International Journal of Law
www.lawjournals.org
ISSN: 2455-2194
Received: 27-02-2021, Accepted: 15-03-2021, Published: 19-04-2021
Volume 7, Issue 2, 2021, Page No. 216-221

Concept of humane implementation of imprisonment in efforts to protect human rights in Indonesia

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Abstract
This research aims to find whether the current implementation of imprisonment that is carried out in Indonesia able to protect the human rights of prisoners and how is the ideal concept of imprisonment can be applied in Indonesia in the future wherein studying the problem, the author uses the normative-explanatory method and a dogmatic-approach to understand the effectiveness of this law better.
The results show that the current implementation of imprisonment as part of the penal justice system needs to be reoriented immediately considering that most of the current penal sanctions both in the Penal Code (KUHP) and in the concept of the New Penal Code are still using a form of sanction in the form of imprisonment. The implementation of imprisonment in Indonesia is currently carried out by correctional institutions as a guidance institution in the implementation of crimes in order to achieve the objectives of punishment, protection of human rights, and also to determine the penal justice system as expected. The ideal concept of imprisonment that can be applied in Indonesia in the future is to develop the idea of penal individualization. As a form of the idea of individualization, an effort emerged through the idea of a "good time allowance" development program as a contribution to reform of penal law in the field of penal executors as a means of individualizing sanctions and rehabilitating prisoners to reduce convict density.

Keywords: concept, imprisonment penalty, human right

Introduction

For the Indonesian nation which is based on Pancasila, new ideas regarding the function of punishment are no longer just a deterrent but also an effort to rehabilitate and social reintegration of the Correctional Assistants which have given birth to a system of guidance that since more than thirty years ago has been known and called the prison system.
Based on the preamble of Law Number 12 of 1995 Concerning Corrections, it is explained that in essence, Correctional Facility Residents must be treated as human beings and their human resources must be treated properly and humanely in an integrated guidance system. Therefore, the current treatment of Correctional Facility Residents based on the current Indonesian prison system is not in accordance with the correctional system based on Pancasila and the 1945 Constitution which is the final part of the penal system. This is because the correctional system is a series of law enforcement which aims to make the prisoners aware of their mistakes, improve themselves, and not repeat penal acts so that they can be accepted back by the community, can actively play a role in development, and can live naturally as good citizens. and take responsibility.
Penal is a punishment given to someone who is found guilty of committing a penal act. The types of crimes vary widely, such as death penalty, life imprisonment, imprisonment, detention, and fines which are categorized as the main penalty, and deprivation of certain rights, confiscation of certain items, and the announcement of a judge's decision, that are called the additional penalties. The purpose of penal sanctions according to Bemmelen [1] is to maintain public order, and has the combined purpose of frightening, correcting and for certain crimes to destroy.
The Correctional System is a series of penal law enforcement units, therefore its implementation cannot be separated from the development of a general conception of punishment. The Correctional System in addition to aims to return the Correctional Facility Residents as good citizens also aims to protect the community against the possibility of repetition of penal acts by prisoners, as well as implementation and an integral part of the values contained in Pancasila.
However, as previously described, the large number of perpetrators of penal acts who repeat their actions has indicated that the implementation of correctional facilities based on Law Number 12 of 1995 does not produce the expected results. So that the current correctional system needs to be questioned its sustainability.
In line with this, based on data obtained from data for residents of prisons and state detention centers in general at the Aceh Regional Office, overcapacity has occurred, although in several places, namely from 26 (twenty six) prisons and state detention centers located in the Aceh Regional Office. There are 19 Aceh Regional Offices (nineteen) prisons and state detention centers that are overcapacity and only 7 institutions still meet the capacity standard. In general, the tendency of the number of residents of the institution to increase every year and the same thing also occurs in various prisons in various regions in Indonesia.
The fact that prisons and detention centers in Indonesia are overcapacity can be ascertained that the rights of prisoners are not properly protected. As stated by Soerjono Soekanto [2], law enforcement can be influenced by many factors. For example, law enforcement for inmates in correctional institutions has been influenced by facilities, which

incidentally are the responsibility of the State. It can be interpreted that the State has violated the human rights of prisoners in prisons.

