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Analisis Efektivitas Penerapan Hukum Pidana Dalam Pengawasan Tindak Pidana di Indonesia

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Abstract: Human trafficking is a serious crime that involves the exploitation of individuals. The threat of imprisonment is a dominant feature of the Indonesian Criminal Code. Although imprisonment is a common punishment in most countries, its effectiveness has been a topic of debate for centuries. Therefore, it is imperative to identify alternative forms of custodial punishment to mitigate the negative consequences of imprisonment. This research utilizes a descriptive qualitative approach to provide a comprehensive overview of the current issues based on existing evidence. The results of this research revealed several key insights. The fundamental purpose of criminal supervision in the Indonesian criminal justice system is to protect the public from criminal acts in accordance with the principles of criminal law. The Draft National Criminal Code explains that supervision punishment is an alternative to imprisonment. Supervision punishment is an alternative form of punishment with the provision that the punishment imposed will not be implemented if the conditions are met, with a maximum probation period of three years. It is evident that conditional punishment as an alternative to deprivation of liberty punishment in the existing Criminal Code is inadequate in protecting individuals and criminal offenders. Therefore, the National Criminal Code must evolve to include alternative formulations, such as supervision punishment (probation), which has been successfully developed and implemented in various countries around the world. The fundamental purpose of supervision punishment is to replace deprivation of liberty/imprisonment, an approach that has resulted in poor outcomes for both the convicted person and society at large. Therefore, supervision punishment should be included as the main type of punishment in the upcoming National Criminal Code, serving as an effective and humane alternative to deprivation of liberty.

Keywords: Law, Crime, Supervising.

INTRODUCTION

As a country governed by the rule of law, Indonesia is responsible for maintaining order and ensuring justice within its territory. Indonesia's criminal law system is an important instrument in law enforcement and the maintenance of public security. Although criminal law is primarily concerned with punishing perpetrators of criminal acts, it also serves as a preventative tool, discouraging criminal behavior by providing strict sanctions.

In line with the evolution of society, the complexity of crime continues to increase, accompanied by an expansion of the range of criminal activities. Starting from conventional crimes, such as theft and fraud, to more complex forms of criminality, such as corruption, terrorism, and cyber crime. Therefore, there is an urgent need to improve the effectiveness of criminal law enforcement, ensuring that the legal framework can effectively and efficiently address these various forms of criminality.

Imprisonment is a significant threat in the Indonesian Criminal Code, a phenomenon that has been going on for a long time. According to this perspective, the imperative for imprisonment is a legacy of the classical school, which prescribes punishment with definite penalties. This classical school prioritizes a strict and certain approach to punishment, with the aim of deterring potential criminals. In this context, imprisonment is considered as the most effective way to achieve this goal, which causes imprisonment to be very prominent in Indonesian criminal law.

Barda Nawawi (2021) notes the results of a comparison between the provisions of foreign criminal law and the provisions of Indonesian criminal law. This comparison shows the reliability of imprisonment as the main punishment in criminal policy in many countries. Therefore, imprisonment policy does not only occur in Indonesia, but also in other countries. (Arief, 2021)

This suggests that imprisonment is considered the primary instrument in the criminal justice system to regulate criminal activity and punish those who commit offenses. However, this perspective also raises debates regarding the effectiveness and long-term consequences of the primary reliance on imprisonment, particularly in relation to offender rehabilitation and crime prevention in the wider society.

Although imprisonment remains the most frequently used punishment and form of imprisonment implemented in a large number of countries, the effectiveness of this approach has been a topic of ongoing debate since its inception. Based on research conducted by Djisman Samosir at Cipinang Penitentiary in 1990, it can be concluded that most prisoners (85 out of 100) expressed a lack of fear of imprisonment. This is due to the fact that the majority of them have known the potential consequences of criminal behavior before committing a crime.

This finding has led to increased interest by penologists in the effectiveness of imprisonment in preventing criminal behavior. In accordance with Article 14a of the Criminal Code, for those convicted of a criminal offense and sentenced to less than one year imprisonment, imprisonment is not an appropriate substitute for a fine, and fines that cannot be paid by the convicted person can be replaced by conditional punishment. (Shodiq & Yuwannita, 2024)

As a result, the imposition of a definitive sentence against a criminal offender/defendant is conditional. This results in stigmatization of the perpetrators of criminal acts through a judge's decision that is imposed in a hearing that is open to the public.

