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Implications of Renewal System of Criminal Justice Based on the Principles of Restorative Justice on The Role of Probation and Parole Officer

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ABSTRACT

In Indonesia, criminal law reform is manifested in plans to amend several laws and regulations, including the Criminal Code, the Criminal Procedure Code, and the Correctional Law. In addition, several criminal justice sub-systems have issued policy regulations that put forward the principle of penal mediation to accommodate the limitations or shortcomings of formal criminal law in resolving criminal cases. These various steps of change put forward a value known as restorative justice. The concept of restorative justice, which contains two main principles, namely participation, and recovery, always requires the role of Probation and Parole Officer as stated in the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System. The formulation of the following research problem is how the implications of reforming the criminal justice system based on the principles of restorative justice on the role of the Probation and Parole Officers. The purpose of this study was to determine the projected implications of reforming the criminal justice system based on the principles of restorative justice on the role of Probation and Parole Officers. This research is descriptive normative legal research. The results of the study indicate that Probation and Parole Officers have the potential to obtain strengthening of duties and functions in particular from the three main aspects of reform, namely strengthening alternative disposal, the existence of sentencing guidelines, as well as supervision and guidance in the implementation of various types of punishments and treatments. The expansion of these tasks and functions indicates the urgency of optimizing the fulfillment of technical and facilitative needs for the Probation and Parole Officers.

Keywords: Probation and Parole Officers, Criminal Law Reform, Restorative Justice, Correctional

ABSTRAK

Pembaruan hukum pidana di Indonesia terwujud dalam rencana perubahan sejumlah peraturan perundang-undangan, di antaranya Kitab Undang-Undang Hukum Pidana, Kitab Undang-Undang Hukum Acara Pidana, dan Undang-Undang Pemasyarakatan. Selain itu, sejumlah sub sistem peradilan pidana telah mengeluarkan peraturan kebijakan yang mengedepankan prinsip mediasi penal demi mengakomodir keterbatasan ataupun kekurangan hukum pidana formil dalam menyelesaikan perkara pidana. Berbagai langkah perubahan tersebut mengedepankan suatu nilai yang dikenal dengan keadilan restoratif. Konsep keadilan restoratif yang mengandung prinsip partisipasi dan prinsip pemulihan senantiasa membutuhkan peran dari Pembimbing Kemasyarakatan sebagaimana dalam Undang-Undang RI Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak. Rumusan masalah penelitian berikut ialah bagaimana implikasi pembaruan sistem peradilan pidana berlandaskan prinsip keadilan restoratif terhadap peran dari Pembimbing Kemasyarakatan. Tujuan penelitian ini adalah untuk mengetahui proyeksi implikasi pembaruan sistem peradilan pidana berlandaskan prinsip keadilan restoratif terhadap peran dari Pembimbing Kemasyarakatan. Penelitian ini merupakan penelitian hukum normatif yang bersifat deskriptif. Hasil penelitian menunjukan bahwa Pembimbing Kemasyarakatan berpotensi memperoleh penguatan tugas dan fungsi khususnya dari tiga aspek utama pembaruan, yakni penguatan alternative dispute resolution, eksistensi pedoman pemidanaan, serta pengawasan dan pembimbingan dalam pelaksanaan berbagai jenis pidana maupun tindakan. Perluasan tugas dan fungsi tersebut mengindikasikan urgensi optimalisasi pemenuhan kebutuhan teknis dan fasilitatif terhadap Pembimbing Kemasyarakatan.

Kata Kunci: Pembimbing Kemasyarakatan, Pembaruan Hukum Pidana, Keadilan Restoratif, Pemasyarakatan

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INTRODUCTION

Crime prevention efforts are conceptualized in criminal policies and their derivations, known as criminal law policies. The criminal policy is substantively a rational effort to tackle crime. The criminal law policy, commonly termed penal policy, establishes regulations by an authorized body to express what is contained and expected by the community (Arief, 2017, p. 26). The development of the two forms of policy blurs the boundaries of scope between each other, resulting in a concept known as restorative justice.

This concept is characterized by the dominant contribution of social science in intervening in criminal policy. This condition has a significant impact on various aspects, one of which is the legal structure. The structure of the criminal justice system accelerates dynamically because it involves social cluster workers in handling criminal acts and the juvenile criminal justice system. Guided by the paradigm of restorative justice, the fundamental aspect expected is the protection of the suspect's human rights and the interests of victims who have been forgotten in the justice system (Haerah & Amriyanto, 2020). In addition, the recovery process is pursued through a participatory approach from the community.

The dominance of the role of the community so that the relevant provisions include three implementing elements outside of the conventional criminal justice system elements, namely Professional Social Workers, Social Welfare Workers, and Probation and Parole Officer. Based on these three elements, the Probation and Parole Officer has a significant role compared to the other two elements considering that the related position carries out the role from the initial stage of the examination until implementing the criminal act, or the result of the diversion agreement has been completed.

The supremacy of Social Advisors in the concept of restorative justice cannot be separated from the development of science, especially in criminology. According to positivist criminologists, humans are seen as not having the doctrine of free will but being influenced by internal conditions (psychological /biological determination) and external conditions (sociological resolution) (Zarkasi, 2020, p. 22). This paradigm also shifts the criminal implementation system from a retributive one to a rehabilitative one that prioritizes individual treatment. Like a medical system, every criminal is diagnosed first, and then a treatment pattern is formulated. The diagnosis document should at least be contained in the Community Counselor's community research (litmas).

In addition to containing a criminogenic analysis of the perpetrators of the crime, the litmas document also outlines the responses from various parties to the incident or recommended policy proposals. The responses consist of families, local government, victims (if any), and local communities. Data mining through related elements becomes a driving force for public participation so that the pattern of criminal settlement is inclusive.