Conditions like this are clearly very detrimental to the prisoners in prison, in other words, it can be ascertained that there have been violations of human rights in prisons committed by the State. In the era of globalization where law enforcement based on a good legal system is desired, a country when enforcing laws that violate Human Rights (hereinafter referred to as HAM) will certainly be criticized and even isolated by the other countries as members of the world community who have no commitment to human rights.

This problems are what prompted the author to conduct a study with the following issues:

1. Has the implementation of prison sentences carried out in Indonesia able to protect the human rights of prisoners?
2. What is the ideal concept of imprisonment that can be applied in Indonesia in the future?

Method of Research

This Research Method is Normative-Explanatory, namely a study that aims to explain, strengthen or test and even reject a theory or hypotheses and existing results. This study intends to find problems and analyze the protection of human rights in the implementation of guiding prisoners in prisons according to Law Number 12 of 1995 concerning correctional facilities. In addition, it is also to find a more ideal social pattern that can be applied in Indonesia in the future.

The reason researchers use normative-legal research is that it is to produce new arguments, theories, or concepts as a prescription in solving the problems at hand [3], where the data are mainly obtained from Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material supported with information from respondents directly obtained through interviews and literature studies.

In this study, the author use data collection techniques, namely literature study, interviews and documentation where the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data [4]. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

Research Result and Discussion

The Implementation of Imprisonment Sentences In Indonesia

Based on the 2019 correctional institution population data from the Director-General of Corrections (PAS) at the Ministry of Law and Human Rights throughout Indonesia, 30 of them are experiencing overcapacity. Based on data from the Directorate General of PAS, the capacity of prisons/ Correctional Facility throughout Indonesia is around 130,815 thousand people, but in reality, it is inhabited by 264,142 thousand prisoners and detainees. This means that prison occupants are currently experiencing an excess of 199% of capacity. East Kalimantan is the Regional Office of the Directorate General of PAS with the largest excess of prison residents. From a capacity of 3,586 people, the prison in that area is inhabited by 12,429 people, which means that there is an overcapacity of 247%. The Regional Office of the Directorate General of PAS which has the second-largest excess capacity is DKI Jakarta. With a capacity of 5,791 prisoners, the correctional facilities in the capital city are inhabited by 17,826 prisoners, meaning that the excess occupants are 208% of capacity. Then followed by the North Sumatra Regional Office with a prison capacity of 12,065 people, but inhabited by 34,487 prisoners which makes it almost 3 times its original intended capacity. And yet on the other hand there is still some prison, like in West Sulawesi Regional Office, D.I. Yogyakarta and North Maluku are still under capacity [5].

In such conditions, it is very doubtful whether the function of prison as a place of guidance that replaces the prison system can be achieved, namely carrying out a mission so that they can return to life naturally and responsibly. As in Law No. 12 of 1995 concerning Corrections, by socializing convicts to become good and useful citizens.

Overcapacity occurs because the growth rate of prison occupants is not comparable to the occupants' facilities. The percentage of each judge's decision with imprisonment in ordinary penal cases up to and special crimes where the input (entry) of new convicts is more than the output of the convict that is released back to the community.

One of the most serious problems in Indonesia is the matter of punishment/ sanctions, especially imprisonment. Where the punishment for depriving independence (imprisonment and imprisonment) is still used as the main selection the judge chooses in determining and imposing crimes in court.

Then the question that arises, Is Imprisonment Penalty Effective? First, if it is viewed from the main aspect of the purpose of punishment, namely, from the point of view of public protection that with the increasing number of residents in prisons and the application of more frequent or excellent imprisonment sanctions by judges in this court, it can be said that the general prevention effect of imprisonment in preventing citizens in general from committing crimes is "effective" in controlling penal acts and restoring the balance of society.

Second, from the point of view of correcting the perpetrator that the measure of effectiveness lies in the aspect of the special prevention of crime. So, the measure lies in the problem of how far the penal (imprisonment) has an influence on the perpetrator/ convicted person. Thus, there are two aspects of the effect of crime on the convicted convict, namely the deternment aspect and the reformative aspect.

