



IUS POENALE

Volume 6 Issue 2, July 2025: pp.87-100.

Faculty of Law, Universitas Lampung, Bandar Lampung, Indonesia.

<http://jurnal.fh.unila.ac.id/index.php/ip>

P-ISSN: 2723-2638 E-ISSN: 2745-9314

Healing Law, Not Hurting: Building a Therapeutic Jurisprudence-Based Criminal Justice System in Indonesia

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Submitted: July 21, 2025 ; Reviewed: August 30, 2025; Accepted: January 19, 2026

Article's Information

Abstract

Keywords:

Therapeutic Jurisprudence, Criminal Justice System, Recidivism, Rehabilitation; Community Research Report.

DOI :

Therapeutic Jurisprudence (TJ) offers a humane and rehabilitation-oriented paradigm that moves beyond a purely punitive criminal justice model. This study examines the urgency of implementing TJ in Indonesia and proposes a conceptual criminal justice model to support its application. Using a normative juridical method with statutory, comparative, and conceptual approaches, the study finds that TJ can enhance rehabilitation and reduce recidivism by incorporating defendants' psychological and social conditions into judicial decision-making. The proposed model integrates Social Research Reports as a key basis for sentencing and strengthens the role of community probation officers in the rehabilitation process. Its implementation requires legal reform, particularly amendments to the Criminal Procedure Code to authorize judges to order Social Research Reports for adult defendants and to reinforce probation institutions. This study contributes to the development of a more inclusive, just, and rehabilitative criminal justice system in Indonesia.

A. Introduction

The Indonesian criminal justice system is increasingly perceived as formalistic, repressive, and lacking substantive justice. Media reports, academic critiques, and civil society advocacy frequently point to law enforcement practices that prioritize procedural compliance and legal certainty while neglecting the human dimensions of crime. The psychological conditions, social backgrounds, and lived experiences of defendants and victims often receive limited consideration. In many cases, particularly those involving minor offenses, vulnerable individuals, or defendants from lower socioeconomic groups, imprisonment is disproportionate, fails to achieve rehabilitation, and instead reinforces stigma and social exclusion.



These conditions raise serious concerns about the legitimacy of the criminal justice system. A central question emerges as to whether criminal law continues to serve as a mechanism for justice and social recovery or has instead become an instrument of punishment that produces additional suffering without addressing the underlying causes of crime. High recidivism rates, chronic prison overcrowding, and the limited success of rehabilitation programs suggest that a predominantly punitive approach to sentencing is insufficient to respond to the complex nature of criminal behavior. This situation underscores the need for a shift from a purely retributive model toward a more humane, contextual, and restorative paradigm of criminal justice.

In principle, criminal liability presupposes the existence of *mens rea*, or a culpable mental state. In practice, however, judicial decision-making extends beyond normative assessments of facts and legal rules.¹ Judges are also required to engage with broader experiential and social dimensions that influence both conduct and culpability. This tension is aptly captured in Oliver Wendell Holmes Jr.'s observation that the life of the law is shaped not by logic alone but by experience. Legal judgment, therefore, cannot be detached from social realities, as lived experience often gives substance and direction to the application of legal norms.²

Ingrid Yin's research criticizes the use of Risk Assessment Instruments (RAIs) that treat young age as an aggravating factor, a practice that contradicts the principles of child justice and proportionality.³ Such use of RAIs undermines the integration of social science into contemporary jurisprudence and highlights the need for critical scrutiny of their application. Yin emphasizes the elimination of biased instruments, the development of age-neutral assessment tools, greater algorithmic transparency, and targeted judicial training to prevent discriminatory outcomes. These findings underscore the urgency of grounding criminal justice decisions in multidisciplinary analysis prior to the imposition of sanctions.

In Indonesia, the criminal law paradigm is likewise undergoing a significant transformation. Judges are no longer understood to be rigidly constrained by the principle of legality embodied in the *maxim nullum delictum nulla poena sine praevia lege penali*.⁴ This shift is reflected in Law of the Republic of Indonesia Number 1 of 2023 concerning the Indonesian Penal Code (IPC).

Law Number 1 of 2023 explicitly institutionalizes this change. Article 53 paragraph (2) provides that, in cases of tension between legal certainty and justice, judges are required to prioritize justice. Article 54 further mandates that judges consider the nature of the act, the motive and inner attitude of the offender, the manner of commission, the defendant's socio-economic conditions, the impact on the victim, and prevailing legal and societal values of justice.

These provisions have normatively expanded the scope of judicial discretion beyond formal legality to include contextual and humane conceptions of justice. However, Indonesia's criminal procedural framework has not yet provided sufficient institutional mechanisms to systematically integrate psychological, social, and rehabilitative considerations, particularly in the sentencing of adult defendants. As a result, existing legal approaches remain ill equipped to address the complexity of contemporary criminal justice.

