

A Juridical Analysis the Act Draft Correctional in Fostering Inmates in Future Indonesian Correctional Institution

Nur Rochaeti*

University of Diponegoro Semarang
etikfh@live.undip.ac.id

Desy Maryani

University of Dehansen Bengkulu.

Abstract. Efforts to overcome crimes using criminal sanctions are considered the most appropriate ways to minimize crimes, although the formal processes have limitations that an idea to make efforts and provide other facilities in overcoming crimes are greatly necessary. The function of prisons may cause the dehumanization of criminal offenders and eventually result in a loss for those spending a long time in correctional institutions (prisons), in the form of inability to productively continue life in the society. Act No. 12 of 1995 on correctional and development in correctional institutions was implemented in integrated manners as the development efforts to well return the inmates back and then provide benefits to the society. The arising problems are related to how the recent policies on correctional and analysis of the bills in developing inmates in future Indonesian correctional institutions. The research method approach used is a normative judicial approach to analyze the policies on the recent correctional institutions and bills. The research result shows that the recent correctional policies have not yet accommodated the fulfillment of inmates' rights in correctional institutions. Furthermore, the analysis on correctional bills in developing the inmates has given some rights to the inmates – yet not entirely, related to the fulfillment of rights for vulnerable groups, including elderly, transgender, children, disability, sex, health, and educational rights, as well as no minimal sentencing limitation that the development was made in the correctional institutions.

Keywords: *correctional, fostering inmates, correctional institution*

INTRODUCTION

The term correctional was first suggested by the late Mr. Sahardjo, S.H. (Minister of Justice at that time) on 5 July 1963 in his speech when receiving the title of *Doctor Honoris Causa* awarded by Universitas Indonesia. Correctional was considered as the objective of imprisonment punishment. The correctional system was the idea

of Dr. Sahardjo, related to “*Treatment of Offenders*”. The correctional conception was not merely formulated in response to the objective of imprisonment sentence but a development system, a methodology in the field of “*multilateral-oriented treatment of offenders*”.

The inmates' guidance and development principles were formulated in the correctional system, known as ten correctional principles: a. Protect and give the inmates life skills that they may play their roles in the society as good citizens who provide benefits for others; b. Criminal punishment is not the state's retributive actions; c. Give development not persecution that they may regret what they have done before; d. The state has no right to make them worse or more evil than before subjected to punitive actions; e. when losing their freedom to move, the inmates should be introduced to and not be isolated from the society; f. The jobs given to inmates may not only function for killing their time, and those may not also give to fulfill the needs of state offices or interests only in a certain time. The jobs given should be the ones found in society and support the efforts to improve production; g. The guidance and education given to inmates should be based on the Indonesian Five Basic Principles (known as *Pancasila*); h. Inmates as the lost persons are humans and they have to be well treated as humans; i. Inmates subjected to punitive actions who lost their freedom is considered as one experienced affliction; j. provided and encouraged with facilities supporting the rehabilitative, corrective, and educative functions in the correctional systems.

The correctional system is a process to develop inmates based on Indonesian five basic principles (*Pancasila*) and consider inmates as God's creatures, individuals, and members of society. Mental, physical, personality and social developments are held for the inmates [1]. Since time long punishments were based on the various theories of punishment, whose object ranged from a deterrent, reformatory, preventive, and retributive. Whichever may be the punishment the prime purpose of giving justice to the society was important. The focus was always to punish the criminal [2].

Article 1 Point 3, The Act of the Republic of Indonesia Number 12 the Year 1995 on Correctional, mentions that correctional institution is a place to develop the correctional facility's inmates. The word "correctional institution" first appeared in 1963, intended to replace the term "jail" functioning as a facility to develop inmates [3].

The development in a correctional institution is one realization of the confinement sanctions subjected to the convicted persons, as a part of criminal justice system processes as the realization of sanctions subjected to the inmates. According to Muladi, the sentencing purpose is to improve the individual, and social damages resulted from criminal actions. A set of sentencing purposes that should be fulfilled with the objectives as the main emphasis should be casuistic. The intended set of sentencing purposes consists of; a. Prevention (General and Particular); b. Public Protection; c. Public Solidarity Maintenance; d. Rewarding/Balancing.

Imprisonment in the form of self-isolation in the jail walls, in fact, experiences changes along with the civilization development of a nation. Thus, the criminal sanctions by developing inmates in the Indonesian correctional institutions have experienced significant changes, especially related to the treatment methods to the inmates.

The problems are related to the policies on the recent correctional facilities and analysis of bills to develop inmates' in the future Indonesian correctional institutions.

METHOD

The method approach used in this research is a normative judicial approach and comparative method to figure out the management of other countries related to the development of inmates in the correctional institutions (prisons).

RESULT & DISCUSSION

Sentencing is not intended to create affliction as a retributive form, no deterrent effects to suffer the convicted persons, and without assuming the convicted persons as those with poor socialization. The correctional facility is under the social reintegration philosophy assuming that crimes are conflicts happening between the convicted persons and the society. Thus, the sentencing is intended to settle conflicts or reunite the convicted persons with society (reintegration).

