

A legal politic study on corrections in human right perspective in Indonesia

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Abstract

Law Number 12 of 1995 about corrections states that correctional system is held based on the principles of protection, equal treatment and education service, respect to human dignity and prestige. The objectives of article are to find out the background of the inception of Correctional Law, to analyze the policy of formulating Correctional Law in Human Right perspective, to analyze the policy of applying and the implementing regulation of Correctional Law. This study was a doctrinal law research, using secondary data, consisting of primary law material (relevant regulation and document), to be analyzed further qualitatively. The result of research shows that the establishment of Correctional Law is a measure to reconfirm the importance of treatment to law breakers (inmates) using social reintegration emphasizing on protection and respect to law and human rights. This protection of human rights is not only defined narrowly in relation to the law breaker, but should also be associated with their material or civil rights.

Keywords: politics of law, corrections, human rights

Introduction

Recently, many crimes occurring within society is an endless problem in Indonesia. Reviewing the objective of criminal law development by state, it aims to give social protection for the sake of social defense and to achieve the more concrete objective, social welfare. The existence of criminal law is very fundamental in a state, because criminal law governs the public relation between individuals, between individual, legal entity, other legal subject, and state. In Indonesia, the provision of criminal law is governed in Penal Code (KUHP) constituting the inheritance of colonial time when Indonesia was colonized and it is still used until today (*Wetboek Van Strafrecht*) with the removal of some articles and renamed into KUHP only.

Criminal law is currently divided into 3 (three) books consisting of first book explaining the legal provision of KUHP, second one concerning violation, and third book explaining the crime against public interest that is compelling and can be forced in nature. The compelling nature of criminal law aims to maintain and to regulate or to get the equilibrium back into original condition, on which sanction and sorrow are imposed. Sanction in criminal law includes fine, confinement, jail, and death sentence. The same characteristic of confinement and jail punishments are that both of them restrict human's freedom to move in undertaking the punishment sanction, or putting the punished one, who has committed crime (prisoner), into a distinctive place under the state's supervision through law enforcers, called penitentiary. A prisoner is limited for his/her freedom to get in and out and should obey stipulation and order enacted in the penitentiary (correctional facility).

The stipulation of criminal sanction imposition against criminals is the form of revenge against the deed they have done, as the objective of classical criminal law is to emphasize merely on the concept of "revenge". On the other hand, in contrast, the imposition of criminal sanction, viewed from modern criminal law perspective, focuses on

the legal subject to rehabilitate the perpetrator of crime to enable it to be a good, smart one and not to repeat the crime. It is in contrast to the classical criminal law focusing merely on revenge.

The philosophy of restoring the perpetrator of crimes to the original condition or called corrections is mentioned in Article 1 of Law Number 12 of 1995 about Corrections (Correctional Law) that "Corrections is an activity to build the inmates, constituting the last part of condemnation in a criminal justice order", and then Article 2 explains "Correctional system is an order concerning the direction and the border for the condemnation of inmates based on Pancasila, conducted in integrated manner between builder, those built, and community, to improve the quality of inmates and to enable them to realize their guilt, to repair themselves, and not to repeat the crime, thereby are acceptable again to the social environment, can participate actively in development, and live normally as good and responsible citizens.

The protection of Human Rights for the prisoners in penitentiary has been actually governed in legislation. It is in confirmed in Article 14 clause (1) of Correctional Law that prisoners are entitled to do worship according to their religion or belief, to receive spiritual and physical treatment, education, and teaching, healthcare service, and feasible food, to deliver grievance, to get reading source, and to attend other non-forbidden mass media's broadcasts, to get wage and bonus for the job done, to receive family's, lawyer's, and others' visits, to get remission, and assimilation, including furlough around the freedom time, and other rights according to legislation enacted. Human basic freedom is also governed in Articles 9-66 of Law Number 39 of 1999 about Human Rights (Human Right Law), including the rights to live, to have family, to self-development, to get justice, to personal freedom, to the secure feeling, to participate in government, and to welfare, and women and children's rights.

Materials and Methods

This study employed a doctrinal legal study. The legal information source used was primary law material (regulations and relevant documents) to be analyzed further qualitatively. The approach used was legislation, conceptual, and analysis in helping solve the problem statement. The data source of research consisted of primary and secondary law materials to be continued with comprehensive analysis on legislation, literature, data, and some relevant document, and tertiary law material to explain and to help analyze primary and secondary law materials.