In this context, Therapeutic Jurisprudence (TJ) offers a relevant and timely alternative paradigm. TJ conceptualizes law as a social force capable of producing both therapeutic and anti-therapeutic effects on individuals and society. It encourages courts to move beyond a

¹ Kenneth Silver, "When Should the Master Answer? Respondeat Superior and the Criminal Law," *Criminal Law and Philosophy* 18, no. 1 (2024), <https://doi.org/10.1007/s11572-023-09659-7>.

² Jens Meierhenrich and Richard Ashby Wilson, "The Life of the Law Has Not Been Logic; It Has Been Experience: International Legal Ethnography and the New Legal Realism," *SSRN Electronic Journal*, 2020, <https://doi.org/10.2139/ssrn.3680811>.

³ Ingrid Yin, "Young And Dangerous: The Role Of Youth In Risk Assessment Instruments," *Michigan Law Review* 120, no. 3 (2021), <https://doi.org/10.36644/mlr.120.3.young>.

⁴ Erwin Susilo, "Analisis Konsepsi Asas Legalitas Dalam KUHP Baru: Perspektif Kepastian Hukum," in *Bunga Rampai Kajian Dunia Peradilan*, ed. Bagus Sujatmiko (Yogyakarta: CV. PUSTAKA HUKUM, 2025), 1–19.

purely normative enforcement role and to function as institutions that promote restoration and respect for human dignity. By integrating legal analysis with insights from psychology and the social sciences, TJ provides a coherent framework for judges to exercise their authority in a fair, humane, and rehabilitative manner while remaining consistent with the principles of legality and accountability.

Therapeutic Jurisprudence (TJ) presents an alternative paradigm that views law as a social force with therapeutic and anti-therapeutic effects. It encourages courts to act as agents of recovery rather than merely as enforcers of formal rules.⁵ By incorporating insights from behavioral sciences, particularly psychology, TJ enables a more reflective and transformative application of law without undermining core legal principles.⁶

In Indonesia, the adult criminal justice system has not formally adopted TJ, yet its relevance is evident in several studies and practices. Research by Pratiwi Hozeng and colleagues shows that integrating TJ with problem-solving courts can strengthen restorative justice by adopting a more responsive approach that accounts for the mental health of all parties.⁷ Similarly, the therapeutic community model at the National Narcotics Agency Rehabilitation Center in Baddoka, Makassar reflects TJ principles by prioritizing rehabilitation, cultural and religious values *maqāsid al-syarī'ah*, and residents' well-being. In the civil law context⁸, Supreme Court decisions Number 1315 K/PDT/2019 and Number 3203 K/Pdt/2017 also demonstrate therapeutic values through the protection of patient rights and the emphasis on informed consent, despite not explicitly referencing TJ.^{9 10}

Despite these studies, no concrete model has yet been developed to operationalize Therapeutic Jurisprudence (TJ) within Indonesia's criminal justice system. This gap is particularly significant given the shift in Indonesian criminal law from a repressive to a restorative orientation, which requires clear conceptual frameworks and normative parameters. Accordingly, this research pursues two objectives. First, it examines the urgency of integrating TJ into the Indonesian criminal justice system. Second, it develops a conceptual criminal justice model that enables judges to apply the TJ approach in a systematic and adaptive manner. The principal contribution of this study lies in proposing a TJ-based criminal justice model that balances legal certainty, justice, and social restoration.

This research employs a normative juridical method using statutory, comparative, and conceptual approaches. The statutory approach analyzes applicable laws and regulations, particularly the Indonesian Penal Code and related legislation. The comparative approach examines the application of TJ in selected jurisdictions, including the United States, Australia, and several European countries, to identify relevant practices and challenges.¹¹ The conceptual approach is used to construct a TJ framework and formulate a more humane, rehabilitative, and psychosocially responsive criminal justice model suited to the Indonesian legal context. Data

⁵ Sarah Murray, "Neo-Elyian Theory, Therapeutic Jurisprudence and the Constitutional Judgment," *Global Constitutionalism* 14, no. 2 (2025): 269–88, <https://doi.org/10.1017/S2045381724000236>.

⁶ Juneman, "Yurisprudensi Terapeutik: Peran Integratif Psikologi Dalam Proses Hukum Untuk Melayani Kesejahteraan Pribadi (Well-Being) Klien Hukum," *Jurnal Kajian Ilmiah Universitas Bhayangkara Jakarta Raya* 9, no. 3 (2008): 908–922, <https://philarchive.org/archive/JUNYTP>.

⁷ Pratiwi Hozeng, Fajar Sugianto, and Sekar Wiji Rahayu, "Interpolasi Yurisprudensi Terapeutik Dengan Problem-Solving Court Dalam Perluasan Makna Keadilan Restoratif," *DiH: Jurnal Ilmu Hukum* 17, no. 1 (2021), <https://doi.org/10.30996/dih.v17i1.4155>.