Government involvement in crime prevention and attention to criminogenic factors has been discussed since the 6th United Nations (UN) Congress in 1980 in Caracas, Venezuela, with a resolution of all UN members taking action to eliminate living conditions that cause a person to commit a crime, covering the problems of unemployment, poverty, illiteracy/ignorance, racial discrimination and various forms of social inequality (Arief, 2017, p. 12). Therefore, the Community Counselor has become a symbol of contemporary criminal law reform that can build a synergy between penal and non-penal policies. However, the realm of concepts has not been in harmony with the existence of Probation and Parole Officer to date.

This can be seen in the initial steps of the criminal justice sub-system in interpreting restorative justice. For example, the Police issued Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice and the Prosecutor's Office through Regulation of the Prosecutor of the Republic of Indonesia Number 15 of 2020 concerning Termination of

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Prosecution Based on Restorative Justice. The two related sub-system regulations simplify restorative justice just to settle cases outside the flow of the conventional criminal justice system. Apart from restoring the relationship between the perpetrator and the victim, restorative justice also demands efforts to restore the perpetrator's criminogenic factors, which directly require litmas from the Community Counselor as an analytical tool.

On the other hand, some previous research also did not include the Probation and Parole Officer as a significant element in implementing restorative justice. Muladi in his research entitled Implementation of Restorative Justice Approaches in the Juvenile Criminal Justice System concluded that restorative justice can be effective if operational steps from stakeholders such as the Police, Prosecutors, Courts, and Correctional Institutions as well as the community are always aware of the 5 (five) basic principles, namely personal excellence. (personal mastery), understanding of organizational systems thinking (mental models), shared vision (shared vision), thinking in teams (team learning), and thinking systemically (systemic thinking) (Muladi, 2019).

In addition, Rudini Hasyim Rado and Nurul Badilla, in their research related to the Concept of Restorative Justice in the Integrated Criminal Justice System, also concluded that restorative justice could be pursued in two forms, namely settlement outside the criminal justice process through deliberation and settlement through the criminal justice system with mediation at the investigation stage by investigators, at the stage of prosecution by the public Prosecutor, at the stage of trial by a judge, or carrying out imprisonment by the Penitentiary (Rado & Badilla, 2019). The two conclusions from the research results do not involve the Probation and Parole Officer as a determining element in the operation of restorative justice.

Therefore, with all the vital roles of the Probation and Parole Officer in the Implementation of restorative justice as in the juvenile criminal justice system and, on the other hand, the Draft Criminal Code (RKUHP) and the strong dynamics of criminal law on the determination of restorative justice theory, the problem in this research is This is how the implications of reforming the criminal justice system based on the principles of restorative justice on the role of the Probation and Parole Officer.

The purpose of the research is to find out and analyze the projected implications of reforming the criminal justice system based on the principles of restorative justice on the role of Probation and Parole Officers. In addition, as input for the legislative and executive parties in drafting laws and regulations and policy regulations related to criminal law reform.

RESEARCH METHOD

Based on the formulation of the problem and the objectives to be achieved in the research, the type of research is normative legal research or doctrinal legal research, namely legal research whose object of study includes legal principles and legal norms using a qualitative approach. The data used include primary data and secondary data. Primary data comes from information obtained from the Directorate General of Corrections, Ministry of Law and Human Rights, the Institute for Criminal Justice Reform, and Makassar Class I Penitentiary. The primary data collection method was carried out through virtual interviews with the Director of Community Guidance and Child Alleviation of the Directorate General of Corrections, the Director of Law and Regulation of the Ministry of National Development Planning / National Development Planning Agency of the Republic of Indonesia, and the Executive Director of the Institute for Criminal Justice Reform. Through face-to-face interviews. The secondary data comes from the study of legislation and various literature studies.

All data obtained from the next study results were inventoried and then analyzed descriptively intending to provide an overview of the relationship between symptoms and phenomena related to the implications of reforming the criminal justice system based on the principles of restorative justice the role of Probation and Parole Officers.

RESULTS AND DISCUSSION

Through the presence of the Draft Criminal Code and the Draft Criminal Procedure Code, criminal law reform projects substantial changes. The current policy direction emphasizes the principle of restorative justice to overcome contemporary crime that includes the participation of various parties in conflict resolution (Presser & Voorhis, 2002). This is explicitly manifested in the norms for punishment as stated in Article 51 of the Draft Criminal Code for the September 2019 period by affirming conflict resolution through efforts to restore balance.

Restorative justice as a basic value that focuses on recovery efforts by not viewing criminals as enemies of society (Akub & Baharu, 2012, p. 75) is contextualized into regulations as a tool that maintains a balance of interests. Many designer figures such as Barda Nawawi Arief, Muladi, and Marcus Priyo Gunarto termed this concept a mono dualistic principle.

The mono dualistic principle is relevant to the Indonesian nation's character, which places individual interests and social interests in a balanced manner which is then embodied in the norms of criminal acts, criminal responsibility, and punishment. Barda Nawawi Arief said the balance was motivated by the culmination of two perspectives, namely the objective aspect of the action (daad) and the subjective aspect of the actor (dader). So this principle is also termed Daad-dader Strafrecht (Arief, 2017, p. 97).

The Monodualistic principle as a synthesis of restorative justice and socio-philosophical characteristics of the Indonesian nation is relevant to the Probation and Parole Officer's role in reforming the Indonesian criminal justice system. Marcus Priyo Gunarto further classifies the determination of Daad-dader Strafrecht into several antinomies which are balanced. One of them is the balance between the protection or interests of the victim and the idea of individualizing the convict (Gunarto, 2012).

