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Optimizing Social Work and Restorative Justice In Overcoming Overcrowded Correctional Institutions

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Abstract: The legal culture of society in Indonesia assumes that providing sanctions or punishment for perpetrators of crimes until they are sent to detention is the easiest method and provides satisfaction for the victim. Crime itself is a social control institution that is linked to and always reflects the values and structure of society, so that it is a symbolic reaffirmation of violations of the collective conscience. In the view of researchers, restorative justice and human rights are one unit because it is law that embodies human rights values. We must ensure that the orientation regarding corrections must of course be in line with the conceptual change in the goals of corrections from the concept of retribution towards the concept of rehabilitation.

Keyword: Social Work, Restorative Justice, Correctional Institutions

INTRODUCTION

Indonesia is a unity of diverse ethnic groups that also have differences in language, ethnicity, beliefs and of course ideology. These differences can encourage conflict, but on the contrary, it is important for Indonesian society to have binding norms so that national unity is maintained, which is reflected in the four pillars of nationality as the basis of the state. The four pillars include; Pancasila as the basis and ideology of the State, the 1945 Constitution of the Republic of Indonesia (UUD RI) as the State constitution and MPR Decree and the Unitary State of the Republic of Indonesia (NKRI) as the form of the State, and the fourth pillar, Bhinneka Tunggal Ika as the motto of the State of Indonesia.

The existence of the current law with the people in Indonesia is still very low. Often seen during law enforcement, awareness in the application of legal culture in the community. This is due to several factors so that awareness of the law is reduced in society, such as: Rule of Law, meaning that a set of institutions authorized to compile and make laws and regulations have not seen results in providing protection and protection to the community. Next is Law Enforcement, meaning that a group of people who are given the authority to

oversee and enforce these regulations have not really implemented the regulations that have been set. In fact, there are not a few cases involving law enforcers who are supposed to keep the regulations running properly but instead violate the law.

Sanctions are used as a final decision for an offender as a form of accountability for his actions that have been carried out in social life. Because the benefits with the emergence of sanctions that have been made by the state can provide goodness and changes in the pattern of social life by providing guidance and learning for citizens for the future. The principle of equal treatment under the law is a manifestation of the rule of law as described in Article 1 paragraph (3) of the 1945 Constitution. Its implementation is very important, because apart from being an effort to protect and equalize in the eyes of the law, it is an important pillar for the achievement of a fair trial. A fair trial is very difficult to achieve if the parties are not in the same position. In particular, if the party is the object rather than the subject of the judicial process. This becomes complex when the party dealing with the law is at the lower economic level.

Various problems that often arise in the environment of the Penitentiary and Detention Center are not only due to discrepancies and errors in handling prisoners by the officers of the institution, but occur in a complex manner between the system and the implementation in the field with all its limitations. The orientation of the correctional institution must be in line with the conceptual change of correctional purpose from the conception of retribution towards the concept of rehabilitation. This can be illustrated by the emergence of the idea of changing the prison institution (historically referred to as a prison house) into a Correctional Institution (Lapas). Or now we often hear the name Lembaga Warga Binaan Pemasyarakatan (LWBP).

What is seen in the current condition is that the correctional institution is over capacity and of course this will cause new problems. The impact is that the initial purpose of the correctional institution, which is as a gathering place for violators of the rules and then fostered to be good and return to society, is inversely proportional to being a place to create new crimes. The emergence of new types of crimes in correctional institutions include; persecution between prisoners, riots, arson and more sadly the spread of psychotropic drugs in the prison environment.

METHOD

This paper uses a qualitative research method, in which the approach system is normative juridical. This means an approach by looking for various problems raised from literature and reading materials sourced from literature. While the research specifications contained therein are descriptive analysis, which means that it can provide an illustration of the problems to be raised then provide an analysis in solving these problems which will be able to provide answers in the form of concrete explanations. In this research, the data collection uses materials in the form of laws and regulations and the like by experts in the field of law as a source of reading and research. Furthermore, the data is analyzed qualitatively normative, namely by conducting research in interpreting and building statements contained in the form of statutory documents.