What the author wants to convey here is that from the aspect of improving the perpetrator in the initial prevention, it has been fulfilled that the perpetrator will not repeat his actions, or the space for activity is limited by confining the perpetrator of the crime in prison so it has no relation with the number of residents who exceed their ideal capacity as long as the purpose is achieved no matter what influence it has on the perpetrator/ convicted person. However, the effect can be seen from the aspect of repairing the perpetrator in their behavior, as imprisonment cannot change the attitude of the convicted person as there are still many recidive who re-commit the same crime act the moment they got out of prison. This means that the excess occupants at correctional institutions/ detention cannot change the attitude of prisoners or prisoners when they leave/ finish their detention period so that they do not repeat

despicable acts in order to live again in society as mandated in the purpose of punishment stated in Law No. 12 of 1995 concerning Corrections, by socializing convicts to become good and useful citizens.

As seen in the data above, it is clear that the factor of overcapacity, according to the author, is because the imprisonment penalties is mostly used by judges in imposing or punishing someone who has committed a penal act, which in this case, even to a minor crimes.

As a note and it is the basis why imprisonment is the prima donna which is often imposed by judges in deciding cases. Whereas, the total of all provisions of the Penal Code which contain the formulation of penal offenses, is 587 (this calculation is not only based on the number of articles, but also on the formulation of offenses in each offense and in each paragraph. If in one such article, several offenses are contained in other articles, then the formulation of offenses and penal threats for each of the other articles or paragraphs is also calculated individually), imprisonment is listed in 575 formulations of offenses (approximately 97.96%), either singly or alternatively with types other types of crime. For this reason, it seems clear that it will result in the accumulation of prisoners and prisoners in prisons or detention centers, then when precautions are taken, the level of punishment must follow how much risk is caused or harmed and the measures taken such as detention, fines, and probation, then tends to be more of a verdict option available, so that it affects the possibility of overcapacity.

Overcapacity tends to have negative implications for several things, including a low level of security/ supervision compared to neighboring countries such as: (1) In Australia, 1 guard supervises 2 prisoners. (2) In Brunei Darussalam, 1 guard supervises 1 prisoner. (3) In China, 1 guard supervises 3-4 prisoners. (4) In Japan, 1 guard supervises 3 prisoners. (5) In Malaysia, 1 guard supervises 3-4 prisoners. The total population of prisons throughout Indonesia is 256,273 people. Of that number, 63 percent were drug cases. There were 558 terrorist crimes cases. Of that number, 1,113 were foreigners. Based on the number of prisoners and security officers, it can be concluded that it is overcrowded as The ideal ratio should be 1 in 25. Of the number of prisoners in 2018, 50 percent of them only graduated from primary education. The following is the list: (1) 11 percent did not graduate from elementary school, (2) only 50 percent of basic education graduates, (3) 27 percent of high school graduates, (4) the remaining were undergraduate as many as 5,480 people, 695 Masters and 56 Doctorates person. All food and living costs of the Correctional Facilities Residents/ Inmates are borne by the people's tax. The money was collected through the State Budget and disbursed to cover 200 thousand of the Correctional Facility Residents. One Correctional Assistance Citizen is given food rations on an average of Rp. 15 thousand / day. The total 2018 State Budget that was disbursed to feed them was IDR 1.391 trillion.

The lack of human resources (HR) of correctional officers, both in quantity and quality of integrity, is another problem in the correctional environment. If what is in question is the number of human resources, then the Ministry of Law and Human Rights has opened civil officer vacancies (CPNS) throughout 2018 and 2019. Of course this can be categorized as the right solution in overcoming the problem of human resource shortages in prisons. However, another problem could be the quality of HR integrity. This needs special attention from the government, especially the ranks of the Ministry of Law and Human Rights. Examples of cases of the quality of the integrity of correctional human resources are the Head of Purworejo Prison Cahyono Adhi Satriyanto[6] who was arrested by the joint team of the National Narcotics Agency (BNN) and the Central Java Provincial National Narcotics Agency (BNNP) in Purworejo on Monday, January 15 2018. He was arrested for providing easy access to control drugs in prisons by Christian Jaya Kusuma. this case shows that the correctional system's effectiveness in Indonesia is questionable. In addition, low security can lead to various problems, including escaping prisoners, a lot of commotion, and not carrying out the process of guiding prisoners as it should be. Another implication of this weak supervision also affects the crime rate in prisons. There were 64 cases of drug discovery in prison raids, with 96 people involved as one concrete example. According to the data obtained by the authors, overcapacity also causes vulnerabilities in the form of escaping prisoners, fights, and drug transactions.