This concept has been manifested in the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, which not only simplifies the concept of restorative justice into a diversion policy which is the settlement of cases outside the criminal justice system but also includes community research (litmas). The Judge must consider a document for the psycho-social diagnosis of Child Perpetrators. In addition, the regulation on several types of crimes and rehabilitative actions also emphasizes the individualization of the perpetrators, which is a variable of the value of restorative justice. In this context, restorative justice seeks to restore the originality of the function of criminal law, especially imprisonment as the ultimatum remidium (Mustikowati, Akub, & Muchtar, 2014, p. 85).

The meaning of restorative justice, which is not only related to the concept of diversion, is also emphasized by the Executive Director of the Institute for Criminal Justice Reform, Erasmus A.T. Napitupulu. Erasmus clearly stated (Interview December 17, 2021):

"Even though diversion is termed as a mechanism outside the criminal justice system, it is still part of the criminal justice system. However, it is not the only one because the concept of restorative justice can be implemented at every stage. Even the adjudication stage through the pressure point of the recovery or rehabilitative efforts also includes the fulfillment of the principles of restorative justice as stated in the General Prosecutor's Guide Number 18 of 2021 concerning the Settlement of the Handling of Criminal

Cases of Abuse of Narcotics Through Rehabilitation with a Restorative Justice Approach as the Implementation of the Prosecutor's Dominus Litis Principle."

In contrast to Marcus Priyo's foundation, which comes from a mono dualistic principle, Erasmus originates from an understanding identical to John Braithwaite's view that restorative justice must be viewed from two sides, namely as a process and as a principle. As a process, the essence of restorative justice is found in the case settlement mechanism outside the criminal justice system, while as a principle, the essence of restorative justice is in recovery. Based on the political dynamics of criminal law in interpreting restorative justice, the authors describe the principles of restorative justice that are in harmony with the Indonesian way with the following details:

1. A criminal act is seen as a social act or a violation against an individual/group/community that damages social relations, not as a criminal offense or a violation against the state (Akub & Sutiawati, 2018, p. 13);
2. The involvement of various interested parties to participate in conflict resolution, especially to identify the threats, needs, and obligations of each party (Akub & Sutiawati, 2018, p. 13);
3. Prioritizing problem-solving by finding the root of the conflict;
4. The normative nature is built based on dialogue and negotiation and institutionalizes peaceful means;
5. It has the main goal of recovery through balancing the three poles, namely restitution of victims' rights, rehabilitation of perpetrators' criminogenic factors, and restoration of the relationship between perpetrators and victims.

The five principles above indicate that restorative justice views criminal behavior in a broader perspective as a humanitarian issue. The reaction to this paradigm leads to a narrative of crime prevention policies implemented through prevention (preventive) and repressive (repressive) efforts. Barda Nawawi Arief linked the two paths with the "penal" and "non-penal" paths. Penal efforts are carried out by applying criminal law based on repressive nature (action/eradication), while non-penal efforts emphasize preventive nature (prevention/control) before the crime event occurs. The main target is criminogenic factors that encourage someone to commit a crime.

The development of criminology in the positivist era encourages an intensive relationship between repressive policies and a review of criminogenic factors as prevention efforts. In this context, Probation and Parole Officers have relevance considering that one of their main functions is doing community research. The function of community research is the activity of collecting, processing, analyzing, and presenting data that is carried out systematically and objectively related to the needs of prisoners' services, prisoner development, and client guidance, as well as efforts to handle cases of children in conflict with the law.

As descriptive research, Litmas presents a complete and detailed picture of Correctional Clients' psycho-dynamic and socio-cultural conditions through descriptions and explorations of several variables related to Clients such as family conditions, surrounding environment, and relationships with family, good habits, and bad habits. , development history, economic and employment conditions. Meanwhile, as explanatory research, litmas seek to explore the causal relationship between the criminal acts committed by the client and the symptoms of the client's social life.

Apart from reforming the RKUHP and RKUHAP, indications of criminal law reform based on the principles of restorative justice are also manifested in several policy regulations for the criminal justice sub-system that prioritize the settlement of cases outside the conventional criminal justice system. This phenomenon is inseparable from the success of the concept of diversion in the juvenile criminal justice

system in overcoming the overcapacity of the Child Special Guidance Institution through constructive case handling. So that the authors argue that criminal law reform towards strengthening restorative justice has implications for the transformation of the criminal justice system that optimizes the Probation and Parole Officers. The author classifies three aspects that are factors for optimizing the Probation and Parole Officers: strengthening the Alternative Dispute Resolution mechanism, the existence of sentencing guidelines, and guidance and supervision on punishments and treatments.

Alternative Dispute Resolution

The impact of privatization and stigmatization obtained from the Implementation of the conventional criminal justice system encourages criminal law politics to prioritize alternative dispute resolution efforts in the settlement of criminal cases. Although the concept of alternative dispute resolution was initiated by the civil law group, theoretically, this concept is justified at the stage of the criminal justice system based on considerations of the principles of certainty, expediency, and justice (Karjoko, Ketut, Jaelani, Barkhuizen, & Hayat, 2021, p. 370). About the value of restorative justice, the alternative dispute resolution policy in the Indonesian criminal law system is termed diversion. The diversion policy is a constructive effort to rebuild social relations damaged by criminal acts rather than confronting the person concerned with formal justice with the implication of being isolated from his social environment (Akub & Sutiawati, 2018, p. 68).

