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Review of Criteria for Commendable Behavior and Expectations for Improvement During the Probationary Period

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Abstract: *Indonesia is one of the countries that still maintains death penalty, as stipulated in article 10 of the old Criminal Code. Death penalty is one of the main punishments as well as the heaviest punishment for criminal offenders. Meanwhile, based on its renewal based on Law No.1 of 2023 concerning the new Criminal Code. Death penalty is no longer included in the category of main punishment, but a special punishment that is always threatened alternatively and imposed with a probation period of 10 (ten) years. Article 100 of the new Criminal Code is one of the articles born from the reformation of the new Criminal Code which has become pros and cons in the community. The reason is that this provision states that the judge can impose death penalty with a probation period of 10 (ten) years by taking into account the provisions of commendable behavior and hope for improvement. If during the probation period the convict shows commendable behavior, then the death penalty can be changed into life imprisonment. On the other hand, if during the probation period the convict does not show commendable behavior and hope for reparation, then death penalty can be imposed by order of the attorney general based on presidential decree by considering the decision of the Supreme Court. Thus, the question arises as to what the criteria for commendable behavior and hope for improvement are. As a basis for the judge's consideration in deciding whether or not the convict deserves a change in sentence.*

Keyword: *Criteria for Praiseworthy Behavior, Hope for Improvement*

INTRODUCTION

Indonesia is one of the countries that still maintains the death penalty until now. The legislation currently in force in Indonesia or positive law in Indonesia, there are various types of punishment, one of which is the death penalty or also known as the death penalty. The death penalty (*doodstraf*) is one of the most controversial types of criminal law enforcement methods in this world, occurring since the Babylonian era until now, including in Indonesia itself, this punishment is still used as a sanction for those who are proven to have committed a crime. One of the laws that apply in Indonesia is criminal law. Criminal law is part of the overall law that applies in a country So that with this criminal law, everyone who violates the

norms will be subject to sanctions both in the form of criminal and administrative sanctions which will be processed through the judiciary.

As one of the oldest and most severe types of punishment, the application of the death penalty is often discussed by many countries, both by jurists, philosophers, theologians, as well as scientists, and society in general. This makes the death penalty the type of punishment that most often causes polemics and controversy compared to other types of punishment. Controversy over the implementation of the death penalty occurs in almost all parts of the world, both in Anglo Saxon countries that adhere to the common law system, as well as in Continental European countries that adhere to the civil law system.

National criminal law reform in Indonesia has long been a topic of discussion and study, both among academics and practitioners. The development or reform of this criminal law is the nation's goal to realize a just law for the community. The existing Criminal Code (KUHP) is the result of the legacy of the Dutch colonial era which is individualism and colonialism which is actually not in accordance with the ideology of the nation. Therefore, the predecessors wanted this colonial Criminal Code to only be temporary in regulating criminal law in Indonesia.

The development of an increasingly modern society has led to shifts in culture and values in society. This is not matched by the existing law, as a result the community feels the injustice of the law which also has an impact on distrust of law enforcement. This means that the drafting of the new Criminal Code is in order to adjust it to the values and conditions of today's society and to take into account the future conditions of society. This is because the current Criminal Code is considered no longer answering the legal problems that exist in Indonesia, especially in the latest modern developments that tend to cause public dissatisfaction in law enforcement.

On Monday, January 2, 2023 President Joko Widodo officially ratified the new Criminal Code contained in Law No. 1 of 2023. Then it will be enforced in the next 3 (three) years, namely in 2026. At the same time, the birth of the new Criminal Code raises pros and cons in various circles, because it has different points of view. Some people even say that the new Criminal Code is no longer in accordance with what is expected as a means of achieving goals. The new Criminal Code has several changes and reforms contained in it. One of them is Article 100 of the Criminal Code related to death penalty with a probation period of 10 (ten) years. However, not a few also hold the opposite view that the new Criminal Code is appropriate and adapts to the developments that occur in legal changes in the world due to the shifting times. However, after a long wait, for decades, Indonesia finally has its own legal product, namely the new Criminal Code. The criminal law that was previously in force was a Dutch legacy since 1918. Finally, Indonesia has a criminal law by the nation's children that has been adapted to changes in society, the times, and modern legal needs.

