

Rehabilitation Of Drug Abuses As An Implementation Of Restorative Justice

ABSTRACT

This article analyzes the implementation of justice within restorative justice based on the civil law tradition adopted by the Indonesian criminal justice system. Historically, the Indonesian criminal law system has focused on a retributive and punitive (imprisonment) approach, which is now considered less effective in creating a deterrent effect and social justice. Therefore, innovation in the sentencing system is needed. The restorative justice approach serves as an alternative, focusing on repairing the harm caused by a crime and on reconciliation between the perpetrator and the victim. In certain cases, such as narcotics abuse, this approach is implemented through rehabilitation. Attorney General's Regulation Number 18 of 2021 governs the rehabilitation process, which aims to restore the perpetrator to normal social functions. This study uses a normative legal research method and a qualitative descriptive analysis to evaluate the effectiveness and legality of restorative justice implementation. It also recommends integrating this approach into new criminal law regulations, especially for complaint offenses, with the goal of creating better justice and balance between perpetrators and victims.

Keyword: Indonesian Justice System, Criminal Law, Restorative Justice, Rehabilitation

INTRODUCTION

Criminal law in Indonesia falls under the civil law system. The civil law system is part of a group often referred to as the Romano-Germanic Family. Indonesia shares characteristics with the Romano-Germanic system, namely its reliance on codified legal sources, in this case the Indonesian Criminal Code (KUHP).

Before the enactment of the Criminal Procedure Code (KUHP), Indonesia used the Inlaands Reglement (Independent Law) judicial system, later updated to Het Herziene Inlaands Reglement (HIR) based on Stbld. 1941 Number 44. Het Herziene Inlaands Reglement (HIR) adopted an inquisitorial approach, in which the pretrial process emphasized the role of judges as investigators and the judiciary dominated in determining cases. Dissatisfaction

with the effectiveness and fairness of this system led to major changes. December 23, 1981, marked a turning point in the revision of the draft criminal law, approved by the House of Representatives (DPR), and subsequently ratified by the president as Law No. 8 of 1981, known as the Criminal Procedure Code (KUHAP).

The integrated criminal justice system was introduced under the Criminal Procedure Code (KUHAP). This system operates based on the principle of functional differentiation, meaning that each law enforcement officer, including the police, prosecutors, and judges, has distinct yet complementary roles and authorities. Furthermore, it is important to remember that the regulation of the criminal justice system in Indonesia is not limited to the Criminal Procedure Code but is also regulated by various other relevant laws.

The understanding that a criminal case is a dispute between an individual and society is the basis of the Indonesian Criminal Justice System, which is then resolved by the state as the representative of that society. These disputes relate to various fundamental issues that are regulated and subject to sanctions in criminal law, both within the Criminal Procedure Code and outside the Criminal Code. To implement the criminal justice system, Law Number 8 of 1981 serves as the reference governing the Criminal Procedure Code (KUHAP). Article 2 of the Criminal Procedure Code (KUHAP) stipulates that this procedural law is applied to regulate judicial procedures within the general court environment.

According to Prof. Romli Atmasasmita, within the framework of the criminal justice system, there are three types of approaches: normative, administrative, and social. The institutions that are integral to the overall law enforcement system are the police, prosecutors, courts, and correctional institutions, and this is also viewed within the normative approach.

The Indonesian criminal law system adopts a combined theory approach. One implementation of this combined theory in Indonesia is restorative justice, an approach that has been introduced in the resolution of criminal cases in Indonesia. In certain cases, conflicts can be resolved through mediation or

deliberation between the parties involved, including the perpetrator, the victim, and other community members, without going through formal court proceedings.

According to Article 1 Number 6 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, restorative justice is a mechanism for resolving criminal cases involving the perpetrator, victim, the perpetrator's or victim's family, and other relevant parties to jointly seek a just solution, emphasizing restoration to the original state, rather than retaliation. This definition demonstrates a paradigm shift from a retributive (revenge) approach to punishment to one focused on restoring the victim's condition and reconciliation between the perpetrator and victim. The goal is to address the damage caused by the crime and restore balance within society.

The restorative approach is an alternative frequently used in Indonesia to resolve criminal cases. Some cases can be resolved through mediation or deliberation between the parties involved, including the perpetrator, victim, and other community members, without the need for formal judicial proceedings. It is important to understand that resolving through a restorative justice approach does not eliminate the criminal sanctions imposed on the perpetrator. This provision demonstrates that the Indonesian criminal justice system focuses not solely on punishment but also on the aspect of recovery. The primary goal of this approach is to enable the perpetrator to reintegrate and become a good member of society. The theory of retribution clearly contradicts the philosophy of punishment based on the correctional system as stipulated in Law Number 12 of 1995, which was amended to become Law Number 22 of 2002 concerning correctional facilities. This is also reflected in the concept proposed in the Draft Criminal Code, which explicitly states that "punishment is not intended to inflict suffering or degrade human dignity." Based on the explanation above, the author intends to discuss **"Rehabilitation of Drug Abusers as a Form of Restorative Justice Implementation."**

RESEARCH METHOD

The research approach uses normative legal research methods to examine existing regulations, and a secondary data approach: books, scientific journals, and related legal literature. The data analysis technique uses qualitative methods as descriptive analysis to examine the data and connect it to restorative justice theory by systematically organizing the data obtained so that it can be shared with others.