⁸ Nur Rakhmi Said, Muhammad Thahir Maloko, and Nur Taufiq Sanusi, "Metode Therapeutic Community Bagi Residen Di Balai Rehabilitasi Bnn Baddoka Makassar Perspektif Hukum Islam," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 6, no. 2 (2019), <https://doi.org/10.24252/al-qadau.v6i2.10804>.

⁹ Fitra Deni, Nelly Esterlina, and Fikri Miftakul Akbar, "Juridical Analysis of Therapeutic Transactions as A Form of Agreement Between Doctors and Patients (Case Study of Decision Number 1315 / K / PDT / 2019)," *Jurnal Akta* 10, no. 3 (2023): 210–18.

¹⁰ Vicia Sacharissa, "Legal Consequences of The Absense of Informed Consent in Therapeutic Transactions," *Mulawarman Law Review*, 2020, <https://doi.org/10.30872/mulrev.v5i1.296>.

¹¹ Zainuddin Ali, *Metode Penelitian Hukum, Jakarta, Sinar Grafika*, 2022.

are derived from legal texts and scholarly sources and analyzed through systematic comparison and conceptual synthesis.

B. Discussion

1. The Urgency of Implementing the Therapeutic Jurisprudence Approach in the Criminal Justice System in Indonesia

a. Basic Concepts and Global Development of the Therapeutic Jurisprudence Approach

Given the demonstrated urgency to reform Indonesia's criminal justice system, which remains predominantly punitive as reflected in persistent recidivism, overreliance on imprisonment, and limited attention to defendants' psychosocial conditions, a conceptual framework capable of addressing these structural deficiencies is required. In this context, Therapeutic Jurisprudence (TJ) offers a compelling theoretical and practical foundation for reorienting the criminal justice system toward rehabilitation and respect for human dignity.

TJ is a socio-legal approach that examines the effects of law, including legal norms, procedures, and institutional actors, on the psychological, emotional, and overall well-being of individuals who engage with the legal system.¹² The concept was introduced by David B. Wexler and Bruce J. Winick, who observed that legal processes, particularly in the mental health context, often generate adverse psychological consequences rather than facilitating recovery.¹³

Wexler further illustrated TJ through the metaphor of the "bottle and wine." The "bottle" represents the formal legal structure, such as legislation, procedural rules, and institutional arrangements, which is relatively rigid and resistant to rapid change. The "wine" refers to the application of law by legal actors, including judges, prosecutors, and defense counsel. This dimension is more adaptable and can be enriched through empathetic, reflective, and recovery-oriented practices.¹⁴

Wexler underscores that although legal structures are often resistant to rapid change, legal practitioners retain discretion to apply the law in a more humane and therapeutic manner. TJ therefore shifts the focus from the formal content of legal rules to their practical application, recognizing that the psychological effects of law are shaped by both legal norms and the conduct of legal actors.

At its core, TJ views law as a social force with therapeutic or anti-therapeutic consequences. It emphasizes that legal processes should not only pursue justice but also minimize avoidable psychological harm, even though welfare is not the law's sole objective.¹⁵ ¹⁶ TJ further rejects the assumption of emotional neutrality in law and promotes empathy, emotional awareness, and interdisciplinary collaboration, including the involvement of mental health professionals.¹⁷ Its relevance is evident in analyses of criminal record expungement policies in Australia and New

¹² Anna Kawalek, "Strengthening the Theoretical Commitments Underpinning Therapeutic Jurisprudence Research: Ontology and Epistemology," *Liverpool Law Review* 45, no. 1 (2024), <https://doi.org/10.1007/s10991-023-09329-7>.

¹³ Jill A. Howieson, "A Framework for the Evidence-Based Practice of Therapeutic Jurisprudence: A Legal Therapeutic Alliance," *International Journal of Law and Psychiatry* 89 (2023), <https://doi.org/10.1016/j.ijlp.2023.101906>.

¹⁴ Anna Kawalek and Mercedes Rosello, "Retained EU Law and Implications for Pregnant Workers: A Therapeutic Jurisprudence Perspective," *Liverpool Law Review* 45, no. 2 (2024), <https://doi.org/10.1007/s10991-023-09354-6>.

¹⁵ Paul Gavin and Anna Kawalek, "Viewing the Dublin Drug Treatment Court through the Lens of Therapeutic Jurisprudence," *International Journal for Court Administration* 11, no. 1 (2020), <https://doi.org/10.36745/ijca.298>.

¹⁶ Susie Atherton, "Restorative Practice and Therapeutic Jurisprudence in Court: A Case Study of Teesside Community Court," *Laws* 11, no. 5 (2022), <https://doi.org/10.3390/laws11050072>.

