

Reforming Indonesia's Approach to Narcotics Offenses: A Call for Rehabilitation over Incarceration

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ABSTRACT

This study examines the issue of prison overcrowding in Indonesia, with a particular focus on the impact of current penal policies related to drug-related offenses. The over-reliance on incarceration, especially for minor drug crimes, is identified as a significant contributor to the overcrowding crisis in correctional institutions. Despite legal provisions for rehabilitation as an alternative to imprisonment, inconsistent implementation has hindered efforts to address the root causes of drug-related crimes. The study advocates for a comprehensive reform of Indonesia's penal system, emphasizing the need to shift from a punitive approach to one centered on rehabilitation and restorative justice. Such reforms are essential not only to alleviate overcrowding but also to ensure the humane treatment of individuals with substance use disorders, in line with international human rights standards. The study concludes with recommendations for enhancing the application of rehabilitation, increasing public awareness, and improving the monitoring of rehabilitation programs to foster a more equitable and effective criminal justice system.

1. Introduction

The concept of criminal law, also known as penal law, is inseparable from the enforcement of criminal law. According to Black's Law Dictionary, criminal law is a branch of law that deals with offenses against society, governs how suspects are investigated, charged, and tried, and establishes penalties for those convicted, considering that a crime is an act that is punishable under the law and/or constitutes a violation of statutes (Santoso, 2023). Article 1 of the Indonesian Penal Code states that an act cannot be punished unless under the authority of a pre-existing law before the act was committed (Butt, 2023).

The rigid application of criminal punishment in Indonesia has led to several issues in Correctional Institutions (prisons). One significant and recurring issue is that the majority of criminal law enforcement in Indonesia always refers to imprisonment or detention sentences, which in practice has led to overcrowding in several prisons. The number of inmates in Indonesia as of June 2017 reached 153,312, according to data from Kompas.com, even though the capacity of prisons was only 122,114 inmates, resulting in an excess occupancy rate of 84%. The statement by the Minister of Law and Human Rights Yasonna Laoly in DetikNews (2020) indicated that the capacity of prisons was only 132,107 people as of June 2020.

Overcrowding in prisons has caused riots and deaths. In April 2016, there was a riot in the special block for narcotics cases in Banceuy Prison, Bandung, West Java. Due to overcapacity in Class IIA Jambi Prison in March 2017, a drug raid dispute escalated and caused riots in the women's block of Class IIB Siak Prison, Riau in May 2019. Kompas.com (2018) revealed the latest information about a riot that killed at least 44 people and injured more than 70 others in Class I Tangerang Prison due to overcrowding. Although the Ministry of Law and Human Rights recorded that the prison ideally had 900 inmates, there were actually 2,069 inmates, with more than 50% of them detained for narcotics cases. Those who are addicts, abusers, or victims of abuse should be the primary focus in efforts to address overcrowding, emphasizing the application of Restorative Justice. It is unwise to impose punitive sanctions on users, addicts, or victims of abuse. Therefore, addressing the issue of prison overcrowding indicates the need for comprehensive and encouraging policies. This means that Indonesia's penal system policies need to be reformed. To ensure the fulfillment of human rights, a penal system focused on restorative justice with rehabilitative processes should be adapted to address various criminal law enforcement issues.

This study focuses on the reconstruction of penal system policies in narcotics crimes as an effort to

mitigate the impact of overcrowding in Correctional Institutions (prisons). The importance of reconstructing penal system policies to address overcrowding in prisons is based on the understanding that addressing violations or crimes through reconstructive actions or processes creates the ability to control violations or crimes philosophically, juridically, and empirically. Most provisions found in the Criminal Law and Administrative Law (containing penal sanctions) and the Penal Code (containing penal sanctions) that formulate imprisonment sanctions prompted the researcher's interest in the issue of overcrowding in prisons. Moreover, the majority of inmates in Indonesia are convicted of narcotics crimes. Therefore, this research only addresses narcotics crimes as the main cause of inmates in Indonesia.

Literature Review

Criminal law, as a branch of public law, encompasses criminal policy, which is governed by substantive criminal law, procedural criminal law, and the law on the execution of sentences. Substantive criminal law outlines the behaviors that are punishable, identifies who can be held accountable, and details the various types of punishments that can be imposed. Procedural criminal law, also known as criminal procedure, provides the legal framework for carrying out criminal actions. The Law on the Execution of Sentences (*strafvollstreckungsrecht*) governs the implementation of imprisonment, detention, measures against juveniles who commit offenses, and more (Sofyan & Azisa, 2023).

