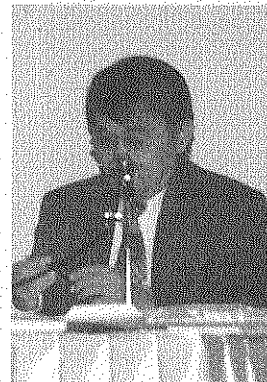
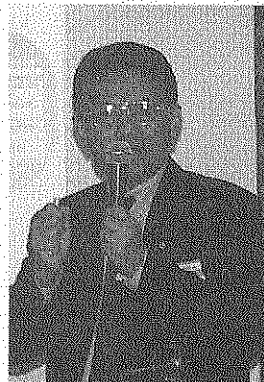
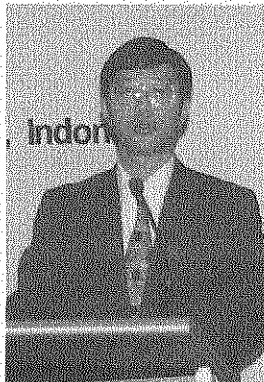


Session Five: Reform of the Treatment of Offenders - Community Involvement

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Please note that the following papers have not been edited for publication. The opinions expressed therein are those of the author's. They do not necessarily reflect the position of the departments or agencies that they represent.

COMMUNITY INVOLVEMENT IN THE JAPANESE CRIMINAL JUSTICE SYSTEM SPECIFICALLY FOCUSING UPON THE VOLUNTEER PROBATION OFFICER (VPO) SYSTEM IN THE COMMUNITY-BASED TREATMENT OF OFFENDERS

By
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I. INTRODUCTION

Japan has a long tradition of community involvement in the criminal justice system which ranges from the police to probation services (community based treatment of offenders). Many citizens participate voluntarily to engage in the following activities;

- (i) Crime prevention activities
- (ii) Assistance to juvenile delinquents
- (iii) Helping offender rehabilitation in correctional institutions
- (iv) Providing support for offender rehabilitation in the community and helping their reintegration into society

II. OVERVIEW OF COMMUNITY INVOLVEMENT IN THE JAPANESE CRIMINAL JUSTICE SYSTEM

A. Police

There are two types of crime prevention volunteers working for the police. Firstly, Local Community Crime Prevention Volunteers are mainly engaged in general crime prevention activities. Secondly, Juvenile Guidance Volunteers work for juvenile crime/delinquent prevention activities and give assistance to juvenile victims of crime. Both have a wide network; school teachers associations, Women's Association for Rehabilitation Aid (WARA), police stations and the Parents and Teachers Association (PTA).

1. Local Community Crime Prevention Volunteers

Local Community Crime Prevention Volunteers are appointed by the police and their term of office is two years. Their main duties are dissemination of crime prevention ideas, vigilance activities in the local community, cooperation with police, organized crime prevention activities and networking with community resources for crime prevention. Some cities have municipal crime prevention committees consisting of crime prevention volunteers.

2. Juvenile Guidance Volunteers

Candidates to be Juvenile Guidance Volunteers are selected by the local community and schools and are appointed by the police. They have a national organization called the Corporate Juridical Person of Juvenile Guidance Volunteers Association and 47 prefectural organizations. This national organization has 60,082 members. Juvenile Guidance Volunteers carry out juvenile crime/delinquent prevention activities such as holding local symposiums for the sound

development of youth, organize social participation activities in the local community and assist juvenile victims of crime.

B. Court

The Japanese family court has jurisdiction to dispose of juvenile delinquents/offenders and family matters such as divorce, parental authority and inheritance. Members of the Juvenile Friendship Volunteer Association for the Family Court work to assist juvenile delinquents/offenders. They mainly support juvenile delinquents/offenders who are under tentative probationary supervision by family court probation officers. They support study, sound leisure activities and befriending activities.

C. Correction Service

The correction service of Japan is in charge of both juveniles and adults. For adult inmates, the correction service has the Volunteer Prison Visitor System. Under this system, Volunteer Visitors for Inmates visit adult correctional institutions, meet inmates and provide them with various kinds of support such as counseling, entertainment and participation in events in prisons. The correction service also utilizes chaplains/religious ministers to ease the feelings of inmates and to help their introspection.

D. Probation Service

The probation service of Japan has a long tradition of community involvement and extensive use of volunteers in the community-based treatment of offenders. The probation service has the following types of volunteer systems;

- (i) Volunteer Probation Officer (VPO)
- (ii) Juridical Person for Rehabilitation Services
- (iii) Members of the Women's Association for Rehabilitation Aid (WARA)
- (iv) Members of the Brothers and Sisters (BBS) Movement
- (v) Cooperative Employer (CE)

There are 48,931 VPOs, 164 Juridical Persons for Offenders Rehabilitation, 200,445 WARA members, 6,100 BBS members and 4,957 cooperative employers throughout Japan (as of April 1, 2002).

A brief explanation about WARA, BBS and CE is given in this section and a detailed explanation about VPOs and Juridical Persons for Rehabilitation Services will be given in the next section.

1. Women's Association for Rehabilitation Aid (WARA)

This association is an autonomous group that conducts crime prevention activities in the community and helps juvenile delinquents/offenders and adult offenders rehabilitate themselves by making use of their experience as women and mothers. For example, it organizes crime prevention activities for local community residents, including junior high school students and gives material support to VPOs, halfway houses and BBS associations. They also visit inmates in juvenile training schools or adult correctional institutions and encourage them to rehabilitate themselves. Currently, more emphasis is placed on supporting young mothers who find

difficulties in bringing up their children. As of April 1, 2002 the national membership totaled 200,445. Membership is open to any woman in the community.

2. Big Brothers and Sisters (BBS) Association

BBS is an organization of youths who support juvenile delinquents/offenders and young adult offenders with a proper understanding of their problems and needs. As of April 1, 2002, there were 6,100 members throughout Japan and there are 581 associations, some of which are certified as university clubs. Regardless of educational or occupational background, any person aged mainly from their twenties to thirties, is able to be a member engaged in providing the following activities such as organizing sports events, doing volunteer work in the homes of elderly people, doing group work outdoors and assistance for study. Their activities are conducted based on the entrustment of professional probation officers, the family courts, child consultation centers, local police and so forth.

Since the average age of BBS members is much younger than VPOs, their activities are very helpful to reduce the generation gap problem between juvenile delinquents and VPOs.

3. Cooperative Employers

They help juvenile delinquents/offenders and adult offenders by offering stable employment in spite of their criminal history. There are 4,957 cooperative employers who employ 566 adult offenders and juveniles (as of April 1, 2002).

III. EXTENSIVE USE OF VOLUNTEER PROBATION OFFICERS (VPOs)

A. What is a VPO?

Volunteer Probation Officers (VPOs) are private citizens and they assist professional probation officers (PPOs), aid offenders of all ages to rehabilitate themselves at all levels in the community and enhance crime prevention in the community. Legally, the VPOs are defined as non-permanent government officials.

B. Introduction to the Actual Activities of Volunteer Probation Officers (VPOs)

This is a model juvenile parole case based upon a number of actual cases.

A is a 16 year old girl who is under the parole supervision and support of a probation office. Initially, A committed thefts and was glue sniffing and sent to a juvenile training school by a family court. When A was released on parole from juvenile training school based upon a decision of the regional parole board, her parole supervision was started.

A is now in the second grade of part-time high school and has three family members such as her father (46 years old), a company employee, her mother (42 years old), a nurse and her younger brother (13 years old), a junior high school student.

