



## RESEARCH ARTICLE

## Alternative Punishment Based on Restorative Justice to Reduce the Overcapacity of Indonesian Community Institutions

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ARTICLE INFO	ABSTRACT
Received: May 22, 2024 Accepted: Jul 15, 2024	The court is an endeavor to resolve a case that, in theory and conceptual terms, will establish justice. However, achieving this at the law-in-action level is challenging, as it often results in a win-lose solution and leads to overcapacity in correctional institutions. Therefore, this research aims to pinpoint restorative justice-based alternative solutions to alleviate Indonesia's correctional institutions' overcapacity. This research is normative and juridical, utilizing legislative, conceptual, and case study methodologies. The research results show that the overpopulation of prisons burdens the government, leading to health issues, security concerns, and high expenses. Consequently, it is encouraged that restorative justice may serve as a viable solution to policy issues associated with criminal law that have not been satisfactorily addressed. Nonetheless, this necessitates a uniform approach in legal culture, structure, and substance to ensure that all components operate in unison and that this therapeutic approach effectively reduces excess prison capacity in Indonesia.
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### INTRODUCTION

The Indonesian state is legal (rechtsstaat), as defined in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia). An individual commits a criminal act, an illicit act subject to punishment based on the legal definition of sin. The adage "Nullum Delictum Nulla Poena Sine Praevia Lege Poenali" translates to "There is no delict, no crime, without prior regulations." Consequently, this principle is enshrined in Article 1, paragraph 1 of the Criminal Code, which states that "no act may be punished except by the force of the criminal provisions in existing laws and regulations, prior to the commission of the act." (Torodji et al., 2023)

In the era of modernization, numerous crimes (offenses) occur within Indonesian society, resulting in litigation. Individuals often resort to court to resolve cases that, in theory and conceptually, should establish justice; however, this is not always the case. Implementing the law presents a challenge because it is inherently a win-lose solution, as resolving a case through judicial channels results in a win-lose outcome. In addition, the government must ensure the legal protection and human rights of all citizens, including those incarcerated in correctional establishments. One way to achieve this is by safeguarding the rights of the inmates (Arifin et al., 2023).

A critical component of the criminal justice system (Integrated Criminal Justice System) is the

correctional institution (Lapas). This institution is responsible for developing prisoners to facilitate their successful reintegration into society and their ability to function as contributing members. As stipulated in Law of the Republic of Indonesia Number 22 of 2022 concerning Corrections (Law of the Republic of Indonesia No. 22 of 2022 concerning Corrections), responsibility and freedom are required. To safeguard and offer direction to inmates in prison, the court imposes criminal penalties on them. This endeavor is anticipated to facilitate the detainees' integration into society and improve their quality of life upon completing their sentences. Prisons provide services, mentoring, community guidance, care, guidance, and observation to inmates, including correctional clients, students, and prisoners. This is consistent with the function of prisons (Silaswaty Faried et al., 2022).

According to Institute for Criminal Justice Reform (ICJR) data, Indonesia's correctional institutions are currently under a disproportionate capacity burden. This burden is expected to increase by 223% by January 2022. In addition, the number of detainees and captives reached 265,514 out of the total number of prisons and detention centers, which totaled 525, as indicated by data from the Indonesian Correctional Database System (SDP) in May 2021. The current capacity is significantly greater than the anticipated 135,647. On average, all correctional institutions have exceeded capacity by 196%, according to data from 2021. In correctional institutions, overcapacity is typically the result of an imbalance between the number of inmates entering and the number departing. A new issue has arisen as a consequence of prison overcapacity: the non-fulfillment of detainees' rights as a result of insufficient prison housing capacity (SUWADI et al., 2023).

The placement of detainees in correctional institutions is intended to offer guidance, not disregarding their rights as inmates. The opportunity for detainees to exercise their rights will be influenced by the extremely high capacity of correctional institutions. This condition has impacted the fulfillment of inmates' rights, including irregularities in placement, separation, and other services (Listiningrum et al., 2023). Consequently, it is imperative to devote additional attention to fulfilling inmates' rights from various parties, as fulfilling these rights is of paramount importance and is associated with human rights. This will enable the rights of inmates to be maximized in compliance with the relevant laws. Restorative justice is one approach to addressing overcapacity. This approach entails the collaboration of community leaders, religious leaders, traditional leaders, perpetrators, victims, and their families to resolve criminal offenses peacefully (Yuliana & Prasetyo, 2022).