¹⁷ Apryl Alexander et al., "Sex Offender Registration and Notification Act with Adolescents Adjudicated for Illegal Sexual Behavior: A Therapeutic Jurisprudence Perspective," *Frontiers in Psychiatry* 14 (2023), <https://doi.org/10.3389/fpsy.2023.1160922>.

Zealand, where TJ has informed assessments of the social and psychological impact of criminal records and the need to reduce stigma.¹⁸

Over time, Therapeutic Jurisprudence (TJ) has expanded beyond mental health law and now influences various legal fields. This development is reflected in the establishment of the International Society of Therapeutic Jurisprudence in 2017 and a special issue of the *International Journal of Law and Psychiatry* in 2019. TJ has also informed the design of rehabilitation programs for sexual offenders, where the emphasis is placed on empowerment, autonomy, participation, and human dignity rather than punishment.¹⁹

Amy Ronner further articulated TJ through the “3V” principles of Voice, Validation, and Voluntariness, which reinforce respect for individual dignity by ensuring that participants are heard, understood, and able to engage voluntarily in legal processes. Compassion is likewise recognized as a central value guiding interactions among judges, legal professionals, and parties.²⁰

Despite its contributions, TJ has attracted criticism. In England, the incorporation of TJ principles into mental health law reform has produced legislation viewed as normatively weak and difficult to implement in clinical practice, thereby limiting its therapeutic effectiveness.²¹ Additional challenges include increased psychosocial burdens on court personnel and limited career progression for judges assigned to specialized courts, such as mental health courts. As such, courts do not yet exist in Indonesia; these career-related concerns have not become a domestic issue.

Such courts are commonly found in jurisdictions such as the United States and England and are designed to integrate legal and medical approaches within a single forum. In practice, however, judges assigned to these courts often encounter professional constraints, including limited opportunities for promotion and insufficient institutional recognition. Moreover, the absence of comprehensive structural reform has led to the fragmented application of Therapeutic Jurisprudence (TJ), preventing it from generating sustained systemic change.

In the United States, TJ has been central to the development of problem-solving courts addressing issues such as substance abuse, mental health disorders, and domestic violence. Although comparable courts have not been formally established in Indonesia, certain non-litigious mechanisms and diversified case-handling practices exist. As a response to conventional punitive and inflexible models of justice, TJ offers a cooperative, recovery-oriented framework tailored to individual needs.²²

TJ also emerged as a response to racial and gender disparities within prison populations. Empirical data indicate that approximately 16% to 24% of incarcerated individuals in the United States experience serious mental disorders, with higher prevalence among women and minority groups.²³ In this context, TJ seeks to reduce legal psychopathology, understood as psychological harm arising from adverse interactions with the legal system.

¹⁸ Allen George, “Therapeutic Jurisprudence and Homosexual Expungement Law: Lessons from Australia and New Zealand/Aotearoa,” *International Journal for Crime, Justice and Social Democracy* 12, no. 4 (2023), <https://doi.org/10.5204/ijcjsd.2701>.

¹⁹ Emmanuelle Bernheim, “The Triumph of the ‘Therapeutic’ in Quebec Courts: Mental Health, Behavioural Reform and the Decline of Rights,” *Windsor Yearbook of Access to Justice* 38 (2022), <https://doi.org/10.22329/wyaj.v38.7779>.

²⁰ Michael L. Perlin, “‘In These Times of Compassion When Conformity’s in Fashion’: How Therapeutic Jurisprudence Can Root Out Bias, Limit Polarization, and Support Vulnerable Persons in the Legal Process,” *Texas A&M Law Review* 10, no. 2 (2023), <https://doi.org/10.37419/lr.v10.i2.2>.

²¹ Atherton, “Restorative Practice and Therapeutic Jurisprudence in Court: A Case Study of Teesside Community Court.”

²² Amanda Wilson, “An Alternative Spotlight: Colonial Legacies, Therapeutic Jurisprudence, and the Enigma of Healing,” in *Decolonizing the Criminal Question: Colonial Legacies, Contemporary Problems*, 2023, <https://doi.org/10.1093/oso/9780192899002.003.0018>.

²³ Brian Zampella, “The Sequential Intercept Model and Forensic Assertive Community Treatment (FACT) for People with Serious Mental Illness: Implications for Social Work Practice,” *Journal of Forensic Social Work* 7, no. 2 (2023), <https://doi.org/10.15763/issn.1936-9298.2023.7.2.30-42>.