As a result, conditional punishment in the current Criminal Code as an alternative to deprivation of liberty still does not provide adequate protection for individuals/criminal offenders. In addition, conditional punishment is not a main punishment in the current

Criminal Code and is only a means of implementing punishment which provides less guidance for judges in its application. This is in accordance with Barda Nawawi Arief's assertion that the provisions governing conditional punishment so far cannot overcome the inflexibility of the imperative formulation system of imprisonment. This is due to the fact that conditional punishment is only a means of implementing the punishment and not a factor in choosing the type of punishment. Therefore, the regulation of conditional punishment in the KUHP is currently not an optimal alternative to imprisonment, especially for short-term imprisonment.

This research is expected to contribute to the development of legal science, particularly in the field of criminal law. In addition, the result of this research is expected to be an input for policy makers and law enforcement officials in order to improve the effectiveness of criminal law enforcement in Indonesia. Thus, it is expected to create order and security in society accompanied by fair and impartial law enforcement.

The effectiveness of criminal law is often correlated with deterrence theory. According to the construct of this theory, the threat of punishment can deter someone from committing a criminal offense. The success of criminal law is measured by the extent to which the law is able to prevent and reduce crime through strict and uniform law enforcement, as explained by Beccaria in Ali (2018). (Ali, 2018)

Indonesia's criminal justice system comprises a network of institutions, including law enforcement agencies, the judiciary and correctional institutions. The success of this complex system depends on effective coordination between these institutions and the quality of the individuals within them. As observed by Rahardjo (2009), the ability of law enforcement officials to demonstrate integrity and professionalism is crucial. A number of empirical studies have identified various difficulties in criminal law enforcement in Indonesia. These include corruption cases involving members of the law enforcement community, overcapacity issues within correctional institutions, and relatively low case completion rates within the criminal justice system.. (Santoso, 2014)

METHOD

A descriptive qualitative research method, which is based on presenting the actual current problem situation, was used in this research. This method is used in conjunction with the formulation of the problem that is the focus of this research. The descriptive qualitative research method offers a way for a normative juridical approach to seek justice in the regulation of imprisonment in Indonesia. (Sugiyono, 2019)



Figure 1. Qualitative Research Method

RESULT AND DISCUSSION

A Preliminary Overview of The Basic Principles Underlying Criminal Supervision

The prevention and resolution of criminal offenses through the application of criminal law (criminal law) is a fundamental aspect of criminal policy. In a broader context, criminal policy is closely related to social policy, which includes social welfare policy and social defense policy.

Muladi proposed that certain criteria (actions and circumstances), together with the decision of the supervising official, would result in the offender being returned to society with supervision, assistance, support and guidance. This approach aims to facilitate the rehabilitation and reintegration of the offender into society. The aim is to avoid the negative influences that can arise from placing offenders in prison.

In addition, those who have been convicted of a criminal offense and subject to supervision are given the opportunity to continue their lives as individuals, family members, community members, and citizens, provided that they strictly comply with the requirements set by the court.

Furthermore, Barda Nawawi Arief argued that the implementation of supervision punishment is carried out by postponing the imposition of punishment, thus eliminating the necessity for the existence of the main punishment. This shows that the implementation of supervision punishment can serve to prevent criminal offenders from early stigmatization as a bad person, which can have a negative impact on their ability to reintegrate into society. Therefore, a sentence of probationary supervision does not represent a full release from the responsibility of the offender. In fact, probationary supervision actually contains obligations (conditions) that are considered more severe than formally regulated forms of punishment such as fines. (Arief, 2021)

The perpetrator's freedom is not completely unfettered. Rather, it is limited by the conditions that accompany the supervision that must be fulfilled. Therefore, in the event of non-compliance or breach of the conditions conditions that have been agreed upon or specified, the perpetrator will be subject to more severe more severe requirements. Alternatively, in the event of unwillingness to cooperate, the offender may be subject to harsher penalties, including the loss of their liberty through detention. detention. As a result, these types of supervisory sentences, such as probation, is perceived by the offender as a punishment. In theory, the application of supervision punishment has the potential to prevent the occurrence of criminal offense, both special prevention and general prevention. and general prevention. This is due to the presence of accompanying conditions conditions and the possibility of aggravation, up to the point of potential imprisonment, those subject to supervision punishment are anticipated to consider imprisonment, those who are subject to supervision punishment are anticipated to reconsider any action that may harm the community in the future. any actions that may harm society in the future. (Buzescu, 2024)