Mr. Yamamoto (a fictitious name) is the volunteer probation officer (VPO) in charge of this parole supervision case. He was assigned this case by the director of the probation office at the beginning when A was in the juvenile training school. After that, he took care of this case under the close collaboration of a professional probation officer (PPO) working for the probation

office in charge of this case.

Under the Japanese probation and parole system, the through care process begins immediately after a person is committed to a correctional institution by a family court or a criminal court. The purpose of the through care is to ensure the smooth transition of inmates from correctional institutions to society and to help themselves rehabilitate in the community. The through care process consists of four parts; (1) treatment of offenders in correctional institutions, (2) environmental adjustment process, (3) parole examination and decision to release on parole by the regional parole board and (4) parole supervision and support in the community. Functions (2) and (4) are carried out by probation offices and the VPO plays an important role in these functions.

The following are the actual activities of a VPO in the through care process. Mr. Yamamoto (VPO) started home condition enquiries (a part of (2)) when he received a classification summary made by the juvenile training school from the probation office. He started to contact the parents of A and asked them to accept her as guarantors after her release on parole. But the parents refused initially because A had committed various kinds of offences and finally she had been sent to a correctional institution. Therefore, the relationship between A and her parents was very bad. Mr. Yamamoto did not give up and continued to visit her parent's home several times to ease their negative feelings. Mr. Yamamoto accompanied her parents to juvenile training school to attend an open day on the occasion of an athletic meeting of inmates and other events.

He also visited the juvenile training school several times to listen to her feelings and to encourage her to live a better life. The attitude of A was not frank at the beginning, but she gradually came out of her shell and finally she wrote many letters to Mr. Yamamoto.

He also asked for support from a wide range of community resources at the same time such as the teachers of A's part-time high school (where A was on the register to continue to go to school), and cooperative employers in order to find suitable temporary work and members of the Big Brothers and Sisters (BBS) Association to help her study and spend meaningful leisure time.

After about one year of enthusiastic effort by Mr. Yamamoto during the environmental adjustment process, the parents of A finally agreed to be guarantors and agreed to let her live with them after her release on parole.

Under close collaboration between Mr. Yamamoto and a professional probation officer (PPO), A started her new life in the community. She tried hard with her studies and temporary work, but there were still many bad peer groups in the community which she had relationships with before she was committed to juvenile training school. They disturbed her rehabilitation and A committed minor offences several times because of these influences. Mr. Yamamoto always went to the police station to meet her straightaway even in the middle of the night when he was called by a police officer.

He also met the parents, the teachers, the cooperative employer and members of the BBS association regularly to exchange information, asking for further support and enhancing cooperation among them. Mr. Yamamoto submitted a monthly progress report to the probation office every month and reported on A. He also communicated with E professional probation officer (PPO) by telephone when urgent incidents occurred.

Through the devoted work of Mr. Yamamoto and the ardent and warm hearted support of her parents, the teachers, the cooperative employer and members of the BBS association, she gradually became more stable.

After Eighteen months of parole supervision and support of A, the regional parole board decided to give her an early discharge from parole supervision because of her good conduct and continuing stable life (low possibility of reoffending) for six months. She is now preparing for an entrance examination to go to university.

C. Outline of the Volunteer Probation Officer (VPO) System

1. Some Characteristics of VPOs

The actual number of VPOs has increased from 48,000 to 49,000 in this decade, as compared with the maximum number of VPOs provided by the VPO Law of 52,500. As of 1 April 2002, there are 48,931 VPOs (male 37,056, female 11,875) and the average age is 63.5 years. The Proportion of females has increased to 24.3%.

As to occupation, VPOs represent almost every sector of society. As of 1 January 2002, the largest group (27%) comprises of housewives (14.5%) and retired persons (12.5%), followed by firm employees (21%), those engaged in primary industries (12%), such as farming and fishing and the religious profession (11%). Other individuals serving as VPOs include company owners, government officials, manufacturers, social workers, schoolteachers, medical doctors and private lawyers.

Concerning length of service, half of all VPOs have been working as such for more than ten years. In spite of the hard and complicated nature of a VPO's duties, many continue to do this work willingly.

2. Activities of VPOs

The activities of VPOs are generally classified into two categories such as (i) rehabilitation aid activities and (ii) crime prevention activities.

Helping Offenders Rehabilitate Themselves in the Community

VPOs conduct the following rehabilitation aid activities based on the referral of the case from the director of the probation office. The case referral procedure is taken by professional probation officers (PPOs).

- (i) To supervise and assist the probationers and parolees assigned to the VPO
- (ii) To inquire into the environment where an inmate of a correctional institution is expected to live after release and adjust any problems there;
- (iii) To locate a probationer or parolee who has moved to the VPO's residential area with or without permission of the director of the probation office in advance and to take over their supervisory casework; and
- (iv) To conduct preliminary investigations for a candidate for pardon.

While the PPO is involved in the case as a specialist in the treatment of offenders, as well

as a law enforcement official, the VPO works as a neighbor to the offender, assisting them on behalf of the community. Furthermore, some VPOs make use of their special knowledge about community resources such as employment in a specific area.

VPOs must submit a monthly progress report for each case to the probation office by the fifth day of every month. In this report, VPOs are required to show their opinions about early discharge from supervision and revocation of probation to the probation office, although they cannot participate in the decision-making for them.

Crime Prevention Activities

To achieve effective crime prevention, establishment and maintenance of social/community support networks for offenders rehabilitation should be emphasized so that is developed and strengthened. From this point of view, VPOs carry out many forms of crime prevention activities in the community in close collaboration with probation offices, Ministry of Justice and other national government ministries and agencies, local government, schools, police, other volunteers and voluntary organizations (NGOs) such as the Women's Association for Rehabilitation Aid (WARA) and Big Brothers and Sisters (BBS) Association.

The following activities are carried out in the community as well as in campaigns to combat crime.

- (i) Public relations activities in public places. For example, campaign parades, various kinds of events such as music concerts, exhibitions, distributing various kinds of campaign goods, crime prevention campaign slogans on TV, radio commercials, newspapers (public and commercial), huge curtains and electrical bulletin boards in downtown areas and sports stadiums.
- (ii) Public symposiums or forums about juvenile delinquency problems
- (iii) Small discussion meetings in local neighborhoods
- (iv) Support activities in the community. For example, support activities for child rearing, holding tentative child guidance or counseling center/clinics, organizing community service activities.
- (v) Fund raising activities for rehabilitation aid. For example, charity concerts, charity bazaars, asking for donations from big companies and so forth.

VPOs play an important role in these activities with their experience in helping offenders rehabilitation, utilizing their locality as much as possible. The target of these activities are ordinary citizens, residents in the local community, students/pupils of elementary, junior high and high school and so forth.

These activities are held throughout the year. We also have a special period for strengthening these activities every July. This annual crime prevention event is held nationwide in collaboration with the above mentioned individuals and bodies under the auspices of the Ministry of Justice to promote public understanding for the rehabilitation of offenders.

Additionally, the national government conducts a nationwide campaign using the mass media. However, without such grass-roots activities led by volunteers, the Movement to combat crime would not be effective.

3. Background

The precursors of the present halfway houses emerged in the 1880s, some of which appointed volunteer workers to provide ex-prisoners with counseling and assistance. When the old Juvenile Law established the probation system for juvenile delinquents, the shortage of regular staff was supplemented through an increased number of juvenile VPO. In 1939, the Juridical Rehabilitation Service Law was enacted which provided a basic framework for "Rehabilitation Workers" (predecessors of the VPO). In the beginning, approximately 13,000 Rehabilitation Workers were appointed.