The existence of diversion, which began with the presence of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, was gradually duplicated by various policy regulations of the criminal justice sub-system to handle adult cases. The Police Institution introduced the Regulation of the Head of the Indonesian National Police Number 08 of 2021 concerning the Handling of Crimes Based on Restorative Justice.

The related regulations have outputs in the form of a policy of stopping investigations or stopping investigations as long as they meet the general and specific prerequisites that have been set. This policy can be applied to all types of criminal acts except terrorism, crimes against state security, corruption, and crimes against people's lives. In addition, this policy also does not cover repeat offenders.

The Prosecutor's Office also issues alternative dispute resolution products through the Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This rule establishes a policy in closing cases in the public interest through a restorative justice approach. The policy is intended for criminal acts with threats of under 5 (five) years, not a repetition of criminal acts, and the value of losses is not more than Rp. 2,500,000, - (two million five hundred thousand rupiah).

The policy regulations of the two criminal justice sub-systems above in the context of state administrative law are known as discretion—an action by the government apparatus to fill the legal vacuum for the benefit and public interest. The Criminal Procedure Code, which has not accommodated diversion for adult perpetrators, encourages the Police and the Prosecutor's Office to take tactical steps to fulfill the legal certainty aspect. However, the legality aspect certainly needs improvement through the legitimacy aspect.

Legitimacy in the context of discretion is related to fulfilling goals in the corridor of general principles of good governance. The purpose of handling cases based on restorative justice is by prioritizing problem-solving through finding the root of the conflict. The concept of discretion implemented by the two criminal justice sub-systems only focuses on restoring the relationship between the perpetrator and the victim and restitution for the victim. This is confirmed by the fact that the affidavit of agreement of the

parties is the basic document of the prerequisites for terminating a case, as is the doctrine of penal mediation in civil procedural law, which stipulates that a peace agreement has the character of ending the case (Witanto D.Y., 2011, p. 31). This condition does not seem to consider the potential for repeating criminal acts from criminals who have an essential position in the enforcement of criminal law.

The research results on ICJR as an independent institution intensively advocating criminal law reform policies also reveal a similar view. ICJR Executive Director, Erasmus A.T. Napitupulu, revealed (Interview December 17, 2021):

"Restorative justice is a conceptual area, so it is wrong for some law enforcement officers to use the term "we will deal with this case" if discretionary or diversion efforts have been made. If the two terms are similar, then post-case settlement recovery efforts are not optimized so that the tendency to repeat criminal acts is even greater. On the other hand, this error in the Implementation of restorative justice is also supported by a paradigm to overcome overcrowding."

The above phenomenon is an implication of the disparity of the concept of discretion in the policy regulations of the Police and Prosecutors' sub-system with the concept of diversion in the juvenile criminal justice system. From the perspective of penal mediation, the discretionary policy is Victim-Offender Mediation which focuses on active participation between perpetrators and victims, while the diversion policy leads to the type of Family and Community Group Conferences which emphasizes not only the active role of perpetrators and victims but also community representatives such as local government and community leaders. . Active community participation in Family and Community Group Conferences resulted in a more comprehensive agreement in restoring the situation (Setiadi & Kristian, 2017, pp. 69-70). Recovery is not only for victims' losses but also as a restoration step for perpetrators so that they no longer repeat criminal acts.

This is supported by the involvement of the Probation and Parole Officer as a representative facilitator in the Implementation of diversion, one of which aims to find the root of the conflict from a criminal incident. The analysis does not only relate to the background of criminal events but also to criminogenic factors that are the driving force or motivation for perpetrators to commit crimes and the response of the community and local environmental government as a form of reintegrative shaming efforts.

Accuracy in the study of criminogenic factors and responses from various parties resulted in more constructive case resolution steps, especially to rehabilitate perpetrators. Rehabilitation through the concept of empowerment that bridges the perpetrator-victim-community to jointly participate in settlement of criminal cases (Clamp, 2013). The Ministry of National Development Planning/Bappenas RI, in carrying out the President's national priority program related to strengthening restorative justice, sees a space in this context. Bappenas RI hopes that in every attempt to settle a criminal case with the final result of stopping the investigation or prosecution, it involves the Probation and Parole Officer through a request for community research.

The data received by the author from the Ministry of National Development Planning/Bappenas RI is the proposed flow of case settlement framework as follows. First, if a criminal act meets the category to be resolved through an instrument of termination of investigation or termination of prosecution, the Police, Prosecutors, Judges, or Detention Centers shall submit a request for community research to Fathers. Second, after receiving the request, the Community Counselor then conducts community research on the suspect or community research on the treatment of prisoners and appoints community groups (Pokmas) in the field of law. Third, the head of the Correctional Center wrote a letter to the Pokmas partner to request legal assistance from the suspect by attaching the Litmas document, which was then followed up with a

meeting between the Pokmas party and the suspect to prepare a power of attorney. Fourth, Pokmas then coordinate with law enforcement officials regarding the settlement of cases by involving the Probation and Parole Officer. Fifth, the settlement of cases with restorative justice is also implemented considering the results of community research from the Community Counselor. Sixth, the decision to settle a case is not only a termination of an investigation or a prosecution but may involve an alternative criminal decision. Criminals can also return to the community with the assistance of the Probation and Parole Officers and Pokmas partners.

Furthermore, this mechanism is being pursued by the Ministry of National Development Planning and the National Development Planning Agency of the Republic of Indonesia through piloting restorative justice for adult offenders, which is planned to begin in early 2022. A short-term effort is through the preparation of joint decisions involving 6 (six) ministries, including the Supreme Court, the Ministry of Law, and Human Rights of the Republic of Indonesia. The Attorney General's Office, the Police, the National Narcotics Agency, and the Indonesian Ministry of Social Affairs.