The application of this supervisory penalty can also serve to deter potential offenders from committing criminal offenses. This has a positive impact on the protection of the public interest. In determining whether to impose a supervision sentence or to deprive the offender of liberty, one of the main considerations is the extent to which the offender will benefit from reintegration into society. This is evidenced by the convicted person's participation in household responsibilities, which is highly valued in society. Financially, a conditional sentence (probation) is more cost-effective than institutionalized supervision, as it does not require the individual to be institutionalized.

Supervision Crimes in the Indonesian Criminal System

As an integral part of the criminal justice delivery system, it is imperative to dispel the notion that non-custodial sentences are acts of generosity, forgiveness or liberation. This is because, in the context of understanding and addressing the root causes of crime among

offenders and strategies to neutralize these causes, the role of supervision in guiding and mentoring individuals outside of institutions is a dynamic and evolving process that seeks to resolve the issues at hand. (Ginting & Yuspin, 2022)

The imposition of supervision/probationary punishment is usually subject to restrictions stipulated in the law. Muladi argues that the restrictions on criminal offenses that can be sentenced to probation are criminal offenses that are considered by the community as very reprehensible criminal offenses. These include:

1. Violent criminal offenses.
2. Crimes against decency.
3. Crimes involving the use of lethal weapons.
4. Crimes committed by a person in order to obtain a reward from another person.
5. Crimes against the government.
6. Criminal offense which the punishment is determined specifically.

A review of the provisions on supervision and punishment in the Draft National Criminal Code shows that the implementation of supervision punishment is associated with imprisonment. Supervision punishment is "non-custodial" in nature and can be viewed as a type of conditional imprisonment. This type of punishment is an alternative to imprisonment and is not intended for serious criminal offenses.

As previously stated, a supervision sentence is an alternative to a conditional deprivation of liberty sentence. In this case, there are exceptions to the execution of the imposed sentence, which relate to imprisonment. The conditions set out in this exception allow for a probationary period of up to three years.

All conditional sentences include a general condition that stipulates that the offender will commit a criminal offense again within a certain time limit. Two different special conditions can then be identified:

1. Conditions specifically mentioned by law (payment of compensation for all losses as a result of the crime, treatment in an institution determined by the court).
2. Other conditions relating to the perpetrator's behavior that do not violate religious or political freedom.

Although not mandatory, it may be desirable to include additional conditions in a conditional sentence. Finally, the probation service may be instructed to provide advice, assistance and protection to the convicted person. Conditional sentences are analogous to probation in that orders are given to advise, assist and protect the convicted person. It is also analogous to a "surcis simple" because only a general condition is made that no further criminal offenses will be committed. (Herlin Hastuti, 2023)

Conditional sentences have both positive and negative characteristics, which depend on the conditions set. One of the negative aspects is the existence of a general condition that obliges the convicted person not to commit a criminal offense during the probation period. This general condition does not specify any specific legal obligations. It is important to note that all persons, including those who have not been conditionally sentenced, are prohibited from committing a criminal offense. Therefore, under this general condition, convicted persons are not imprisoned. The motivation to educate oneself and improve oneself does not exist. In addition, the fundamental benefit and value of conditional punishment lies in the special provisions that allow the court to indirectly force convicts to engage in educational activities and work to improve themselves.

In the 2000 draft of the National Criminal Code, the setting of this specific type of punishment was clearly outlined, and positioned as the main disciplinary measure within the framework set out in Article 65 of the 2006 draft. The setting of this type of supervisory punishment is set out in Articles 72, 73, and 74 of the 2000 draft, which are equivalent to Articles 77, 78, and 79 of the 2006 draft. (Sutrisno, 2021)

Supervision Criminal Policy in Criminal System of National Criminal Code Concept in the Future as an Effort to Reform Criminal Law

The current Criminal Code offers a second avenue for non-custodial detention, namely conditional punishment outlined in Articles 14 a-f. Article 14 a stipulates that defendants who are punished with imprisonment of less than one year may not be confined in lieu of a fine; in this case, the convict can be sentenced to conditional punishment. Therefore, the imposition of punishment against the criminal offender/defendant becomes certain, with the execution of the punishment being conditionally postponed. As a result, the perpetrators of criminal acts are stigmatized through a judge's decision that is handed down in a hearing that is open to the public.