After World War II there followed a discussion over whether or not probation and parole services should be established as a professional service and the new organization (current system) came into being in the form of a combined system that consisted of professional staff (PPOs) and volunteer citizens (VPOs).

4. Legal Basis

The Volunteer Probation Officer Law (1950, VPO Law) stipulates administrative office conditions for VPOs. The VPO Law was amended and partially came into force on 1 April 1999. The new law has three main points:

- (a) Community organizing and networking activities for crime prevention and the mobilization of social resources are defined as major activities of VPOs;
- (b) VPO's association is defined as a public organization certified by the Law, to which every VPO is affiliated without exception depending on their residence; and
- (c) Cooperation of municipal governments with VPOs and VPO associations is emphasized.

5. Legal Status of VPOs

Legally, the VPOs are defined as non-permanent government officials and are entitled to the benefit of national compensation when any bodily injury is inflicted on them in the performance of their duties. However, they are not paid any remuneration for their services. The government may pay only the total expenses incurred in discharging their duties, or a part thereof. In practice, the VPO is reimbursed a certain amount for their expenditures.

The term of service of the VPO is two years with the possibility of re-appointment. In practice, most of them are re-appointed repeatedly for a number of years, because the duties of the VPO requires long-term experience with much knowledge and skill about the treatment of offenders.

As in any other fields of volunteer work, what constantly motivates VPOs is a sense of mission and gratification from helping others. Of course, some social prestige attached to the volunteer's activity may also be an incentive. Manifest recognition of meritorious service, which is awarded regularly on formal occasions by the Emperor or other authorities at different levels, has traditionally been a practical means of encouraging voluntary service in Japan.

6. Recruitment of VPOs

A VPO's character and personality contribute substantially to their role. The VPO Law requires VPOs should be:

- (i) Evaluated thoroughly with respect to their character and conduct in the community;
- (ii) Enthusiastic and sufficiently available to work;
- (iii) Financially stable; and
- (iv) Healthy and active.

To recruit VPOs, the directors of the 50 probation offices prepare a list of candidates based on the information gathered from various sources in the community. In effect, the list reflects to a great extent the opinion of representatives of the VPO's Association. Further screening is made by a VPO Screening Commission, an advisory committee to the Ministry of Justice that is established in 50 locations corresponding to probation offices. This committee consists of representatives of the court, prosecution, the bar association, correctional institutions, probation and parole services, other public commissions in the community and learned citizens. The Minister of Justice then appoints the candidates who pass the screening process as VPOs.

7. Training

VPOs shall assist professional probation officers (PPOs) (Art. 20 of Offenders Rehabilitation Law), aid offenders of all ages and levels in the community to rehabilitate themselves and enhance crime prevention in the community. To perform these duties effectively, training of VPOs plays a crucial role.

There are five types of systematic training courses for VPOs such as (i) Initial Training designed for providing essential knowledge and information for newly assigned VPOs, (ii) Primary Training designed for providing practical knowledge of various procedures on supervision and other care for the offenders for VPOs with less than 2 years experience, (iii) Secondary Training designed for providing basic knowledge and skills of treatment methods for VPOs with between 2 to 4 years of experience, (iv) Regional Regular Training designed for providing knowledge and skills of rehabilitation service for All VPOs and (v) Special Training designed for providing special knowledge and skills of treatment methods for various types of offenders for VPOs selected by the director of the probation office.

8. Organization of the VPOs

The volunteers are assigned on the basis of their place of residence to one of 904 Administrative Areas for Offenders Rehabilitation in the whole country. VPOs form a Volunteer Probation Officers' Association in each area. Every VPO is affiliated with one such association depending on their residence. A PPO is normally assigned in charge of one or two areas. Presidents of VPOs' associations form organizations at prefectural, regional and national levels, which play crucial roles in facilitating better VPO activities by means of organizing systematic training, giving awards to excellent VPOs and other services.

9. Advantages of the VPO system

There are three main advantages of the VPO system such as (i) locality, (ii) non-government official status and (iii) continuity of activities.

Since both the VPO and the parolee live in the same community, a parolee can make immediate contact with a VPO (immediate contact).

The VPO can provide the offender with various social resources and useful information about the community to help them rehabilitate in the community (social resources).

The VPO is in a more advantageous position in bringing about a change in the public's attitude towards the offender and in mobilizing social resources (practices based on community needs).

The offender and their relatives look upon a VPO as a neighbor, rather than as a representative of the government. As a fellow citizen, he/she can demonstrate purely fraternal concern about the welfare of the offender and even intervene more smoothly in the offender's family relationship. Experiencing such a relationship with the volunteer undoubtedly helps the offender regain their self-respect and identify himself or herself with law-abiding culture; since most offenders have never previously experienced such warm concern for them (close relationship).

VPOs live continuously in the community, and therefore, can establish relationships on a more continuous basis. A PPO sometimes fails to keep close relationships because he/she moves to other offices every two or three years. Furthermore, even after the expiration of the parole period, private relationships between the offenders and the VPO may continue in their community, and the VPO may provide them with various services even though there is no legal requirement to do so. This continuation of providing services may contribute to the rehabilitation of offenders (continuous support).

10. Problems

Since the system for community-based treatment of offenders (probation and parole services) is a part of the governmental criminal justice system, it should provide the same level of supervision and support to all the offenders. But VPOs, as laymen, are inclined to treat offenders in accordance with their personal or inherent views that have been established through their lives. This might lead to wide differences in the treatment of offenders from one VPO to another. Although treatment methods should be individualized based on the needs and risks of offenders, partial treatment may result in partial disposition. And so, these kinds of partiality should be minimized.

The average age of VPOs tends to become older year after year and it has reached 63.3 years on average (as of 1 January 2002). On the other hand, approximately 70 percent of the delinquents/offenders under supervision are under 20 years of age. Therefore, there is a considerable gap in generation and a gap in the way of thinking between the elder VPOs and juvenile delinquents/offenders. This gap may disturb smooth communication with each other and invalidate positive influences from VPOs on the offenders.

11. Future Prospects

In order to solve the problems relating to the VPO system, enhancing the systematic training of VPOs might be an effective way to minimize the partiality in the treatment of offenders.

The introduction of a semi-professional VPO system should be considered. This new system will assume stronger supervision and enrich the various kinds of support for offenders. For this purpose, VPOs with special expertise and professional experience in human services

should be recruited and assigned to special tasks such as psychological counseling and legal assistance.

In terms of the generation gap and the difficulty in securing qualified candidates for VPOs in urban areas, the recruitment procedure should be reconsidered so as to get younger volunteers and specialists serving as VPOs. We should consider the introduction of an age-limit on the appointment of a VPO, diversification of recruitment methods such as a more open recruitment system in which people can apply to be a VPO candidate more freely (public advertisement for the recruitment of VPOs). Since interest in volunteer activities among young people has been increasing, new ways of recruitment will be effective and also strengthen ties with other voluntary activities.

IV. OUTLINE OF THE JURIDICAL PERSON FOR REHABILITATION SERVICES

A. Introduction - Three functions of the Juridical Person for Rehabilitation Services

The Law for Offenders Rehabilitation Services established the juridical person for offenders rehabilitation in the form of a non-profit organization for offender rehabilitation services such as (1) accommodating offenders in halfway houses, (2) providing material aid, and (3) financially supporting other rehabilitation organizations under the supervision of a probation office. As of 1 April 2001, there are 164 juridical persons for offenders rehabilitation, 99 of them run 101 adult and juvenile halfway houses and 66 of them provide services (2) and (3) through the Rehabilitation Aid Associations. These associations also have the legal status of juridical persons for offenders rehabilitation.