Research Result and Discussion

Background of Correctional Law Inception

As mentioned in Republic of Indonesia's Constitution, exactly in the fourth paragraph of preamble of Republic of Indonesia's 1945 Constitution (UUD NRI 1945): "Subsequent thereto, to form a government of the state of Indonesia which shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate toward the establishment of a world order based on freedom, perpetual peace and social justice, therefore..." What is contained in the fourth paragraph of Preamble of UUD NRI 1945 is the objective wanting to be achieved by the state. It means that the state is obliged to protect all the people, to improve public welfare, and to educate the life of the people.

Correctional facility is a state organ contributing to law enforcement. This institution plays a role not only at post-adjudication stage, but also at pre-adjudication and adjudication stages. This implementation of correctional role is inseparable from the objectives wanting to be achieved by the state as mentioned in the Preamble of UUD NRI 1945. Building correctional institution through the establishment of Correctional Law among others is a measure to reconfirm the importance of treatment to the law breakers (inmates) using social reintegration approach. This approach, viewed from philosophical background, is to maintain positive relation to the public and to substitute new positive value for the negative one. The most important element in the society prioritized more in positive bond approach is family.

Integration between former inmates and society can be achieved when the state can give the best treatment to inmates. This treatment involves service, building, and guiding activities held systematically and sustainably by always prioritizing respect to inmates' rights, including material right. The premise underlying social reintegration approach should be discussed again. Social reintegration is based on a premise that crime is only symptoms of disorganization within society. Therefore, people (society) are responsible for implementing correctional task. Corrections should provide broad space for the people and the inmates to interact with each other. Thus, inmates are expected to internalize values and norms prevailing within society. The objectives aforementioned will, of course, be achieved when some aspects in the implementation of correctional tasks such as institutional, authority, supervision, and public participation are governed clearly and comprehensively in Correctional Law. Thus, the implementation of correctional task can be accomplished effectively thereby can fulfill the society's expectation to the treatment of inmates prioritizing respect to law and

human rights. Dynamic society development and this democratic time grow the people's consciousness of the importance of correctional task implementation. Society has an expectation concerning the existence of correctional facility as an institution that can undertake its task and function optimally. On the other hand, people also have big expectation about the treatment of inmates prioritizing law protection and respect to human rights. This human right protection is not only defined narrowly related to the law breaker, but should also be associated with their material or civil rights.

The implementation of correctional task will develop significantly both in the present and in the future due to the change in strategic environment, at national, regional, and international level. The change occurring is in line with global reformation and transformation processes characterized with the establishment of society expressing very critically many problems replete with the content of human rights, democratization, and other central issues, and the emergence of various criminal behavior levels, forms, and types, including transnational crime, organized crime, white collar crime, economic crime in addition to conventional and traditional crimes.

Illustratively, it can be said that as the result of the emergence of various criminal behavior levels, forms, and types, including transnational crime, organized crime, white collar crime, and economic crime, the implementation of correctional task faces a sufficiently hard condition, the sufficiently high occupancy rate of penitentiary and state's jail. Considering the data existing in Directorate General of Corrections, the occupancy rate of penitentiary/jail keeps increasing substantially. On December 2020, "the occupancy rate of penitentiary is 255,599 persons. This occupancy rate has exceeded the dwelling capacity, 90.853 persons. It is this condition that is often called over-capacity (overcrowded) condition". This over-capacity condition, of course, affects a variety of life aspects in penitentiary/jail tending to be dysfunctional to the achievement of correctional objective. If this condition is unresolved, the people's expectation to healthy integration between former inmates in living within society and state will not be achieved optimally.

Such attempt is in line with the statement mentioned in Implementation of The Standard Minimum Rules for the Treatment of Prisoners that "the policy to enforce the rule in the penitentiary/jail will not be effective when the measures are not taken to deal with the over-crowded symptoms at the same time. The attempts of building inmates should be preceded with some programs aiming to reduce the content of penitentiary/jail, corresponding to the facilities and media available. Considering this guideline, it can be concluded that the jail over-capacity problem is a variable affecting the effectiveness of building implementation. Therefore, a strategy should be taken immediately to cope with the over-capacity, so that the effects of such condition can be minimized. Considering the development of strategic environment constituting the determinant of correctional task implementation, it is important to make amendment to the correctional law. This amendment to Correctional Law is conducted to enable the implementation of correctional task can achieve the objective specified and fulfill the people's expectation.