Theoretically, it can be explained that overcapacity can lead to prisonization. Sykes[7], in his theory of "pains of imprisonment" said that in essence, prisonization was formed as a response to the adjustment problems that were raised as a result of imprisonment itself with all forms of deprivation. Adjustment here is to relieve the pain of suffering as a result of deprivation. Deprivation here is the loss of something that is usually owned and/ or enjoyed by free people, so as to cause suffering, in this case also being put into an overcrowded prison, they must be crammed into it. Sykes's opinion is supported by Steven Box which states that prisonization is an adaptation made to inflict certain pain or suffering in prison.

Steven Box further stated that, in essence, a new inmate is part of a triangle. In the first point of view is the organization or official representatives, namely the official norm. The second corner stands groups of prisoners who offer solutions to various kinds of problems, including overcoming plunder which is suffering.

Thus the adaptation to pain or suffering that was done by a prisoner is essentially because a prisoner who goes to prison will be faced with two alternatives. The first alternative is to enter or follow the officers' rules, which means experiencing deprivation with a strong sense of suffering. The second alternative is to enter into the culture of the prison society which means reducing the suffering of deprivation that is experienced.

The Penitentiary, which is the final part of the penal justice system in the penal justice system is an integral part of the integrated penal justice system. However, the problem of overcapacity in almost all prisons is still a problem that has not improved. Until now, regulations regarding parole are the solution to overcapacity). To reduce excess capacity in prison centers, the Director-General of Corrections has made several efforts, one of which is by optimizing or simplifying the provision of parole, leave nearing release, and conditional leave. According to the Ministry of Law and Human Rights, optimizing services for the provision of parole leave before release and parole are one of the strategic steps in dealing with the problem of overcapacity in prisons or detention centers.

This effort is in accordance with the sound of the Implementation of The Standard Minimum Rules for the Treatment of Prisoners point 11 which states that "Policies

to enforce rules in prisons will not be effective if steps are not taken at the same time to overcome the symptoms of overcapacity. Efforts to guide prisoners must be preceded by a program that aims to reduce the contents of correctional institutions/ detention in accordance with the available facilities and facilities.

From these guidelines, according to the author, the problem of prison overcapacity is a variable that affects the effectiveness of the implementation of coaching. Therefore, a strategy must be made immediately so that the overcapacity can be overcome, so that the impacts of this condition can be minimized. Prison as a guidance institution has a very strategic position in realizing the ultimate goal of the penal justice system, namely rehabilitation and resocialization of lawbreakers and even to the prevention of crime (Suppression of Crime). It can also be called the spearhead of the implementation of the principle of protection, which is a place to seek goals by means of education, rehabilitation, and reintegration. Correctional Institutions are the final part of the penal system in the penal justice system which should be integral to an integrated penal justice system.

The success of imprisonment as a means of reform is very small, although this is very difficult to pinpoint. In fact, it was emphasized, that in fact it is not known whether the recidivist decline was due to the prison houses having developed individualized methods of formation. Current forms of formation and rehabilitation programs have very little impact on recidivists. The prison experience is so dangerous that it damages or seriously hinders the convict's ability to resume to a law-abiding state upon discharge from prison.

According to Richard Posner [8], from an economic perspective, fines contain a value that is not found in imprisonment, so that from the point of view of state assets, by multiplying transactions through imprisonment, it is more profitable than imprisonment. The social costs of imprisonment are greater. According to Pompe, there is a tendency to decrease the use or application of imprisonment in the Netherlands. There are efforts to improve the implementation of imprisonment with the existence of minimum standard rules (SMR) which were originally designed by The International Penal and Penitentiary Commission (IPPC).

When followed, the research results of David J Cooke, Pamela J Baldwin, and Jacqueline Howison[9]. So it can be known why crime occurs and its consequences in prison, with the influence of alcohol, narcotics, and psychotropics, violent behavior caused by culture, or to get something, or because of emotion.

