

THE IMPLEMENTATION OF PUNISHMENT FROM THE PERSPECTIVE ON HUMAN RIGHTS

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ABSTRACT

Punishment is a formal reaction by the state to the perpetrators of crimes through a judicial process in which the form and severity of the verdict is given based on the decision of the court's power in accordance with the law. It aims at building awareness to avoid deviance; not through creating fear of punishment, nor pressure from certain parties. Yet, through creating feelings of guilt or anxiety as they have committed certain actions.

Punishment is regulated in the Criminal Code. Furthermore, the implemented punishment should be considering the protection on human rights. The concept of humanistic punishment can be defined as punishment that respects the human rights of each individual. In this case, the context of humanizing humans in giving punishment should consider the value of justice without abolishing people's rights despite the fact that they have committed infringements. The consideration in imposing punishment should concern on the aspect whether the punishment is still humanist, and does not degrade the dignity of a person as a human being.

Keywords: Punishment, Human Rights.

1. INTRODUCTION

The Criminal Law System on the prevention and crime control to enforce the discipline of society and law enforcement in our country has encountered great obstacles in line with national and international socio-political and economic developments. Concerning on matters relating to the sentencing of people including the effectiveness of punishment and the execution of the crime frequently intangible to public. It has tendency to the thickness of the prison walls, tends to be self-closing, has cause people reluctant to comment on everything happened inside. If the crisis is occurred in all aspects in our country regarding social, economic, political and cultural concerning the nation's morals; it possibly affects everything related to prison management. Regarding current opinion in the mass media, it clearly reports that a prison sentence can be analogous to "delivering death to Correctional Institution". It is a whip for institutions which are responsible particularly for convicts, even though it is actually a burden and responsibility of other law enforcement agencies.

2. RESEARCH METODOLOGY

The method used in this research is descriptive qualitative. Qualitative descriptive research seeks to describe a social phenomenon that focuses on solving problems in the present and the future. This is in accordance with the opinion, Sukmadinata (2011: 73), that qualitative descriptive research is intended to describe and describe existing phenomena, both natural and human engineering, which pays more attention to characteristics, quality, interrelationships between activities. While data collection techniques in qualitative research generally consist of four types, namely observation, interviews, documentation, and combination/triangulation (Sugiyono, 2011:309). In relation to this research, the data collection method used is documentation and literature studies. Literature

study conducted by the author, namely by searching various written sources, either in the form of books, archives, magazines, articles, and journals, or documents that are relevant to the problems studied in this study, namely the Implementation of Punishment in Perspective Human rights.

3. RELATED RESEARCH/LITERATUR REVIEW

The study of articles related to current research is about Crime in Society and Efforts to Overcome it in a Criminological Perspective (Sujana, 2021, pp. 51-72). Because it has similarities and is followed up with the current article on the topic of Implementation of Punishment in a Human Rights Perspective. The two articles resulting from this research in their early stages discussed crime. However, there is a slight difference in terms of perspective.

4. RESULTS AND DISCUSSION

A. Crime and Punishment

An important part of criminal law is about "punishment" or more commonly called "punishment". All arrangements regarding criminal law will ultimately lead to punishment, namely circumstances that can take away a person's independence, property, even their lives. In Indonesia in terms of crime prevention, sentencing is more directed at the theory of maintaining the dignity of the perpetrators in terms of educating them so they do not repeat crimes again. Punishment of people for committing criminal acts in fact often becomes the main focus of society, given the fact that it turns out that those who were convicted and the cases that were committed are issues that attract the attention of the general public, as are the big cases that are carried out by famous people and it turns out that they are people who also have influence and even have strong power in certain positions socially or politically. Contemporary crime is indeed on the rise at this time in accordance with developments and developments in the modernization of the world of technology and is also supported by a cosmopolitan lifestyle in the development of the globalization era. However, it is not uncommon for the quality and quantity of crime to increase significantly, bearing in mind that on the other hand, the problem of preventing and controlling the development of crime is almost invisible. In connection with the reasons why people commit crimes, this can occur because they are influenced by social deregulation. There is a possibility of crime if there are class conflicts in society or very striking social gaps in society (Sujana, 2022). This condition can be analogous to the current social conditions in our country, which can be said to be the truth of existing theories, given the rise of crimes committed on the basis of economic pressure, and even violence and anarchy by certain groups of people who feel their rights are being neglected. by the influence of abuse of power by state officials who are in power. (Alam, AS, and Amir Lyas, 2017: 71).