The new concept changes in guiding and developing inmates explained in the following table[4], [5]:

Table 1. Correctional Facility Concept changes

No	Component	Imprisonment	Correctional Facility	New Correctional Facility
1	Philosophy	Liberal	Indonesian Five Basic Principles (Pancasila)	Indonesian Five Basic Principles (Pancasila)
2	Legal Bases	<i>Gesticen Reglemen</i>	<i>Gesticten Reglemen</i> with its changes	Correctional Law
3	Objective	Deterrent Effect	Development	Improving Inmates' Awareness
4	System Approach	<i>Security Approach</i>	<i>Security Approach</i>	<i>Consciousness Approach</i>
5	Classification	<i>Maximum Security</i>	<i>Maximum Security, Medium Security, Minimum Security</i>	<i>High Consciousness, Half Consciousness, Low Consciousness</i>
6	Approach	<i>Maximum Security</i>	<i>Maximum Security, Medium Security, Minimum Security</i>	<i>High Consciousness, Half Consciousness, Low Consciousness</i>
7	Treatment for Inmates	Object	Subject	Subject/Object
8	Development Orientation	<i>Top-down Approach</i>	<i>Top-down Approach</i>	<i>Bottom-up Approach</i>
9	Development Character	Exploitation	Work training	Independent/Confident
10	Remission	Awarded (1017-1949)	Rights (1950-1986)	Rights and Obligations (1987-Now)
11	Building Form	Jail	Jail, building not yet reflecting correctional institutions	Needs a special designed plan
12	Inmate	Neglected/not developed	guided/developed	Introduced to him/herself, motivated to develop him/herself
13	Family	Not given opportunities, neglected roles	Given opportunities to also develop the inmates	Full opportunity to each development stage.
14	Advisor/Government	Directed to give deterrent effects that the inmates will not do any crime in the future as they will be put in jail if repeating to do criminal crimes.	Directing inmates not to recommit criminal actions after discharging from the correctional institutions	Paragon, as long as the correctional facility officers cannot be the paragons, they should resign. The correctional facility officers should be able to motivate inmates to think positively and constructively.

The development functions and duties of correctional institutions to the inmates should be implemented in integrated manners to make those who have completed their imprisonment period become good citizens. The development implemented in the correctional institutions should be based on a principle held by the correctional advisors to reach the targeted objectives from the development itself. The purpose of a correctional system is to recover the life relationship between inmates and society that the correctional institutions have implemented a developing process for inmates to change and have a better life.

The psychological impacts include a. loss of personality, b. loss of security, c. loss of personal communication, d. loss of goods and services, f. loss of heterosexuality, g. loss of Prestige, h. loss of belief, i. loss of creativity [6].

In the correctional draft act, the development made for inmates should be intended to repair the cracked relationship. The inmates have extensive opportunities to socialize with society; and conversely, the society should actively participate and support the development of inmates as the realization of social responsibility. According to Clement Bitola's [7], keeping those violating the

law existing in society is something important since jail basically may cause dehumanization. Social reintegration is based on the premise that crimes are only the disorganization symptoms occurring in society. Society should also responsible for the efforts made to develop inmates. The development implementation may give wider room for the society and inmates to interact with each other.

The National Advisory Commission on Criminal Justice Standards and Goals support the social re-integration model. This condition explains that maintaining those violating the laws in the society is something important since jail or correctional institution results in dehumanization [8].

"Prison tends to dehumanize people ... Their weaknesses are made worse, and their capacity for responsibility and self-government is eroded by regimentation. Add to these facts the physical and mental conditions ignore the rights of offenders, and the riots of the past decade are hard to be wondered at. Safety for society may be achieved for a limited time if offenders are kept out of circulation, but no real public protection is provided if confinement serves mainly to prepare men for more and more skilled criminality."

The fulfillment of inmates' rights is classified into vulnerable groups: adult recidivists and adult non-recidivists, and inmates with severe criminal conduct and mild criminal conduct, adults, teens, children, disability, elderly, as well as transgender. The efforts of making protection, improvement, enforcement, and fulfillment of human rights have become the main principles in all correctional system implementations. Thus, the principles may be contextual through the correctional system organization principles. The principles covering the correctional system organization are as follows: a. non-discrimination, b. protection for vulnerable groups, c. the best interest for children, and d. legal certainty, accountability.

The involvement and participation of the society must develop the inmates in the correctional institutions. For those fulfilling the requirements to be involved in public activities, it can be shown with the people's acceptance in their environment. In the development based on society, it is necessary to approach with organizations or institutions during this time involved in the development in the correctional institutions that the efforts to optimize the role of society may well succeed. The cooperation and participation of society in providing job opportunities to the freed inmates will surely help the recovery or restoration process and as one effort to minimize the criminal activities as the human basic economic needs are well fulfilled.