Restorative justice is a novel method of resolving criminal cases. Even though this approach model is still the subject of extensive theoretical debate among experts, it is a reality that continues to exist, develop, and influence legal policy and practice in numerous countries (Saputra et al., 2022). In certain criminal cases, such as those involving children and women, narcotics, and minor crimes, the application of restorative justice is normatively oriented and results in the alignment of the interests of victim recovery and non-imprisonment accountability of perpetrators. Restorative justice is currently included in the new Criminal Code (KUHP), specifically in Article 51, Article 54 paragraph (1) letters j and k, Article 70, and Article 132 of Law Number 1 of 2023. Restorative justice is the primary objective of the new Criminal Code, which emphasizes the restoration of justice rather than merely the imposition of punishment for each criminal offense (Triasari et al., 2023). Restorative justice is one of the principles of law enforcement in resolving cases that can be used as an instrument of recovery. The Supreme Court has implemented this principle by enacting policies. However, its optimal implementation in the Indonesian criminal justice system, including prisons, has not been achieved. In an endeavor to prevent conditions of overcapacity in prisons, particularly in Indonesia, it is crucial to thoroughly examine the pattern of restorative justice, given this context.

## METHOD

This study employs normative legal research, a method based on secondary data. This type of research is characterized by the analysis of legal norms, resulting in an argument, theory, or novel concept that serves as a prescription or assessment of the issue (Jaelani et al., 2024). This research

employs the statutory (statute) and analytical and conceptual approaches to analyze legal concepts (Irawan et al., 2024). These concepts will be analyzed using legal interpretation in argumentative descriptions based on legal theory, principles, and legal concepts relevant or directly related to the studied problem (Luhukay & Jaelani, 2019).

## RESULT AND DISCUSSION

The term "restorative justice" has been acknowledged in Indonesia as a stage in the traditional criminal justice system since the 1960s. Restorative justice is a concept that is employed to resolve cases that occur in Indigenous communities without the engagement of state officials. The fundamental tenet of restorative justice is the participation of victims, perpetrators, and citizens who act as intermediaries in resolving disputes (Laksana, 2017). This guarantees that the harmony established in society is not disturbed by perpetrators or minors. According to Liebmann, restorative justice is a legal framework intended to prevent the recurrence of criminal activities or violations and restore the well-being of victims, perpetrators, and communities that have been affected by crime. Furthermore, Liebmann articulated the fundamental principles of restorative justice, which are as follows:

- a. Prioritize the assistance and recovery of victims.
- b. Violators are held accountable for their actions.
- c. Facilitating comprehension through communication between the perpetrator and the victim.
- d. The losses that have been sustained can be accurately assessed.
- e. Offenders must be aware of the strategies that can be employed to prevent the commission of future offenses.
- f. The community should support both the victim and the perpetrator to facilitate their integration.

Apart from that, according to Satjipto Rahardjo, there are three basic principles for establishing restorative justice, namely (Hobson & Payne, 2022):

- a. There be a restoration to those who have been injured (Terjadi pemulihan kepada mereka yang menderita kerugian akibat kejahatan).
- b. The offender has an opportunity to be involved in the restoration if they desire (Pelaku memiliki kesempatan untuk terlibat dalam pemulihan keadaan (restorasi)).
- c. The court systems role is to preserve the public order and the community's role is to preserve a just peace.

There are two recognized legal settlement methods: litigation and non-litigation. Indonesia continues to resolve criminal cases through litigation or judicial procedures. It is anticipated that the provision of imprisonment will serve as a deterrent to criminal perpetrators by resolving disputes through justice (Mulyawarman et al., 2024). Nevertheless, this litigation phase only sometimes proceeds as expected in practice. This litigation method results in issues that hinder the recovery of the impact of crimes with justice due to retaliation, the accumulation of cases, the lack of rights and objections, and the rigidity of punishment (Siboy et al., 2023). Prisons are the most critical component of the correctional system and are beneficial in providing guidance. The name change transformed the prison system's objective into a corrective one. The current correctional system's goal is development, not imprisonment. Coaching is conducted to facilitate the transition back to a life of fairness and responsibility in society (Sharpless et al., 2022).

The issue of prison overpopulation still needs to be satisfactorily addressed. Over time, it becomes clear that numerous challenges confront the goal of coaching prisoners, potentially leading to suboptimality and the institution's inability to fulfill its coaching role. Ideally, when enforcing the law, law enforcers must be capable of achieving the three fundamental legal values of justice, benefit, and legal assurance. Radbruch posits that legal certainty is the primary guide for the law, ensuring that it is positive and applies with certainty. Adherence to the law is genuinely positive. The law must be unchanging, as it is required to be specific. One may prioritize justice over the interests of the broader community. Adherence to a hierarchy of priorities necessitates prioritizing justice over expediency and legal certainty. In its role of protecting human interests, the law must achieve its objectives. The fundamental aim of the law is to establish a social structure that is both equitable and well-organized. It is anticipated that human interests will be safeguarded by establishing order in society (Kirkwood, 2022).

The United States holds a significant role in the implementation of restorative justice. It is a pioneer in this field, having begun implementing Victim Offender Mediation (VOM) as part of the restorative justice procedure in 1970. This process offers victims the chance to inquire about the perpetrator's motivations for their actions and to demand immediate accountability (Wardani Amnesti et al., 2023). The complexity of the United States legal system means that the implementation of restorative justice is contingent upon the policies of the judicial institutions in each state. Not all countries implement restorative justice as a dispute-resolution method, but the United States is a leading example. Indonesia and the United States are two countries that have instituted restorative justice in their criminal justice systems, each with its own unique implementation based on their legal systems and policies.

