

Punishment on Criminal Law Reform in Indonesia

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ABSTRACT

The development of criminal punishment in today's world to experience dissatisfaction and frustration against the criminalization of existing mechanisms, because it felt unable to satisfy the justice and the objectives to be achieved, preventing and combating crime. The purpose of punishment in practice can never be achieved, due to the law enforcement agencies are always turmoil between justice and legal certainty and also benefit law never met at the level of an ideal, so that criminal prosecution is only a reflection of the values and as an excuse to meet the desires of vengeance alone.

Keywords: *concept, sanction, criminal law*

1. INTRODUCTION

Normatively the renewal of criminal law (*penal reform*) in Indonesia began from the beginning of the founding of the Republic of Indonesia which was proclaimed on August 17, 1945. Article II of the Transitional Rules of the 1945 Constitution stipulates that: "all State bodies and existing regulations still apply immediately, as long as nothing new has been done according to this constitution (1945 Constitution)". R. Iwa Kusuma Sumantri [1] states that: "With the entry into force of the transitional regulation, and coupled.

with the non-implementation of paragraph 1 of the 1945 Constitution, namely the rule requiring the formation and convening of the People's Consultative Assembly within 1 year, the Republic of Indonesia will remain in a revolutionary period. The armed forces are basically still under the influence of regulations originating from the Dutch colonialism, both in the legal field of State Administration and State Administration, even today the Indonesian people are still under the influence of regulations originating from the Dutch colonialism.

As part of criminal law policy, the renewal of criminal law is essentially aimed at making criminal law better in accordance with the values that exist in society. In the Indonesian context, the renewal of criminal law is carried out so that the applicable criminal law is in accordance with the values of Indonesian society.[2] The meaning contained in legal reform, at least has the meaning of *legal reform* and *law reform*. In simple terms, *legal reform* is the law that gets change, and puts forward the flow of intellectuals who are more knowledgeable in law. Meanwhile, *law reform* is more about the *extra legal* values entered into it. Efforts and policies to make good criminal law regulations in essence cannot be separated from crime prevention purposes. Thus, criminal law policy or politics is an important part of criminal policy. Crime prevention efforts with criminal law are in

essence also part of the law enforcement policy. The making of laws or criminal law is essentially also part of the effort to protect the community. Viewed in a broad sense, criminal law policies can cover the scope of policies in the field of criminal law. Various parties from the legal practitioners, academics, and government, through the Draft Criminal Code Bill, one of the triggers for changes in criminal law is the advancement of information technology regarding all human activities that takes place quickly, transparently, and is *borderless*. [3] Therefore, the renewal of criminal law as part of criminal law policy (*penal policy*). What is meant by *Penal Policy* [4] is;

"A science as well as art that ultimately has a practical goal to enable legal regulations to be better formulated and to provide guidance not only to the legislators, but also to the courts that apply the laws and also to the organizers or executors of court decisions"

Essentially the renewal of criminal law is part of a policy or "*policy*" (ie part of law politics or law enforcement, criminal law politics, criminal politics, and social politics). Said to be a policy because the renewal of criminal law is intended as a renewal of a legal *substance* (*Legal substance*) in a series of more *effective* law enforcement. In addition, the intended policy is to eradicate or overcome crime in the context of protecting the community. Renewal of criminal law which is part of criminal law policy (*penal policy*) is followed by an approach outside of criminal law (*non-poenal policy*). Policies in handling crime through "*non-penal*" channels are more of a precautionary measure before the occurrence of crime. The main goal is to deal with the factors that are conducive to the occurrence of crime which is centered on social problems or conditions which can directly or indirectly cause crime. These *non-penal* efforts have a strategic position and play a key role which must be intensified and made effective.

