

Understanding the Restorative Idea of the Correctional Institution in Indonesia

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Abstract- *Indonesian Ministry of Law and Human Rights recently released a large number of prisoners. More than 30,000 prisoners were set free. Law and Human Rights Minister stated this is due to the possible surge of the novel coronavirus in several overcrowded prisons. In the following days after being released, few prisoners sent back to jail due to repeating crimes. Two questions have arisen among the society, firstly, asking for the government to take custody of these prisoners away in prison as long as possible. Secondly, society argues that once a criminal, is forever criminal, and that is why society in some regions ban the authorities movement on releasing prisoners. This research aims to build a better understanding of restorative justice idea principle of the Indonesian correctional institution. This research employs the normative method of legal study and uses some approaches to analyze, namely statute approach, historical approach, theoretical approach and grammatical approach. The research found that society should gain more understanding of restorative justice of the Indonesian correctional institution. Moreover, authorities should encourage and extend the socialization to provide adequate knowledge to broader society.*

Keywords- *Correctional Institution; Human Rights, Penitentiary Law; Correction Principles; Restorative Justice.*

I. INTRODUCTION

In April 2020, the Ministry of Law and Human Rights released 39,628 prisoners and convict children.[1] According to the news media and official statements from the government, here is information on the number of prisoners released based on the following timeline:

Table 1 Inmate Assimilation and Integration Data Time by Time

No	Inmates Released	Month
1	36.554	April
2	39.193	May
3	40.020	June
4	40.504	August

Source: Various Sources [2] [3] [4] [5]

Based on these data, the government under the Ministry of Law and Human Rights within any

circumstances in 2020 called for assimilating and integrating 69,358 prisoners.[6]

The lack of health facilities in the correctional institution and its exceeded capacity,[7] prompting Minister Yasonna Laoly to pass Regulation of the Minister of Law and Human Rights Number 10 of 2020 concerning the Requirements for Providing Assimilation and Integration Rights for Prisoners and Convicted Children in the Context of Prevention and Combating the Spread of COVID-19 (Regulation No.10/2020) followed by Decree of the Minister of Law and Human Rights Number M.HH-19.PK.01.04.04 of the year 2020 concerning the Release and Release of Prisoners and Children through Assimilation and Integration in the Context of Preventing and Combating the Spread of COVID-19 (Decree No. 19/2020).[8]

Apart from the situation of overcapacity and awareness of the pandemic, however, these policies have reaped reactions from the public. Among the convicts who had received assimilation and integration, in turn, they are repeating to commit crimes. According to the information from the Ministry of Law and Human Rights, as of June, 236 assimilated inmates had repeated crimes again, and their rights of assimilation were immediately revoked.[9]

Table 2 Inmates Caught Reoffend After Being Released by April to early August 2020

Number of Recidivism	Crime	Place of Origin
1	Thievery	West Lombok
2	Thievery	Denpasar
3	Thievery	South Ternate
4	Thievery, Attempt of Thievery, Maltreatment, Drug Trafficking, Child sexual abuse	Banyumas and Kebumen

Source : Various Sources [10] [11] [12] [13] [14]

Numbers that mentioned above only showed a partial number of the total 236 assimilated inmates repeating crime submitted by the Minister of Law and Human Rights on July 26, 2020. The additional information was that of the total 40,000 inmates who were granted the right of assimilation and integration, the perpetrators of repeating crime are only 0.6%, and the majority of their crime was theft.[9]

However, there was one assimilated prisoner who acted violently and pointed his self-made gun against police that the police took him down accordingly. [15]

Responding to these facts of repeat criminals, people became anxious. Academics, practitioners from different disciplines expressed their objections to the policies of assimilation and integration that were previously mentioned. There is an established polar division between supporters and opponents of the assimilation and integration policies of the government.

A media outlet stated that this assimilation policy was considered a careless step by the government because it actually increased the crime rate.[16] This impact led to the Law and Human Rights Minister being sued by the advocate association of Solo resident.[17]

On the other hand, support for this policy also emerges on the basis that the capacity that exceeds the load capacity of a prison must be reduced in accordance with the initial objectives of assimilation and integration.[6]

The description of the above facts gives the impression to the community that there is absolutely no opportunity for inmates to correct their mistakes, improve themselves, and be accepted back by the community. In conclusion, the community does not understand the history of why Indonesian's former founder changed the prison system into a correctional system that relies on restorative ideas on prisoners. This article will review the idea of the correctional institution, which imply a strong emphasis on restoration.