In the old KUHP, death penalty is the main punishment as well as the heaviest punishment. Based on the provisions of Article 10 of the Criminal Code, the Criminal Code recognizes the existence of two types of punishment, namely principal punishment and additional punishment. The main punishment includes death penalty, imprisonment, confinement, fine, and closure. Then, additional punishment includes revocation of certain rights, confiscation of certain objects, and announcement of the judge's decision. However, in its reformation in the new KUHP, there are 3 (three) punishments that are regulated, namely principal punishment, additional punishment, and special punishment. In the main punishment, the new KUHP does not only regulate imprisonment and fine, but also adds closure punishment, supervision punishment, and social work punishment. The fundamental difference is that the new KUHP no longer places death penalty as the main punishment, but

a special punishment that is always threatened alternatively and imposed with a probation period of ten years.

Article 100 of the new Criminal Code is one of the articles that has become pros and cons in the community. Article 100 of the new Criminal Code states that

1. "the judge may impose the death penalty with a probation period of 10 (ten) years if;
 - a. The defendant feels remorse and there is hope for improvement; or
 - b. The role of the defendant in the crime.
2. Death penalty with probation period as referred to in paragraph (1) must be stated in the court decision.
3. The probation period of 10 (ten) years shall commence one day after obtaining permanent legal force.
4. If the convict during the probation period as referred to in paragraph (1) shows commendable attitude and behavior, the death penalty can be changed into life imprisonment by Presidential Decree with the consideration of the Supreme Court.
5. Life imprisonment as referred to in paragraph (4) shall be calculated since the Presidential Decree is enacted.
6. If during the probation period as referred to in paragraph (1) does not show commendable behavior and hope for improvement, the death penalty can be carried out by order of the attorney general,"

Based on the legal arrangements above, if during the probation period the convict shows commendable behavior and there is hope for improvement. Then the death penalty can be changed to life imprisonment. Based on this provision, this article invites 2 (two) different points of view. Some people argue that this article will be a loophole for a convict to escape from death penalty. With the probation period, it is considered as a gap for convicts and related parties to commit despicable acts such as making bribes to law enforcement officials so that the sentence can be changed to life imprisonment. There are even concerns that it is lighter than what it should be. Thus, this is considered to be a weakness in the implementation of article 100 of the new Criminal Code. However, there are also parties who support the enactment of the article. Because it is considered to provide an opportunity for convicts to be able to change their behavior towards a better direction.

The case of Ferdy Sambo is one of the most controversial cases in society. After being found guilty of premeditated murder as stated in article 340 of the Criminal Code: "Whoever deliberately and with premeditation takes the life of another person, shall, being guilty of manslaughter, be punished by capital punishment or life imprisonment or a maximum imprisonment of twenty years."

Based on this case, at first instance the South Jakarta court sentenced Ferdy Sambo to the death penalty. However, the question arises that if Article 100 of the Criminal Code will also be applied to this case, if it is applied, what is the basis for the judge's consideration in terms of regret and good behavior so that the judge reduces the sentence to life imprisonment?

If we look at Article 100 of the 2023 Criminal Code, it is stated that the execution of death can only be carried out after a probation period of 10 (ten) years. If within 10 (ten) years the convicted person has commendable behavior and there is hope for improvement, then the death penalty is replaced with life imprisonment. This new Criminal Code will take effect 3 years after it is approved, it can only be applied in 2026. With the sound of the article, it raises a variety of views which say that this will be a gap for Ferdi Sambo to escape the death penalty and not a few also think that the new Criminal Code seems to be prepared

to escape Ferdy Sambo from the death penalty, considering that Ferdi Sambo is a big person as the Police Propam Cadiv.

Meanwhile, the New Criminal Code has been drafted for decades and was born from long discussions and seminars. Therefore, the opinion and view can be said to be a wrong view. Through this research, the author hopes to provide views and interpretations to readers, especially law enforcement officials, regarding the criteria for commendable behavior and hopes for improvement, based on Article 100 paragraphs (4) and (5) of the 2023 Criminal Code. So that the judge can reduce the sentence from death penalty to life imprisonment.

