of differential association means that the pattern of evil behavior is not inherited but is learned through familiar association. Closely related in explaining the process of criminal behavior, Sutherland puts forward 9 propositions, namely a) criminal behavior is learned behavior; b) criminal behavior is learned in interactions with others in the communication process; c) the basis of the evil behavior is occurring in intimate private groups; d) if evil behavior is learned, it is the technique of committing crime, motive, motivation, rationality and attitude; e)

motives and motivations are learned from the definition of favorable or unfavorable legal norms; f) someone has become delinquent due to overly understand that committing an offense is more beneficial than not committing; g) differential association may vary according to frequency, duration, priority, and intensity; h) the process of learning evil behavior with crime and anti-crime patterns is including complex mechanisms in each of the other lessons; i) evil behavior is a statement of general needs and values that cannot be explained because non-evil behavior is also a statement of the same needs and values [9]. The strength of the theory of differential association is able to explain the causes of crime, and also how a person through the learning process becomes evil.

Differential association theory can be used as a tool in analyzing the reasons why someone has become a recidivist. This is in accordance with the characteristics in this theory that crime is the result of an intense learning and communication process. the interaction among prisoners in LAPAS is one of the way in the differential association process. The lack of maximum supervision and guidance for prisoners due to the overcapacity of prisoners in LAPAS has a bad influence on the prison culture or better known as prisonization. Thus, freely is making LAPAS a place for inmates to get new crime knowledge. A recidivist must have gone through an intense learning process between prisoners in terms of encouragement and motives for doing recidivism.

"The Prevention of Crime and Treatment of Offenders" at the fifth UN congress in 1975 reported that the prison experience seriously undermines or hinders the offender's ability to begin complying with legal norms after he is released from prison. In many countries, the role and function of penal institutions were the subject of vigorous debate, and there was in crisis in public confidence regarding the effectiveness of imprisonment and a tendency to discount the capacity of correctional institutions to contribute to control or reduction of crime [10]. This was reaffirmed at the XI UN Congress in 2005 on Crime Prevention and Criminal Justice with the theme of responsive and synergistic efforts with a combination of strategies in ways to prevent crime and criminal justice [11].

The Control theory has arisen because of a reaction to labeling orientation and conflict. Albert J Reiss, Jr. distinguishes between personal control and social control. Personal control is the ability of a person to refrain from violating norms, while social control is the ability of a social group or society to

implement norms to be effective. If recidivism is explained through social control theory, Hirschi's social control theory, which is known as the social bond concept, proposes that criminals fail to form or maintain bonds with society consisting of attachment, commitment, involvement, and belief [12].

Hirschi is emphasized that the evil behavior was caused by the absence of attachment or lack of attachment of the perpetrator to society. In social control theory, the assumption of a person's good or evil has depended on society. A person is good when society has made him so and conversely. A person has become evil when society has made him so. These four elements, according to Hirschi, can be explained that individual behavior is influenced by the extent to which a human's ability to involve himself in others, how he is committed to a better future by not doing deviant actions, the extent to which the intensity of one's involvement in social activities, and beliefs and strong adherence to norms [13].

Being able to blend into society is the first step taken by an inmate who has just been released from prison. Sensitive to the surrounding environment, often involved in various kinds of community activities will form a bond between former prisoners and the community. Once this bond has been formed, of course, the feelings and thoughts of an ex-convict cannot freely commit another crime. Trying to get a job and keep yourself busy with positive activities will reduce your chances of doing recidivism. This is not easy for an ex-convict to do because the process of reintegration into society is often followed by social stigma, resulting in loss of attachment and isolation of the perpetrator from the community.

The result of coaching and mentoring in the form of work skills by LAPAS is only as a provision in finding work, not until the stage of distributing it to the employer. This of course will make it difficult for former prisoners to find work because of the stigma formed from the community. So, the only fulfillment of the necessities of life is to be a recidivist.

Several factors have influenced by a person to become a recidivist including a) negative community stigma. The community's rejection was caused by feeling threatened by the tranquility of their environment towards the presence of the former convict; b) the lack of maximum training of prisoners in LAPAS and the problem of prisonization is a process of bad influence in prison

culture. LAPAS at its empirical level is actually a prison. There are even allegations that LAPAS is a "crime school". Because people are even eviler after serving imprisonment in LAPAS. This is one of the dominant factors in the emergence of ex-convicts doing recidivism [14].