II. PROBLEMS

This article will discuss an arising problem which emphasizing on the essential purpose of the correctional institution imposing its restorative function. How should everyone understand the restorative idea of the correctional institution?

III. RESEARCH METHOD

This research employs the normative legal research method. A normative method is used to determine the source of the data, namely secondary data, namely legislations, articles, journals, books, news, reports, and other related written references.[18, p. 190] The obtained data then analyzed using some approaches, specifically historical, sociological, and theoretical approach to acquire the answer to the discussed problem.[19]

The discussion presented in an explanatory and descriptive method. Every possible issue is pointed out and analyzed using the aforementioned approaches.

The closure is withdrawn by juxtaposing the facts happened in society with the collected data that has been discussed.

IV. DISCUSSION

A. From retributive prison to restorative institution

Indonesian law is a legacy of Dutch colonialism with modifications adapted to the character of the nation's soul. The history of change is instant and requires great sacrifice from its founders and leaders. During the Dutch to Japanese occupation era, the colonial government implemented a system of punishment based on various backgrounds such as political and economic backgrounds as follows:

Table 3 The History of Prison System in Indonesia

Year Period	Prison System	Characteristics
1872-1905	Indonesian captive treated differently from European	Forced labour, fine, capital punishment
1905-1921	Region centred prison	Forced labour located in every region
1921-1942	Hijmans created a prison for adults, children, male or female separately	Forced labour but centralized on one large area
1942-1945	Japan treated prisoners worse than the Netherlands	Forced labour and severe torture
1945-1950	Prison as an emergency evacuation place during the independence war	Only to hold captive enemy's spies of Indonesia
1950-1960	The fall of the Netherlands' prison regulations	Indonesia's effort to reform the Netherlands' prison system
1960-1963	As the Indonesian prison reform began, prison is a school to restore humanity	Indonesia reshape its prison as a social control tool

Source : [20]

Starting in 1960 until today, the foundation of the retributive function of Indonesian prison slowly reshaped to an institution which focused on social control or correction. Saharjo made a concept and symbolized the correctional institution as a banyan tree.[20]

Banyan tree is believed as a source of ever-revolving and ever-replenishing. Its entwined roots and shoots describe the symbol of continuity and restoring the community.[21] Saharjo borrowed

these deep meaning of a banyan tree and made a symbol of it in the Indonesian correctional institution.

The Correctional Derectoral Service conference that was held in Lembang, Bandung in 1964 stated a significant change in the term of the correctional institution. It was formerly regarded as a good member of society, and it is now interpreted as a way to restore the society into its balanced state.

B. The beginning of the restorative correctional system

The initial adjustments made by Indonesia to reform the prison system prominently occurred in 1964. The imprisonment system, which highlights on the elements of revenge and imprisonment (known as retribution) by the legacy of the Netherlands,[22] was gradually seen as a system and meant conflicting with the concept of rehabilitation and social reintegration. Thus prisoners are aware of their mistakes, making them no longer desire to commit criminal acts and return to being responsible citizens for themselves, their families and their environment.

Starting in 1964, the supervision system for prisoners and children has changed fundamentally, namely from a prison system to a correctional system. Likewise, the institution, which was formerly called a prison house and a state education house, turned into a correctional institution based on the Instruction Letter of the Head of the Directorate of Corrections Number JHG8/506 dated June 17 1964.[23]

The Correctional System is aiming to restore Correctional Assisted Citizens as good citizens additionally also to protect the community against the possibility of repeating criminal acts of the convicted by the assistance of the Correctional Assistants, as well as an application and an inseparable part of the values incorporated within Indonesia's ideology of Pancasila.

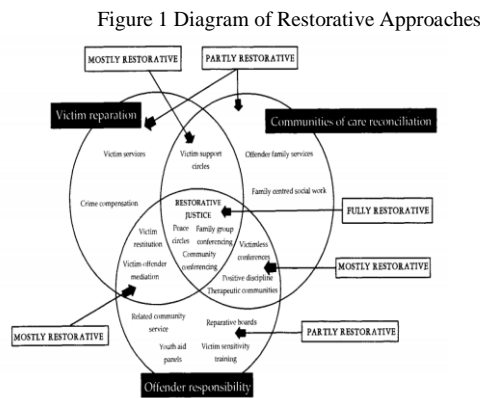
Indonesian correctional system acknowledges inmates, correctional child convict, or correctional clients the rights to receive spiritual and physical guidance. They are guaranteed their rights to carry out their worship, having communication to others, both family or friends. They also have rights to obtain information through physical or/and electronic media, receive education decently and so on.