Herbert L. Packer in his book "The Limit of the Criminal Sanction" [5] said :

1. *The criminal sanction is indispensable; we could not, now or in the foreseeable future, get along without it;*
2. *The criminal sanction is the best available device are have for dealing with gross and immediate harm and threats of harm;*
3. *The criminal sanction is at once prime guarantor; used indiscriminately and coercively, it is threatener.*

2. DEFINING CRIMINAL LAW

Criminal law is a nation's moral code. With the existence of a nation's moral code, we can see what exactly is prohibited, not permissible and which must be done in a society or a State. What is good and what is not good according to the view of a nation can be reflected in the criminal law. Exactly what Herman Manheim said, that criminal law is the most trusted reflection of a nation's civilization. Van Bemmelen points out that criminal law is the same as other parts of the law, because all parts of the law determine regulations to enforce norms recognized by law. However, in one aspect, criminal law deviates from other parts of the law, namely in the criminal law, it is discussed about the deliberate addition of suffering in the form of a criminal, even though the criminal has a function other than adding to suffering. The main purpose of all parts of the law is to maintain order, calmness, prosperity, and peace in society without deliberately causing suffering.[6]

Criminalization is not a pleasant thing for someone who is convicted. Criminalization also costs a relatively large amount, for example in the costs of litigation, prisons, parole, consultation centers that must be attended, and collection of fines. According to the utilitarian theory put forward by Bentham, punishment is a crime (mischief) which can only be justified if the crime is able to prevent a greater crime than the punishment for perpetrators of crime. At the end of the eighteenth century, the practice of criminal law was still influenced by the idea of retaliation which together with frightening efforts had been seen as the goal of punishment. Since classical times the goal of punishment has been a concern. Von Bar in terms of punishment, argues that law must obtain the moral character desired by morals, but with civilization becoming more advanced, its forms must become more widespread. As the foundation of the retributive school, Immanuel Kant always stems from the imposition of criminal or criminal acts as retaliation for the perpetrators. Kant's thought was subsequently followed by other experts in various theories of retaliation. Criminal is a demand for justice. Criminal as a logical necessity as a consequence of crime, because crime is a denial of law and state order which is a manifestation of moral ideals. So as a general requirement, crime can be convicted is a criminal offense of human behavior against the law as determined in the offense formula.[6] In criminal law, debates about punishment and the goals to be achieved in criminal law ideally are continuously explored to continue to seek sharpness. The

sharpness both politically, sociologically, and philosophically, so as to aim to achieve the foundation for the application of sanctions from a variety of fairer criminal alternatives, to achieve social justice for the people of Indonesia, which is based on God Almighty in the perspective of Pancasila. The use of Pancasila as an Indonesian perspective in punishment, starts from the assumption that the precepts of Pancasila provide an opportunity to formulate what is right and good for humans universally.[7]

Pancasila formulates the principle or abstract nature of Indonesian human life which is based on the three relations of human nature as completely as possible, namely the relationship between man and matter. The first precept as an ontological framework is that people believe in the power of God Almighty, so that they have a handle to determine good and evil. The second precept, provides a normative framework because it contains the necessity to act justly and civilized. The third precepts, as an operational framework, are outlining the boundaries of individual interests, the interests of the State and nation. The fourth precepts, about state life, namely self-control over law, constitution and democracy. The fifth precepts, give the direction of each individual to uphold justice, with others and all members of the community. thus the principles of the Pancasila precepts are interrelated with one another directed at a balanced arrangement in the matter of punishment in the perspective of the Pancasila.[7]

The objective of criminalization of Indonesian society which is integralistic in the five precepts in Pancasila is an internal and inner balance in realizing human relations and settlement of punishment which is humane, godly, national, humane, democratic and just in accordance with the fair sense of Indonesian society which is spread in the nuances of Indonesian society characterized by the nuances of Indonesian society characterized by religious magic for the balance of life. Therefore looking for a philosophy of punishment is the philosophy of Pancasila. The development of the policy idea of developing a national legal system based on Pancasila as the values of the national life aspired. Means that it is motivated by the basic idea of Pancasila which is contained in the balance of religious moral values (divinity), humanity (humanistic), nationality, democracy, and social justice. The development of conviction gave birth to the thought or principle of punishment as a guiding principle, making the convict no longer as an object but as a subject, so that he saw the convict as a whole person.[7] As in the philosophy of punishment that can be measured according to the sense of justice of the Indonesian people which continues to take place until now to realize the codification of national criminal law based on the philosophy that lives in Indonesian society which views the sense of high through the principles of social justice for all Indonesian people.