The Netherlands administers alternative punishments to offenders as part of implementing restorative justice. Alternative punishment emphasizes penalties such as administrative fines, rehabilitation, the requirement to acquire specific skills, and social work. This is particularly true for crimes classified as "light" and particular "medium." Providing alternative punishments for offenders in the Netherlands has proven to be a highly effective solution to the issue of overcrowding or excess capacity in detention centers. Until the implementation of alternative punishments in 2007, the Netherlands also faced excess detention capacity (Hariyanto et al., 2024). Malaysia, which is not significantly different from Indonesia, also has a Malaysian variant of the KUHP, known as the Malaysian Internal Security Act 1960 or the Malaysian Internal Security Act. The Malaysian Internal Security Act 1960 does not explicitly regulate restorative justice, which is not significantly different from the KUHP in Indonesia (Taufiqurrohman et al., 2024). Nevertheless 2012, the Malaysian government adopted the 2012 Criminal Procedure Code. One of its components is the implementation of restorative justice through plea bargaining, which involves expediting the resolution of criminal cases and avoiding imprisonment due to the perpetrator's admission of guilt (Rohmy et al., 2024).

However, positive law in Indonesia only emerged in the 2020s, particularly with establishing the Prosecutor's Regulations and Police Regulations regarding restorative justice, even though restorative justice is considered one of the distinctive characteristics of Indonesian law. The restorative justice concept's ultimate objective is to decrease the number of inmates in prison, eliminate the stigma or label, and transform criminals to facilitate their reintegration into society. To prevent repeating their actions, criminals can learn from their errors to avoid repeating themselves. Republic of Indonesia Law No. 1 of 2023 concerning the Criminal Code (KUHP), albeit without explicit mention, regulates restorative justice. It is mandatory to contemplate forgiveness from the victim or the victim's family, as outlined in Article 54, which governs sentencing guidelines (Qurbani et al., 2021).

Additionally, the Criminal Code allows judges to grant absolution or judicial pardon. This is the fundamental rationale for altering the direction of punishment. However, each law enforcement institution regulates the implementation of restorative justice. For example, the Prosecutor's Regulation (Perja) No. 15 of 2020, which pertains to the termination of prosecution based on restorative justice; the Police Regulation (Perpol) No. 8 of 2021, which relates to the handling of criminal acts based on restorative justice; and the Decree of the Director General of Badilum MA No.1691/DJU/SK/PS.00/12/2020, which outlines the guidelines for the implementation of restorative justice in the general court environment. Despite the various ways of regulating restorative justice, improvements are necessary. There is concern that implementing restorative justice in different regulatory frameworks will result in varying perceptions. The absence of a comprehensive definition and explanation of restorative justice can impede law enforcement officials' implementation (Gerson, 2022).

Implementing restorative justice in Indonesia is not only an opportunity, but it also faces challenges. People often perceive restorative justice as a way to end cases and achieve harmony. In reality, the concept of restorative justice is more concerned with recovery, particularly for victims. For instance, it addresses how victims can access services to obtain justice. The solution to the issue of prison overcapacity cannot be achieved solely through the construction of new facilities; it necessitates modifications to the political landscape of criminal law. The overcrowding or overcapacity of prisons is one of the most significant issues in the Indonesian punishment process (Marder, 2022). This is because criminal sanctions remain the preferred method of punishing perpetrators, which is why prisons are becoming increasingly overcrowded and unable to accommodate detainees. Overcapacity causes issues within the institution, including reduced security and supervision. Therefore, the initial purpose of prisons, which was to provide a safe environment for prisoners, has resulted in increased criminal activity within the prisons. Acts of maltreatment between prisoners, drug trafficking in prisons, or overcrowding that leads to fires or riots are among the types of crimes that may occur in prisons. In addition, prison congestion results in higher government expenses, health issues, and security concerns (April et al., 2023). People widely recognize that the government is responsible for the costs associated with providing sustenance and healthcare to prisoners. Consequently, restorative justice is anticipated to serve as a viable solution to the policy issues related to criminal law that have not been resolved to the best of their ability.

## CONCLUSION

Prison overcrowding burdens the government with high expenditures, health issues, and security concerns. People widely recognize that the government bears the responsibility for the expenses associated with providing sustenance and healthcare to prisoners. Consequently, it is anticipated that restorative justice will serve as a viable solution to the policy issues associated with criminal law that have not been resolved to the best of their ability. Restorative justice, a novel alternative resolution method for criminal cases, has the potential to alleviate overcapacity conditions in Indonesian institutions. Nevertheless, this necessitates a consistent approach in terms of substance, structure, and legal culture to ensure that all components function in concert and that this restorative approach is effective in reducing the overcapacity of prisons in Indonesia.

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