Wexler cautions that “therapeutic” should not be used to justify coercive interventions. He criticizes the therapeutic state that legitimizes coercion in the name of healing while disregarding individual rights. Accordingly, TJ rejects excessive paternalism and emphasizes respect for autonomy within the limits of conventional law.²⁴ This concern is particularly relevant in death penalty cases, where failure to consider the defendant’s mental condition may constitute a moral and legal failure.²⁵

TJ comprises three interrelated dimensions: philosophical, which views law as an instrument of restoration; empirical, which assesses the effects of law through scientific inquiry; and practical, which designs more empathetic and humane legal procedures.²⁶ These dimensions are reflected in drug courts in jurisdictions such as the United States and Australia, where TJ-informed practices emphasize empowerment, behavioral agreements, and psychological methods to support rehabilitation.

Indonesia has not yet established specialized drug courts, and rehabilitative efforts remain within the general criminal process or external programs. Although these approaches appear more humane, they are criticized for relying on imprisonment as a response to non-compliance during rehabilitation. This raises the question of whether such practices genuinely promote recovery or merely repackage punitive logic. The issue is instructive for Indonesia in designing rehabilitation policies that prioritize recovery rather than concealed punishment.²⁷

Consistent with the principles of Therapeutic Jurisprudence, the resolution of minor cases should prioritize mediation and dialogue, as practiced in Ghana.²⁸ This approach reorients law from a purely enforcement mechanism toward a process of social and psychological restoration grounded in dignity.

Accordingly, TJ should be understood not merely as a legal method but as a broader ethical and multidisciplinary reform movement. It reconceptualizes law as an instrument of humane, inclusive, and just recovery by integrating legal justice with psychosocial welfare within a comprehensive and restorative framework.

b. The Urgency of the Therapeutic Jurisprudence Approach in the Indonesian Criminal Justice System

The urgency of applying a Therapeutic Jurisprudence (TJ) approach in Indonesia is evident from recidivism data that reflect the limited rehabilitative impact of the correctional system. Data from the Directorate General of Corrections as of February 2020 show that 18.12 percent of 268,001 detainees and prisoners were recidivists. Although this figure falls within the global range of 14 to 45 percent, it nonetheless indicates structural weaknesses in sentencing practices that remain predominantly punitive rather than rehabilitative.²⁹

More recent criminal statistics reinforce this concern. In 2023, imprisonment accounted for 73.55 percent of all criminal cases decided by district courts. In the same year, 11,147 recidivists were recorded, representing approximately 5.3 percent of total suspects and marking an increase of 10.61 percent from the previous year. Recidivism was most prevalent in narcotics offenses, theft, and violent crimes. This pattern suggests that incarceration has failed to deter

²⁴ Bernheim, “The Triumph of the ‘Therapeutic’ in Quebec Courts: Mental Health, Behavioural Reform and the Decline of Rights.”

²⁵ Michael Perlin, Tailia Roitberg Harmon, and Sarah Chatt, “‘A World of Steel-Eyed Death’: An Empirical Evaluation of the Failure of the Strickland Standard to Ensure Adequate Counsel to Defendants with Mental Disabilities Facing the Death Penalty,” *University of Michigan Journal of Law Reform*, no. 53.2 (2020), <https://doi.org/10.36646/mjlr.53.2.world>.

²⁶ Wilson, “An Alternative Spotlight: Colonial Legacies, Therapeutic Jurisprudence, and the Enigma of Healing.”

²⁷ Wilson.

²⁸ Enoch Kwabena Amoah, “The Existence of African Jurisprudence: An Audit of Life Experience of Precolonial Anlo Traditional Society,” *E-Journal of Humanities, Arts and Social Sciences* 1, no. 6 (2020), <https://doi.org/10.38159/ejass.2020101>.

²⁹ Ahmad Arif, “Pemenjaraan, Antara Memulihkan Atau Menciptakan Residivis,” *Ditjenpas.go.id*, 2020, <https://www.ditjenpas.go.id/pemenjaraan-antara-memulihkan-atau-menciptakan-residivis>.

repeat offending because it does not adequately address offenders' underlying psychosocial problems.³⁰

At the adjudicative level, Indonesian judges face structural constraints in examining defendants' psychological and social conditions. The formalistic and strictly juridical nature of evidentiary procedures often precludes meaningful inquiry into the causes of criminal behavior. As a result, the justice system frequently overlooks the motivations and backgrounds of offenders, limiting its capacity to deliver a comprehensive and rehabilitative response.

In contrast, Indonesia's juvenile criminal justice system adopts a more inclusive and rehabilitative approach under Law Number 11 of 2012 on the Juvenile Criminal Justice System. This framework introduces Community Supervisors who conduct social inquiries, assist children in conflict with the law, and prepare Social Research Reports detailing the child's background, social environment, circumstances of the offense, victim impact, diversion efforts, and recommended case resolution. This mechanism demonstrates that therapeutic and corrective approaches can be normatively embedded within the justice system, at least in the juvenile context.

Although based on restorative justice, the juvenile system offers important lessons for adult criminal justice reform. Its success should not be equated with the full application of Therapeutic Jurisprudence, but rather understood as a restorative practice focused on the child's best interests. It therefore serves as a normative and practical reference, not evidence of the institutionalization of TJ within the broader criminal justice system.