From this description, we can understand that the implementation of imprisonment in retributive justice does not have a positive impact on someone who commits a criminal act. This is in line with the results of research conducted by the Correctional Advisory Center of the Ministry of Justice which noted that 31.7 percent of respondents thought that the criminal system in LAPAS was not useful, despite having skills, but after leaving LAPAS it was not necessarily accepted by the community [20]. The problem of punishment is not just putting a person who has committed a criminal offense in prison or obliging someone to pay a fine, but punishment certainly includes philosophical, sociological, and criminological issues [1].

Criminal justice system with retributive justice, which places the public on the sideline and is shown abstractly by the state. Thus, there is a view of crime as a violation committed against the state, resulting in almost all crimes handled by the Indonesian criminal justice system always ending in prison [14]. So of course, reforming the criminal justice system in Indonesia by applying the principle of restorative justice is the best alternative.

3.2 The Application of Restorative Justice in Indonesia

Restorative justice is a court that emphasizes repairing losses caused by criminal acts. Restorative justice is oriented towards solving cases by focusing on perpetrators, victims, and society. The terminology is used to describe the concept of restorative justice such as communitarian justice, Positivism justice (positive justice), relational justice (relational justice, reparative justice), and community justice [15]. Several understandings of restorative justice can be presented as follows:

- a. Restorative justice is a process when all the parties with a stake in a particular offense come together to resolve collectively how to deal with the offermaths of the offense and its implications for the future [16]
- b. Restorative Justice may be defined as a response to criminal behavior that seeks to restore the

losses suffered by crime victims and facilitate peace and tranquility among opposing parties [17].

- c. Restorative justice is a form of conflict resolution and seeks to make it clear to the offender that the behavior is not condoned, at the same time as being supportive and respectful of the individual [18].
- d. Restorative justice is an alternative or other way of criminal justice by prioritizing the integration approach of the perpetrator on the one hand and the victim/community on the other hand. It is a unity to find solutions and return to the pattern of good relations in society [14].

In principle, restorative justice is a restoration of relations and redemption of the offender against the victim and his family outside the court with the intention that legal issues can be achieved based on agreement and agreement between the parties. The keyword of restorative justice is "empowerment", namely the process of meeting perpetrators with victims or the community to discuss and actively participate in the resolution of the criminal matter [14].

Restorative justice practices and programs are reflected in the objectives of addressing criminal acts by: a) identifying and taking steps to repair harm, namely identifying and taking steps to repair losses / damages; b) involving all stakeholders, namely involving all interested parties, in this case the perpetrator, victim / community, and family; c) transforming the traditional relationship between communities and their government in responding to crime, namely changing the traditional patterns of public and government relations [19].

The principle of restorative justice is to put forward the recovery of losses and restoration of circumstances (restoration) and the role of the community to preserve fair peace. This is certainly different from the retributive justice paradigm which resolves cases by punishing the perpetrator as a form of retaliation.

The application of the concept of restorative justice in the Indonesian criminal justice system has been regulated in several statutory regulations. The Juvenile Criminal Justice System Law (UU SPPA) regulates that the juvenile criminal justice system must prioritize the restorative justice approach and at the stage of the investigation to trial. It is mandatory to seek diversion. In other practice, we can see in Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law),

where Judges have the objective, on the one hand, to protect victims and take action against perpetrators. On the other hand, it has the aim of maintaining the integrity of the household. Thus, court proceedings often include penal mediation which is not regulated in Indonesian criminal procedure law [21].

Restorative Justice provisions have also been standardized in the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning the Cessation of Prosecutions based on Restorative Justice. In Article 5, it states that criminal cases can be closed by law and prosecution is terminated based on restorative justice in the event that a) the suspect has committed a criminal act for the first time; b) a criminal act is punishable only by a fine or punishable by imprisonment of not more than five years; c) a criminal act is committed with the value of the evidence or the loss incurred as a result of the crime not exceeding Rp. 2,500,000.00 (two million five hundred thousand rupiahs) [22].

4. CONCLUSION

Based on the discussion above, the conclusion can be drawn that basically prison is not the best solution in solving the problem of crime. Particularly criminal acts in which damage or loss caused to the victim and the community can still be restored. So, the condition can be returned to its original state.

