

Handling Of Minor Crime Cases (Tipiring) Through Restorative Justice As An Effort To Overcome Overcapacity Of Prisoners

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Abstract.

As one of the sub-systems of criminal justice, correctional institutions (Lapas) have a role in the implementation of fostering prisoners and correctional students through a correctional system based on education, rehabilitation, and reintegration. In Law Number 12 of 1995 concerning Corrections, it is stated that the correctional system is held in order to form correctional inmates so that they become fully human, realize mistakes, improve themselves, and do not repeat criminal acts so that they can be accepted again by the community. However, in its development, the guidance carried out is not optimal due to the complexity of the problems that occur in prisons. One of the root causes of problems in prisons/detention centers is overcapacity. Various policies have been taken to overcome the overcapacity problem, including through building rehabilitation to the construction of new buildings with the aim of increasing the capacity of prisons and detention centers. However, this policy was not significantly able to overcome the problem of overcapacity considering the increasing number of detainees and inmates who are still much more as a result of the high level of crime in the community. Efforts that may be more appropriate to do to overcome the excess capacity in prisons can be taken by using a Restorative Justice approach, namely a shift in punishment in the criminal justice system that prioritizes justice for victims and perpetrators of criminal acts in addition to alternative punishments such as social work. and others. this policy was not significantly able to overcome the problem of overcapacity considering the increasing number of detainees and inmates who are still much more as a result of the high level of crime in the community. Efforts that may be more appropriate to do to overcome the excess capacity in prisons can be taken by using a Restorative Justice approach, namely a shift in punishment in the criminal justice system that prioritizes justice for victims and perpetrators of criminal acts in addition to alternative punishments such as social work. and others. Efforts that may be more appropriate to do to overcome the excess capacity in prisons can be taken by using a Restorative Justice approach, namely a shift in punishment in the criminal justice system that prioritizes justice for victims and perpetrators of criminal acts in addition to alternative punishments such as social work. and others. Efforts that may be more appropriate to do to overcome the excess capacity in prisons can be taken by using a Restorative Justice approach, namely a shift in punishment in the criminal justice system that prioritizes justice for victims and perpetrators of criminal acts in addition to alternative punishments such as social work. and others.

Keywords: Restorative Justice, Overcapacity Of Prisoners

I. INTRODUCTION

As one of the sub-systems of criminal justice, correctional institutions (Lapas) have a role in the implementation of fostering prisoners and correctional students through a correctional system based on education, rehabilitation, and reintegration. In Law Number 12 of 1995 concerning Corrections, it is stated that the correctional system is held in order to form correctional inmates so that they become fully human, realize mistakes, improve themselves, and do not repeat criminal acts so that they can be accepted again by the community. However, in its development, the guidance carried out is not optimal due to the complexity of the problems that occur in prisons. One of the root causes of problems in prisons/detention centers is overcapacity. Based on data in the correctional database system on August 5, 2018, the number of prisoners and inmates in all Correctional Institutions (Lapas) and Detention Centers (Rutan) in Indonesia is 250,444 people. This number far exceeds the ideal capacity that can be accommodated by prisons and detention centers in total which is only 124,696 people. As a result of this overcapacity, among others, it has an impact on the poor health condition and psychological atmosphere of the inmates and detainees, it is easy for conflicts to occur between the residents of prisons/detention centers, coaching is not optimal and does not run according to regulations and there is an increase in the budget due to increased consumption of water, electricity, and foodstuffs. Various policies have been taken to overcome the overcapacity problem,

including through building rehabilitation to the construction of new buildings with the aim of increasing the capacity of prisons and detention centers.

However, this policy was not significantly able to overcome the problem of overcapacity considering the increasing number of prisoners and inmates who were still much more as a result of the high level of crime in the community. If the overcapacity problem is analogous to a leaky roof, how many and how big a storage container should be provided to accommodate water that enters the house when it rains if the hole in the leaky roof is not repaired immediately. This is what happens in Corrections, how much budget should be spent by the state to increase building capacity or build new prisons/detention centers? Or to what extent is the financial capacity of the Ministry of Law and Human Rights to provide an annual food budget to meet the ever-increasing needs of inmates and detainees? Efforts that may be more appropriate to do to overcome the excess capacity in prisons can be taken by using a Restorative Justice approach, namely a shift in punishment in the criminal justice system that prioritizes justice for victims and perpetrators of criminal acts in addition to alternative punishments such as social work, and others. Bagir Manan, describes the substance of restorative justice which contains the principles: building joint participation between perpetrators, victims, and community groups to resolve an event or criminal act; placing the perpetrators, victims, and the community as 'stakeholders' who work together and immediately try to find a solution that is considered fair for all parties (win-win solutions).

