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Criminal law policy of the Indonesian Criminal Code

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Abstract
Criminal law policy is a legislative policy through the formulation stage, namely the preparation of regulations, both general regulations and special criminal regulations by lawmakers in this case lawmakers together with the Government. Errors or weaknesses in legislative policy are part of strategic errors that can become obstacles in preventing and overcoming crimes at the Judicial and Execution stages. The formation of the Criminal Code politics in the future does not only deal with legal substance, legal structure. Criminal law reform is more directed at actions in the form of a series of prohibited actions, criminal/false responsibilities and punishment systems. The research method used is the juridical-normative legal writing method. The results of this study are the politics of the formation of the National Criminal Code, which refers to thoughts that maintain a balance between objective and subjective and in fact the form of political law is the unification and codification of law, the supremacy of law, national law reform, the elimination of legal dualism, increasing legal awareness and legal culture, firm, consistent, and non-discriminatory law enforcement.

Keywords: Criminal law policy, Criminal Code politics, punishment systems, supremacy of law

Introduction

The drafting of this law is intended to replace the Wetboek van Strafrecht or what is known as the Criminal Code as stipulated in Law Number 1 of 1946 concerning Criminal Law Regulations which has been amended several times.

Imprisonment is one type of punishment in the criminal law system in Indonesia, as stated in Article 10 of the Criminal Code which states that punishment consists of: Principal punishment, which includes the death penalty, imprisonment, detention and fines; and additional punishment, which includes: revocation of certain rights, confiscation of certain goods and announcement of the judge's decision. In its implementation, Imprisonment according to Article 12 paragraph (1) and (2) of the Criminal Code consists of: life imprisonment, and imprisonment for a certain period.

Imprisonment is one of the most frequently used criminal sanctions to address crime. The use of imprisonment as a means of punishing criminals began in the late 18th century, stemming from individualism and the humanitarian movement. Therefore, imprisonment has increasingly assumed a significant role, displacing the death penalty and corporal punishment, which were considered cruel [1].

Roeslan Saleh stated that imprisonment is the primary punishment among those depriving one's liberty. Imprisonment can be imposed for life or temporarily. Barda Nawawi also stated that imprisonment not only results in the deprivation of liberty but also has negative consequences for matters related to the deprivation of liberty itself [2]. These negative consequences include the deprivation of a person's normal sexual life, leading to frequent homosexual relations and masturbation among convicts.

The loss of a person's freedom also means the loss of their freedom to do business, which can have serious consequences for their family's economic well-being. Furthermore, imprisonment imposes a stigma that persists even after the person no longer commits crimes. Another frequently highlighted consequence is that the prison experience can lead to degradation or a decrease in human dignity and self-esteem [3].

Andi Hamzah also stated that imprisonment is a form of punishment involving the loss of liberty. This loss of liberty can take the form of not only imprisonment but also exile, for example, in Russia, exile to Siberia, and also exile overseas, such as the former exile of British criminals to Australia [4]. In colonial times in Indonesia, there was a system of exile based on the special rights of the governor-general, for example the exile of Hatta and Syahrir to Boven Digoel then to Neira, the exile of Soekarno to Endeh then to Bengkulu. Thus, it can be said that imprisonment today is the primary and most common form of punishment for loss of liberty. In the past, imprisonment was unknown in Indonesia (customary law); instead, punishments included exile, corporal punishment in the form of amputation or whipping, the death penalty, and fines or compensation [5].

Jaremmelink, regarding imprisonment, also stated that imprisonment is the most important form of deprivation of liberty (corporal punishment). In the Netherlands, the requirements for its imposition are even included in Article 133, paragraph 3 of the new Dutch Constitution, which stipulates that only a judge may impose a sentence (criminal) [6].

Based on the description above, in principle, imprisonment is closely related to the crime of deprivation of liberty which can give a bad label and can lower the dignity and self-esteem of humans if someone is sentenced to imprisonment.