B. Halfway Houses

1. Basic function

The basic functions of halfway houses are the smooth transition and aftercare of offenders. The successful re-integration of offenders into society may be impossible without their smooth transition from custody to the community. Halfway houses can provide an opportunity for them to deal with sudden changes, and they can be provided with the necessary aftercare services such as accommodation and counseling. As the family structure has changed due to urbanization and industrialization, the family has been less accepting and assumed less responsibility for the care of offenders than before. Drastic changes in social structure may deteriorate the positive factors which support the upbringing of juveniles and prevent them from committing crime. Thus, the establishment and development of halfway houses and aftercare services should be emphasized.

Halfway houses are important and special institutions for the treatment of offenders. Halfway houses primarily provide room, board and guidance to juvenile and/or adult probationers, parolees and other discharged offenders. Moreover, halfway houses not only help their residents secure employment within the community or in the workshops which are available in some halfway houses, but also provide offenders with treatment for alcoholism, social skills training, and special vocational guidance etc.

They accommodate nearly a quarter of prison parolees lacking a suitable place to live. In Japan, those inmates who do not have a suitable place to return to after release from prison are not allowed to be released on parole. It is fair to say that it would impossible to maintain the present parole system without the involvement of halfway houses. In addition, a program

designating selected halfway houses for parolees serving sentences of eight years or more was launched in 1979. Under this scheme parolees are accommodated for the first month after release on parole and receive intensive group counseling, as well as assistance and guidance, for coping with ordinary social life from which they have been excluded from for many years.

Those released from imprisonment and detention can get shelter aid services within six months after release. Also prior to a final disposition, the Family Court often refers juveniles to halfway houses for guidance and observation of their behavior.

2. Current Situation

As mentioned earlier, at present, juridical persons for offenders rehabilitation run 101 halfway houses under the authority of the Ministry of Justice (1 April 2001). Among them, 5 houses accommodate only juveniles, 22 houses are only for adults, and 74 houses are for both juveniles and adults. In terms of gender, 91 houses accommodate only men, 7 houses for women and 3 houses for both men and women. The total capacity of the halfway houses is 2,271 individuals including adults and juveniles. For adults, the capacity is 1,802 men and 98 women. For juveniles, the capacity is 371 individuals (321 boys and 50 girls, as of April 1, 2001).

The national government (the Rehabilitation Bureau, Ministry of Justice) supervises and provides financial support to the halfway houses. In the fiscal year 2000, halfway houses received approximately 78 percent of their budget from the national government.

In terms of regular staff strength, there are a total of 553 employees nationally; an average of six regular staff per facility. Among them, 367 employees (66.4%) are appointed as VPOs concurrently (April 1, 2000) and there is at least one regular staff member who is appointed as a VPO working for each halfway house. This means that the function of halfway houses is not only to provide accommodation and meals but also to provide various kinds of effective treatment programs for residents of halfway houses under close collaboration with professional probation officers.

3. Historical Development

Similar facilities have existed since the 1880s in Japan. At that time, many facilities for discharged prisoners were established by individual volunteers and organizations. Until the end of World War II, volunteer associations also operated juvenile institutions, which acted simultaneously as a juvenile training school and probation home. After World War II, these facilities accommodated mainly discharged prisoners for aftercare services under the Law for Aftercare of Discharged Offenders (1950)¹. Since the 1970s, the adult offenders who have been released on parole from prisons have replaced the discharged offenders, so that these facilities are characterized by their function as "halfway houses."

C. Rehabilitation Aid Associations

Rehabilitation Aid Associations represent another type of juridical persons for offender rehabilitation services. There are 66 such associations throughout the country, at least one in every prefecture (1 April 2001). They contribute to rehabilitation services in two ways. One is to

¹ The Law for Aftercare of Discharged Offenders (1950) was abolished and replaced by the Law for Offenders Rehabilitation Services in 1995, which regulates judicial persons for offenders rehabilitation services including halfway house.

provide temporary aid such as meals, clothing, and medical care and travel fares to offenders experiencing difficulties in their daily lives. The other is to provide liaison and assistance services to persons and organizations working in rehabilitation services, such as halfway houses, VPO associations and other volunteer organizations. They accomplish the latter by providing subsidies, textbooks for training, tools and materials for crime prevention activities, and educating the public on crime issues.

V. CONCLUSION

- (i) Japan has a long tradition of community involvement in the criminal justice system which ranges from the police to probation services (community based treatment of offenders).
- (ii) Especially there are five types of well organized volunteer systems such as the VPO and others working for community based treatment of offenders.
- (iii) But to cultivate and to organize those volunteers well take long term. Nevertheless, introduction of practical and extensive use of volunteers and community resources and enhancement of community networks will definitely enrich the contents of offender's treatment and strengthen offender's support.
- (iv) The first step which we recommend is to find existed volunteers in local community and expand their ability. At the same time, to utilize public advertisement effectively and to recruit capable volunteers are vital step. After recruitment, we have to establish a sustainability mechanism for volunteers such as awarding system, reimbursement scheme and systematic training.

If you establish and manage those mechanisms and systems, you will succeed to have a well organized volunteer system working for your criminal justice system.

REFORM OF THE TREATMENT OF OFFENDERS – COMMUNITY INVOLVEMENT

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I. INTRODUCTION

Indonesia has a population of 210 million which is spread over many islands. The population consists of groups of people with very different cultures and customs, as well as traditions. Within this diversity, it is obvious these conditions have the potential to create some problems or social conflict. This conflict is being recognized as a battle between good and bad or it could also be defined as crime.

Emile Durkheim said “*Crime is a normal phenomenon of society, the natural and inevitable product of collective life and social evolution. The collective conscience of a people defines what is crime*”¹, it is obvious that we as members of the community should be directly responsible for what we’ve done or the results of our actions. Based on the statement above we, therefore, must reconsider the notion of punishment within the social approach.

Correctional systems have become a new system for the treatment of offenders in Indonesia based on the idea that *correction is part of society’s agencies of social control that attempts to rehabilitate or neutralize the deviant behavior carried out by adult criminals and juvenile delinquents. It functions with social and legal authority after the criminal courts have held an adult to be guilty of a violation of the law, or when the juvenile court acts in a child’s interests after a complaint or referral has been made alleging a delinquent act. In practice some correctional function precedes the formal assumption of responsibility by agencies for the administration of justice.*² Since 1964, the Indonesian former Minister of Justice, Sahardjo, has implemented significant changes in regard to the treatment of offenders by revealing a correctional concept that contains Ten Correctional Principles for the treatment of offenders. The principles state that:

- (i) To protect and to provide the offender with a proper and useful role in the community;
- (ii) Punishment is not a form of revenge by the State;
- (iii) To provide the offender/prisoner guidance on repentance, not incarceration;
- (iv) The State shall not be responsible for the offender’s further deterioration;
- (v) Loss of freedom should not constitute total isolation from the community, the offender must stay tuned to the rhythm of society;
- (vi) The offenders shall not be given jobs that benefit only the institution or state, the job should develop the offender’s skills;
- (vii) The educational aspect of correctional treatment must be paramount;
- (viii) Treat the offender/prisoner as a human being, their dignity and rights as humans must be respected;

¹ Davis Dressler editor, Reading in Criminology and Penology, judul Crime as normal behavior diangkat dari karangan Emile Durkheim “Rules of sociological Method” (New York and London: Colombia University Press 1972) hal. 3.