The emergence of the discourse of restorative justice is the answer to the destruction of the current criminal system where the system is no longer effective in suppressing the high crime rate which leads to overcapacity in Correctional Institutions. The concept of conventional criminal justice which only focuses on punishing and punishing criminals has not touched the interests of victims and/or people who have been harmed by criminal acts committed by criminals. Restorative Justice views punishment from a different angle, which is related to the fulfillment of the losses suffered by the victim so that peace becomes the ultimate goal of this concept. This concept does not necessarily eliminate imprisonment, but in certain cases that cause mass losses and are related to a person's life, imprisonment can still be used. The concept of Restorative Justice has an implementation method in the form of penal mediation and diversion, although both have the same way and point of view, sometimes their use is in different jurisdictions. Penal mediation is more associated with ordinary criminal cases, while diversion is a term in the Juvenile Criminal Justice System. However, the application of Restorative Justice in the Indonesian legal system is still partial and not comprehensive because it is still scattered in various legal and policy instruments and has not been implemented comprehensively in our criminal justice system. Another factor that hinders the application of the concept of restorative justice as an effort to reduce the overcapacity of correctional institutions is the statutory factor, namely the absence of a law that regulates the use of restorative justice through Alternative Dispute Resolution (ADR) in criminal cases. Based on the explanation above, the researchers took the title of the thesis research "Handling cases of minor crimes (TIPIRING) through restorative justice as an effort to overcome the overcapacity of prison residents".

II. FORMULATION OF THE PROBLEM

1. How is the process of handling minor criminal cases (TIPIRING) through restorative justice as an effort to overcome the overcapacity of prison residents?
2. What are the obstacles faced in handling cases of minor crimes (TIPIRING) through restorative justice as an effort to overcome the overcapacity of prison residents and how to overcome them?

III. DISCUSSION

➤ Process for Handling Minor Crime Cases (TIPIRING) through Restorative Justice as an Effort to Overcome Overcapacity of Prisoners

Based on Article 1 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, what is meant by children in conflict with the law are children in conflict with the law, children who are victims of criminal acts, and witnesses of criminal acts. According to Article 1 paragraph 3 Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) states that children in

conflict with the law are children who have reached the age of 12 (twelve) years but have not yet reached the age of 18 (eighteen) years.

The things that must be considered in the process of handling children in conflict with the law are:

1. Investigation Process

The investigation of the child must be in a family atmosphere as regulated in Article 27 paragraphs (1), (2) and (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Investigators must seek diversion no later than 7 (seven) days after the investigation begins, this provision is in accordance with the SPPA Law. Diversion is attempted solely to prioritize the best interests of the child so that the child will live a life later without any trauma due to the judicial process. The SPPA Law also regulates criminal provisions for investigators who do not carry out their obligations, namely seeking diversion. If there are investigators who intentionally do not carry out these obligations, they will be threatened with imprisonment for a maximum of 2 years.

2. Arrest

Technique interview conducted by a police officer against a child offender first informs the child's parents or guardian immediately before the interview begins, then the police also informs that the child has the right to get legal assistance from a lawyer or advocate. The police also inform children and their parents or guardians about the importance of children being accompanied by competent legal counsel and social workers, and how to access such assistance. Next the police in examining children, treat children with consideration of limited ability or verbal compared to adults and even compared to the police themselves. The wrong action against the child creates a sense of trauma to the child in the future. Therefore, the police in conducting an examination seek to create a friendly atmosphere between the investigator who is interviewing and the child being examined. The police institution is the first state institution to intervene against children in conflict with the law. Arrest, detention, investigation, and investigation are the authority of the police to enforce the juvenile criminal justice system.

In carrying out their duties, the police are given discretionary power. Discretionary authority is a legal authority where the police have the right to continue or not to continue a case. Based on this authority, the police can divert (diversion) a child's case so that the child does not have to deal with a formal criminal court settlement. Diversion meetings are held by involving children (children in conflict with the law) and their parents/guardians, victims and their parents/guardians, community counselors, and professional social workers. The diversion meeting opens the possibility to bring other parties if needed. Other parties who can be presented at the diversion meeting according to Article 8 paragraph (2) of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System are social and/or community welfare workers. The diversion deliberation that has obtained approval to carry out the diversion shall be included in the diversion agreement. the diversion agreement that has been prepared is then processed in accordance with the provisions of Article 12 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System.