METHODS

The type of research used in this research is doctrinal which examines the provisions of norms, principles, rules, and values or better known as examining applicable legal provisions and the reality that occurs within the scope of legal institutions and society. In this research, the author analyzes the interpretation of the rule of law in Article 100 paragraph (4) and (5) of the Criminal Code 2023. Because the article does not provide a detailed explanation regarding the criteria for good behavior or commendable behavior and the hope for improvement in question. So that it gives rise to different interpretations. Thus, it is difficult to determine what criteria are assessed by the judge as the basis for his consideration in deciding the case, whether or not the convict gets the death penalty or life imprisonment.

RESULT AND DISCUSSION

Death Penalty With 10 (Ten) Years Probation (Article 100 Paragraph Of Criminal Code)

The Criminal Code 2023 is a milestone in the reform of criminal law in Indonesia after a long time of drafting or formulation. The President of the Republic of Indonesia officially signed the Criminal Code 2023, Law No. 1 of 2023. Once enacted, the new Criminal Code (KUHP 2023) will come into force in 2026 or three years after its enactment. The 2023 Criminal Code was previously approved at a plenary session of the House of Representatives (DPR) on December 6, 2022, in point b of Law No.1 of 2023, that the 2023 Criminal Code will replace the old rules that are a legacy of the Dutch colonial government.

One of the articles stipulated in the 2023 Criminal Code, namely article 100 related to judges imposing death penalty with a probation period of 10 (ten) years by considering the convicted person's commendable behavior and hope for improvement during the probation period of 10 (ten) years. Article 100 of the Criminal Code is one of the new rules that enforce the provisions of commendable behavior and hope for improvement by death convicts. The assessment of commendable behavior has previously been regulated in articles 14a to 14f of the Criminal Code regarding conditional punishment. but in conditional punishment it is not intended to be applied to death convicts, while in article 100 of the Criminal Code specifically for death penalty. relieve the convict's sentence from death penalty to life imprisonment, but with due regard to several provisions, one of which is commendable behavior and hope for improvement during the probation period of 10 (ten) years.

Thus, it can be said that Article 100 of the 2023 Criminal Code provides an open opportunity for every death convict to be assessed whether the convict has commendable behavior and hopes to be improved while serving a sentence in prison carried out by the authorized institution, namely the Correctional Institution (Lapas). If a convict changes his behavior in a positive direction, then the death penalty that has been imposed on him can be annulled and replaced with life imprisonment. "The judge can impose a death

sentence with a probation period of 10 years if the defendant has a feeling of regret and there is hope for improvement, the defendant's role is not too important, or there are mitigating reasons" This is clearly stated in article 100 of the 2023 Criminal Code.

The death penalty as referred to in the article and paragraph must be stated in the court decision. If a convict as referred to in article 100 paragraph (1) shows commendable attitude and behavior, then the death penalty can be changed to life imprisonment by presidential decree by considering the decision of the supreme court. However, if the convict during the probation period does not show a commendable attitude and behavior and there is no hope that it will be corrected, then the death penalty can be carried out by order of the attorney general. However, the implementation of the death penalty can be carried out if the clemency request is rejected by the president.

However, the question related to this article is what are the criteria for commendable behavior and hope to be corrected so that a person can obtain forgiveness in the form of a change in detention period or sentence from death penalty to life imprisonment? Regarding these criteria, there are many different speculations so that it is feared that it is not in line as it should be. So far, it is still necessary to regulate further elaboration in the formulation of these criteria, so as not to cause various different perspectives related to the article as material law and its implementation as formal law.

However, many have concluded that Article 100 of the 2023 Criminal Code is a breath of fresh air for convicts to get the opportunity to escape the death penalty only with provisions and opportunities to improve their behavior so that they are released from the death penalty to life imprisonment. Given that the death penalty often becomes pros and cons because it is considered to violate human rights (HAM).

Criteria For Commendable Behavior And Hope For Improvement During Probation Under Article 100 Paragraphs (4) And (5) Of The 2023 Criminal Code

"The probation period is a period of time given to convicts in undergoing probation for 10 years. If during the probation period the convict does not commit a criminal offense and shows good faith or commendable behavior, the death penalty can be changed to life imprisonment ". The probation period given to convicts is an opportunity to change behavior to become a better person. through the behavior of the convict, it becomes a reference to assess whether or not it is appropriate to obtain probation. As an opportunity to be able to change the sentence from death penalty to life imprisonment. If a convict during the probation period shows commendable behavior, a change in sentence from death penalty to life imprisonment will be given.