² Vernon Fox: Introduction to Corrections, Englewood cliffs: Prentice Hall, Inc. (1972) hal. 1

- (ix) The offender/prisoner shall suffer punishment only in the form of loss of freedom;
- (x) All correctional structures and facilities must support the rehabilitative and educational function of the correctional system.

The implementation of the correctional system in Indonesia is a part of the law's enhancement in particular and national development in general. It is also strongly related to the impacts of the regional situation, as well as the continuous rapid development, both within the national and international sphere. Problems and changes emerging from globalization also affect the degree, form, types and subjects of crime and includes transnational crime, organized crime and white collar crime etc. These phenomenon affect the correctional system in Indonesia.

On the one hand, the basic concepts behind the need for treatment and correctional programs are to improve the professional qualities of the prisoners and try to eliminate the negative effects of their criminal acts. On the other hand, the concepts also aim at developing responsibility in the offender so they are aware of human values, social morality and social responsibility in their everyday interactions.

In implementing its discretion, the Directorate General of Correction refers to its Vision and Mission. The Vision states that the correctional process is aimed at restoring relationships, living, and life support (social reintegration), which uphold the principle of protection, care and guardianship for the society. As for the Mission, the correctional process should optimize the implementation of prisoner treatment and management of state confiscated goods should be utilized for law enforcement and human rights.

II. INTERNAL POLICIES

The correctional process has four phases. The process begins after the convicted offender is given his final sentence from the criminal court judge.

A. The First Phase

At the First phase there is admission, orientation, and observation. This phase takes about a month. The offender is introduced to the environment of the correctional institution. This is necessary to ease the burden of transition and to avoid the possibility of friction with other inmates. This phase could take as long as 1/3 of the sentence period. In this period the offender is kept under maximum security.

B. The Second Phase

This phase is the continuation of the first phase, however in the second phase the offender is given training in business, small industry, and all kinds of support skills. This training will be adjusted according to the offender's talent and interest. This phase will take as long as one third to a half of the sentence period. In this period the offender is kept under medium security.

C. The Third Phase

In this phase the offender is introduced to the assimilation process, the assimilation process is a process to assimilate the offender back into society. This process includes academic studies, religious worship, furloughs, social work and working for third parties etc. The offender is entitled to receive all of this treatment. This phase will take as long as a half to two-thirds of

the sentence period. In this period the offender is kept under medium security.

D. The Fourth Phase/Final Phase

The integration phase, in this phase the offender is entitled to have parole and pre-release treatment. He or she no longer has to stay at the correctional institution, however the offender has to report regularly to the parole office. This phase takes place at the final third of the sentence period. The security level is minimum.

These phases are designed to treat the offender in accordance with correctional discretion and the offender's basic human rights.

III. EXTERNAL POLICIES

In line with the policy above, cooperation with other resources in society is beneficial to the treatment of offenders. Among those resources are:

A. Related Institutions

Some institutions that have worked together in the implementation of correctional treatments are:

1. The Ministry of Health

The cooperation involves medical treatment for the prisoners and offenders, the assignment of doctors and paramedics as well as medications for ill prisoners. It also covers research on prisoners involved with drugs. The results will be used by the Directorate General of Corrections to formulate policies for the treatment and rehabilitation of offenders in drug cases.

2. The Ministry of National Education.

The Ministry assists formal and informal education of the young and adult prisoners including the illiteracy eradication program. The assistance covers the assignment of teachers, learning modules and opportunities to study in schools outside the correctional institutions.

3. The Ministry of Manpower

The cooperation includes training in certain skills. The programs are designed to give knowledge and skills to prisoners so that they can make a living for themselves and their families in the future. The aim is to create a productive, useful and independent citizen. The programs are:

- (i) Entrepreneurship programs like handicrafts, home industry, machine and electronic repair, etc.
- (ii) Small-scale business programs like raw material processing, snack processing and preservation, brick making, etc.
- (iii) Skill training programs related to their interests.

4. The Ministry of Religious Affairs

The Ministry gives spiritual guidance to offenders through religious talks, *Qur'an* reciting, Arabic lessons for the *Qur'an* for Moslems and other religious teaching for followers of other

religions. Another program is the Qur'an reading (*Musabaqoh Tilawatil Qur'an*) competition.

5. The Ministry of Social Affairs

The Ministry has participated in giving treatment, especially for children, at the correctional institutions, as well as for offenders who have been released in a program called the After Care Program. Meanwhile, children under state supervision are allowed to join the assimilation program at the Ministry by taking some lessons at school or outside school, as well as some vocational training programs. The juveniles who, based on the court's verdict, are sent to the Ministry of Social Affairs will also get some guidance programs conducted by the Ministry in cooperation with the correctional institutions. Another kind of cooperation between the correctional institutions and the Ministry of Social Affairs has been established in order to rehabilitate offenders in drug cases, in which the Ministry of Social Affairs supplies some modules on the Therapeutic Community Method based on a fixed standard.

6. The National Drugs Organization

The Organization provides assistance in handling offenders who are involved in drugs, either as users or dealers. It is realized that handling drug problems requires solid teamwork among many parties, including correctional institutions. This is based on the fact that drug use has spread to many places and reached many people, including inmates who happen to be users or dealers, their number has been increasing significantly. The situation has worsened, as the drug dealers have been successful in circulating drugs everywhere, including to children, young people, adults, and even intellectual communities. Since the government has shown concern in handling drug problems by establishing the National Drug Organization, which is supported by non-government organizations, the war against drugs has been intensively executed.

B. Social Organization

Society has the following three elements, which should be encouraged to actively work together in implementing the treatment program for offenders within the community.

1. Social Organization/Non-Government Organization

Social organizations have played a significant role in the treatment of offenders. They help lessen the state burden. They participate in giving treatments such as religious and health services, training programs, legal advice as well as character building programs. There are also some social organizations which accommodate ex-offenders and offer vocational courses at some companies. At the same time, these non-government organizations train some of the correctional officers. In regard to skills training, some women's correctional institutions have cooperated with companies to give courses in make up and hairdressing.

2. Prominent Figures

Some people in the community are prominent figures because they have a strong desire to eliminate crime. For this reason, these priceless resources have become close partners in conducting programs for the treatment of offenders. They usually take part in supervising and guiding offenders who are in assimilation programs, furlough programs to visit family members, pre-release furlough or parole under the coordination of the correctional institution.

3. Members of Society

Society's role in participating in the treatment of offenders is very important. Members of society show their concern by working individually or in groups in aiding in the treatment of offenders, both the physical and mental aspect.

C. Cooperation with Third Parties

Offender's employment is one of the programs included in the treatment program, and it is arranged based on the offender's ability. *"The offender's employment philosophy is that the offender is a member of society and as such has a basic need to live life, and any job or employment given is indeed very important and has a strategic value in the process of the treatment of offenders.* According to a paper presented by The Queensland Corrective Service Commission at the 17th Asian and Pacific Correctional Administrators which stated that *"Correctional administrators need to give careful consideration to the degree to which both training and work in prison are designed to meet opportunities for employment in the general community. It is essential for prison industries to keep pace with industries in the community in terms of modernization and productivity and vocational training in prisons should be closely related to training standards and employment opportunities in the community"* (The Queensland Correctional Services Commission, 1997)³. In order to support the treatment of offenders, correctional institutions have cooperated with companies to provide employment for offenders.

Correctional Institutions are responsible for:

- (i) Selecting the offenders who will be hired
- (ii) Providing a place to run the business
- (iii) Supervising the security and guaranteeing the appropriate implementation.