RESULTS AND DISCUSSION

Resolution steps in addressing the current overcrowding of correctional institutions

In a criminal statement and punishment is a picture of the past about the darkness of the treatment of society which when correlated with current developments is seen as exceeding the limits of humanity and cruel. According to Van Hammel, the meaning of punishment or straf according to positive law today is a special suffering, which has been imposed by the power authorized to impose punishment on behalf of the state as the person in charge of public law order for an offender, namely solely because the person has violated a legal regulation that the State must enforce. According to Gustav Radbruch, as quoted by Satjipto

Raharjo said that, "The law must fulfill various works as the basic value of the law. The basic values of the law are Justice, Usefulness and Legal Certainty".

a. Justice

According to L.J Van Apeldoorn said that, "Justice should not be seen as the same meaning as equality, justice does not mean that everyone gets the same share". This means that justice requires each case to be weighed separately, meaning that what is fair for one person is not necessarily fair for another. The purpose of the law is to regulate the association of life peacefully if it leads to fair rules, meaning rules where there is a balance between the interests that are protected, and each person gets as much as possible that is his share.

b. Legal Certainty

The meaning of legal certainty is also very important for society, legal certainty as outlined in the judge's decision is a result based on juridically relevant trial facts and considered with conscience. This is very important, because the existence of legal certainty will greatly affect the authority of the judge and the electability of the court itself. Because a judge's decision that contains elements of legal certainty will contribute to the development of science in the field of law. This is because a judge's decision that already has permanent legal force is no longer the opinion of the judge himself who decides the case, but is the opinion of the court institution and becomes a reference for the community.

c. Expediency

Society expects benefits in the implementation or enforcement of law. The law is for humans, so the implementation of law or law enforcement must provide benefits or uses for the community. Do not let it be because the law is implemented or enforced instead there will be unrest in the community itself. The judge's decision will reflect expediency, when the judge not only applies the law textually and only pursues justice, but also directs it to benefit the interests of the parties to the case and the interests of society in general. This means that in applying the law, judges should consider the end result. Does the judge's decision bring benefits or usefulness to all parties.

Indonesia is a country that adheres to a civil law system that bases its legal system on the law. As a result, the judges are the executors of the law, not the makers of the law, as is done by judges in the UK, which adheres to the customary law system. However, judges in Indonesia can make legal discoveries through their decisions, although there are rules that must be adhered to, namely that judges must not bump into the content and philosophy of pre-existing laws and regulations.

Criminal law, of course, cannot be implemented properly if there are no other legal sciences that accompany it. Among these legal sciences, there is what is called Penitentiary law, which is commonly known as Punishment Law or legal science that studies about Punishment. This legal science then regulates how punishment should be carried out in accordance with its objectives as well as which institutions are authorized to carry out the punishment. Penal Law then does not become a rule of law that can immediately punish criminals arbitrarily, but needs to consider human rights.

Human beings since being born into this world with all their privileges are also given naturally in the form of inherent rights, namely the right to freedom as a human being or what we often know as human rights. That right will be guarded by each individual throughout his life because other people also have the same right to freedom. But still every human being cannot live alone without the help of others. This is what makes humans as social creatures with dependence between fellow humans. It is commonplace for humans to be able to take care of each other and protect themselves from each other. Normatively, the definition of human rights in Indonesia can be found in Article (1) number 1 of the Human Rights Law which reads:

"Human Rights are a set of rights inherent in the nature and existence of human beings as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, Government, and every person for the sake of honor and protection of human dignity."

From this article, it can be interpreted that human rights are basic human rights, are a gift from God Almighty, are natural rights, and therefore cannot be revoked by other human beings. A justice will be owned by every human being if human rights can continue to be appreciated and can continue to be respected by each individual. It is at this moment that the correlation between law and human rights will meet. According to the researcher's view, law and human rights are one unit because it is the law that embodies human rights values. The judge's verdict will be used as the basis for a person in the penitentiary, if indeed the incracht verdict mandates a person to be fostered in the institution of Prisoners of Correction (WBP).

Following the development of regulatory transformation that is currently running is the existence of a regulatory system that has a modern legal paradigm. Namely, Law Number 22 of 2022 concerning Corrections which emphasizes the Restorative spirit in it. As a new law that updates the previous law, namely Law Number 12 of 1995 which is deemed no longer in accordance with current developments. Then there is Law Number 1 of 2023 concerning the Criminal Code, which regulates a number of criminal regulations. No wonder it is said to be a codification because this law internalizes modern legal values which certainly greatly affects the legal system in Indonesia.

One of the causes of correctional institutions or detention centers to be crowded, because the legal culture of the people in Indonesia assumes that by giving sanctions or punishment to the perpetrators of crimes to enter into detention is the easiest method and provides its own satisfaction for the victim. This problem has caused conditions that are not ideal and affect optimal community services. The impacts include disrupted service and coaching functions, decreased health quality of detention center residents, and increased opportunities for disturbances. The government has made various efforts in handling the problem of overcrowded detention centers and correctional institutions, one of which is by structuring regulations.