Successful implementation of the correctional system depends on the cooperation between government and the community either by cooperating in coaching or by being willing to accept back the Correctional Assistance Citizens who have completed their service in the correctional institution.

C. Theory of Restorative Justice in Prison

Indonesian correctional institution introduces a restorative characteristic which should educate its residents. This idea is introduced by Edgar and Newell. They stated that people are obligated to uphold the justice of others that are not only by the law but also have to take steep measurement to support the law by a vast amount of behaviour that is not regulated by the law.[24]

Restorative justice is the part of criminal justice, and by the meaning as a part, it means it should be considered to carry out. The case why restorative justice is neglected was ignorance from the community. Edgar and Newell proposed a restorative justice model figure that involving the participation of the community, the victim itself, and the offender.



Source: [24, pp. 16-17]

Formerly founded by McCold and Wachtel, the diagram above demonstrates three degrees of restoration, namely 'fully restorative', 'mostly restorative', and 'partly restorative'. Here is further discussion about the diagram:

Table 4 Degree of Restorative Justice approaches

Approach	Type of consensus participation
Fully restorative	Peace circles, family group conferencing, community conferencing
Mostly restorative	Victim support circles, victimless conferences, positive discipline, therapeutic communities, victim restitution, victim-offender mediation
Partly restorative	Victim services, crime compensation, related community service, youth aid panels, reparative boards victim sensitivity training

Source: [24, p. 15]

Table 5 Characteristics of restorative approaches

Approach	Characteristics
Fully restorative	Completely engage victim, offender, and community of care reconciliation
Mostly restorative	Usually involving either one of these: victim-offender mediation, victim-community mediation, offender-community mediation
Partly restorative	Commonly enforced by the law, repairs the harm but fails to empower the core persons (victim and offender), involves dialogue but does not vindicate the victim

Source: [24, p. 16]

Now, those approaches are needed to be applied in the term of Indonesian correctional system. Kimmett strongly proposed that every prison, be it just to hold captive a suspect or a convict, must pay attention to improve safety, enhance social order, make the experience less hostile and damaging for all concerned.

A correctional institution that mainly centred on restorative values will less harm to the inmates and would begin to involve social community including victims of crime, making it a place of safety in

mediating between people who have been deeply harmed and those who have caused the harm, and also occupy a crucial position in the reintegration of offenders into society.[24]

D. The incorrect correctional implementation in Indonesia

Indonesian academics, researchers, and practitioners on the related field of the correctional system claim that imprisonment solely will not bring restoration to criminals. Saharjo was devoted to establishing such correctional institution to bear the mighty symbol of restoration but why until almost 80 years later the correctional institution fails to embody restorative value?

An analogical approach to answer this question has the same characteristic to answer the question of why Indonesian citizen neglect Pancasila. Five principles of Pancasila similar to restorative justice, both of them are abstract. They lie within the heart of every citizen of Indonesia.[25]

The fact that Pancasila principles incorporated restorative principles are imposed, there would lessen the number of criminals and repeating offender as well. In reality, correctional institutions are overcrowded, overcapacity, and also fail to employ proper guidance to society to accept their own (convict originally comes from society).

There was a loophole made by the government that such restorative idea would not be implemented successfully without conducting a fully restorative approach involving all concerned parties. It is a core and essential to employ such an approach.

Criminologist has found causes on why assimilated inmates reoffend.

1. Inmates were not fully restored, and they are not repressed by the punishment
2. The correctional institution is hasty and unprepared
3. Stigma from society
4. Inmates fail to control themselves because of their dominant abusive behaviour[26]

Indonesian people are sustaining the principle of punitive behaviour as a custom. Meaning that everyone who commits a crime must go to jail. Correctional institutions and restoration will be difficult to carry out. Society still maintains the notion of imprisoning criminals rather than resolving it in a restorative manner. It should be noted that there are other social mechanisms that can

be taken to solve the problem. However, if at some point law needs to be upheld, people would still have other choices.