Starting from the negative criticisms as stated above, the author felt that it is necessary to reorient, re-evaluate and reform penal politics, especially in using imprisonment.

Ideal Concept of Imprisonment That Can Be Applied In Indonesia In The Future

Handling overcrowding requires a comprehensive and simultaneous policy, requiring a new direction for the development of penal law and the penal justice system in Indonesia. Changes in the orientation of penal law in Indonesia must be directed at overcoming various problems of penal law enforcement and ensuring the protection of human rights. Various efforts to deal with overcrowding will be maximally successful if there is a change in orientation in penal law in Indonesia.

Important aspects in the effort to carry out these reforms are, First, the existence of significant decriminalization politics in various laws and regulations in Indonesia. Based on the author's data, the number of acts that can be detained and sentenced to imprisonment and contributes to overcrowding, so this reorientation requires efforts to reorganize various penal acts that are punishable by imprisonment both as stipulated in the Penal Code and in various laws and regulations which contain penal provisions outside the Penal Code. The Draft of Penal Code (RKUHP), for example, that is the future of The Indonesian Penal Code also shows that the tendency of punishment with massive imprisonment has not been shifted from the dominant approach to imprisonment. In the Indonesian draft of the Penal Code, this has not changed much as of the 1251 penal offenses in the draft Penal Code, the highest proportion of penal offenses is punishable by imprisonment, namely 1154, followed by a fine of 882. Of these, more than 50% of imprisonment is a single model of crime. Therefore, the tendency of 'overcriminalization' in the Draft Penal Code also needs to be reviewed by carrying out a significant decriminalization process.

Tackling overcrowding, according to the author, can be used for convicts guilty of using narcotics illegally for example as based on the Correctional System Database as of December 2017, 35% or around 34,448 special prisoners are narcotics convicts. If rehabilitation efforts were carried out against narcotics users and not sentenced to prison, This means that Indonesia could reduce the prison population by around 14% [10].

In addition, law enforcement officers must also begin to understand the penal acts that can be subject to non-prison terms if the RKUHP is passed. There are 5 main types of penalty in the RKUHP as stipulated in article 71 of the RKUHP263, namely, the imprisonment penalty, closing penalty, Supervision penalty, Fines penalty, and Social Work penalty.

So, later on, if there is a penal offense that carries a penal threat of less than 5 years, then to the perpetrators, the penalty for them can be a non-prison penalty such as supervision or social work.

There are 294 types of penal acts in the RKUHP that can be applied to penal supervision, such as penal acts of theft (article 550 RKUHP), foul competition crime (Article 580 RKUHP), penal acts of fraud (article 567 RKUHP), penal acts of persecution (534 paragraph 1).

This is also a note for members of the DPR and the Government, in this case the Ministry of Law and Human Rights, to re-correct the pattern of penal threats and derivative instruments for implementing alternative crimes that were promised to be more democratization-oriented in accordance with the original spirit of the RKUHP. If the imprisonment threat is still dominant in the upcoming RKUHP, then the phenomenon of overcrowding and its derivative impacts will remain a necessity and a state problem that will not be resolved.

Second, the reorientation of the penal justice system is directed at ensuring that the penal procedure law allows for out-of-court settlement processes for penal cases. This reorientation accompanied by changes to the penal procedure law will provide space for law enforcement officers to use various approaches in handling cases and change the paradigm of law enforcers to easily carry out a

detention or impose imprisonment.

This reform of penal procedural law is specifically related, for example, to the reformulation of provisions regarding pre-trial detention as a cause of overcrowding. Weak pre-trial detention arrangements in the Penal Procedure Code provide enormous powers to law enforcement officials, namely in relation to the urgency of detention which becomes the full discretion of law enforcers. This situation is exacerbated by the absence of a mechanism that can check and test whether the conditions of detention have been met by law enforcement officials. Although the Penal Procedure Code allows for alternative detention, namely house arrest, city detention, and suspended detention, it does not provide an accountable mechanism for how alternative detention should be carried out. As a result, the alternative of detention authorities fall to the investigator's discretion.