In serving a sentence in a correctional institution (Lapas), convicts are provided with independence development consisting of mental and spiritual as well as skills development. Thus, the attitude or commendable behavior of the convict during his sentence period can be used as a reference material in obtaining a reduction in sentence or conditional release application. Thus, death penalty can be changed into a lighter punishment, namely life imprisonment.

Furthermore, Article 100 of the 2023 Penal Code states:

1. "The judge may impose death penalty with probation period for 10 (ten) years. If:
 - a. The defendant showed remorse and there was hope for improvement.
 - b. The defendant's role in the crime is less important.
2. Death penalty with probation period as referred to in paragraph (1) must be stated in the court decision.

3. The probation period of 10 (ten) years shall commence one day after the court decision becomes final.
4. If the convict during the probation period as referred to in paragraph (1) shows commendable attitude and behavior, the death penalty can be changed into life imprisonment by Presidential Decree with the consideration of the Supreme Court.
5. Life imprisonment as referred to in paragraph (4) shall be calculated since the Presidential Decree is enacted.
6. If during the probation period as referred to in paragraph (1) does not show commendable behavior and hope for improvement, the death penalty can be carried out by order of the attorney general,"

If we examine the article 100 of the new Criminal Code, as stated above, it is a form of postponement of death penalty by providing an opportunity by the legal constitution for death convicts who were previously sentenced to death by a judge, but the convict has the opportunity to be changed from death penalty to life imprisonment through a probation period of 10 (ten) years. If within ten years the convict has an attitude of hope for improvement, there is hope for improvement and commendable behavior. Then the death penalty can be changed to life imprisonment. However, it still goes through the applicable legal procedures, namely by Presidential decree based on the consideration of the Supreme Court.

Besides being an alternative method to views that support or reject the death penalty. Probation is also seen as a reflection of the practice of Pancasila values. Because it tries to balance the interests of individuals with the interests of the general public in accordance with the values of Pancasila. This is believed by abolitionists and retentionists. However, according to the judge's perspective, there are weaknesses in Article 100 of the 2023 Criminal Code, among others:

1. Article 100 of the 2023 Penal Code does not provide any limitation on the cases that should be allowed to obtain probation. Therefore, this article is assumed to apply in general to all cases.
2. The provision of probation in Article 100 of the 2023 Criminal Code is feared to be a forum or loophole in conducting the element of purchase against the criteria of commendable behavior and hope for improvement by the convicted person against law enforcement officials.

Based on the explanation of the judge's opinion above at point (1) one. The author agrees with the judge that there should be a limitation on the application of Article 100. Because if you look at the wording of Article 100 of the 2023 Criminal Code, at first glance this article applies to all cases, both for crimes such as terrorism, rape accompanied by murder, as well as premeditated murder committed with sadism and other similar crimes. This article does not provide any limitations or exceptions to cases that should be given the opportunity to obtain the right to serve their probation period. So that a stigma arises that every case sentenced to death is entitled to probation by simply attaching it to the court's verdict.

In this case, according to the author's view, every person sentenced to death penalty will easily get the opportunity to undergo a probation period, to further carry out the assessment stage of behavior and remorse as one of the requirements to escape death penalty by death convicts. Meanwhile, not all crimes can be tolerated and accepted by the community such as terrorism crimes, premeditated murder, or murder committed by sadism. For example, murder committed by inhumanely dismembering the victim's body parts, murder of a family, rape of a mother in front of her child, and other sadism cases. According to the

author, these crimes are crimes that should not be given forgiveness to the perpetrators and are very worthy of the death penalty. Thus, the above crimes should not be applied Article 100 of the 2023 Criminal Code, because it seems to provide an opportunity to escape the death penalty by providing an opportunity to undergo a probationary period.

The author argues that in cases such as the above it is unfair to be given probation. If given the opportunity to undergo probation by only relying on the provisions of commendable behavior and hope for improvement. The perpetrator still has hope to escape the death penalty, while at any time he can commit the actions he has previously committed. Because the murderous soul of a murderer is ingrained and will be difficult to cure. It is likely to be inherent in his soul as a killer in satisfying his inner self to solve his problems. So there is a concern that if this article 100 is not given a limitation, the purpose of punishment to provide a deterrent effect on the perpetrator will not be achieved. So according to the author, it is necessary to provide exceptions or limitations on what cases can be given the opportunity to undergo probation.