The article 7 of Law Number 12 about the Ratification of International Covenant on Civil and Political Rights states

that “No one can be imposed with mistreatment or any other cruel, inhuman, or humiliating treatment or punishment. Particularly, nobody can be the object of medical and scientific experiments freely without his/her consent”. Article 10 states that “Everybody whose freedom is deprived should be treated humanely and by respecting the dignity inherent to human self. The suspect, unless in very special conditions, should be separated from the condemned one and treated differently according to their status as the one not condemned yet. Minor defendant should be separated from adult and tried in the court immediately. Correctional system should have the objectives to correct and to do rehabilitation in treating the prisoners. Minor convict should be separated from adult and treated by their age and legal status”.

The policy of Formulating Correctional Law in Human Rights perspective in Indonesia

Considering the Correctional Law mandating that jailing system before the correctional system is incompatible to Pancasila and 1945 Constitution. Correctional system is the last subsystem of condemnation system aiming to enable the inmates to realize their guilt, to correct themselves, and not to repeat the crime, thereby being acceptable again to social environment, participating actively in development, and living normally as the good and responsible citizens.

Initial consideration has revealed the spirit of the law aiming to change the concept of jail exerting deterrent effect and taking revenge against the criminal's guilt (retributive justice) into the correctional concept to restore the condition of perpetrators so that they regret their deed and to return them to the society (restorative justice).

Article 1 of Correctional Law about the definition of common terms in the law explains the difference between penitentiary (thereafter called *Lapas*) and rehabilitative center (thereafter called *Bapas*). Penitentiary is the place where prisoners and inmates undertaking building program. Meanwhile, rehabilitative center (*Bapas*) is an institution to give guiding and counseling to the correctional client. The guiding is conducted by BAPAS to the conditional convicts, prisoners, inmates, and state's child getting conditional liberation or furlough around the freedom. The state's child, based on the court's verdict, the building of which is handed over to foster parents or social institution, and the State's Child based on the Decision of Minister or officials in Directorate General of Corrections environment designated. It indicates that there is a special treatment to the one undertaking conditional punishment, either prisoners or inmates. It is because the one undertaking conditional punishment is considered having committed lighter crime compared with the ordinary crime. Thus, the shorter condemnation time is intended to guide them to be prepared for reverting to the society. It is in accordance with the Article 28 B clause (2) of UUD NRI 1945 stating that child is entitled to survival, growth, and development, and protection from violence and discrimination.

Article 5 of Correctional Law explains the principle of correctional building system based on “protection, equal treatment and service, education, counseling, respect to human dignity and prestige; the deprivation of freedom is the only sorrow, the guaranteed right to keep in touch with family and certain people”. It is interesting to study this principle stating clearly that the punishment that may be implemented in correctional system is the deprivation of

freedom and it is the only sorrow. No sorrow like physical or mental mistreatment or compelled hard work is allowed. It is corresponding to the mandate Article 5 of Universal Declaration of Human Rights “No body may be mistreated cruelly, punished inhumanly or humiliated” and Article 6 states “Everybody is entitled to the recognition before the law as personal human wherever he/she is”.

In relation the prisoners, there are two matters interesting to be studied here: categorization and rights of prisoners. Prisoners are categorized by five criteria: age, sex, length of punishment imposed, type of crime, and other criteria corresponding to need or building development.

The rights of prisoners are included into Article 14 of Correctional Law are:

- a. Doing worship according to their religion or belief;
- b. Receiving treatment, both spiritually and physically;
- c. Receiving education and teaching;
- d. Receiving healthcare service and feasible food;
- e. Expressing grievance;
- f. Receiving reading source and attending other forbidden mass media broadcast
- g. Receiving wage or bonus for the job done;
- h. Receiving family's, lawyer's, and others' visits;
- i. Receiving remission;
- j. Receiving assimilation opportunity including furlough to visit family;
- k. Receiving conditional liberation;
- l. Receiving furlough around freedom; and
- m. Receiving other rights corresponding to the legislations enacted.

Considering Article 4 of Correctional Law, the Correctional Consideration Center (thereafter called BPP) serves to give recommendation and or deliberation to the minister, including:

- a. Recommending the form and program of building and counseling in implementing correctional system;
- b. Evaluating the implementation of building and counseling program or
- c. Receiving grievance and complaint from the inmates.