The description of the quality and quantity of the crimes mentioned above is intended to see the motivation and balance of our criminal justice system's efforts in dealing with perpetrators and in dealing with cases that occur in line with the shift in the concept of punishment theory that once existed, namely "punishment for retaliation, punishment for prevention." "and since April 27, 1964 the concept changed to "punishment with the concept of coaching with a correctional system". Then it can be seen how the concept of an institution entrusted with handling the coaching of people who have been convicted earlier fills the concept of coaching with this penitentiary system so that the purpose of punishment is "not to repeat the same crime again, and is deterrent to other potential perpetrators of crimes later" can run well, synergistic institutional relations within the network of the criminal justice system in Indonesia. Thus it can be stated several problems that have attracted the attention of practitioners and the general public, including:

1. There is public dissatisfaction who thinks that the punishment for the perpetrators, especially the perpetrators of certain crimes, is in fact not comparable to other perpetrators of crimes, because there is an impression of "Selective Cutting";
2. It turns out that the punishment given was felt to be disproportionate between the crime and the victim caused by the crime;
3. There is discrimination in the treatment of perpetrators of crimes that are applied in the environment where people are detained or in the training places for convicts who are undergoing their sentencing process;
4. The spread of dangerous diseases in prisons.

Basically the current sentencing process is based on the Criminal Procedure Code which prioritizes the protection and respect for human rights. However, what considerations are most appropriate so that judges sentence someone for their criminal actions, in general judges are only concerned with formal rules, and there is evidence or no evidence of cases committed by the defendant and then there are considerations of mitigating or aggravating matters and what being in a gray space is a "personal judge's belief" (Dwi Priyatno, 2017). Therefore, people still see facts that are happening in society, for example, corruptors are only sentenced to one year in prison, while those who steal from malls/supermarkets due to poverty and economic necessity, they are sentenced to two months in prison. With this incident, the community seemed impatient and immediately wanted to take revenge on the perpetrators of the crime.

Punishment is defined as the stage of imposing sanctions and the stage of imposing sanctions in criminal law. The word punishment itself has the same meaning as punishment. The definition of punishment that has the biggest role comes from Flew's thought (David Scott, 2008; 18) who argues that an action can be called a punishment if it fulfills 5 (five) basic rules, namely:

- a. Causing a sense of suffering for humans;
- b. Arise as a direct result of the Actions performed;
- c. Addressed to the person who committed the violation;
- d. It arises as a result of intentional action;
- e. Given by an institution or agency authorized to implement these rules.

Punishment is very important in criminal law because punishment is a process in which a person must be held accountable for a crime that has been committed. Basically, criminal law without punishment or punishment is tantamount to declaring someone guilty without any definite consequences for that mistake.

B. Criminal Policy

In a practical sense, criminal policies/politics are all rational attempts by society to tackle crime. This effort includes the activities of legislators, police, prosecutors, courts and punishment execution apparatus. The activities of these institutions basically do not stand alone but are related to each other in accordance with their respective functions, in the sense that they also cover administrative law enforcement policies. From the point of view of Human Rights, this is part of a social policy, which is a rational effort by society to improve the welfare of its citizens on a humanitarian basis (O.C. Kaligis, 2017). Efforts to deal with crime with criminal law are basically part of "law enforcement" efforts, especially criminal law enforcement. Therefore it is also said that politics or criminal law policies are part of law enforcement (Law Enforcement Policy), which is carried out through the criminal justice system (Criminal Justice System). It is also an integral part of social defense efforts. So it is natural that social policy can also be interpreted as "all rational efforts to achieve community welfare and at the same time include community protection". So in the sense of "social policy" which includes "social welfare policy" and "social defense policy", this means that the main objective of

criminal policy/politics is to protect society in order to achieve social welfare. (M. Ali Zaidan, 2016: 99)

Based on the concept of integral policy thinking mentioned above, it can be described two things to pay attention to in using criminal sanctions, namely:

- a. There needs to be an integral approach between penal and non penal policies. What is meant in this case is prevention without punishment, such as using administrative sanctions or other civil sanctions.
- b. A value approach is needed in the use of criminal sanctions. Approaches using penal means, as if continuous improvement is carried out through various efforts on a humanitarian basis to perfect the criminal justice system both from the aspects of legislation, criminalization, improvement of system infrastructure, improving the quality of human resources and increasing community participation in the criminal justice system (police, prosecutors, courts and correctional institutions). Criminal law implementation, which in its implementation is seen from various forms of policies concerning officers/HR and policies concerning convicts and detainees such as granting remissions, leave and others (Romli Atmasasmita, 2015).