Then in point (2) in the opinion of the judge related to the probation period as stated by the judge above. According to the author, it is very necessary to carry out strict supervision of death convicts as well as law enforcement officials such as judges, Correctional Institutions, the Ministry of Law and Human Rights (Kemenkumham) as an institution that has the authority to supervise and assess death convicts. This needs to be done so that there is no element of purchase related to commendable behavior and hope for improvement as referred to in Article 100 of the Criminal Code to be able to change the sentence of the convicted person. The element of purchase referred to in this case is such as making bribes to law enforcement officials, especially the Correctional Institution (Lapas) and judges. So that the convicted person obtains recognition that he/she does have an attitude of commendable behavior and hopes to be corrected as an assessment in accordance with the provisions stipulated in Article 100 paragraph (1) of the Criminal Code 2023.

In addition, the author agrees with the opinion of the judge that the supervisory judge should be involved in conducting direct supervision and assessment in the field or to the correctional institution (lapas). Given that this is a basis for deciding whether the convicted person has commendable behavior or not during the probation period. So in this case, the judge does not necessarily only have a role limited to deciding whether or not the convicted person's sentence should be changed based on a report that the convicted person has commendable behavior and hopes to be improved during the probation period from the Correctional Institution. However, on the basis of direct evaluation based on what is seen and heard by the judge during field supervision. Thus the judge also has full confidence in deciding the case and not just limited to reports. If the supervision system is fully effective, the purpose of punishment, namely providing a deterrent effect on the perpetrator and ensuring public peace, will be achieved.

In the author's view, the implementation of this probation period requires full supervision, as well as firm action. So that the granting of the convict's right to get a change of sentence is right on target, indeed on the basis of commendable behavior and hope for improvement. So that the imposition is given appropriately and in accordance with the objectives of this article. If at any time returned to society does not repeat unlawful acts.

Death penalty with probation must be included in the judge's ruling so that convicts get a probation period, otherwise if the request is not included in the judge's ruling then the convict does not get the opportunity to undergo a probation period for 10 years but only immediately serves the sentence as imposed by the judge.

Based on this provision, it must be included in the judge's ruling. The author argues that this is a weakness in this article. Because if you look at the academic text of the Criminal Code, this article seems to apply automatically if this article is applied to the verdict, but in reality this is not the case. In addition, there is a concern that there is an element of negligence in forgetting to include a request for probation in the court's ruling. So that convicts who should have the desire to undergo a probationary period but are missed so that inevitably only serve the death penalty sentenced by the judge. Or vice versa, convicts who have commendable behavioral attitudes and hope to be corrected in their daily lives. However, in reality it is not included in the court's ruling regarding the request for probation. Then the sentence cannot be changed even though it has a commendable behavioral attitude and hopes for improvement as stipulated in the Law.

Criteria for Commendable Behavior and Expectations for Improvement

Commendable behavior means that the convicted person does not commit any offense or action that is not commendable, and obeys all applicable provisions during the probation period of 10 (ten) years. This opinion is correct by other formulators of the Criminal Code so it can be said to have the same opinion. In connection with the element of commendable behavior assessment of Prisoners (WBP). One of the regulations that become provisions in categorizing the behavior of WBP in prison is the legal regulation regarding discipline in prison which is regulated in Law No.12 of 1995 concerning Corrections. Then it is further regulated in the Regulation of the Minister of Law and Human Rights No.6 of 2013 concerning the Code of Conduct of State Detention and Correctional Facilities. In this regulation formulates several disciplinary penalties based on the categories of light, medium, and heavy penalties. Some of these categories are as follows:

1. "Light disciplinary punishment consists of verbal and written warnings;
2. Disciplinary punishment includes placing the Prisoner in a seclusion cell for a maximum of 6 (six days) and delaying or denying certain rights within a certain period of time such as delaying the implementation of visits;
3. While severe disciplinary punishment means the placement of prisoners in exile cells for 6 (six) days and can be extended twice 6 (six) days, as well as a reduction or suspension of rights such as not getting the right to remission, leave to visit family, conditional leave, assimilation, leave before release and release conditions in the current year."