The job given should match the offender's qualifications and during their time in prison the offender shouldn't be isolated from the community. In accordance with the treatment process, an offender who has reached half of his/her period of sentence is entitled to assimilation. The offender will likely use this opportunity to get a job placement outside the correctional institution. In 2001, 980 offenders (0.03% of the total) entitled to assimilation worked for third parties in many companies, meanwhile there were 1,872 offenders (0.052% of the total) who received parole and 435 offenders (0.012%) who were given pre-release furlough.

D. Academic Institutions

Some academic institutions have also shown their concern for the implementation of treatment programs in correctional services by conducting research on the subject. Either they help through research or by giving legal aid or legal advice or by giving some other advice, guidance and counseling services. They also offer psychological treatment programs to the offenders.

IV. CURRENT POLICIES

In the last five years, many problems concerning correctional issues have surfaced which need to be addressed by the government. Including drugs, overcrowding and comprehensively

³ Sujatno.; Adi, SH, Bc. IP, Negara Tanpa Penjara, Direktur Jenderal Pemasyarakatan, Jakarta, 2001, ha I. 30.

adopting human rights concepts into the Indonesian correctional system.

A. Drugs and Prisoners.

The Asian and Pacific Correctional Conference Administrators in Chiang Mai, Thailand observed that the number of drug offenders has been increasing by 10% a year in several members' jurisdictions. The General Assembly has also declared that drug offender issues have become a problem for all the members of the conference. Because of a significant number of drug offenders, the Indonesian government, particularly the Directorate General of Correctional Services has a strategic plan to deal with the treatment of drug offenders. They need special treatment because they commit crime as a result of the substances they are addicted to. One response is the establishment of 9 special correctional institutions for drugs offenders in some regions of Indonesia. These special institutions must be fully equipped with special equipment and officers. However, this would require a huge budget, which the government can't afford and the number of officers that are trained in dealing with drug offenders is also insufficient.

B. Overcrowding

Based on the last five years of correctional data, the comparison between institutional capacity and the number of prisoners is as follows:

Table. 1
Correctional Institution/Detention House Capacity

Capacity Lapas/Rulan	Year				
	1998	1999	2000	2001	2002
64,619	28,826	33,072	34,385	38,041	45,520
Percentage	66.13%	86.17%	84.50%	92.06%	114.20%

Even though there was a percentage decrease in 2000, since then the number has continuously been approaching the limit of capacity. Overcrowding has been a big problem at some metropolitan institutions which could directly affect the treatment of offenders. Since then the Indonesian government has a policy of rebuilding or renovating some institutions, and building more institutions, particularly since the Autonomous Act was implemented. For example in: Central Java, Western Sumatran and West South East Island (Nusa Tenggara Barat). Gradually, it plans to build a number of childrens institutions, womens institutions, special drug institutions, and traffic violation prisons. Currently, the number of correctional technical units are:

Table. 2
Correctional Technical Unit and Correctional Officers

	Correctional Institution	Detention House	Parole Office	State Treasury for Confiscated Goods	Total	Correctional Officers
Amount	148	230	48	7	433	23,015

The ratio is very staggering, it is 1 correctional officer for every 80 prisoners/offenders or (1 : 80).

C. Adopting the Human Rights Concept

Some appropriate words to indicate the implementation of human rights concepts are: assimilation, parole, pre-release treatment, and family visits.

Table. 3
The Amount of Assimilation, Parole, Pre-Release Treatment and Family Visits Received by the Offenders/Prisoners

No	Description	1998	1999	2000	2001	2002
1	Assimilation	328	338	163	372	765
2	Parole	1,507	1,467	891	1,614	1,526
3	Pre-Release Treatment	365	322	114	134	279
4	Family Visits	427	295	138	101	395

Generally the number of assimilation, parole, pre-release treatment and family visits has increased. Nevertheless compared to some Asian and Pacific countries, Indonesian non-institutional treatment is still low. The 18th APCCA conference in 1998 stated that non-institutional treatment accounts for 2% of all cases in Indonesia, 19.2% for the Philippines, and 32.3% for Thailand.

The cause of the low numbers for non-institutional treatment in Indonesia is the lack of community acceptance for this program. They still don't accept such treatment for reasons concerning equity in the community and social interactions.

To provide for the increasing non-institutional treatment, the Directorate General has stipulated a new policy, whereby some offenders will be granted a special remission in consideration of a national day of religion. In 2001 the data was as follows:

Table. 4
Special Remission Received by Offenders/Prisoners

No	Contains	Idul Fitri	Natal	Nyepi	Waisak	Jumlah
1	RK I (Special Remission-Partial)	14,993	1,799	2	13	16,797
2	RB II (Special Remission-Complete)	978	90	0	0	1,068
	Total	15,971	1,889	2	13	17,865

V. CONCLUSION

After almost 38 years of correctional implementation in Indonesia, the treatment program policies for offenders has significantly progressed even though it is still not up to standard, compared with neighbouring countries in Asia and the Pacific.

After deeply searching the many factors that influence the successful treatment of offenders, I believe the goal should be to return offenders to the good will of society who will fully support the program undertaken by the government. A community role which as stated by Emile Durkheim is absolutely necessary, due to the fact that crime is produced by the community itself and those most responsible for this matter are the community.

No matter how sophisticated the criminal justice system is in Indonesia, if the community still does not have an awareness and feels distrust against the system, it will be impossible to reduce the number of criminals in Indonesia.

If community awareness could be reached and achieved, it is possible this country could become a country without prisons.

THE URGENT NEED TO REFORM TREATMENT TOWARDS CORRUPTION OFFENDERS IN INDONESIA

By
Prof. Dr. Tb Ronny Rahman NITIBASKARA,
UI, Indonesia

There was a story that used to be quoted about criminal punishment in the era of Queen Victoria. England was experiencing a very long dry season. The economic crisis, as always, triggered an increase in the *property crime rate*, especially that of theft. The Kingdom employed a variety of solutions, but theft still increased due, understandably, to the increase in the number of hungry people.

Eventually, the Kingdom decided to employ a very harsh punishment: Those who were caught stealing, would have their hands cut off in public. When the new policy was about to be executed, the people rushed to the city square park where the punishment was to be carried out. But just after the execution, with the splash of the thief's blood still fresh in the memory of the audience, a noisy roar suddenly came from some of the spectators - shouting that their wallets had been stolen.

The above story perhaps illustrates that harsh punishments will not always decrease the crime rate, if the social-economic condition of the society is still deprived. The story did not tell us about the condition of the elite and the privileged class at that time, and whether or not they also suffered from hunger. If the 'blue blood' group had enough food, the theft cases could be another form of public disobedience towards the rulers.

There are two factors which are often neglected in penology studies that ought to attract our attention in the treatment of criminal offenders.

Firstly, the actual condition of the society. In this regard, living values among the society which are usually changed should be carefully observed through legal culture studies. From so doing we will know the trend of development regarding legal ideals of the majority of the public. In a democratic society, these ideals will directly influence the national legal policy as well as the performance of law enforcement institutions. This first factor can also be considered as a form of community involvement.

The somewhat higher participation in political matters among our society lately, has strongly influenced the realities of law enforcement ideals in Indonesia. For example, the strong inclination towards a *good and clean* government has triggered enthusiasm among the people to eliminate corruption without discrimination. Perhaps the enthusiasm was there all along, but the momentum to realize it was very small then, due to the government being the key player in this kind of crime. As the regime has changed, the enthusiasm to eliminate corruption has been renewed, as reflected in the willingness to employ the harshest possible punishment towards corrupters generally.