At the same time, the Indonesian Penal Code reflects a shift toward a more humane sentencing orientation by requiring judges to consider defendants' social, economic, and personal conditions. However, these provisions remain abstract and lack procedural mechanisms to systematically assess and integrate psychosocial factors. Without institutional support such as mandatory social research reports for adult defendants and structured involvement of non-judicial experts, humanitarian considerations risk becoming merely symbolic. In this context, TJ remains relevant as a complementary framework to strengthen fairness, rehabilitation, and social reintegration.

2. Construction of a Therapeutic Jurisprudence-Based Criminal Justice System Model for Defendants in Indonesia

a. The Therapeutic Jurisprudence Approach in the Criminal Justice System

Efforts to orient the criminal justice system toward humane and rehabilitative values are not intended to transfer responsibility for addressing the root causes of crime to criminal law. Accountability and punishment remain core functions of the system, while structural causes such as poverty, inequality, and mental health issues fall within the domain of non-penal policy. Nevertheless, sentencing cannot disregard the offender's psychological and social conditions, as the nature of the penal response directly affects its effectiveness, particularly in reducing recidivism. In this respect, Therapeutic Jurisprudence does not replace non-penal measures but ensures that punishment is not counterproductive and remains consistent with rehabilitation and social reintegration. TJ thus frames law not only as an instrument of sanction but also as a means of healing.

Within the TJ framework, therapeutic interventions such as Cognitive Behavioral Therapy (CBT) are particularly relevant. Research by Orkun Karabatak demonstrates that CBT is effective in addressing criminal behavior related to violence, substance abuse, and dysfunctional relationships by targeting cognitive distortions and maladaptive beliefs through techniques such as cognitive restructuring, social skills training, and emotion regulation. Third-wave approaches, including Acceptance and Commitment Therapy, Schema Therapy, and Metacognitive Therapy, further enhance rehabilitation by promoting psychological flexibility

³⁰ Hendry Syaputra et al., *Statistik Kriminal 2024* (Jakarta: Badan Pusat Statistik, 2024).

and self-awareness. In addition, the use of technologies such as virtual reality has shown potential in strengthening rehabilitative outcomes in correctional settings.³¹

These findings confirm that a purely repressive model grounded in punitivism and retributive justice is insufficient to prevent crime or reduce recidivism. Retributive approaches focus on punishment as moral retaliation, often neglecting rehabilitation and the restoration of social relationships.³² An effective criminal justice system should therefore move beyond retribution toward restorative outcomes for offenders, victims, and society.

In several jurisdictions, Therapeutic Jurisprudence has emerged as a more progressive framework, particularly in the juvenile justice system of the United States. TJ challenges retributive practices that ignore adolescents' neurological immaturity and the traumatic effects of legal processes, promoting the use of neuroscience, psychosocial assessments, and care-based interventions in sentencing. While landmark decisions such as *Miller v. Alabama* and *Montgomery v. Louisiana* have enabled reform, juvenile justice practices remain largely shaped by adult criminalization logics that conflict with TJ principles.³³

Awareness of the therapeutic orientation of law is also emerging within legal education. Yamada's development of the Law and Psychology Lab demonstrates how law students can be trained to understand the psychological dimensions of legal norms and judicial practice. He distinguishes between therapeutic design, which seeks to structure legal rules to avoid psychological harm, and therapeutic application, which emphasizes empathetic and reflective enforcement. Integrating this model into legal curricula, including in Indonesia, is essential for cultivating legal professionals who are attentive to human suffering and substantive justice.³⁴

Therapeutic courts in Australia, such as drug and mental health courts, further illustrate the practical application of Therapeutic Jurisprudence. These courts combine legal procedures with psychosocial interventions delivered by interdisciplinary teams involving judges, health professionals, social workers, and community actors. The non-adversarial process encourages active participation by defendants and supports the development of individualized recovery plans.³⁵ In this setting, judges function as facilitators of change rather than solely as decision-makers, producing outcomes such as improved mental health, increased motivation for behavioral change, and more sustainable legal compliance.

Therapeutic Jurisprudence also plays a significant role in serious criminal cases in the United States, including death penalty proceedings involving defendants with mental disorders such as PTSD. In this context, TJ requires defense counsel to move beyond formalistic advocacy and conduct comprehensive mitigation investigations that present relevant psychological and social evidence. It promotes the involvement of mental health experts not only in evaluating defendants but also in educating judges and juries to reduce biases, including sanism. TJ further supports reform of the standard for effective legal assistance, traditionally based on *Strickland v. Washington*, and encourages the use of mitigation specialists to ensure meaningful protection for vulnerable defendants.³⁶

TJ is therefore not merely a theoretical framework but a practical, holistic approach to addressing psychosocial complexity in sentencing. Its relevance is particularly strong in Indonesia, where the criminal justice system has yet to systematically incorporate considerations of trauma, mental health, and rehabilitative needs for adult defendants.