The goal of imposing imprisonment is to prevent released detainees and inmates from reoffending. The success of specific prevention programs and reintegration efforts can be measured by how effectively they reduce recidivism. Discussing theories of punishment, the famous Roman philosopher Seneca once said, “*nemo prudens punit quia peccatum est, sed ne peccetur*”, meaning that one should not punish because a wrong has been done, but to prevent future wrongs (Schilling, 2015). Theories of punishment are generally categorized as follows: Absolute Theory (retributive); Relative Theory (deterrence); Combined Theory (Integrative); Treatment Theory; and Social Protection Theory (Hamja, 2015).

In Indonesia, the Juvenile Criminal Justice System has embraced restorative justice as outlined in Law No. 11 of 2012, which replaced Law No. 3 of 1997 on Juvenile Courts. Article 5, paragraph (1) of this law prioritizes restorative justice within the juvenile justice system. Within the police force, restorative justice is implemented via Chief of Police Circular No. SE/8/VII/2018 on the Application of Restorative Justice in Criminal Case Settlement, Police Regulation No. 6 of 2019 on Criminal Investigations, and Police Regulation No. 8 of 2021 on Handling Criminal Cases Based on Restorative Justice. These regulations acknowledge that Indonesia's criminal law enforcement system must evolve to reflect the principles of restorative justice, which are foundational to societal justice. This requires police to exercise their authority responsibly, ensuring that: actions do not violate existing laws; they align with legal obligations; they are appropriate, reasonable, and within their duties; they consider compelling circumstances; and human rights are respected (Wardana et al., 2024).

As an integral part of the criminal justice system, prisons must be managed in accordance with human rights and relevant legislation. However, it's important to recognize that prisons, as total institutions, might no longer be relevant, as suggested by Goffman. Prisons can be seen as authoritarian institutions where all essential human activities occur within an organization removed from daily life. This separation can hinder successful resocialization, even though correctional efforts aim to provide inmates with opportunities for development. According to Hart (1979), the concept of justice involves both the notion of “justice according to law” and the broader idea of fairness or unfairness within the law itself. Hart further explains that justice and its specialized relationship with law become apparent when examining the terms “fair” and “unfair” in the context of “balance” and “imbalance”. When certain burdens or benefits are distributed among classes of individuals, “balance” describes how these classes are treated, while “imbalance” refers to specific disadvantages that require remedy or compensation. A fundamental principle of justice is that individuals are entitled to relative equality

with others. This consideration of inequality or disparity is crucial in the uncertain realm of social life when distributing burdens or benefits.

2. Result and Discussion

Indonesia is confronted with a substantial issue of prison overcrowding, caused mainly by the large population of adults imprisoned for drug-related crimes (Novian et al., 2018). According to data from the Ministry of Law and Human Rights, more than half of the jail population comprises those who have been found guilty of illicit drug-related offenses (Situmeang et al., 2024). The current scenario not only burdens our penal system but also exposes a fundamental deficiency in our strategy for dealing with drug-related crimes: an over-dependence on imprisonment.

The legislative framework regulating narcotics in Indonesia, namely Law No. 35 of 2009 on Narcotics, places significant emphasis on applying harsh sanctions, such as extended periods of incarceration, even for minor drug-related crimes (Susilo et al., 2022). Although the primary objective of this legislation was to address drug trafficking and misuse, its execution frequently leads to punitive actions that unfairly impact drug users and individuals with minor criminal records. This strategy is ineffective in distinguishing between traffickers and individuals grappling with addiction, resulting in a recurring pattern of reoffending and ongoing strain on prison capacity (Hartono et al., 2023).

Nevertheless, Law No. 35 of 2009 does provide provisions for rehabilitation as a substitute for imprisonment for drug users. Specifically, Article 54 of the law requires addicts and victims of drug misuse to receive medical and social rehabilitation. Regrettably, the implementation of this rule has shown inconsistency, as numerous individuals struggling with addiction continue to be incarcerated instead of obtaining the necessary treatment.

Moreover, Government Regulation No. 25 of 2011 about the Enforcement of Mandatory Reporting for Narcotics Addicts highlights the need for mandatory rehabilitation (Pertasari & Yuliana, 2023). However, this provision still needs to be fully utilized. Under this legislation, drug users who willingly disclose their condition are granted immunity from criminal prosecution and instead receive guidance to rehabilitation facilities. Nevertheless, the successful enforcement of this legislation has been impeded by a deficiency in public knowledge, insufficient infrastructure, and inadequate collaboration between law enforcement and rehabilitation centers.