These facts reflect the recent issue of Indonesian correctional institution system. The mass incarceration imposes an illustration in which Indonesian still practice custodial punishment. A research which was conducted in 2011, recidivism in Indonesia should be measured by rating the number of reoffending inmates as stated early by the Minister of Law and Human Rights that approximately 236 inmates reoffend. This concludes that there are no significant problems entirely related to the Indonesian correctional institution.[27]

However, the current occurrence of assimilated inmates reoffending does not reflect the initial purpose of the restorative idea of the Indonesian correctional justice as referred to the Law Number 12 of 1995 concerning corrections. Contrary to the method proposed above, Indonesian law on corrections seeks more to restore humanity.

Inmates that are subject to corrections are considered treated equally as others. It is their poor behaviour that needs rehabilitation to prevent the impetus of sheer evil, moral degrade, or other socially prohibited actions. Either custodial or non-custodial, punishment should be regarded as an effort to make every correctional member repent for their behaviour, thus rehabilitate them and reintegrate them back to society.

Indonesian law on corrections emphasizes the importance of corrections firstly, re-establishing inmates to their former state, making them obey the law, uphold moral, social and religious values, to attain a safe, orderly and peaceful community life. Secondly, Indonesian law on corrections encourages society to involve actively in supporting the correctional institutions.[23]

E. Positioning the society as the centre of the correction

The restorative principle of Indonesian correctional institution stated clearly in the explanation section of the Law Number 12 of 1995 concerning Corrections, stated that the community also hold an important role in the efficient corrections.

The information gathered from the news and research stated that the failure of the Indonesian

correctional system because it could not carry these principles:

1. Protection principles, it is the responsibility of the correctional institution to secure the community from the fear of crimes
2. Human rights protection principle, within few months prior to the pandemic, Ferdian Paleka, a well known former YouTuber artist, was abused while in custody. This reflects the neglect of the restorative justice idea.

Government alone could not carry the restorative principles. Inspecting crimes in a restorative manner has to concern these:

1. Crime is defined as one offence against another and recognized as conflict;
2. Emphasized on solving problems of future responsibilities and obligations;
3. The character is built on the basis of dialogue and negotiation;
4. Restitution as a means of restoration, reconciliation and restoration as the main goal;
5. Justice is defined as a relationship of rights, judged on the basis of results;
6. Target attention to the improvement of social losses
7. The community is the facilitator in the restorative process;
8. The roles of victims and perpetrators of criminal acts are recognized, both in matters of and in resolving the rights and needs of victims. Perpetrators of criminal acts are encouraged to be responsible;
9. The responsibility of the perpetrator is acquainted and involves them in every stage of the restoration process;
10. Criminal action should be viewed as comprehensive and contextually;
11. Stigma can be removed through sustainable, restorative action.[28]

This should be the leading restorative idea neglected by the majority of society. The correctional member came from the community, and eventually, they will be returned to where they came from. It is society who hold responsibility for the entire process of restoration.[29]

Some empirical and normative research suggest that restorative correctional principle should impose society involvement to reduce the rates of recidivism thus propose realistic and achievable solutions by paying attention to :

1. A better understanding of the incarceration policy and encourage the entire criminal justice system to uphold the non-penal method instead of taking custody.[29]
2. The corrections itself should ban internal factor that can amplify the criminal behaviour of their member
3. Research suggests that the reoffend factors could be dispersed through the inmate's family perceived support
4. The government should socialize the importance of a good family tie in order to influence inmates' willingness to return to the community
5. To provide restorative idea means to open a discussion and maintain the power of dialogue and solve conflicts of human relationships.

Barda Nawawi, along with his colleague in their teachings, always underlined the usage of the non-penal method. There should be at least four aspects to assess before punishing someone, namely, the gravity of the crime, the internal condition of the perpetrator, and the environment or situation.

Encouraging the criminal justice system to impose the non-penal method and involving the society to participate actively in educating their member will establish the whole principle of the restorative correction that was proposed early by Saharjo.

Such implementation, based on empirical research related to the repeat offence of inmates, should decrease the number of recidivism.

V. CONCLUSION

To conclude, the restorative idea of the Indonesian correctional institution should be carried out by understanding the importance of regaining responsibility within the perpetrator (inmates). Stimulating them with good vibes and encourage inmates' family to educate more also a considerable solution and yet without the involvement of community as a whole society, the central aspect of the restorative idea. Without such involvement, the restoration could not be successfully conducted.

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