³¹ Orkun Karabatak, "Cognitive Behavioral Therapy (CBT) for Criminal Behaviors," in *Criminal Behavior - The Underlyings, and Contemporary Applications*, 2023, <https://doi.org/10.5772/intechopen.1002039>.

³² Kenneth Butterfield et al., "Moral Repair versus Punishment: Influences on Managerial Responses," *Organization Management Journal* 20, no. 4 (2023), <https://doi.org/10.1108/OMJ-11-2021-1398>.

³³ Perlin, "'In These Times of Compassion When Conformity's in Fashion': How Therapeutic Jurisprudence Can Root Out Bias, Limit Polarization, and Support Vulnerable Persons in the Legal Process."

³⁴ David C. Yamada, "Teaching Therapeutic Jurisprudence," *University of Baltimore Law Review* 50, no. 3 (2021).

³⁵ Howieson, "A Framework for the Evidence-Based Practice of Therapeutic Jurisprudence: A Legal Therapeutic Alliance."

³⁶ Michael L. Perlin, "Ineffective Counsel in Death Penalty Cases and the Promise of Therapeutic Jurisprudence," *Journal of the American Academy of Psychiatry and the Law* 50, no. 1 (2022), <https://doi.org/10.29158/JAAPL.210089-21>.

Accordingly, there is a clear need to develop a model that integrates TJ within the existing legal framework.

b. Strengthening the Preparation of Social Research Reports in Therapeutic Jurisprudence

A key step toward a more humane and responsive criminal justice system is to extend the obligation to prepare Social Research Reports beyond juvenile cases to adult defendants, particularly those with social or psychological vulnerabilities. These reports would provide comprehensive information on the defendant's background and circumstances, enabling judges to make more proportional decisions. In line with Therapeutic Jurisprudence, sentencing would thus move beyond punishment toward restorative outcomes.

Although criminal proceedings already recognize expert testimony from psychologists or psychiatrists, Social Research Reports serve a distinct and complementary function. Expert testimony offers specialized assessments of specific mental or psychological conditions and is essential for accurate diagnosis and the protection of defendants' rights. By contrast, Social Research Reports are not diagnostic tools but judicial policy instruments that integrate psychological findings with social, familial, environmental, and life history information. This holistic perspective supports more contextual, informed, and rehabilitative judicial decision-making.

A further distinction lies in their temporal and functional scope. Expert testimony is typically event-specific and delivered at a particular stage of the proceedings, whereas a Social Research Report enables ongoing assessment and provides a longitudinal perspective. This makes it especially valuable for judges in determining the nature and purpose of sanctions.

Institutionally, Social Research Reports occupy a different role. Prepared by probation officers as part of the state's criminal justice function, they are non-adversarial and policy oriented. Unlike expert testimony, which operates within the evidentiary process, Social Research Reports function as a bridge between adjudication and sentencing, with an emphasis on rehabilitation, social reintegration, and the prevention of recidivism.

Within the Therapeutic Jurisprudence framework, Social Research Reports enhance the value of expert testimony by situating it within a broader normative context. While expert assessments remain indispensable, these reports ensure that judicial decisions extend beyond individualized diagnosis toward sentencing policies that are proportionate, humane, and responsive to social conditions and rehabilitative needs.

In addition to preparing Social Research Reports, community supervisors play a crucial role in accompanying defendants throughout the legal process. They conduct periodic evaluations of rehabilitative progress and provide informed input to judges and prosecutors to support more accurate and equitable decision-making. In this study, the significance of Social Research Reports forms the basis for concrete normative proposals incorporated into the draft of the forthcoming criminal procedural code.

1. New article on Adult Community Research Report: A new article in the Adult Social Research Report

"In certain criminal cases involving adult defendants with backgrounds of social or psychological vulnerability, law enforcement officials are required to request the preparation of a Social Research Report by a Community Supervisor from the investigation or pre-prosecution stage."

This norm ensures that the Social Research Report is not only an administrative instrument but also an integral part of more substantive legal considerations, taking into account the social and psychological conditions of the defendant.

2. Article on the Judge's Authority to Order a Social Research Report Article on the Authority of Judges to Order Social Research Reports

"The judge is authorized to order the preparation of a Social Research Report if, during the trial process, there are indications that the defendant has a mental condition, a history of trauma, or rehabilitative needs relevant for sentencing considerations."

Judges need to be granted this authority to ensure that the decisions made encompass a deeper consideration of humanitarian factors, not just normative legal aspects.

3. Article on the Role of Community Supervisors for Defendants Article on the Role of Community Supervisors for Defendants

"Community supervisors prepare social research reports and provide assistance to defendants during the judicial process, as well as compile progress reports that are periodically submitted to judges and prosecutors."