The strengthening of the concept was also optimized by the establishment of a restorative justice working group consisting of the Indonesian National Development Planning Agency, the Indonesian National Police, the Indonesian Attorney General's Office, the Indonesian Supreme Court, the Indonesian Ministry of Law and Human Rights, the National Narcotics Agency, the Ministry of Health, the Witness and Victim Protection Agency, the Ministry of Politics (Khosyi'ah et al., 2021). Law and Security, and the Indonesian Ministry of Social Affairs. This group is a restorative justice think tank with the main tasks of equalizing the definition, scope, and implementation of restorative justice, formulating strategies for achieving restorative justice maps, encouraging the implementation of restorative justice policies in their respective agencies, providing monitoring and evaluation instruments, and preparing steps to resolve obstacles. Restorative justice in the future (Interview with the Directorate of Law and Regulation of the Ministry of National Development Planning/Bappenas RI, January 26, 2022).

The concept described above has been implemented since 2021 with a bottom-up approach. There are 6 (six) districts/municipalities piloting restorative justice for adult offenders, consisting of DKI Jakarta, Serang City, Bandung City, Surabaya City, Semarang City, and Makassar City. The activity was carried out in the form of coordination meetings involving law enforcement officers, including the Police, Attorney General's Office, Courts, Correctional Centers, Correctional Institutions, and State Detention Centers, as well as several related agencies (Interview with the Directorate of Law and Regulation of the Ministry of National Development Planning/Bappenas RI, January 26, 2022).

As one of the piloting areas, Makassar City mandates the responsibility for Implementation to the Makassar Class I Penitentiary. Based on data mining results with the implementing party, the coordination meeting was followed up with the formulation of a cooperation agreement to strengthen the concept of restorative justice. The parties expressed their willingness to take into account the condition of the State Penitentiary and Detention Center, which had overcapacity and a fairly large burden of stigmatization experienced by ex-convicts. However, the Police and the Prosecutor's Office assume that the mechanism proposed by Bappenas RI can hinder the efficiency of case resolution based on restorative justice.

Over time, the Implementation of the program carried out by Bappenas RI was not carried out optimally. The monitoring and evaluation results in the Makassar city jurisdiction indicate that the Makassar Class I Fathers have not been involved in resolving cases through restorative justice instruments. According to ICJR, the obstacles in the transition to the Implementation of the criminal justice system are because the Probation and Parole Officers are not accustomed to being involved in the system. For example, the role of Probation and Parole Officers in Article 14d of the Criminal Code related to the

supervision or supervision of probationary crimes has been very rarely involved. Thus, by the system, most of the criminal justice sub-systems forget the role of the Probation and Parole Officers (Interview with ICJR Executive Director, December 17, 2021).

The monitoring and evaluation results from the Directorate General of Corrections found that the program's ineffectiveness was motivated by a bottom-up approach. The working mechanism based on a memorandum of understanding from law enforcement agencies in each region is not optimal if it is not based on a memorandum of understanding from each central level institution (Interview of the Head of the Social Research Section of the Directorate General of Corrections, January 5, 2022).

Criminal Guidelines

The disparity of punishment is one of the crucial problems in the dynamics of criminal policy in Indonesia. The root of the problem does not lie in the public's skepticism about the independence of the judiciary. However, the discretionary power of judges is sometimes seen as an abuse of power when the decision gap in similar cases is not based on a valid legal basis. This phenomenon was followed up with the provision of sentencing guidelines in the context of material criminal law reform through the draft law on the Criminal Code. The sentencing guidelines are part of the legislative policy in the dynamics of criminal law reform in Indonesia. This provision serves as a director or guides for judges in making criminal decisions so that they are useful and purposive (Irmawanti & Arief, 2021, p. 225).

The provisions of the sentencing guidelines are consistent with the sentencing objectives, which prioritize the principles of restorative justice. One of the basic principles of restorative justice is to prioritize problem-solving by finding the root of the conflict. This is in line with contemporary criminal policy as a rational effort in crime prevention.

The rationale of law enforcement is not only the fulfillment of the elements of guilt of the perpetrators of criminal acts along with several reasons for reducing the crime such as not being old enough (Article 47 of the Criminal Code), probation (Article 53 of the Criminal Code), or assistance (Article 56 and Article 57 of the Criminal Code) or reasons for additional crimes such as position as an official (Article 52 of the Criminal Code), recidivist (Articles 486, 487, 488 of the Criminal Code), and Joint (Articles 63-71 of the Criminal Code) as well as reasons for the abolition of crimes which are accommodated in justification and excuses (Sofyan & Azisa, 2016, pp. 140-152). However, it also considers environmental and psychological conditions that are seen as determinants of a person's characteristics. Therefore, judges should consider a number of these aspects to produce a proportional criminal decision.

This issue was followed up with the provisions of Article 54 paragraph (1) letter (g) of the Criminal Code Bill, which obliges the Judge to consider the life history, social life, and economic condition of the perpetrator of a crime. Life history in the development of contemporary criminology is relevant to the determination of criminals' psychological and biological aspects. Psychological instability in some cases is sometimes termed abnormal psychology, which is counter-productive to the Implementation of the criminal act of imprisonment. The demands of the relative punishment theory emphasize purposive and forward-looking punishment so that the relevant actor should be decided on the appropriate action.

The obligation to implement actions in line with the above case is also emphasized in Article 38 of the Draft Criminal Code, which states that every criminal who commits a criminal act suffers from a mental or intellectual disability. His sentence can be reduced and subject to action. As for Article 39 of the Criminal Code Bill, if the perpetrator in question is in the acute category, he cannot be sentenced to a crime, but the imposition of actions relevant to efforts to recover the perpetrator.