The chairperson of penitentiary is authorized to impose disciplinary action or punishment on inmates who break the rule of security and orderliness in penitentiary environment he/she leads. (2) The type of disciplinary punishment as mentioned in clause (1) can be: a. isolation for maximally 6 (six) days for prisoners; and or b. postponing or nullifying certain right for certain period according to the legislation enacted. (3) In imposing disciplinary action or disciplinary punishment, as mentioned in clause (1), the correctional officers should obligatorily: a. treat the inmates fairly and not haphazardly; and b. base their action on the penitentiary's rule of order. (4) The prisoners or inmates have ever been imposed with isolation punishment as mentioned in clause (2) letter a, when they repeat the violation or attempt to escape, can be imposed with the same punishment for maximally 2 (two) times 6 (six) days.

The Policy of Application and Implementing Regulation of Correctional Law, the Policy of Correctional Law Application

The essence of correctional system is basically an idea to apply “Treatment of Offender” Concept and can be considered replacing the jailing system. A penological study

found that jailing system is incompatible to the recognition of human's right and freedom in "*Personality, sexuality, security*" life as long as the corresponding one undertakes jail punishment. Thus, the objective of condemnation is oriented to rehabilitation (correction, restoration, recovery), in which condemnation is directed to treatment system aiming not only to make the prisoners repenting and not doing more crime, but also to protect people from the crime. Penitentiary, as the starting point of protection principle implementation, is the place to achieve objective through education, rehabilitation, and reintegration. Thus, it is appropriate for the officers of Penitentiary to implement the duty of building and securing inmates specified as the functional officials of law enforcement.

Corrections mean to rehabilitate prisoners into good and useful citizens (rehabilitation). In the process of re-socializing prisoners, some constraints often occur, because prisonization process also occurs in the penitentiary. Resocialization is a process of interaction between prisoners, penitentiary officer, and people (public). The interaction process involves changing value system of prisoners in order to adapt well and effectively to norms and values prevailing within society. Resocialization is conducted through the process of rehabilitating and reintegrating inmates.

Corrections, as a process, are not only intended to condemn and to focus exclusively on the convicted individual, but is also a whole relation between the convict and the public, so that corrections system recognizes institutional and non-institutional building aspects. To implement correctional system, good public participation is required to cooperate in building and to be willing to accept again the former inmates who have undertaken their punishment.

Correctional process is a process since the inmates come into penitentiary through they return to the society. In its implementation, correctional process is conducted through two aspects: securing and building aspects. The two aspects are inseparable from each other because both of them are interdependent, meaning that good security and orderliness in penitentiary will facilitate/smooth the building process. Furthermore, good building will facilitate the regulation or the maintenance of security and orderliness. Building is any attempt to educate, to guide, and to direct an activity in some ways and through an orderly and organized process to achieve the objective maximally. The process of building prisoners using correctional system aims:

- a. To prevent inmates/prisoners from breaking the law anymore;
- b. To make inmates/prisoners the active and productive participants in development;
- c. To help inmates and prisoners be happy later in the world and hereafter.

The building of prisoners in both penitentiary and jail is a process undertaken gradually based on time and output of building done. This staging is useful for the process of improving the prisoners. The procedure of building prisoners is divided into three (3) stages:

- a. Beginning stage;
- b. Intermediate stage;
- c. Last stage.

In the beginning/first stage (maximum security), prisoners are overseen from the time when they began to have

prisoner status to 1/3 of their punishment period. This building stage starts with admission and orientation since the prisoners came into penitentiary, preceded with observation, research, and introduction to environment, to determine the next building program (at least 1 (one) month). The second building stage (medium security) or the continuation of the first stage begins since the end of beginning stage through at least ½ (a half) of actual punishment period. In this stage, the prisoners are allowed to adapt to internal environment of penitentiary by means of doing physical exercises/other activities under the penitentiary officer's supervision and guard. The third stage (minimum security) or called the continuation of second stage has begun since the end of the first continuation stage through 2/3 punishment period. In this stage, prisoners have been able to assimilate with the external environment of penitentiary to attend education and other activities further under the penitentiary officers' supervision. The fourth stage (interrogation), also called the last stage, starts since the end of the first continuation stage of building through the end of punishment period (at least 9 months). In this stage, the prisoners can be proposed to get conditional liberation, i.e. when the prisoners have undertaken at least 2/3 of their punishment or 9 (nine) months and fulfill the requirement of Law.