The concept of criminal law reform through application restorative justice is one of the best alternatives to reduce recidivism because restorative justice is in addition to reducing the overpopulation of prisoners in LAPAS which results in less optimal supervision and guidance which results in the differential association process running, also encourages the creation of social reintegration of criminal offenders into society and avoids from stigma.

This research strongly recommends the legalization of the draft criminal code and the correctional bill. This is due to the problem of overcapacity in prison, namely the absence of other legal options besides imprisonment. The Implementation of correctional facilities is also considered not giving legal certainty guarantee for protection efforts and fulfill the rights of prisoners in vulnerable groups. This matter indicates a problem in governance correctional facilities, among others the capacity and facilities are not yet optimal and infrastructure, correctional officers and weak functions intelligence.

REFERENCES

- [1] E. A. Zulfa, "Pergeseran Pemidanaan di Indonesia," *Jurnal Huk. dan Pembang.*, no. 3, p. 393, 2006.
- [2] "Dirjen: Angka Residivis Capai 24 Ribu Orang." [Online]. Available: <https://nasional.republika.co.id/berita/q3uahh430/dirjen-angka-residivis-capai-24-ribu-orang>.
- [3] Muladi and B. N. Arief, *Teori-Teori Dan Kebijakan Pidana*. Bandung: Alumni, 1984.
- [4] U. E, *Rangkaian Sari Kuliah Hukum Pidana II*. Surabaya: Pustaka Tinta Mas, 1994.
- [5] A. Hamzah, *Sistem Pidana dan Pemidanaan Indonesia, dari Retribusi ke Reformasi*. Jakarta: Pradnya Paramita, 1986.
- [6] P. M. Marzuki, *Penelitian Hukum*. Jakarta: Kencana Prenada Media Grup, 2009.
- [7] E. Y. Kanter and S. R. Sianturi, *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya*. Jakarta: Stora Grafika, 2002.
- [8] P. Hadisuprpto, "Studi Tentang Makna Penyimpangan Perilaku Di Kalangan Remaja," *J. Kriminologi Indones.*, vol. 3, no. III, pp. 9–18, 2004.
- [9] T. Santoso and E. A. Zulfa, *Kriminologi*. Jakarta: Grafindo, 2008.
- [10] U. N. Congress, "The Prevention of Crime and Treatment of Offenders," 1975.
- [11] U. N. Congress, "Crime Prevention and Criminal Justice," 2005.
- [12] T. Hirschi, *Causes of Delinquency*. Berkeley: University of California Press, 1969.
- [13] A. Prakoso, *Kriminologi*. Surabaya, 2014.
- [14] K. P. Prayitno, "Restorative Justice untuk Peradilan di Indonesia (Perspektif Yuridis

- Filosofis dalam Penegakan Hukum In Concreto),” *J. Din. Huk.*, vol. 12, no. 3, 2012.
- [15] E. A. Zulfa, “Mendefinisikan Keadilan Restoratif,” 2009. [Online]. Available: <http://evacentre.blogspot.com/2009/11/definisi-keadilan-restoratif.html>.
- [16] T. Marshall, *Restorative Justice: An Overview*. London: Home Office Research Development and Statistic Directorate, 1999.
- [17] J. T. Morrison and K. Minor, *A Theoretical Study and Critique of Restorative Justice*, in Burt Galaway and Joe Hudson, eds., *Restorative Justice: International Perspectives*. Monsey, New York: Ceimical Justice-Press and Kugler Publications, 1996.
- [18] B. E. Morrison, *The School System: Developing its capacity in the regulation of a civil society*, in J. Braithwaite & H. Strang (Eds.), *Restorative Justice and Civil Society*. Cambridge: Cambridge University Press, 2001.
- [19] McCold and Wachtel, “Restorative Practices, The International Institute for Restorative Practices (IIRP),” *Kugler Publ. J.*, vol. 85–101, p. 7, 2003.
- [20] hukumonline.com, “Restorative Justice, Alternatif Baru Sistem Pemidanaan.” [Online]. Available: <https://www.hukumonline.com/berita/baca/hol9768/irestorative-justicei-alternatif-baru-sistem-pemidanaan/>.
- [21] D. Setyowati, “Memahani Konsep Restorative Justice sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan,” *Pandecta*, vol. 15, no. 1, pp. 121–141, 2020.
- [22] *Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif*.