The category of mental disability in the related provisions concerns mental illness that interferes with the functioning of thought patterns, emotions, and behavior with types of illness including schizophrenia, bipolar, depression, anxiety, personality disorders, autism, and hyperactivity. In contrast, intellectual disability is related to slow learning, Down syndrome, and mental disability.

From a biological point of view, the object of investigation is related to the relationship of genetics to the environment. A number of the latest biological theories find that brain disorders, head injuries, and birth complications affect the nervous system. Indications of brain disorders are not only the result of a hard impact, chronic disease, or long-term drug consumption but can also be caused by various traumatic experiences in the development history (Fishbein D.H., 2002, p. 111). These disorders affect an individual's reaction to the social environment around him.

About social life, this consideration is motivated by the fairly intensive development of mainstream sociological theories within the scope of criminology studies. There are two theoretical points of view as the basis for analyzing the influence of social life on a criminal event, which are related to social processes and social control.

The social process perspective begins with the basic assumption of human ecological studies that view humans and cities as organisms that grow dynamically. The growth dynamics have resulted in the tug-of-war for several ethnic and racial groups that continue to be in conflict and acculturate. The pattern of adaptation that is not optimal tends to produce social disorganization, which leads to several deviant behaviors. Edwin Sutherland emphasized the phenomenon referred to in his theory of differential association. This theory describes that individuals are prone to crime when there is access to significant contact with advocates of criminal behavior. Through these contacts, an individual will accept and learn the values that support criminality (Hagan, 2013, p. 226).

The social control perspective pays attention to how society, especially the main agents, maintains and strengthens restrictions to suppress a person's urge to commit a crime. Reckless outlines in an article entitled The Good Boy in High Delinquency Area that individuals become inclined towards crime because of stronger external pressures and pulls and weakened internal and external restrictions (Reckless, Dinitz, & Murray, 1957). There is also Travis Hirschi in Causes of Delinquency, who further reveals that an individual's bond of conformity holds them back from deviant behavior because they are worried that the related individual's image will be damaged in the eyes of the group (Hirschi, 1969). In this context, the attachments referred to include parents, family, educational environment, peers, and the local community.

Meanwhile, related to economic conditions, the most relevant criminogenic factor is the Anomie theory (absence of norms). The concept of anomie focuses on the conditions that arise as a result of the disparity between the social goals expected by an individual and the available means to achieve them. This phenomenon, according to Merton, produces tension conditions that are followed up with adaptive steps. The adaptation modes include conformist, innovator, ritualist, retreats, and rebel. Apart from conforming, the four adaptation patterns are classified as deviant behavior (Hagan, 2013, p. 213).

The content of the sentencing guidelines as described has accommodated the shift in the context of penology from penal policy to rehabilitative practice (Bullock & Bunce, 2020, p. 114). The rehabilitative ideal that developed in the 20th Century focused on social welfare and psychological treatment of criminals based on sociological and psychological behavioral theories (Cullen & Gendreau, 2001) by the sentencing guidelines of the Criminal Code Bill.

In this context, the obligation to consider the curriculum vitae, social life, and economic condition of the perpetrators of criminal acts has relevance to the role of Community Research (litmas) from the functional position of Probation and Parole Officer. The Litmas document as contained in the Litmas

framework for Juvenile Court Sessions and Litmas for Adult Suspects contained in the Decree of the Director-General of Corrections Number PAS-219.PK.01.04.03 the Year 2019 concerning Quality Standards for Community Research Work contains aspects of curriculum vitae, social life, and the economic condition of the perpetrators of the crime.

The curriculum vitae in the Ditjenpas implementation instructions consists of a history of the client's birth, growth, and development. In addition, there is also a history of education and history of behavior. In educational history, the litmas document classifies the type of education from three perspectives, namely education in the family, formal education, and non-formal education. As for the history of behavior, the litmas document describes in detail several aspects, including talent and potential, relationships with family, obedience in carrying out religious orders, good habits and bad habits, attitudes at work, history of violating the law, and history of smoking cigarettes. Alcohol and drug and psychotropic abuse.

Elements of social life in the Community Guiding litmas document are contained in a special section related to the social conditions of the client's living environment. This section collects social relations between community members and economic, cultural, educational, and environmental conditions. Meanwhile, the element of the economic condition is contained in the work section and the economic condition of the actor or parents. In this context, the Community Counselor will collect information related to the amount of income, the amount of savings, the condition of residence, the use of electricity and water sources, the number of vehicles, the number of dependents, and the amount of personal or nuclear family debt.

Various information was obtained by the Probation and Parole Officer through direct interviews with the perpetrators, parents, families, communities, and local government. In addition, the Community Counselor also visits the location of the perpetrator's residence to observe the situation and condition of the living environment directly.

Psychological, sociological, and economic diagnoses of the perpetrators can also directly accommodate or support information related to the criminal influence on the future of the perpetrators of criminal acts as referred to in Article 54 paragraph (1) letter h of the Criminal Code Bill. Suppose the perpetrator is seen as the head of the family or the spearhead in meeting the needs of family life and has been verified based on data mining for the Community Counselor. In that case, this condition can be a mitigating reason for the Judge. Likewise, suppose the perpetrator is seen as experiencing mental and intellectual instability so that it is counter-productive to a certain type of crime. In that case, the Judge may consider other types of punishment that are more purposive.