C. Correctional and Implementation

John Howard is known as a reformer of the prison system in his book "The State of The Prisons", having predicted the conditions of prisons in the future by saying: "Even though there are improvements in the system and organization and treatment in prison due to an effort to struggle for improvement, but at other times there will also be violent treatments and reactions that may lead to reforms. But it is not impossible that the sufferings will be felt again, this is partly due to the factor of executors who manage certain prisons, so sometimes they do not depend on the prison system which is implied and stated in the prison law alone. Whatever John Howard's prediction, in reality "prisons" are currently being widely reported in the mass media, and events that attract public attention are increasingly occurring, either in the form of conflicts or in the form of violations of the rules that are actually carried out by the officers. Several cases will be revealed based on observations and other facts, such as:

1. Penitentiary Incident

According to the perspective of criminology, conflict occurs due to various conflicting interests towards one object. If this is related to prison issues, and in general the prison situation is very vulnerable to various interests, whether it concerns on the inmates or the officers, or "mutualism symbiosis" where they fulfill or guarantee each other's interests, then conflict definitely cannot be avoided (Iqram Sulhin, 2016).

In this case, history has shown that as a result of a conflict of interest, incidents have been recorded in Correctional Institutions. On 29th September 2019 there was a riot which resulted in a fire at the Class III prison in Palu, Central Sulawesi. On Thursday 16 May 2019 there was a riot at the Class III Prison (Narcotics prison block) Langkat, North Sumatra. Riots also occurred at the Class IIB Bondowoso Prison, East Java, on Sunday, 6 October 2019. On Saturday, 11 April 2020, riots occurred at the Class II A Prison in Manado City, North Sulawesi. In Sorong City, West Papua, there was also a riot at the Class II B Prison on Wednesday, April 22, 2020. On Wednesday, September 8, 2021 there was a fire and chaos at the Class I Prison, Tangerang, Banten. There was a riot at the Class III Prison Parigi Montong, Central Sulawesi. The situation and conditions that occurred were very tense because prisons were inhabited by prisoners who exceeded their capacity.

The situations and conflicts that occur in Correctional Institutions specifically illustrates the existence of situations that arise from various things; those concerning the interests of prisoners and also regarding the interests of their

officers. Then the interests develop into a complex conflict that expands and tapers not only related to the interests between prisoners and officers, but becomes more serious because it involves interests between officers, between prisoners, and between officers and their inmates.

In cases that occur and as an effort to find alternatives for handling a conflict, it should be done by looking the root of the problem that raise the conflict or what conditions have the potential to cause the conflict. People who are imprisoned are generally the result of a crisis and conflict, which then leads them to become inmates in prison. Thus, it is not uncommon that in this small community/in prison society, certain people will compete to find or show their existence in various ways, either by showing their abilities or by showing and then exploiting the weaknesses of prison officers. The thing that has fatal consequences in this condition is when the situation can be changed through the "skills" of convicts; convicts are able to control officers by taking advantage of the officers' weaknesses, so that convicts openly or subtly turn around controlling or managing the existing officers.

From the point of view of Human Rights, basically the protection of Prisoners and Detainees should meet the standards, which are in accordance with National and International standards, such as:

1. Law No. 22 of 2022 concerning on Corrections, with Implementing Regulations
2. Standard Minimum Rules for the treatment of prisoners
3. Basic Principles for the treatment of prisoners
4. Body of principles for the protection off all persons under any form of detention or imprisonment.

The existence of several forms of self-protection for convicts and detainees in general indicates that their class can be grouped into vulnerable groups or people who are in a powerless condition (legally). Therefore, nationally and internationally, these regulations are made to protect the human dignity of those who are in a powerless position, despite the fact that not all of them are helpless people (Ester Christian, 2013). This condition can be seen from the existence of several prisoners who in fact belong to a group of people whose socio-economic position puts them at the "Upper class" level who have a high intellectual level background and are followed by an affluent economic level. On the other hand, if you look at the condition of field officers at the Correctional Technical Implementation Unit, generally they have not paid attention to the form of protection that can be used as a guarantee for officers in carrying out their duties and obligations, even though they must realize humane standards for convicts and detainees. This condition is a dilemma for officers when they have to strive for the application of humanitarian standards, and on the other hand officers have many weak points both economically and socially, such as transportation guarantees and special housing guarantees for officers who receive less attention. This form of weakness can be seen from the saturation of work routines or the difficulty of overcoming the economic crisis that hit almost the entire population of Indonesia, and the most important thing in this case is the "mental crisis" of officers who may have escaped the attention of human resource development for correctional officers.