In this particular setting, rehabilitation functions not only as a method of facilitating the recovery of people with a substance use disorder but also as a proactive strategy to avoid future transgressions (Theodorakis et al., 2024). Individuals who undergo sufficient therapy for addiction can achieve recovery and successfully reintegrate into society as productive members instead of being confined in a recurring pattern of drug substance abuse and criminal behavior. Alternatively, jails that are too populated with individuals struggling with drug addiction not only fail to prevent relapse effectively but also establish an atmosphere that is not favorable for authentic rehabilitation, frequently resulting in deteriorating circumstances and increased chances of involvement with wider criminal networks.

It is imperative to emphasize that the global viewpoint also endorses a more compassionate and health-oriented strategy for dealing with drug-related problems. The significance of a public health approach to drug-related matters was underscored by the United Nations General Assembly Special Session (UNGASS) on Drugs in 2016 (Volkow et al., 2017). The session urged member nations to give precedence to treatment, rehabilitation, and social reintegration above punitive actions. As a signatory to several international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR), Indonesia is required to conform its drug policy to global norms that prioritize the right to health and humane treatment (Bone, 2019).

Furthermore, there is a pressing necessity for reform in the management of narcotics matters inside our legal system. It is advisable to promote the increased use of rehabilitation procedures by judges and prosecutors during the sentencing process, especially for those who are first-time offenders and whose criminal conduct is directly associated with their addiction. The attainment of this goal requires

enhanced training for judges and prosecutors in the areas of rehabilitation and health-based methodologies. This will guarantee that law enforcement authorities are not only equipped with knowledge about alternatives to imprisonment but also possess a high level of assurance in the efficacy of these methods in diminishing reoffending (Jaya & Hikmah, 2024).

Furthermore, it is crucial to implement a comprehensive public awareness campaign across the entire country in order to enlighten the general population about the legal regulations that permit rehabilitation as an alternative to incarceration. This encompasses the provision of education to families and communities regarding the various alternatives accessible to individuals grappling with addiction. The concept that rehabilitation can be a more efficacious and compassionate measure than incarceration must be deeply embedded in the collective knowledge of the general population. Society must recognize that drug abusers are not only criminals but also persons who require necessary medical and social support (Hartono et al., 2023).

Moreover, rigorous surveillance and assessment of rehabilitation programs are essential. An integrated system should be implemented to monitor and evaluate the efficacy of rehabilitation programs systematically. This will guarantee that these programs are indeed achieving their objectives of decreasing reoffending and facilitating the reintegration of prisoners into society. The use of efficient supervision can also detect current barriers and provide ongoing enhancements to our rehabilitation system.

It is crucial to acknowledge that implementing these steps will not only alleviate the strain on our correctional system but also enhance the overall health and welfare of society. By decreasing the population of those imprisoned for drug-related crimes and enhancing their availability of rehabilitation services, we concurrently mitigate the risk of disease transmission, violence, and other societal problems that frequently arise in densely populated correctional facilities.

Given the circumstances, revising Indonesia's drug policy should entail a fundamental change in our perspective and approach towards drug-related crimes. It is imperative to shift from a primarily punitive strategy to one that prioritizes rehabilitation and reintegration into society. This approach is in accordance not only with our responsibilities under international law but also with the humanitarian principles that form the foundation of our legal system.

Fundamentally, this transformation necessitates the endorsement of not just the government and law enforcement but also the whole Indonesian society. Through collaborative efforts, we can construct a fairer, more efficient, and compassionate framework for tackling drug-related problems, which will ultimately lead to a much healthier and safer society

3. Conclusion and future scope

Indonesia faces a critical challenge with prison overcrowding, primarily driven by the high number of incarcerations for drug-related offenses. The current penal policies, which heavily rely on imprisonment, particularly for minor drug crimes, have proven ineffective and have exacerbated the problem. Despite existing provisions for rehabilitation under Indonesian law, such as those in Law No. 35 of 2009 on Narcotics and Government Regulation No. 25 of 2011, implementation has been inconsistent and inadequate.

The research advocates for a shift from a punitive approach to one that emphasizes rehabilitation and restorative justice. Such a shift is essential not only to reduce prison overcrowding but also to ensure the humane treatment of individuals struggling with addiction. The study calls for a comprehensive reform of Indonesia's drug policy, including greater use of rehabilitation during sentencing, enhanced public awareness, and rigorous monitoring of rehabilitation programs. This approach aligns with international human rights standards and is necessary for building a fairer, healthier, and safer society.

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