RESULT AND DISCUSSION

Restorative Justice

The study of restorative justice has become a widely discussed issue, both by academics, law enforcement officers, and the general public. This initiative is increasingly important given that the current justice system often receives negative criticism from the public, particularly regarding the prosecution of criminal cases by prosecutors, which is considered not to reflect social justice. Although it does not explicitly regulate restorative justice, Law No. 1 of 2023 concerning the Criminal Code, Article 54 emphasizes the importance of considering the benefits of the victim or the victim's family and opens up the opportunity for judges to grant clemency. Therefore, to address this issue, the Indonesian Criminal Justice System needs to adopt a restorative justice approach.

Restorative justice practices allow prosecutors to resolve cases out of court, especially those that the public deems unnecessary. Article 3 outlines the primary objectives of restorative justice, namely:

1. Restore the victim.
2. Restore the relationship between the victim, the defendant, and the community.

3. Encourage accountability from the defendant.

4. Avoid deprivation of liberty, especially for children.

However, restorative justice does not aim to eliminate criminal responsibility. Article 4 outlines guidelines for judges in adjudicating cases. These rules include: Restorative Justice Guidelines: These guidelines are regulated in the Supreme Court Regulation (PERMA) and serve as a guide for judges in adjudicating criminal cases. Scope of the Regulation: This PERMA applies to all criminal cases, including cases within the scope of criminal law and military law. The provisions in the PERMA also apply to juvenile cases, in line with Article 5 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Implementation Obligation: All courts are required to implement these restorative justice guidelines, in accordance with applicable criminal procedure law.

Rehabilitation And Restorative Justice

Rehabilitation and Restorative Justice are two interrelated concepts, particularly in resolving legal cases, such as drug cases. Rehabilitation is a recovery process for lawbreakers, encompassing physical, mental, and social aspects. Meanwhile, Restorative Justice is an approach that focuses on mediation and collaboration between victims and perpetrators to achieve recovery.

Rehabilitation aims to restore the social functioning of individuals involved in crime, particularly drug crimes, so they can reintegrate into society. This process is carried out through structured and organized care, treatment, and recovery programs and can be part of a Restorative Justice approach, which promotes a more humane and recovery-focused case resolution.

The function of rehabilitation as a public health approach aims to reduce the number of active drug users. This is done through medical and social therapy provided by:

1. The National Narcotics Agency (BNN) Rehabilitation Center in Lido, West Java.
2. BNN Satellite Clinics located in various provinces and cities.
3. Private clinics and hospitals with whom we collaborate.

This rehabilitation program is intended for victims of abuse who report themselves voluntarily or for users recommended by law enforcement as an alternative to criminal penalties.⁷

Implementation of Restorative Justice

A paradigm shift in law enforcement from a punitive and retaliatory approach to restorative justice is a crucial step. Restorative justice emphasizes an agreement between the victim and the perpetrator, in which the perpetrator takes responsibility for their actions. This approach involves collaboration between the perpetrator, the victim, and the community to achieve a just resolution for all parties. It recognizes that criminal acts have a broad impact, not only on the victim, but also on the perpetrator and the community.

The implementation of restorative justice can optimize the justice system, making it more efficient, simple, and affordable. An example of restorative justice implementation is in drug abuse cases, which utilize a restorative justice approach through rehabilitation methods, where rehabilitation is an element of restorative justice. The implementation of restorative justice in drug cases is regulated in Attorney General's Guidelines No. 18 of 2021, which contains guidelines on resolving drug abuse cases through a rehabilitation process using a restorative approach. Its implementation is based on the Prosecutor's Principle of *Dominus Litis*.

This process is not arbitrary, but rather involves a series of rigorous considerations, including the quantity of evidence, the defendant's qualifications, the category of crime, the article charged, the defendant's elements of culpability (*mens rea*), and an in-depth evaluation through a comprehensive assessment. In

drug cases, restorative justice is not viewed as a last resort in the justice system, but rather as a form of rehabilitation focused on restoring the victim and perpetrator to their original state. Through this process, victims are expected to not only recover but also reintegrate into society and refrain from reusing drugs.

It is time to consider incorporating the philosophy of Restorative Justice into new criminal law regulations, particularly for cases involving complaints. The goal is to shift the focus from mere criminal sanctions to creating justice and balance for both perpetrators and victims. This way, legal dispute resolution will no longer rely solely on imprisonment, which is currently considered ineffective in creating a deterrent effect. Therefore, innovation is needed in the criminal justice system in Indonesia, which does not only rely on prison sentences, but also implements the principles of Restorative Justice.

CONCLUSION

Indonesia's criminal justice system, which adheres to the civil law tradition, has historically focused on retributive approaches and imprisonment. However, this approach is considered ineffective in creating a deterrent effect and achieving social justice. Therefore, restorative justice emerged as an innovation focused on repairing the damage caused by criminal acts and reconciliation between victims, perpetrators, and the community.

The application of restorative justice does not aim to eliminate criminal responsibility, but rather to complement the existing system. One concrete implementation is through rehabilitation, particularly in cases of drug abuse. The rehabilitation process, as stipulated in Attorney General's Guidelines Number 18 of 2021, aims to restore the social function of perpetrators so they can reintegrate into society. This implementation is based on rigorous consideration and comprehensive assessment. In short, restorative justice represents a paradigm shift from retributive to restorative.

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