Literature Reviewer

Imprisonment is one form of deprivation of liberty; another is confinement. Imprisonment is more severe than confinement. It is imposed on crimes committed intentionally [7]. Imprisonment is specifically intended as a punishment for crimes that, by their nature, demonstrate a bad character and evil desires. Imprisonment is imposed for

life or for a period of time, with a minimum limit of one day and a maximum limit of 20 consecutive years (Article 12 of the Criminal Code) [8].

In principle, imprisonment is closely related to the crime of deprivation of liberty which can give a bad label and can lower the dignity and self-esteem of a person if someone is sentenced to imprisonment. According to old decisions until the French legal codification made in 1670, imprisonment was not yet known, except in the sense of hostage-taking with money ransom or commutation of the death penalty before the sentence was determined to be reduced by other means. In England after the Middle Ages (approximately 1200-1400) there was a sentence of church imprisonment in a cell, and an ancient form of imprisonment in Bridwedell (mid-16th century) which was continued with the form of imprisonment for work and imprisonment for confinement [9].

In the explanation of Article 12 paragraphs (1) and (2) of the Criminal Code, a life sentence can be imposed. The public objects to this type of punishment, the objection being that with such a decision the convict has no hope of returning to society. However, often this hope can be restored through the institution of clemency, which can change the life sentence to a prison sentence for a certain period [10].

In Article 12 paragraph (2) of the Criminal Code, it is stated that the shortest prison sentence is one day and the longest is fifteen consecutive years. Furthermore, after the life imprisonment sentence was changed to a temporary prison sentence, the longest of which is fifteen years, then if the convict consistently behaves well, he can also be released again on August 17th, which is the day of the proclamation of independence.

Article 13 of the Criminal Code, divides convicts sentenced to prison into several classes. This article explains that convicts sentenced to prison are divided into four classes. The purpose of this division is to ensure that convicts who are inherently good are not influenced by the bad habits of other convicts. It is also intended to encourage convicts to behave well so they can rise to a higher level. In the first class; people sentenced to life imprisonment and people sentenced to temporary imprisonment who refuse to obey orders or who are dangerous to the safety of prison staff or fellow convicts. Convicts in this class must be separated from other convicts, but convicts in this class whose sentence is temporary imprisonment can be promoted to the second class, if there is progress in their good behavior for one year [11].

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Understanding the impact of imprisonment is not easy, because, as Johannes Andenaes said, the operation of criminal law must always be viewed within its entire cultural context. There is a mutual influence between the law and other factors that shape our attitudes and actions. In light of this "mutual influence," Wolf Middendorf argues that it is difficult to evaluate the effectiveness of general deterrence because the mechanisms of deterrence are unknown. We cannot know the true relationship between cause and effect. People may commit crimes or repeat them without any connection to the existence or imposition of laws or penalties. Furthermore, Middendorf argues that other means of social control, such as parental authority, customs, or religion, may be as powerful deterrents to crime as the fear of crime [12].

Research methods

This research, it is specific to the descriptive-analytical nature of the type of doctrinal or normative juridical research. The research is descriptive-analytical in nature which means that this paper will describe the problems that occur with a normative analysis regarding the reform of the Indonesian criminal justice system in the future (Adami Chazawi, 2010). The research approach used is the statutory and case approach. The statutory approach refers to Indonesian laws and regulations in which there are Pancasila values such as the 1945 Constitution of the Republic of Indonesia, the Law on Judicial Powers, the Law on the Prosecutor's Office. Then approach the case by looking at conditions in society regarding cases of people in conflict with the law. This research relies on secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials obtained through library research as a data collection technique, which is then analyzed using qualitative analysis techniques to get real conclusions (Fathurokhman, 2008)

The definition of law is not only from a practical perspective in society, but also from a theoretical perspective. Furthermore, this research method describes the type/typology of research, research approach, type of research data, data collection techniques, interviews with sources, data analysis techniques and research stages carried out in order to answer the problems that have been formulated. This research is a normative legal research, The method of data collection in normative legal research is carried out through library research on legal materials, including primary legal materials, secondary legal materials, tertiary legal materials, and/or non-legal materials. Searching for these legal materials can be done by reading, viewing, listening, and now, many searches are conducted via the internet.