➤ **Constraints Faced in the Process of Handling Minor Crime Cases (TIPIRING) through Restorative Justice as an Effort to Overcome Overcapacity of Prisoners and How to Overcome It**

a. Obstacles Faced

The factors that become obstacles in resolving criminal cases of minors are as follows:

1) Limited time

One obstacle to the implementation of diversion is the lack of time provided by law for law enforcement officers to seek diversion. Because the law only provides a maximum limit of 30 (thirty) days.

2) Apparatus enforcer Retributive Law

Law enforcement officers who play a role in it are the police, prosecutors, and judges, if they are still thinking retributive (punishment), will be an obstacle in the application of restorative justice and diversion. Because law enforcement officers in charge of criminal cases of children must prioritize the rights of protection for children.

3) Attitude Perpetrator and the Perpetrator

In the case of criminal acts committed by children, there are various attitudes from children who sometimes feel innocent and think that the case they are doing is a light matter, and also the attitude of the parents of the perpetrators who are still irresponsible in accordance with the results of the diversion agreement that has been made. where usually the perpetrator does not compensate in accordance with the stipulated time.

4) Amount Apparatus

The problem of the number of personnel is also an internal constraint. According to personnel in the PPA unit the number of police commissioners is limited. To become a police commissioner, certain qualifications are required and not all investigators can become police commissioners. With so many other tasks, the limited number of personnel sometimes becomes an obstacle because one personnel must solve many problems at once.

5) Community views on diversion and restorative justice

6) The public still has the view that all criminal cases must be resolved through the courts because of this view they assume that only judges have the most appropriate decisions in every settlement of criminal cases. Victims/families of victims who attend the diversion meeting who hear regrets and apologies from the side of children in conflict with the law do not always accept remorse and forgive children in conflict with the law

b. Efforts made in Resolving Obstacles

Effort The steps taken by the police in overcoming the obstacles faced are as follows:

1) Improving human resources

The improvement of human resources in the application of restorative justice is aimed at improving the quality of law enforcement officers who handle child criminal cases with the improvement of the quality of human resources. there is a process of examination, arrest and investigation using retributive behavior.

In addition to improving the quality of the apparatus, the number of officers can be increased again because the addition of the number of officers is expected to optimize the work of law enforcement officers in solving juvenile criminal cases.

2) Providing child-friendly facilities and infrastructure

Children in conflict with the law should not be treated equally with adults, the facilities and infrastructure provided must also be adapted to the perpetrator, where if the perpetrator is a child then child-friendly facilities and infrastructure must be provided so that children who are in conflict with the law do not feel pressured and afraid in carrying out every process in the settlement of criminal cases of children.

3) Instilling an understanding of diversion and restorative justice

By providing complete understanding and clarity regarding diversion and restorative justice, it is hoped that the views of parents whose children are in conflict with the law on the settlement of criminal cases can not only be resolved by court but can be resolved by diversion. -people who are dealing with the law but it can also be done by providing socialization.

4) Deal and Indemnity at the same time

5) There are obstacles where the perpetrators do not carry out their responsibilities as agreed in the diversion agreement, the police make efforts where in the diversion agreement, the perpetrators must also make compensation in accordance with what was agreed simultaneously. This effort is made so that there are no more perpetrators who break their promises regarding the agreement

IV. CONCLUSION AND SUGGESTION

Conclusion

a. The implementation of restorative justice through diversion has begun to be implemented by adhering to the guidelines of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which replaces Law no. 3 of 1997 concerning Juvenile Court which was carried out with the aim of realizing

a court that truly guarantees the protection of the best interests of children who are in conflict with the law as the nation's successor.

b. There are several obstacles faced in the process of resolving child criminal cases by investigators with restorative justice, namely the quality of the apparatus and the number of law enforcement officers where usually there are still retributive officers in resolving child criminal cases and the number of officers in handling child cases is still quite low. because it takes special skills in dealing with a child in conflict with the law, facilities and infrastructure are also an obstacle where the lack of child-friendly facilities and infrastructure

Suggestion

More serious efforts are needed in implementing restorative justice efforts in the criminal justice system as a solution to solving the overcapacity problem in correctional institutions, one of which is by instituting the principles of restorative justice in the form of norms in the Criminal Code Bill and other laws and regulations so that all sub- systems in the criminal justice system such as the police, prosecutors, and judicial institutions have a strong legal basis for implementing them. Thus, it is hoped that the problem of overcapacity in correctional institutions can be resolved considering that the negative impact caused by this problem is not small and consumes a large amount of the state budget.

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