The next element of sentencing guidelines relates to the interests of the victim. This is in line with the basic principles of restorative justice and victimology, which see the victim as an important part in considering the imposition of a sentence (Zulfa & Adji, 2011, p. 59). The sentencing guidelines seek to balance law enforcement through justice from two points of view, namely the point of view of the perpetrators of the crime and the point of view of the victims and the community based on the principle of benefit, the principle of justice, the principle of balance, and the principle of legal certainty (Azisa, 2016, pp. 114-115). The important role of the victim is found in two elements of the guidelines, namely the influence of the crime on the victim or the victim's family and the forgiveness of the victim or her family.

Substantively, these two elements also relate to the information contained in community research. The type of information is contained in the section on the victim's condition and response to the crime committed. In the victim's condition section, information is collected regarding the number of losses suffered due to criminal events such as physical losses, material losses, and psychological losses. The

victim's response contains the victim's response to a criminal incident and hopes for a follow-up to resolve the case.

The need for both of these information requires the Probation and Parole Officer to extract data on the victim. If observed in handling cases of Child Perpetrators, data mining for the Probation and Parole Officers for victims is also accompanied by efforts to dialogue and negotiate case settlements. If the case in question can be resolved through the diversion route, the Community Counselor will then coordinate with the relevant law enforcement officials by the examination stages. However, suppose the case does not meet the requirements for diversion. In that case, the final result of the dialogue between the Community Counselor and the victim will end in a statement of peace between the two parties. This letter is then attached to the case file and can be used as a mitigating reason for the Judge's consideration to make a decision.

Punishment and Treatment

The criminal law reform policy also has implications for changes in the types of punishments and treatments and implementation mechanisms. This phenomenon encourages the reconstruction of prisons as implementing institutions for imprisonment to be actively involved in several other types of punishment implementation. This is also confirmed in the research of Steve Hutchinson and Gwen Robinson that contemporary correctional policy combines the function of punishment, control function, and rehabilitation function (Hutchinson, 2006) (Robinson, 2008). The Probation and Parole Officer becomes a functional position representing the Correctional Center through its main function of community guidance.

The role of the Community Counselor is divided into two types of sentence, namely punishment and treatment. The types of crimes consist of imprisonment, supervision punishment, fines, and social work crimes. Meanwhile, the type of treatment consists of counseling, rehabilitation, job training, treatment in institutions, and repairs due to criminal acts.

In implementing imprisonment, the Community Counselor still has room to restore the perpetrator and the victim. This is based on Article 133 of the Draft Criminal Procedure Law, which states:

1. Suppose the defendant is sentenced to a crime, and there is a victim who suffers material losses as a result of the crime committed by the defendant. In that case, the Judge requires the convict to pay compensation to the victim, whose amount is determined in his decision.
2. If the convict does not pay compensation as referred to in paragraph (1), the convict's property is confiscated and auctioned to pay compensation to the victim.
3. If the convict tries to avoid paying compensation to the victim, the convict is not entitled to a reduced sentence and is not paroled.

The provisions in the above rules indicate additional prerequisites for Prisoners in obtaining remission rights and parole rights. This rule applies to criminal cases with victim losses, as confirmed by the Judge's decision. The connection with the Community Counselor is motivated by the obligation to explore victims' responses to each Implementation of the community research function for the proposed parole. This changes the victim's response position, which was previously only seen as part of the consideration of the convict's reintegration proposal.

In addition, compensation as a condition for granting remission requires extracting information from victims' responses since the Implementation of the Litmas Initial Guidance. However, in the Litmas Initial Guidance, there is no framework related to the said response. So according to the author, the provisions on victim responses should be accommodated in the Litmas Initial Guidance if the draft

Criminal Procedure Code is approved so that the Community Counselor is also able to carry out the role as a mediator between the perpetrator and the victim from the early stages of carrying out the crime.

In addition to the restitution approach, restorative justice efforts in implementing imprisonment are also carried out through an individual rehabilitation approach. In the case of serious crimes that receive a court decision in a death sentence or a life sentence, the Social Advisor may propose a criminal change litmas after the convict has gone through a probationary period. This is based on the observations of the Probation and Parole Officer since the beginning of the Implementation of the crime through the Litmas of Initial and Advanced Development and the Implementation of periodic assessments.

If the prison inmates show positive changes during the probationary period of 15 years, it can be proposed to the President to change the life sentence to a temporary sentence (20 years). As for the death row convicts who show remorse, do not have an important role, and there are several mitigating reasons confirmed by the Judge's decision, the probation period lasts for ten years. If it shows a positive change, it can be proposed to the President to change the sentence from the death penalty to a life sentence. Both proposals are required to include the litmas document on criminal change.

In non-imprisonment punishments, as a reduplication of the Probation Officer in various countries, the Community Counselor has a fundamental role as a supervising officer. This is emphasized in the Tokyo Rules regarding Standard Minimum Rules for Non-Custodial Measures, especially in section V regarding the Implementation of non-custodial measures that If a non-custodial measure entails supervision, the latter shall be carried out by a competent authority under the specific conditions prescribed by law (If non-custodial action requires supervision, it must be carried out by a competent authority recognized by law). The Probation Officer, who is termed a judicial social worker in several countries, is seen as a "competent party".

Criminal supervision collects contemporary punishment goals that are daad-daderstrafrecht-oriented, namely social welfare as the ultimate goal, future-oriented, and scientific empowerment (Muladi, 1985: 220). In the material criminal law renewal, criminal supervision provisions can be imposed on convicts who receive a prison sentence of not more than 3 (three) years.

The Implementation of the supervision crime focuses on the obligation of the convict not to violate the general and special conditions. The general conditions relate to the repetition of criminal acts and special conditions relating to compensation and the obligation to do something or not to do something that supports the recovery of the perpetrator of a crime. Violation of the general conditions results in the convict being obliged to serve imprisonment.