The existence of criminal sanctions (criminal sanction) is an absolute thing, both in the present and the future. Criminal sanctions are the best means for dealing

with immediate threats and serious consequences of a crime. These tools become less useful if the threats and consequences are reduced and will be ineffective if used to enforce morality (enforce morality) compared with behavior that is generally seen as detrimental. The revolution in a law enforcement process is a reaction to the specific threat inherent in criminal sanctions against personal values and independence / freedom and towards a demand to maintain a proper distance between individuals and authorities.[8]

Demands will be achieved through a reform in the law enforcement process will only be useful if it is equipped with the same attention to objectives (ends) to be achieved through the means (means) the (criminal sanctions). Between goals and means must interact with each other, not just simple interactions but the means must be subordinated to the goals to be achieved. Criminal sanctions are the main guarantor / protector (prime guarantor) and also a major threat (prime threatener) against human independence. Humane and impartial use is a guarantor / protector and the use of discriminatory and coercive nature is a threat. Even though the guarantor / protective function and the threats contained in criminal sanctions cannot be completely resolved, they can begin to try it.[8]

3. CONCLUSION

The basic philosophy and concept of the goal of punishment in Indonesia, when examined more deeply, the philosophy of punishment has the basic ideas of criminality which clarify the understanding of the nature of criminal law as the responsibility of legal subjects for criminal acts and public authority to the state based on the law to carry out punishment. Penalty theories can be divided into several groups, namely: *First*, Retributive Theory or the theory of retaliation, which has the principal teachings of the nature of retaliation as the basis for repaying evil and misery commensurate with the misery committed by criminals. *Second*, deterrence theory or relative theory, has a teaching principle that is based on a criminal basis, namely a tool to enforce order (law) in society. The purpose of punishment is directed at efforts to prevent future crimes that have been committed (*prevention*). The nature of prevention consists of two types, namely: general prevention (*general prevention*), and special prevention (*special prevention*). *Third*, treatment theory, which gives the meaning of punishment as providing *treatment* and *rehabilitation* for the perpetrators of crime as a substitute for punishment. This flow is often regarded as a *forward-looking* flow, which means approaching the perpetrators positively means that they influence the perpetrators towards a more positive direction as long as possible. *Fourth*, the theory of social defense or social protection has an understanding of the main purpose of law is to integrate it into social order and not to punish its maker.

The renewal of the Indonesian criminal law as outlined in the Draft Penal Code has long been proposed regarding criminal, criminal, and action states that criminal law aims to: first, prevent the commission of criminal acts by enforcing legal norms in order to protect the public. Second, socializing the convicted person by providing coaching so that he becomes a good and useful person. Third, resolve conflicts caused by crime, restore balance, and bring a sense of peace in society. Fourth, freeing the guilty guilty person. The formulation of the four objectives of punishment constitutes a view of community protection (*social defense*), a view of rehabilitation and resocialization of the convicted person. This view is reinforced again by mentioning that punishment is not intended to narrate and demean. Criminal objectives that adhere to the neo-classical flow with several regulated characteristics, namely the formulation of minimum and maximum crimes, recognizing principles or circumstances that alleviate crimes, basing objective conditions and considering the need for individual coaching of criminal offenders. The purpose of punishment is based on the theory of relative punishment which has the aim of achieving benefits to protect the community and towards the welfare of the community. The purpose of punishment is not retaliation where the sanction is emphasized on its purpose, namely to prevent people from committing a crime. The purpose of punishment is to resolve conflicts caused by criminal acts, restore balance, and bring a sense of peace in society. Thus, the aim of punishment is to be *forward-looking*.

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