Discussion

Penal policy, like public policy in general, must essentially be a rational policy. One measure of the rationality of penal policy can be linked to the issue of effectiveness. Thus, the measure of rationality is based on the success or effectiveness of the punishment in achieving its goals. Determining the justification for imprisonment from the perspective of its effectiveness is a pragmatic approach that should be considered in every policy step. However, the question is, to what extent can the effectiveness of imprisonment be measured and proven to justify the imposition of imprisonment in legislation?

To discuss this problem, the following is a review of the effectiveness of imprisonment from 2 (two) main aspects of the objectives of punishment, namely from the aspect of protecting society and from the aspect of improving the perpetrator. It should be noted first that what is meant by the aspect of "community protection" includes the objectives of: preventing, reducing or controlling criminal acts and restoring balance in society (including, among other things, resolving conflicts, bringing a sense of security, repairing

losses/damage, eliminating stains, reinforcing the values that live in society). Meanwhile, what is meant by the aspect of "improving the perpetrator" includes various objectives, including rehabilitating and reintegrating the perpetrator into society and protecting him from arbitrary treatment outside the law.

From the perspective of protecting/serving the public interest, a punishment is considered effective if it prevents or reduces crime to the greatest extent possible. Therefore, the criterion of effectiveness is determined by the extent to which crime frequency can be reduced. In other words, the criterion lies in the extent to which the "general deterrent" effect of imprisonment deters the general public from committing crimes. Based on previous research, it appears that imprisonment is the most common type of punishment imposed by judges compared to other types of punishment. However, statistical data shows that crime continues to increase. Therefore, there appears to be no deterrent effect, or at least no correlation, between the number of imprisonment sentences imposed and the decline in crime. Does this mean that imprisonment is an ineffective form of punishment?

It's too simplistic to answer the above question with "yes," as there are actually too many factors that contribute to the rise and fall of crime. In other words, if the rise and fall of crime frequency is used as a measure to determine the effectiveness of prison sentences, then this oversimplifies the relationship between the rise and fall of crime and the effectiveness of criminal sanctions. Research data shows that, on the one hand, judges impose the most prison sentences, while on the other, crime continues to increase.

That is all that can be known for certain, but the actual effect of prison sentences on the rise and fall of crime cannot be known for certain. In fact, according to criminologists, the variety of punishments has no visible or demonstrable effect on the emergence or spread of crime. Schultz, for example, stated that the rise and fall of crime in a country is not related to changes in its laws or trends in court decisions, but is related to the operation or functioning of major cultural changes in the life of society [13]. Likewise, Rubin states that punishment, whatever its nature, that is, whether it is intended to punish or to reform, has little or no influence on the problem of crime.

The impact of criminal law on the wider community is very difficult to measure. This impact (meaning the impact of criminal law in the sense of "general prevention") consists of a number of different and closely interrelated forms of action and reaction, which are called by various names, such as deterrence, general prevention, reinforcement of moral values, revival of shaken feelings of solidarity, reaffirmation of the public feeling of security, reduction or alleviation of fears, release of aggressive tensions, and so on.

The Effectiveness of Imprisonment in Terms of the Aspect of Imprisonment Improvement From the aspect of imprisonment improvement, the measure of effectiveness lies in the "special prevention" aspect of the sentence. Therefore, the measure lies in the issue of how far the sentence (imprisonment) has an influence on the perpetrator/convict. There are 2 (two) aspects of the influence of the sentence on the convict, namely the initial prevention aspect ("deterrent aspect") and the improvement aspect ("reformative aspect").