The Implementation of monitoring and evaluation of related provisions requires the synergy of the Probation and Parole Officers and Prosecutors. The consideration of the Probation and Parole Officer is a mandatory provision for prosecutors to propose a reduction or extension of the supervision period. This is motivated by the mentoring function carried out by the Probation and Parole Officer during the Implementation of the supervision crime.

Leopold Sudaryono conveyed a different view as a criminology expert from The Asia Foundation in the ICJR Webinar and the National Alliance for Criminal Code Reform entitled "RKUHP Overcoming Overcrowding of Rutans and Prisons?" on December 21, 2021. Leopold's view:

"The mechanism of supervision and guidance for conditional convicts is no longer burdened to the Prosecutor, but only to the Pastoral Community Counselor. If it is charged to the Prosecutor, it will not work effectively considering that the relevant agencies are not equipped with the expertise, mechanisms, and resources to carry out the intended function as the reality of the application of the probationary sentence that has been carried out under the Criminal Code.

In addition, the existence of Litmas from the Probation and Parole Officer as a judge's consideration in imposing a sentence with conditions is carried out to measure several recovery needs that will be applied through the stipulation of special conditions."

The role of the Probation and Parole Officer in the Implementation of criminal penalties is related to information on the income and expenses of the defendant to be considered in the application of the criminal penalty decision. This correlates with the function of the suspect's community research as part of the sentencing guidelines, especially in the context of the economic situation.

The social work crime is also related to making litmas for the suspect as part of the sentencing guidelines. This is the Judge's obligation to consider the workability of the defendant and the defendant's social history. The defendant's workability is related to the potential interests and talents of the perpetrator in the suspect's community gathering, while the social history is as described previously. Not only as material for consideration, in the Implementation of social work crimes, the Probation and Parole Officer together with the Prosecutor, also carry out monitoring and evaluation. The Community Counselor carries out the mentoring function, and the Prosecutor carries out the supervisory function.

In the context of the Implementation of the rehabilitation, the function of the Probation and Parole Officer has been relevant since the adjudication stage through the litmas of the suspect. As part of the sentencing guidelines, curriculum vitae that focus on growth history and developmental history correlate with consideration of counseling, rehabilitation, and institutional care. The information related to economic conditions, which focus on aspects of work, skills, and general economic conditions, is correlated with the consideration of decisions on job training actions. Meanwhile, extracting information on the responses and expectations of victims is correlated with the consideration of the decision on remedial action due to a crime.

The significance of the role of the Probation and Parole Officer in the context of implementing punishment is also supported by the Correctional Care Community Group (Pokmas Lipas) program. Based on the results of data mining at the Directorate General of Corrections, this program is a collaboration between the Director of Community Guidance and Child Alleviation of the Directorate General of Corrections with the Director of Law and Regulation of the Deputy for Political, Legal, Defense and Security Affairs of the Ministry of National Development Planning / National Development Planning Agency (Ministry of PPN Bappenas) as a step to support the concept of restorative justice through community empowerment.

Pokmas Lipas is an individual or community group that acts as a working partner for the Correctional Center in realizing the goals of the correctional system and is regulated in the Decree of the Director-General of Corrections Number PAS-06.OT.02.02 of 2020 concerning Guidelines for the Establishment of Correctional Care Community Groups at the Correctional Center. To date, Lipas Pokmas have 180 Pokmas. One of the basic functions of Pokmas Lipas is to participate in the Implementation of punishment for criminals.

This can be observed in the application of punishment in the juvenile criminal justice system. The Judge can decide on the Implementation of the crime on the condition that it is at the location of the Pokmas partner after being recommended by the Probation and Parole Officer. The recommendation is stated in the Community Research Court Session by attaching a statement of willingness from the Pokmas.

The active role of the Probation and Parole Officers in criminal law reform also has implications for the involvement of Pokmas cockroaches in the Implementation of punishments and treatments. This program is adapted to the Pokmas field targets, which consist of independence, personality, law, and society. The punishments that can involve Pokmas cockroaches include imprisonment in the integration

phase, supervision penalties on aspects of meeting special requirements, social work crimes, counseling actions, rehabilitation actions, job training actions, and treatment actions within the institution.

CONCLUSION

The design of reforming the criminal justice system that puts forward the concept of restorative justice fundamentally requires the Probation and Parole Officer's role in the juvenile criminal justice system. This is based on several provisions in the draft for reforming criminal law policies, such as the rules for criminal law guidelines and the availability of various types of punishment and treatment. In addition, strengthening the legal politics of alternative dispute resolution also has implications for strengthening the role of the Probation and Parole Officer. Based on the description of the conclusions above, the authors recommend several suggestions, among which the policymakers emphasize the function of Probation and Parole Officer in the draft of formal and material criminal law reform as an affirmation of the function of the Probation and Parole Officer in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

In addition, the mechanism for implementing the criminal justice system is based on the principle of restorative justice to be regulated in laws and regulations in the form of government regulations which are strengthened through several provisions in the draft Criminal Procedure Code. This aims to present a common perception and data integration and the integration of law enforcement between institutions. As for supporting the facilitative aspect, the government should optimize the availability of the number of Correctional Center UPT by the number of districts/cities in Indonesia, increase the number of the Probation and Parole Officer officers by the ideal ratio of handling Correctional Clients, and add a budget that is compatible with increasing functions in the justice system. Criminal. This can be done by changing the logic of the budget allocation from focusing on the quantity of law enforcement towards the quality of law enforcement/crime prevention.

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