The guidance provided by community supervisors throughout the legal process is an important aspect of delivering a more comprehensive sense of justice, as well as ensuring that the defendant receives an opportunity for rehabilitation, not just punishment.

4. Article on Community Research Reports as the Basis for Considering Alternative Sentencing Article on Community Research Reports as the Basis for Considering Alternative Sentencing

"The results of the Community Research Report must be one of the bases for considering the type of criminal sanctions, including alternative sanctions, supervision sanctions, or rehabilitation programs, according to the needs of the individual defendant."

Under this framework, the Social Research Report functions as a benchmark to ensure that imposed sanctions correspond to the defendant's rehabilitative needs. Although Article 54 of the Indonesian Penal Code requires judges to consider the accused's personal circumstances, mental attitude, and social background, this mandate remains abstract and is often unsupported by adequate tools for systematic assessment. A Social Research Report grounded in Therapeutic Jurisprudence can operationalize Article 54 by providing structured and comprehensive information on the defendant's psychological, emotional, and social conditions. This enables judges to base sentencing decisions on stronger empirical foundations that reflect both culpability and rehabilitative potential.

TJ-informed sentencing is not intended to replace the existing legal framework but to strengthen the implementation of judicial obligations under the Penal Code. By integrating humanitarian, proportional, and restorative considerations into decision-making, the Social Research Report becomes a substantive instrument rather than a mere administrative requirement. In this way, it supports a legal process that meaningfully addresses the emotional and psychological dimensions of defendants and promotes recovery-oriented sentencing.

The healing principle of Therapeutic Jurisprudence emphasizes the recovery of the accused's psychological and emotional well-being, extending beyond sentencing to support social reintegration. The principle of non-coercion safeguards individual autonomy in choosing appropriate paths to recovery, while the principle of dignity affirms the inherent worth of every person and requires respectful treatment throughout the legal process.³⁷ Together, these principles promote a justice system oriented toward rehabilitation rather than mere punishment.

Under this approach, law functions not only as a normative and punitive mechanism but also as an instrument of healing and social transformation. Social Research Reports informed by the principles of Voice, Validation, and Voluntariness enable defendants to participate

³⁷ Brendan Kelly, "Treatment of Mental Disorders in Buddhism and Psychiatry," in *Buddhism and Psychiatry: Moving Beyond Mindfulness in Mental Health Care* (Springer, 2025), 27–45.

meaningfully in legal proceedings, feel acknowledged, and have their preferences considered in determining rehabilitative measures.³⁸

Implementing TJ within the Indonesian criminal justice system requires substantial shifts in legal perspective, policy, and practice. It calls for sustained attention to the psychological and social conditions of defendants, which are often overlooked in punishment-centered systems. A key step is to institutionalize Social Research Reports for adult defendants as an integral part of the process, beginning at the pre-adjudication stage. Such reports provide judges with a robust basis for considering defendants' psychosocial backgrounds and for imposing more proportional and rehabilitative sentences.

Community supervisors play a central role in this approach. Beyond preparing Social Research Reports, they accompany defendants throughout the legal process, ensuring that proceedings remain oriented toward rehabilitation and enabling defendants to understand and change their behavior.

To support the implementation of Therapeutic Jurisprudence, the draft Code of Criminal Procedure should include a mandatory provision on Social Research Reports. Granting judges explicit authority to order such reports would facilitate sentencing decisions that are rehabilitative rather than purely punitive and that take account of defendants' psychological and social conditions.

These measures would enable Indonesia to develop a criminal justice system centered on rehabilitation. Through TJ, law can function as an instrument of healing and social reintegration, contribute to the reduction of recidivism, and promote a more just and humane society.

C. Conclusion

The application of Therapeutic Jurisprudence in Indonesia represents a crucial step toward a more humane, rehabilitative, and restorative criminal justice system. Persistently high recidivism rates reveal the limited effectiveness of sentencing practices that prioritize punishment while neglecting defendants' psychological and social conditions. Integrating TJ principles, particularly through the mandatory use of Social Research Reports for both juveniles and socially or psychologically vulnerable adult defendants, would provide judges with a stronger basis for proportionate and restorative decision-making. In this framework, probation officers play a pivotal role in ensuring that criminal proceedings promote rehabilitation and social reintegration rather than punishment alone. TJ thus offers a viable pathway toward substantive justice and a criminal justice system grounded in human well-being.

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³⁸ Benjamin A. Barsky, Heather Ellis Cucolo, and Dominic A. Sisti, "Expanding Therapeutic Jurisprudence across the Federal Judiciary," *Journal of the American Academy of Psychiatry and the Law* 49, no. 1 (2021), <https://doi.org/10.29158/JAAPL.200040-20>.

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