The first aspect ("deterrent aspect"), is usually measured using the recidivism indicator. Based on this indicator, R.M. Jackson stated that a punishment is effective if the offender is not punished again within a certain period. Furthermore, it is emphasized that effectiveness is a measurement of the comparison between the number of offenders who are re-convicted and those who are not re-convicted. Research using this recidivism indicator is difficult to conduct in Indonesia because the existing data is usually very vague, namely only stating the number of recidivists at the end of each month or the end of the year. From the data presented, it cannot be known with certainty: the type and severity of the previous punishment imposed, the type of crime that was previously committed and which was then repeated and how long the repetition period is. By only knowing the number, it cannot be known the level of effectiveness of imprisonment and its comparison with other types of punishment.

Measuring the comparative effectiveness of criminal penalties cannot be done simply by knowing the number of recidivists. It is also necessary to know the number of people who have been convicted for the first time (first offenders) with each type of sentence they received and how many of them do not repeat the offense. It is also necessary to know how long the grace period for repeat offenses since the previous sentencing decision. With such incomplete data, which is indeed difficult to obtain in practice, it is clearly impossible to know how far the effectiveness of imprisonment is based on the recidivism indicator.

The second aspect, the reformative aspect, relates to the issue of changing the convict's attitude. The extent to which imprisonment can change a convict's attitude remains an unsatisfactory question. This is due to several unresolved methodological issues and a lack of consensus, particularly regarding: Considering the above description, it can be emphasized that the results of research related to the problem of the effectiveness of criminal sanctions so far cannot be used as a benchmark for justifying the establishment of imprisonment in legislation as a rational means of dealing with crime. The problem of effectiveness is actually related to the problem of the functioning/operation of criminal sanctions.

Furthermore, based on observations of several research findings and the opinions of scholars, the effectiveness of punishment is more specific, meaning it is closely related to the characteristics of the particular crime and the perpetrator. Therefore, it may be more appropriate to consider it at the criminal application stage (the applicative policy stage) rather than the in abstracto criminal determination stage (the formulative policy stage), which prefers general principles.

Criminal law reform is based on principles of criminal law that are appropriate or consistent with the structure of the Indonesian national legal system. Therefore, it is necessary to change the mindset of the Dutch Criminal Code (Wetboek van Strafrechtj). The Dutch Criminal Code is generally based on classical school thinking that developed in the 18th century, which focuses criminal law on criminal acts or offenses.

In this regard, the neo-classical school of thought is currently developing, maintaining a balance between objective factors (actions/external) and subjective factors (people/inner/inner attitudes). This school focuses its attention not only on the actions or crimes that occur, but also on the individual aspects of the perpetrator. Another fundamental thought that influences the reform of criminal

law is the development of the science of crime victims (victimology). This science places great emphasis on the fair treatment of victims of crime and abuse of power.

Regarding criminal penalties, it is important to note that the purpose of criminal penalties is to prevent criminal acts by enforcing legal norms; to socialize perpetrators of criminal acts through coaching; to resolve conflicts caused by criminal acts, restore balance, and bring a sense of peace to society; and to absolve perpetrators of guilt. To achieve this, the types of penalties that need to be regulated include principal penalties, the death penalty, and additional penalties.

The purpose of punishment is to prevent the commission of criminal acts by enforcing legal norms for the protection and care of society, to socialize convicts by providing guidance and mentoring so that they become good and useful people, to resolve conflicts caused by criminal acts, to restore balance, and to bring a sense of security and peace in society, and to foster a sense of regret and free the convict from guilt. “Criminal law contains three issues concerning, prohibited conduct, prohibiting, and criminal. Based on such thoughts, in Chapter II there is a separate chapter on "Criminal Acts and Criminal Accountability" (Chapter II) separated from the Chapter on "Criminal, Action and Criminal Act", Chapter III is based on the systematic division between "Criminal Acts and Criminal Accountability ", In Chapter II there are separate chapters on" criminal acts "with chapters of error", as well as separate chapters on "justification" and "excuses of forgiveness”.