It was due to such enthusiasm, that when the idea to adopt a policy of *release and discharge* towards several major corruption offenders came about, a wave of opposition arose in society. Eventually as a result, the President, the Supreme Public Attorney, the Finance Minister

as well as the Chairman of the Indonesian Banks Restructuring Agency (IBRA) did not dare sign the decision, and even seemed to throw the responsibilities to each other (Media Indonesia, 2002). These realities confirmed how community involvement in a democratic society could sharply influence the ideals of law enforcement, especially regarding the treatment of corruption offenders.

The enthusiasm to prioritize the elimination of corruption through employing harsh punishment towards offenders has also arisen among religious leaders. The willingness was clearly shown among members of *Nahdatul Ulama* (NU)-the biggest grass roots Islamic organization in Indonesia. At their latest national congress (Mahsul Masail NU 2002) at the Haj Boarding House Pondok Gede, Jakarta last August, among other things it was stated:

A. On National Debt

- (i) A national debt is not an individual debt of every citizen.
- (ii) Those who are responsible to pay is the state, with a detailed note that, the debt which was used for the benefit of the people, will be paid by the state with state's money; whilst national debt, which was the result of corruption by state officials and their cronies, will be paid by the state with the funds derived from the corruptors themselves.
- (iii) As *warasatul anbiya* or the inheritors of the Prophet Muhammad (peace be upon him), following one of his examples, NU members should not pray for the dead bodies of Moslem officials who corrupted the state's money, before they have given back the assets resulting from their corruption.

B. On Corruption

- (i) From the Islamic laws (*syariat*) viewpoint, corruption is a very deceitful act (*ghulul*) towards the people's trust (*amanah*). And from its practice and impact, corruption can be categorized as stealing (*sariqah*) or robbery (*nahb*).
- (ii) The giving back of money resulting from corruption does not cancel out the punishment. Because, the claim of punishment belongs to God's (*Allah*) right, whilst the giving back of corruption money to the state is that of the public's (*adamiy*) right.
- (iii) The proper punishment for corruptors ranges from cutting-off their hands up to that of capital punishment (death sentence).
- (iv) Political gifts given (in money or other things) to influence and/or deviate the just and objective decisions, in *syariat's* view is, a kind of bribery (*risywah*) which is cursed by Allah, whether it is the givers (*raasyi*), the receivers (*murfasyi*) or the mediators (*raaisy*). (Gatra, 2002)

Such formal guidance (*fatwa*) as mentioned above, although it might have been issued before, is not as severe as the present. We can see here, for example, a kind of social punishment of not being prayed for when the offender dies (as it should for a Moslem according to Islamic law). These are the new guidance policies of the NU. Other important things to be noted in the decisions were a) that lawsuit claims were not cancelled and b) the severity of the punishment. So the suggested solutions given by several parties regarding big corruption cases in Indonesia, i.

e. “*get the person but not the assets*”, or “*get the assets/money but not the persons*” are not valid. Perhaps the later solution was the thinking behind the *Release & Discharge* policy specially designed for the biggest corruptors.

If we accept the NU’s guidance, which is also the opinion of most Indonesian people, the expected solution should be aligned with the existing law, “*get the money and the person*”. No other dichotomy choices. What is more, such an alternative, including the effort to make corruption cases civil (*perdata*) ones, is suspected as being a trick to avoid responsibility before the law. These realities show how strong the current thinking in Indonesia regarding hard punishment toward corruptors is today. Such an actual condition cannot be neglected, should we want to reform the treatment of such offenders.

From a study of a society’s actual condition, it is easier for us to understand the ways certain nations or states treat their offenders. In Japan, where the life of an individual is strongly integrated within a group, social punishment in the form of *re-integrative shaming* is more effective as a *deterrence* compared to other forms of punishment. In other words, for a homogenous society which has a strong group cohesiveness like that of Japan, the concept of de-institutionalization of punishment is more appropriately employed. The concept of shaming has more usefulness for society than that of taking one’s freedom and putting him/her into an institution for a long period of time. For not being acknowledged or alienated by his/her group is a disaster for a Japanese person. Because it is within a group that an individual’s life has meaning. So to preserve the group, is identical to preserving one’s individual existence (Bayley, 1986). Therefore, criminal acts could also be interpreted as a deceitfulness or shaming towards one’s group. And to compensate such a shaming experience, it is common to pay the price with one’s life, i. e. through suicides (*seppuku* or *harakiri*). According to Newsweek magazine (2002), at least 30,000 Japanese commit suicide every year. And we have reason to believe, that the cause of such a high suicide rate is due to the shaming factor.

Meanwhile, unlike what happens in Japan, in the Bamboo Curtain’s country (People’s Republic of China), the treatment towards offenders is viewed from the level of dangerousness (serious or minor) of the wrong deeds. According to Edward J. Epstein and Simon Hing yan Wong (1996), there are two concepts of dangerousness in China’s criminal justice system. The first, the dangerousness to society (*She Hui Weihaixing*) which is considered as a fundamental characteristic of crime. Corruption belongs to this concept, and therefore it is appropriate for the offenders to be punished severely, including the death sentence. Secondly, individual dangerousness (*Renshen Weixianxing*), i. e. crimes that are being done by individuals who have anti-social tendencies. Both concepts are applied in sentencing, remission, parole, and the methods employed to reform convicted persons.

What happens in China is additional proof, that the idea of reforming treatment towards offenders cannot be separated from the emerging concept about crime and that of criminals within society. Therefore, the conflicting discourse in penology of social rehabilitation and reintegration on one side versus punitive strategies on the other may become less relevant if the actual conditions and needs of the nation are referred to. What is considered important and urgent by certain states may be different for other countries. Corruption in Singapore, for example, is not an urgent case. Meanwhile for other countries, the same crime is very urgent because it is threatening the livelihood of both the nation and the country. Therefore, the meaning of *reform in the treatment of offenders* can also be in a form of additions (*pemberatan-pemberatan*) to the execution of the existing punishment system. In short, it depends on the actual condition of the nation. And because it has a characteristic of actuality, it is likely to be renewed in the future.

These realities have been a contemporary phenomena throughout the world.

Currently, many parties (including most of the human rights defenders within the U. S) are protesting the treatment by the United States of America of the prisoners alleged to have been involved in the terrorist activities on September 11, 2001 that destroyed the WTC buildings. Although their cruel treatment received much support from the American people, with 68% agreeing to it, according to a Newsweek (10/12/2001) poll at the same time they are expecting the prisoners to receive justice through the open court process. Here lies a big question that should be answered, and the Newsweek magazine used the question as the title of it's front cover: "*Justice vs Terror. How Far Should We Go?*"

Under the Anti-Terrorism Act (USA Patriot 2001), the U. S. has employed very harsh treatment towards people alleged to be terrorists. They are sentenced to the most secure prison there is today, i. e. at Guantanamo Bay, Cuba. The prisoners therein are being treated inhumanely. And as a consequence, the U. S. has many critics, including U. N. officials, among others the Chairlady of the Human Rights Commission, Mary Robinson.

As the victim of such a massive terrorist attack, it is understandable that the U. S. employed such a policy. Besides, the September 11th attacks are also hurting the "national pride" of the U. S. as being the only superpower. Terrorism has changed the consciousness of the American people, that such a crime could be so devastating, and therefore the elimination of the threat should be prioritized. However, despite the hatred towards the terrorists, the U. S. should still abide by the law and justice. What is more if we bear in mind that the U. S. is often referred to as the champion of democracy, then justice must be seen to prevail whatever happens.