The stigmatization of the offender can lead to a negative outlook on the offender's future life, as a consequence of feeling humiliated and ostracized by society. This can result in frustration, which can lead to recidivism in the future. Therefore, conditional punishment as an alternative to deprivation of liberty in the current Criminal Code is inadequate in terms of protection of individuals/offenders. In addition, under the current Criminal Code, this conditional punishment is not the main punishment and is only a means to execute the punishment. Therefore, this does not provide a strong foundation for judges in applying it. This is in accordance with Barda Nawawi Arief's statement that the provisions governing conditional punishment are not strong enough to overcome the rigidity inherent in the imperative formulation system of imprisonment. He argues that conditional punishment is only a means of implementing punishment (*strafmodus*) and not a mechanism for selecting the appropriate form of punishment (*strafsoort*). (Rahardjo, 2009)

In the 2000 National Criminal Code Concept, this type of supervision punishment is regulated and placed as one of the main punishments (Article 60 of the 2000 Concept, which was later incorporated into Article 65 of the 2006 Concept). The regulation on this supervision punishment is stated in Articles 72, 73, and 74 of the 2000 Concept (Articles 77, 78, and 79 of the 2006 Concept).

Article 72 of the 2000 Concept (which was later incorporated into Article 77 of the 2006 Concept) outlines the framework for imposing supervision punishment against a person convicted of a criminal offense punishable by a maximum imprisonment of seven years. This formulation indicates that judges can apply supervision punishment only to perpetrators of criminal offenses punishable by a maximum imprisonment of seven years. The purpose of this law is to provide a clear definition of criminal offenses that can be subject to supervision punishment.

Under the provisions of Article 72 of the 2000 Concept (which was later incorporated into Article 77 of the 2006 Concept), the judge has not imposed the final punishment to the perpetrator of the criminal offense, because the threat of imprisonment is sufficient. Therefore, the determination of whether a criminal offender can be sentenced to supervision punishment is based on the level of imprisonment, not on the level of imprisonment imposed. Therefore, the formulation of this supervision punishment contains an element of postponement of imprisonment, which often has a detrimental impact on criminal offenders, including the stigma of being a criminal, criminal offender, or former criminal in the community. By postponing imprisonment through the implementation of supervision punishment, it is hoped that the stigmatizing effect of imprisonment in the criminal justice process can be reduced. (Munandar, 2023)

Article 73 of the 2000 Draft Criminal Code (which was later incorporated into Article 78 of the 2006 Draft Criminal Code) defines the period of supervision, by setting a maximum period of three years (paragraph 2). In certain circumstances, the period may be extended to a maximum of twice the remaining unexpired period of supervision (paragraph 5) or shortened from the previous period (paragraph 6).

The focus of the purpose of punishment has shifted from the determination of

punishment as pure "retribution" against the perpetrator of a criminal offense to the protection of the individual criminal. This is reflected in the 2000 Draft Criminal Code Concept (which was later incorporated into the 2006 Draft National Criminal Code), which outlined the objectives of individual offender protection and community protection, with the ultimate goal of achieving the welfare of the entire community.

CONCLUSION

The basic concept of the implementation of supervision punishment includes two key elements: (1) the replacement of deprivation of liberty/imprisonment which has been identified as the cause of negative impacts on convicts and society and has been the subject of criticism, both nationally and internationally, and (2) the protection of the individual interests of the convict and the interests of society, which is the direction of the objectives of modern punishment. The formulation of requirements for the imposition of supervision punishment is very important to be carried out so that the implementation of the punishment can run clearly and consistently in accordance with the expected objectives. The importance of these requirements as a framework to guide criminal offenders and maintain the collective interests of society/victims in the process of supervision punishment can be better accommodated through the incorporation of these requirements into the framework of the National Criminal Code. In the future, it would be beneficial for future policy formulation on supervision punishment in the National Criminal Code to consider four characteristics of supervision punishment.

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