In its implementation, correctional process is conducted through 2 (two) aspects: securing and building aspects. The two aspects are inseparable from each other because both of them are interdependent, meaning that good security and orderliness in penitentiary will facilitate/smooth the building process. Furthermore, good building will facilitate the regulation or the maintenance of security and orderliness. The building of prisoners in penitentiary will end if the corresponding prisoners:

- a. Their punishment period has ended;
- b. Get conditional liberation;
- c. Get furlough around the freedom;
- d. Die, in this case the corresponding prisoners will be returned to their family and any cost burden is assumed by the state and the prisoners who have undertaken his punishment period completely (free) will be equipped with the cost of discharging to origin area or the area where their domicile.

Government Regulation Number 28 of 2006 about the Amendment to Government Regulation Number 32 of 1999 about the requirement and procedure of implementing the inmates' rights.

Considering the Government Regulation Number 28 of 2006 about the amendment to Government Regulation Number 32 of 1999 about the requirement and procedure of implementing the inmates' rights, some substances are added: remission, assimilation, furlough, furlough around freedom, and conditional liberation only. Meanwhile, remission can be given when the prisoners have good behavior and undertaken more than 6 months of punishment period. Furthermore, this government regulation adds the regulation concerning prisoners who commit terrorism, narcotic and psychotropic-related crimes, corruption, crime against the state's security and severe human right crime, and other organized transnational crime. Remission is given to the prisoners who have committed the deeds above when they have behaved well and undertaken 1/3 of their punishment period.

Similarly, in relation to the right to do assimilation, some additions have been made concerning the prisoners who commit terrorism, narcotic and psychotropic-related crimes, corruption, crime against the state's security and severe human right crime, and other organized transnational crime. They are entitled to do assimilation when they have behaved well, can attend the building program well, and undertaken 2/3 of their punishment period. Furthermore, in relation to the right to get furlough, some regulations have been added, that the prisoners who commit terrorism, narcotic and psychotropic-related crimes, corruption, crime against the state's security and severe human right crime, and other organized transnational crime are not entitled to get furlough.

In relation to furlough around freedom, some substance is added to this government regulation stating that the prisoners are entitled to get furlough around freedom when they have undertaken at least 2/3 punishment period with the stipulation that the 2/3 of punishment period is not shorter than 9 months, behaved well during undertaking the punishment period at least in the last 9 (nine) months since before the 2/3 punishment period, and the length of furlough around freedom is as same as the last remission, at least 6 (six) months. The prisoners who commit terrorism, narcotic and psychotropic-related crimes, corruption, crime against the state's security and severe human right crime, and other organized transnational crime get furlough around freedom with the criteria: have undertaken at least 2/3 punishment period, in which the 2/3 punishment period is not shorter than 9 months, behaved well during undertaking punishment at least in the last 9 (nine) months since before the 2/3 punishment period, and the length of furlough around freedom is as same as the last remission, at least 3 (three) months, and have gotten Directorate General of Corrections' approval.

Furthermore, in relation to the right to conditional liberation, some requirements have been added: have undertaken punishment period at least 2/3 punishment period, in which the 2/3 punishment period is not shorter than 9 months, behaved well during undertaking punishment at least in the last 9 (nine) months since before the 2/3 punishment period. Then, particularly the prisoners who commit terrorism, narcotic and psychotropic-related crimes, corruption, crime against the state's security and severe human right crime, and other organized transnational crime get conditional liberation if they have undertaken punishment period at least 2/3 punishment period, in which the 2/3 punishment period is not shorter than 9 months, behaved well during undertaking punishment at least in the last 9 (nine) months since before the 2/3 punishment period, and have gotten Directorate General of Corrections' approval.

Conclusion

The spirit of correctional law aims to change the concept of jail exerting deterrent effect and taking revenge against the criminal's guilt (retributive justice) into the correctional concept to restore the condition of perpetrators so that they regret their deed and to return them to the society (restorative justice). The change occurring is in line with global reformation and transformation processes characterized with the establishment of society expressing very critically many problems replete with the content of human rights, democratization, and other central issues, and

the emergence of various criminal behavior levels, forms, and types, including *transnational crime*, *organized crime*, *white collar crime*, *economic crime* in addition to conventional and traditional crimes.

In a broader perspective, correctional system is an attempt of protecting human rights from the law breakers. In the context of convict, corrections should be able to reintegrate inmates and maintain positive relation to the community (public). Integration between former inmates and society can be achieved when the state (in this case correctional facility) can give the best treatment to inmates. This treatment involves service, building, and guiding activities held systematically and sustainably by always prioritizing respect to inmates' rights, including material right. In addition to the state, the party playing important role in making the integration program successful is the public (people). Therefore, corrections should provide broad space to the public to participate in the implementation of corrections.

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