The disciplinary punishment can be categorized into 3 (three) parts, among others:

Table 1. of Discipline Violations by Category

| Minor Disciplinary Offenses | Medium Discipline Offenses | Serious Disciplinary Offenses |
|---|--|---|
| 1) Not keeping clean | 1) entering the sterile area without the officer's permission | 1) Not following the coaching program |
| 2) Leaving the residential block without permission from the staff. | 2) making piercings, tattoos or other similar events | 2) committed acts of aggression such as resisting and threatening prison officers. |
| 3) Not wearing prisoner uniform | 3) take actions that may endanger others or oneself | 3) storing or sharp weapons and the like |
| 4) did not attend the roll call | 4) Saying or doing things that violate religious norms | 4) vandalizing prison facilities |
| 5) using accessories such as necklaces, bracelets, earrings, and belts | 5) buying and selling or debts and receivables | 5) create threatening or provoking disturbances |
| 6) issuing disrespectful remarks that violate norms of decency and modesty | 6) commit acts that violate light disciplinary punishment more than 1 (one time) | 6) Using electronic devices and communication tools |
| 7) Perform actions that fall under the consideration of the community observer hearing. | 7) conduct that falls under the category of a correctional observation team hearing. | 7) Storing, carrying, distributing or making alcoholic beverages |
| | | 8) Storing, carrying, distributing or making |
| | | 9) illicit drugs such as drugs and the like |
| | | 10) Trying to escape or helping others escape |
| | | 11) Committing violence against convicts or officers |
| | | 12) Install or cause others to install electrical installations into a dwelling |
| | | 13) Bringing personal equipment outside of the provisions determined by the prison. such as stoves, TVs, fans or the like in residential rooms. |
| | | 14) committing immoral crimes such as sexual perversion |

Based on the category of disciplinary punishment above, it becomes a reference material in regulating the behavior of WBP in undergoing probation. if at any time WBP commits an offense based on the severity, lightness and moderation of an offense. Will be a separate record for prison officers. In assessing the WBP, the judge is one of the bodies that has an important role in deciding whether or not the WBP deserves a change in sentence as stated in Article 100 paragraph (4) and (5) of the Criminal Code 2023. The judge formulates 3 criteria for commendable behavior, among others:

1. Comply with the rules that apply in correctional institutions (prisons) and positive law;
2. Carry out obligations as a prisoner;
3. Not doing things that are criminal and detrimental to the interests in prison and the public interest.

The above criteria are supported by 2 (two other judges) and also the drafter of the Criminal Code 2023. Comply with the regulations as in point 1 (one) above. Includes all provisions regulated in the prison as listed above and positive law, both the Criminal Code regarding criminal offenses and outside of the Criminal Code such as Government Regulations, Ministerial Regulations, and other regulations.

The aforementioned criteria are the basis for the judge's consideration in determining whether or not the WBP deserves a change in sentence, from death penalty to life

imprisonment. Criteria for commendable behavior of convicts and hope for improvement, can be seen based on supervision conducted by prison officers. WBP in serving a probation period of 10 (ten) years. supervised and assessed directly by prison officers based on actions taken by WBP in their daily lives. WBP said that in addition to obeying the rules and carrying out obligations as a WBP, having creativity such as painting, cooking, massage, playing music, and other similar creativity is one form of commendable behavior that is included in the assessment of prison officers. The creativity possessed by WBP is based on the interests and talents of each WBP. Then honed through training programs held by the prison as a form of guidance for WBP.

The training program carried out is one form of category carrying out obligations as a WBP. Thus, if the WBP has creativity in undergoing probation. Then the action or behavior he does is a form of commendable behavior from WBP. This becomes an assessment material by the assessment team such as prison officers, and Community Supervisors (PK) under the auspices of the Ministry of Law and Human Rights (Kemenkumham), when at any time conducting field evaluations based on reports submitted by Correctional Institutions (Lapas) regarding commendable behavior that is considered to meet the criteria. Then the report made by the correctional institution and the Correctional Counselor will be one of the basic considerations of the judge in deciding to grant a change of sentence, from death penalty to life imprisonment as stated in Article 100 paragraph (4) of the 2023 Criminal Code.