2. Figures in the Prison

The emergence of figures in the prisoner community are generally people who have high intellectual abilities and considerable economic strength. It is certain that these figures easily have the ability to "human relations" to foster good relations with officers so that they can get special opportunities and facilities that are more than other inmates such as special room facilities with all the equipment of sophisticated communication equipment. Further analysis can be concluded that the important factors that need to be considered in this case are related to the authority of officers and the moral values of officers. Another indication related to officer morale can be seen from the existence of a "Local King" culture that exists

in prisons. Generally, this culture is considered as something that is commonplace, because this condition has been motivated by situations that are ongoing between officers and the prisoners; the culture of ordering or commanding with the intention that whatever the officer's wishes can be fulfilled by the prisoners. If this thuggery takes place at the level of prisoners in prison, they generally extort and control each other. Thuggishness is basically a social phenomenon in the general public which is sociologically difficult to analyze, considering many factors that cause it, one of which is the coercive socio-economic conditions.

D. Threats and Efforts in Prison

Law Number 22 of 2022 is the basis for the implementation of coaching in Correctional Institutions and State Detention Centers throughout Indonesia which states that "The correctional system is an order regarding directions and boundaries and methods for carrying out the functions of an integrated correctional facility. Furthermore, in Article 3 it is explained that the correctional system is implemented on the basis of: protection, non-discrimination, humanity, mutual cooperation, independence, proportionality, loss of independence as the only suffering, and professionalism. Based on this explanation, in accordance with Article 9 of Law No. 22 of 2022 inmates are given the right to practice worship in accordance with their religion and beliefs, receive treatment both physically and spiritually, receive education, teaching and recreational activities as well as the opportunity to develop their potential, receive health services and proper food according to nutritional needs, get information services, get legal counseling and legal aid, submit complaints and/or complaints.

In relation to UN international standards; the standard minimum rules basically explain that each prisoner should have his own cell that meets health standards such as air ventilation, smooth sanitation, floor area, lighting, heating, clean water which can be used at any time. With this international reference, it can be said that it is still difficult for correctional institutions to make improvements, considering that these institutions do not stand alone, but are a part of the work journey of the existing criminal justice system. Thus, when planning to carry out reforms, what needs to be considered is the improvement and performance policies from the police, prosecutors, and judges who are part of the Indonesian criminal justice system.

E. State Efforts and Responsibilities

One of the principles of convict development states that "the state is responsible not to make people worse off than they were before they entered prison". Departing from the meaning of this statement, this becomes a boomerang for the country when the institution responsible for fostering people who are undergoing the process of being detained in Correctional Institutions or State Detention Centers is late in terms of repairing their Technical Implementation Unit concerning human resources officers and other infrastructure facilities to support the implementation of the coaching process work.

Looking at the current conditions in places where people are detained in Indonesia is very concerning. This is reflected in the ratio between the number of officers and prison inmates which is far from adequate, which is described as 1: 60 to 100. Meanwhile, according to calculations from the Directorate General of Corrections, ideally the ratio of the number of officers and prison residents is 1: 20. Therefore, this is considered normal if various cases arise in prison such as fights, brawls, and escapes to other cases such as the death of inmates in prison due to various reasons. According to the Directorate General of Corrections of the Ministry of Law and Human Rights as of September 2022 the number of prisoners in prisons and detention centers throughout Indonesia totaled 276,172 people, 139,839 of whom were drug convicts. This condition is the obstacle why the penitentiary process

does not run as expected. This happens because in general the condition of prison/LP inmates is always in an overloaded condition. In this way, the spread of infectious diseases cannot be stopped, and even the problem of placing residents who have HIV/AIDS do not receive special services.

5. CONCLUSION

1) Conclusion

In line with the performance of criminal justice system in our country, it turns out that the punishment problem ultimately cease at Correctional Institutions, which basically this institution within the bureaucratic lines of the Directorate General of Corrections, Ministry of Law and Human Rights. However, the effectiveness of punishing a person in the globalization era is basically the responsibility of all levels of the criminal justice system, considering that currently almost all places where people are detained are overloaded. As a result, it has an impact on all aspects related to the process of fostering convicts. The number of prisoners who died due to various kinds of diseases in the process of undergoing detention in prison. Therefore, the protection of convict's human rights does not get serious attention from related institutions.

2) Suggestion

It is necessary to add Correctional Institutions to avoid overload in prison rooms. As well as the provision of infrastructure that fulfills health standards. It is necessary to improve the performance of each institution that becomes part of the criminal justice system in the sense that there is a harmonious working relationship between each institution which must support each other to prioritize the interests of smooth work. So this will affect the improvement of services to people who are undergoing detention/punishment.

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