Undoubtedly, in treating convicted criminals we should always keep in mind the balance between justice and national security. The implementation of such a principle will bring us to the second factor that has to be studied regarding the treatment of criminal offenders, i. e. the variety of crimes. How a society views many kinds of crime is important to study, in order to further our knowledge about the ways the state and society treat offenders. Due to the limitation of space, it is impossible to discuss here all forms of crime regarding treatment reform towards offenders. Consequently, we have to limit our focus to only one kind of crime, and we choose the one that is assumed to have the most destructive power. It is indeed relative as to what kind of crime is the most dangerous. But the elimination of crimes that are considered most threatening for the safety of all are unusually prioritized, and the offenders are punished the most severely.

For the U. S., the first priority is terrorism, because the people consider it the most threatening to their national security. In other countries, the priorities may be different. In Iraq, for instance, the highest crime is if someone were to become a spy for the U. S. Meanwhile in Indonesia, the most targeted crime in the eyes of the public is, as we know, that of corruption. How a society views the level of dangerousness of certain crimes, depends greatly on the actual conditions that are experienced by that society.

Those realities show, that the view that is developing in the society regarding crime will influence the treatment of the offenders. The way a certain crime is viewed between one society to another, also influences the ways in which they reform treatment towards certain offenders. Thus, the second factor is closely related to the first one, i. e. the actual conditions of the society. Therefore the reform of treatment towards corrupters in other countries cannot be adopted here just like that. What is appropriate in Japan, for example, is not necessarily so in Indonesia. The need to fulfill the ideals to be realized are different. When China wanted to push economic

development, they did it together with a campaign to eliminate *economic crime*. Since the launch of the campaign in 1982, more than 30 people have been sentenced to death or sent to prison for life (Epstein and Wong, 1996).

In any part of the world, the corrupters are usually educated persons who generally hold an official office of some kind. Therefore it could also be concluded that this type of offender is more rational in comparison with other criminals. Before they carried out the crime, they thought about it time and again based on its benefit-cost ratio. So in carrying out their crime, these offenders are always in a conscious mode. Therefore, it is very strange to treat them with mental rehabilitation concepts and the like. Besides, according to Clayton A. Hartjen (1976), those rehabilitation concepts contain two flaws "*The first argument suggest that rehabilitative activities are somewhat less than painful. But convicts do not seem to agree. Most would rather be left alone to do their time. The second argument is erroneous because it is assumed that humane treatment will automatically lead an individual to reform his ways. This is not only untrue, but also potentially self defeating*".

Based on the consideration of actual conditions in our country, what the corruptors have done is already threatening our *national security*. Therefore, there is no other proper way to treat them except with *punitive strategies*, one of which is through long term imprisonment.

To implement this strategy, it seems we need to heed the advice of David Garland (1966), that: "This punitiveness has complex roots. It is by now a deep rooted aspect of our culture, embedded in the common-sense of the public, the police and the judiciary. Meaning that to severely punish the corruptors we have to follow a long and winding road, because there is so much to be set in order. But we have to continuously make such an effort anyway. And in order not to experience the pointlessness of harsh punishment as illustrated in the opening story of this article, all kinds of discrimination should be avoided. If discrimination does exist, it could be a sign that *judicial corruption* has taken place. In this regard, we are only able to read the indicators, because to expose and bring corruption cases to court is very difficult. Although, according to Garland, the court also needs to be reformed before we start reforming the treatment of offenders.

These realities tell us, that if we really want to reform the treatment of convicted corruptors, we have to eliminate the culture of corruption. One way to do so is to give a shock wave in the form of severe punishment to every corruption offender. Again, in order not to imitate what happened in the opening story, I repeat, all discrimination in establishing the punishment of corruptors should be avoided. The great prophet Muhammad (p. b. u. h) taught us even if his own daughter is caught stealing, her hand should be cut off. Thus the key to reform suggested herein is harsh punishment and indiscrimination.

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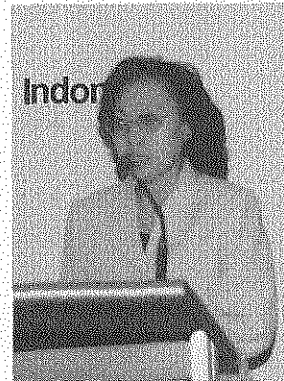
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Closing Session

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Please note that the following papers have not been edited for publication. The opinions expressed therein are those of the author's. They do not necessarily reflect the position of the departments or agencies that they represent.

CLOSING ADDRESS

By
Prof. Dr. Harkristuti HARKRISNOWO,
Indonesia

Ladies and gentlemen, allow me to summarize the report of this seminar. This seminar was held for three days from 18 to 20 of December 2002. Minister Kwik Kian Gie opened the seminar along with the Ambassador of Japan.

On the 1st day, we had 219 participants and 2 Japanese speakers, and 4 Indonesian speakers with 2 moderators. The 2nd day, we had 160 participants, 2 Japanese speakers and 4 Indonesian speakers with 2 moderators, and on this the 3rd day we have 152 participants with 3 speakers and 1 moderator. The working group has drafted the Final Recommendations and I hope the events do not stop at the recommendations; we hope that our colleagues here both from Indonesia and Japan will be able to follow up the action to promote our criminal justice system. Thank you.

CLOSING ADDRESS

By
Mr. Kunihiko SAKAI,
(UNAFEI)

The Indonesian-UNAFEI-JICA seminar is now coming to a close. As Director of UNAFEI I would like to say congratulations to all the participants for your time at this joint seminar. At the same time I would like to express my sincere gratitude and appreciation to the government of Indonesia and JICA for their understanding, strong support, cooperation, and the success of this joint seminar.

I would also like to express my appreciation to those who have been working very hard behind the scenes; I would appreciate it if you could give them a big round of applause. In this seminar we have looked, in an integrated way, at various aspects of criminal justice system reform, ranging from the police to correction institutions. We have exchanged experiences, knowledge and very interesting opinions, our discussions have extended to material matters like the salary of prosecutors to the philosophy of an integrated criminal justice system. My special thanks go to the seminar participants not only for your participation in the discussion but also for singing and dancing in a very lively way.

I know many participants missed their chance to take the floor because of time constraints, but UNAFEI will always open the floor to everyone here, so please visit UNAFEI sometime to discuss this further. Through this joint seminar I am very much impressed and encouraged to see so many criminal justice people gather here and express concern about criminal justice systems and discuss the future of this country.

As you already know Japan is also in the process of judicial reform and we would like to walk together on this long and winding road. Thank you very much.

CLOSING ADDRESS

By
Ms. Leila Ratna KOMALA
(BAPPENAS)

Ladies and gentlemen, now we come to the end of this three day seminar on criminal justice systems and the seminar has already produced the recommendations which were just read by Ms. Harkrisnowo and already approved by all the participants. We hope from this seminar that we will contribute to the legal reform in Indonesia, therefore we also hope there will be follow up from this seminar in the form of concrete action and there will also be continuing cooperation between the government of Indonesia and the government of Japan especially in legal matters. I think we have already started with other activities and this seminar, and hopefully in the future there will be more action. With the closing of this seminar I hope it's not the end of our cooperation but the start of our continued cooperation towards legal reform. I hope that we will see you all again on another occasion.

I would like to take this opportunity to say thanks to all parties that contributed to the success of this seminar. My special appreciation goes to the participants of the seminar because they have already shown a strong interest in the criminal justice system. Once again thank you very much and I hereby officially close this seminar.

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