Regarding the existence of 'hope to be corrected' as stated in Article 100 (6) of the Criminal Code 2023, related to the behavior of WBP in carrying out obligations during the probation period for 10 (ten) years. Commendable behavior and 'hope to be corrected' is one thing that cannot be separated from one another. Because by doing commendable behavior, the predicate of 'hope to be corrected' assessment will automatically be attached to the WBP's personality. This is because by doing commendable behavior, it indicates an act of regret in the WBP based on a change in behavior towards the better. Thus, regret and changes in behavior from WBP are a form of hope to improve behavior. It can be said that these two things are interconnected with each other as the basis for assessing the criteria for commendable behavior and hope for improvement. This is justified by the judge based on his belief that 'hope to be corrected' can be seen and actualized in everyday life while the WBP is serving a probationary period of 10 (ten) years.

According to the Ministry of Law and Human Rights, commendable behavior of WBP in undergoing probation carries out every provision that becomes a rule in the Correctional Institution. With the criteria that the name of a WBP (Prisoner of Correction) has never been included in Register F. WBP (Prisoner of Correction) has never violated the rules or caused problems, either between fellow WBP or with prison officers. The F Register in question is a record that contains every act of offense committed by WBP while on probation. If the name of the convict is included in the record, when conducting a field evaluation that can be done at any time. Then the opportunity to obtain commendable behavior criteria as one of the conditions for changing the death penalty to life imprisonment will be difficult to provide. Because it will be a consideration in determining whether or not the convict is eligible to have his sentence changed, from death penalty to life imprisonment.

If the WBP during the probation period has a commendable behavior attitude, it does not mean that they will immediately get a discount or change in detention period. However, it still goes through long procedures based on applicable regulations. Because the change in detention period is not necessarily WBP enough to get recognition of having commendable behavior written by the prison. Thus, an application is submitted to the

President to be decided by the President. However, it must first fulfill the completeness of the correctional research file, the report is made by the field of Community Supervisor (PK). However, the Community Supervisor (PK) first conducts in-depth research or evaluation of the name of the WBP who is reported to meet the criteria, directly to the field.

Community Supervisors (PK) in conducting direct monitoring to the prison, conduct interviews with WBP with the aim of conducting identification. Including knowing the background of the reasons why the WBP committed a criminal offense and also what kind of criminal offense committed by the WBP? Through the interview, an assessment will be made by the Community Supervisor (PK) through body gestures, speech and also answers from the WBP regarding the questions given by the Community Supervisor (PK). Based on the information provided by the WBP, it will be taken into consideration whether the criminal offense committed by the WBP is eligible for a change in sentence based on the severity of the criminal offense committed.

In addition to conducting interviews with WBP. Community supervisors (PK) also conduct interviews with prison officers who are in charge of supervising WBP in their daily lives. What kind of actions are taken and further examine whether it is true that the WBP has a commendable behavior attitude. One example is by asking the officer or guardian, how did the WBP act during the probation period? in this case if the WBP during the probation period always participates in training or even reminds other WBPs not to commit criminal acts like he did. for example like drugs, then from these actions it can be interpreted that the WBP already has commendable behavior. However, if on the contrary, during the probation period the WBP still often indulges or boasts about cases that have been committed. Such as murder, so that other prisoners feel reluctant towards WBP through the cases they have previously committed. Then the actions of the WBP have no possibility for hope to be improved.

Based on direct research conducted by the Community Supervisor, it is continued by conducting a TPP (Correctional Observation Team) hearing regarding whether or not the application is approved by the Directorate General of Corrections. As evidence that whether or not WBP deserves a request to change the death penalty to life imprisonment or a reduced sentence.

However, the problem is that the assessment system related to commendable behavior carried out by the Performance Assessment Division (Binker) in correctional institutions (lapas), has not been fully carried out effectively. Because according to the WBP, the assessment team for these criteria does not pay attention to the positive actions they take. So that the WBP thinks that the actions they take are not entirely assessed by the Performance Assessment Division (Binker). According to the author, there is a possibility that the assessment carried out by the Performance Assessment Division (Binker) has an element of deliberate silence so that it is considered not to pay too much attention to the commendable behavior actions carried out by the WBP. This is aimed at avoiding pretense in the behavior of WBP, which is only done briefly when there is monitoring by prison officers who have the duty and authority to assess the behavior of WBP.

However, if there is an element of pretense in the WBP. The possibility of commendable behavioral actions carried out by WBP will not last long. Because it will be seen from the actions that are actualized in everyday life with a relatively long period of time, namely 10 (ten) years. By itself, it will be seen whether the commendable behavior carried out by WBP arises from within itself or is only pretended because of the monitoring carried out by prison officers with the knowledge of WBP.