The politics of the establishment of the National Criminal Code refers to the Neo- Classical School thinking that maintains a balance between objective factors (Actus Reus) and Subjective factors (person/soul/mind attitude/Mens rea), so that the focus of attention is not only on the crime in the form of a series of actions that occur, but also on the individual aspects of the perpetrators of criminal acts, as well as against victims of crime (victimology), thus affecting the formulation of three criminal law issues namely the formulation of the anticorruption law, criminal liability or misconduct and sanctions in a criminal punishment system and actions. Some of the main issues that to date require review are:

a. The application of the legality principle set forth in Article 2 of the Criminal Code Draft which recognizes the living law in society. In the course of the debate, some argue that it is necessary to compile the customary law and living laws of that society so that there are boundaries that provide legal certainty, which is also the essence of the legality principle;
b. Reorientation of the criminal responsibility system that is oriented to the perpetrator. He also recognizes new things such as misconduct and crime preparations, criminal acts and the purpose of crime;
c. Changes to criminal and criminal punishment systems with single and alternative formulation. In this case the recognition of *the double track system* in the punishment system, namely the subject of criminal law may be subject to additional criminal, which is adapted to the development of criminal law regarding punishment system or punishment against certain offender;
d. The existence of new types of criminal punishment systems such as criminal supervision and social work as well as additional criminal adjustments that have been developed in other legislation such as the payment of indemnity and the fulfillment of customary obligations that are still the pros and cons;
e. Got input related to the development of criminal acts or conventional crime that is currently regulated in the Criminal Code and criminal acts that developed outside the Criminal Code that need to get a response and the direction of criminal law policy

Based on the opinion of the criminal law expert, then in the draft National Criminal Draft only recognize two books are book I on General Provision and second book about Criminal Act. So from Politics of Law, Legal Policy, Politic of Legislation, Politic of legal Products, Politic of law Development, Politic of law enforcement, Politic of Jurispridence, there are some changes in the National Criminal Code is aimed at a single mission that implies the "decolonization" of the Criminal Code in the form of "recodification", but later in the era of national and international development the second mission is the mission of "democratization of criminal law" which among others is marked by the entry of criminal acts against Human Rights, and the abolition of a crime of obliteration of hostility or hatred which constitutes a formal criminal act and re-formulated as a criminal act of contempt which is a material offense. The third mission is the mission of "consolidation of criminal law" because since the independence of criminal law legislation has experienced rapid growth both inside and outside the Criminal Code with various peculiarities, so it needs to be reorganized within the framework of Principles of Criminal Law set forth in Book I of *Criminal Code*. Furthermore, the fourth mission is "adaptation and harmonization" to various legal developments that occur both as a result of developments in the field of criminal law science as well as the development of values, standards and norms recognized by civilized nations in the international world.

Actually, the form of Political law is Unification is the unification of the law that applies nationally and the codification of law is the legal bookkeeping in the form of legal writing into a Book of Law, Supremacy of law is an effort to provide guarantee of the realization of justice by upholding the principle of equality before the law, Renewal national law is an attempt to review and reform (reorientation and reform of Criminal law).

Conclusion

The policy of forming the National Criminal Code refers to the thinking of the Neoclassical School which maintains a balance between objective and subjective, so that attention is not only on crimes in the form of actions that occur, but also on the individual aspects of the perpetrator of the crime, as well as the victim of the crime thus influencing the formulation of three legal issues, namely the formulation of unlawful acts, responsibility or error, and in the system in the form of criminal penalties.

In reality, the main objective of law is Justice and Legal Certainty, so to realize these legal objectives, the Formation of the National Criminal Code Policy needs to be immediately updated so that there is no vacuum in legal norms, unclear legal norms, and conflicts in legal norms.

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