Next, in regard to detention, according to the author, there is still no definite solution in the current law, and even in the draft KUHAP, there are still no new alternatives to detention. Similar to the reform of pre-trial detention arrangements in Latin America which emphasizes the involvement of judges in pre-trial detention (by granting detention authority to judges or through pretrial detention hearings), the draft KUHAP introduces Preliminary Examining Judges (HPP) who can check the legality of detention that is carried out by law enforcement. However, the concept of HPP is different, for example from the pretrial detention hearing or custody hearing in Brazil, the draft KUHAP does not state that law enforcement officers must bring all those who are arrested or detained in front of the HPP without delay. Since there is no such requirement, a person may be detained for a certain period without being given consideration of the legality of their detention.

In addition, in the pretrial detention hearing the suspect is confronted together with the legal adviser and the public prosecutor before the judge, before the judge can decide the legality of his detention, there is no such arrangement in the Draft Penal Procedure Code. As a result, HPP may make detention decisions based on information in the minutes of the case (BAP). If the suspect expects to be heard, then he must submit his own application to the HPP.

Third, an important reform is to reaffirm the function of correctional institutions as an effort to guide prisoners. The existing penitentiary system provides space for the coaching process both inside and outside prisons, one of the goals of guidance carried out outside prisons is to prepare a prisoner to be able to adapt to society after he is truly free. In this context, there needs to be a strengthening of regulations to maximize the orientation of the development of prisoners, for example by amending Law 12/1999 on Corrections.

The three aspects of changes in penal law and the penal justice system above need to be accompanied by the development of various alternative convictions other than imprisonment. That the settlement of penal cases needs to be developed to ensure that penal law is not solely oriented towards retribution (retributive justice) but also other approaches such as the restorative justice approach. The use of restorative justice has been practiced in a limited manner for crimes committed by children and for narcotics users, but it needs to be extended to be applied to various other penal acts.

Then, on a practical level, various non-prison penal policies that have been taken need to be increased in their effectiveness. Restorative justice approach to Law No. 11 of 2012 concerning the Juvenile Penal Justice System has allowed the settlement of penal cases carried out by children to be carried out outside the court or children is spared from imprisonment. However, this mechanism needs to be developed so that it truly achieves the purpose of using the restorative justice mechanism or maximizing the use of diversion.

Conclusion

The implementation of imprisonment in Indonesia is currently carried out by correctional institutions. If viewed from the positive law in Indonesia, the prisoners in prisons have been provided protection. Guidance carried out in the correctional institution must be in accordance with the laws and regulations and uphold the rights of prisoners. Besides that, the success of the prisoners' correctional facility is inseparable from the existing facilities and infrastructure in the correctional institution. Thus the correctional facility is not merely the guidance, protection, and rehabilitation of the prisoners, but also the complete facilities and infrastructure in carrying out guidance such as educational facilities, sports, and other facilities for the prisoners' expertise.

2. The ideal concept of imprisonment that can be applied in Indonesia in the future is to develop the idea of penal individualization. The development of the idea of individualization requires dedicated and professional prison coaches as well as the attention and creativity from the level of the Ministry of Law and Human Rights. As a form of the idea of individualization, an effort emerged through the idea of a good time allowance development program as a contribution to reform of penal law in the field of penal executors as a means of individualizing sanctions and rehabilitating prisoners to reduce convict density. Reducing the period of serving a sentence by doing a good job can motivate prisoners by doing a good job to commit to being good with an award for reducing the period of serving a sentence (The Good Time Allowance model). This model is a provision for implementing imprisonment through the development program for prisoners inside and outside of prisons provided by the government, private institutions, or social institutions. Prisoners who perform their work either receive an award or reduced wages for serving a sentence provided that 2 days of work receive a reduction in serving a sentence of 1 day or a minimum reduction of serving a sentence of 1 day up to a maximum of 15 days per month. The stipulation on the length of time for imprisonment by performing a good job is to work 7 hours per day for 6 days or work 42 hours for one week. In addition, the existence of an open penitentiary as an alternative to short-term or short-term penalties can overcome excess capacity in prisons, because inmates do not have to enter prisons but are carried out in open prisons so that they can make prisoners active and productive in society.

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