However, in this case there is a possibility that if the commendable behavior performed by the WBP is based on pretending. Will become a habit because it is done repeatedly.

Considering that the period of probation is quite long in a period of 10 (ten) years. However, this truth can only be obtained through monitoring and supervision carried out by the Performance Assessment Division (Binker) officers in the prison and also the Correctional Observation Team (TPP) under the auspices of the Ministry of Law and Human Rights when conducting field reviews or evaluations.

In addition to the Correctional Institution (Lapas) and the Ministry of Law and Human Rights, supervisory judges should be involved to become one of the bodies that have the authority to conduct direct evaluations in the field to find out and determine whether WBP is included in the provisions and criteria for having commendable behavior or not. Based on the beliefs seen and heard by the judge, it can be used as the basis for the judge's consideration in deciding the case. So that the role of the judge in this case is not just deciding on the basis of the report given to him. However, it is also based on the facts in the field based on his testimony when the WBP is serving the probation period.

Thus, in determining the criteria for commendable behavior towards WBP, there is an element of supervision carried out by supervisory judges with the aim of directly witnessing the actions of convicted behavior undertaken by WBP on probation, and also so that there is no abuse of authority by the Correctional Institution (Lapas) such as concerns about the element of buying (bribery) against the criteria for commendable behavior by WBP against the prison and the Ministry of Law and Human Rights. However, according to the author in this case, the possibility of buying (bribery) against the criteria for commendable behavior is not only possible at the Correctional Institution (Lapas) and the Ministry of Law and Human Rights. However, it can also occur with judges as a body that decides cases and has an important role. Because if there is no element of bribery against prisons and the Ministry of Law and Human Rights but there is bribery against judges. It is possible that at any time the decision is accepted even though the decision is in the hands of the President but still with the consideration of the Supreme Court, one of which is a judge.

Thus, regarding the supervision system carried out on WBP in assessing the criteria for commendable behavior, according to the author, it still requires the principle of mutual supervision (*Checks and Balances*) in the justice system. So that in determining the criteria for commendable behavior it is really based on the truth as it happens by WBP which is actualized in everyday life while undergoing probation.

However, it needs to be realized that the legal arrangements related to the implementation mechanism of article 100 of the 2023 Criminal Code are not fully adequate, but still require further detailed arrangements. As mentioned in article 102 of the 2023 Criminal Code which states that "Further provisions regarding the procedures for the implementation of death penalty shall be regulated by Law". Considering that it will only be enacted three years later, namely in 2026.

CONCLUSION

Legal arrangements related to the criteria for commendable behavior and hope for improvement are regulated in Article 100 of the Criminal Code 2023 and Minister of Law and Human Rights Regulation No. 6 of 2013 concerning the Code of Conduct of Correctional Institutions and State Detention Centers. These regulations are interconnected with each other with opinions expressed by the drafter of the Criminal Code, judges, WBP and the Ministry of Law and Human Rights regarding the criteria for commendable behavior and hope for improvement, as a basis for consideration of materials in deciding cases. However, it should be realized that the regulation is not yet fully adequate, considering that the 2023 Criminal Code, especially Article 100, is still in legal transition so that it will only be enacted in the

next 3 (years). Therefore, related to the implementation of this article, there are not yet regulations that specifically regulate it. Thus, it is still waiting for follow-up regulations relating to the mechanism in its implementation. So that there is no misuse in the implementation of legal provisions with their implementation.

The criteria for commendable behavior and hope to be corrected as stipulated in Article 100 paragraph (4) and paragraph (5) of the Criminal Code 2023 is a unity that cannot be separated from one another. When a WBP shows an attitude of commendable behavior, the hope to be corrected for the previous bad behavior can automatically change for the better. The criteria for commendable behavior can be divided into 3 (three), namely (1) obeying the rules that apply in the correctional institution (prison) and positive law, (2) carrying out obligations as a prisoner, (3) not doing things that are criminal and detrimental to the interests of the prison and the public interest. These criteria are the basis for the judge's consideration in deciding whether or not the WBP deserves a change in sentence from death penalty to life imprisonment. Based on a presidential decree but taking into account the decision of the Supreme Court judge within the scope of the justice system.

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