The management in several countries, such as France, Portugal, Vanuatu, Queensland, New South

Wales, and New Zealand, the state law system has recognized a system called semi detention or periodic detention. Weekend detention is an alternative or sanction type subjected to the inmates when the judge thinks that there is no better decision to make that the inmates are only imprisoned on Saturdays and Sundays. Thus, they may still work on weekdays like the common people whose several rights are lost that the previously mentioned ideas may practically be re-achieved (Constitutional Court Decision Number 022/PUU-III/2005:31). Based on the sentencing system in France (Sub-section 1-Semi detention, ARTICLE 132-25) it is stated that;

"Where a trial court imposes a custodial sentence of one-year imprisonment or less, it may decide the sentence is to be served in semi-detention where the convicted person establishes that he has a trade or profession, or his assiduous participation in a course of education or professional training, or apprenticeship or temporary employment with a view to social rehabilitation, or his essential participation in the life of his family, or the necessity to undergo medical treatment."

In the above formulation, it is shown that the legal system used by France mentions that human rights are highly appreciated. For less than one-year imprisonment, the convicted individual may still do trading and work based on his/her profession, or participate in an education or professional training, or internship intended for social rehabilitation, or important participation in his/her family life, or an obligation to do a medical treatment. Those are committed under the supervision of correctional officers, who previously make sure that the inmate does not run away, that there must be a guarantee either in the form of securities or warranty for his/her family.

In New Zealand, the system is called periodic detention well known since 1963. This system is not far different from that known in Portugal known as weekend detention. As a nation of laws, the appreciation of the inmates' human rights should always be greatly upheld and protected as it is although the perpetrator has committed criminal conduct and made mistakes as mentioned in the offense formulation available in the applicable regulations of law.

Slovenia has succeeded in maintaining the lowest detention number in the world. Not enough facilities to completely hold the recent jail population that the jail density has become a serious problem. Slovenia officially became the nation of abolitionists in 1989 after the constitution was changed to prohibit death sentence although the death sentence has effectively been abolished with the last execution made in 1957. As a new democratic country based on the constitution (1991)

established that human life is inviolable and the death sentence was prohibited. (Flander and Bučar Ručman 2015; Flander and Meško 2010; Meško and Jere 2012; Šelih 2012).

Lesbian, Gay, Bisexual, and Transgender (LGBT) prisoners, The significant vulnerability of LGBT persons in the criminal justice system in many counties calls for the formulation of policies to address the needs of this group and the development and implementation of strategies that ensure that they are not discriminated against in their access to justice and victimized in the criminal justice system, due to their sexual orientation or gender identity [9].

To ensure that persons with disabilities can access justice on an equal basis with others, relevant legislation and procedures are needed, so those who are charged or convicted of a crime are not discriminated against in the criminal justice system. Prison sentences should be used as a last resort in all cases. This principle should be fundamental in deciding whether to imprison offenders with disabilities, and especially those who have committed non-violent offenses, taking into account the level of care they are likely to receive in prisons [9].

CONCLUSION

The research result shows that the recent correctional policies have not yet completely accommodated the fulfillment of the inmates' rights in correctional institutions. Furthermore, the analysis on the correctional bills in developing the inmates has given several inmates' rights yet not entirely, related to the fulfillment of rights for the vulnerable groups, such as elderly, transgender, children, and disabilities, sex, health, and educational rights, well as no minimal limitation of sentences that the development was made in the correctional institutions. Several countries give the sentencing system in institutions functioning as confinement under one year, the convicted person may still have the rights to trade or do the work based on his/her profession or participate in an education or professional training for social rehabilitation or important participation in his/her family life.

REFERENCES

- [1] H. R. Soegondo, *Sistem Pembinaan Narapidana Di tengah Overload Papas Indonesia [Development System for Inmates in the Middle of Overload Papas in Indonesia]*. Yogyakarta: Insania Cita Press, 2006.
- [2] S. ; J. D. Shelke, "Theories of Punishment: Changing Trends in Penology," *Int. J. Eng. Adv. Technol.*, vol. 8, no. 6S3, p. 1299, 2019.
- [3] D. Samosir, *Sekelumit Tentang Penologi & Pemasyarakatan [A Brief on Phenology and Correctional Facility]*. Bandung: Nuansa Aulia, 2012.
- [4] N. S. P. Jaya, *Kapita Salekta Hukum Pidana [Capita Selecta of Criminal Law]*. Semarang: UNDIP Press, 2005.
- [5] I. Cahyaningtyas, "Rekonstruksi Model Pembinaan Anak Didik Di Pembinaan Khusus Anak Berbasis Kepentingan Terbaik Bagi Anak [Reconstruction of Inmate Development Model in Children Special Development based on the Best Interest for Children]," Universitas Diponegoro, 2015.
- [6] H. C.I. Harsono, *Sistem Baru Pembinaan Narapidana [New System to Develop Inmates]*. Bandung: Djambatan, 1995.
- [7] C. Bartolas, *Correctional Treatment; Theory and Practice*. New Jersey: Prentice-Hall, 1985.
- [8] National Advisory Commission on Criminal Justice Standards and Goals, *A National Strategy to Reduce Crime, Washington*. Washington DC: GPO, 1973.
- [9] United Nations, *Handbook on Prisoners with Special Needs, Criminal Justice Handbook Series, New York, Sales No. E.09.IV.4*. New York: United Nations, 2009.