Overcrowded concerns various aspects from the preparation of regulations to the law enforcement process which is still oriented towards detention and imprisonment. For this reason, it is necessary to change the mindset of law enforcement officials and the public that the modern criminal justice system is not oriented towards retributive justice but towards corrective, restorative and rehabilitative justice. The success of a modern justice system does not lie in how many cases are revealed, but its success lies precisely in how to prevent people from committing crimes or criminal acts. Even if the criminal act has occurred, it does not always lead to imprisonment because there are other alternative solutions.

Overcapacity in correctional institutions is one of the major problems in the criminalization process in Indonesia. To fix this problem, it is not enough to build new buildings, but it must be accompanied by changes in the politics of criminal law. One of them is by applying restorative justice mechanisms. The basic idea of the application of restorative justice in Indonesia was triggered by the problem of the increasing number of prisoners in prisons and detention centers, resulting in Over Capacity. The problem arises because so far, punishment is assumed to be imprisonment or punishment with the aim of providing a deterrent effect. The number of residents of prisons and detention centers that exceed the capacity has the potential to cause various problems. There is even a view that prisons or detention centers are "schools of crime" because in that place all people who have committed crimes gather. In fact, prisons are supposed to rehabilitate prisoners until they are fit to return to society.

Overcrowding in prisons creates security and health problems, as well as high costs borne by the government. As is known, the government bears the cost of fulfilling the food

and health of prisoners. The result is that not all prisoners are fit to return to society, but the number is not large. To solve the problem of prison overcrowding, it cannot be done by simply building new buildings. More than that, an upstream solution is needed by changing the politics of criminal law. Therefore, restorative justice is expected to be used as a way out to unravel the problem of criminal law policy that has not been optimal.

Restorative justice is a phenomenon in conflict resolution using the concept of Pancasila, namely the 4th principle (deliberation), but still does not forget the interests of victims as well as justice and benefits for the parties in conflict. This application is not only carried out at the court stage but also at the level of investigation by the police, namely with the Chief of Police Circular Letter Number SE/8 / VII / 2018 concerning the application of restorative justice in resolving criminal cases and Regulation of the Indonesian National Police Number 08 of 2021 concerning Handling Crimes based on Restorative Justice which is recorded in the State Gazette of the Republic of Indonesia in 2021 Number 947, which is then used as a legal basis and guidelines for investigations and investigations within the police.

Social work punishment in the new Criminal Code is placed or included in the classification of main punishment types. This is something different from the concept of main punishment in the Criminal Code which is currently still in use. Because in the Criminal Code, which is included in the classification of main punishment, are death penalty, imprisonment, confinement, fine and closure punishment. The criminal sanction of social work in Indonesia itself has been included in the formulation of the new Criminal Code. Furthermore, Article 85 of the New Criminal Code explains that defendants who commit criminal acts punishable by imprisonment of less than 5 (five) years, the judge imposes a maximum sentence of 6 (six) months imprisonment or a category II fine may be subject to social work punishment. Then the social work punishment is imposed within a certain period of time, namely a minimum of 8 (eight) hours and a maximum of 240 (two hundred and forty) hours.

Regulation in Resolving the Overcrowding of Correctional Institutions Currently Occurring in Indonesia

According to research conducted by the Directorate General of Corrections (Ditjenpas) together with the Detention Studies Center, the overcrowding of correctional institutions in 2025 could reach 136 percent or 311,534 prisoners. With this number of prisoners, it means that the government needs new residential space for 179,427 prisoners, or the equivalent of 179 new correctional institutions.

In response to this, the government issued several regulations and laws. Among them are:

1. Law Number 22 of 2022 concerning Corrections.
2. Law Number 1 of 2023 concerning the Criminal Code in the period 2020-2023 The Minister of Law and Human Rights has issued Permenkumham Number. 32 of 2020 concerning Terms and Procedures for Granting Assimilation, Conditional Release, Leave Before Release and Conditional Leave for Prisoners and Children in the Context of Preventing and Combating the Spread of Covid-19.
3. Permenkumham Number 7 of 2022 concerning the Second Amendment to Permenkumham Number. 3 of 2018 concerning Terms and Procedures for Granting Remission, Assimilation, Leave to Visit Family, Conditional Release, Leave Ahead of Release and Conditional Leave.

Then a road map for regulatory structuring was prepared from the short term to the long term. This includes initiating a legal umbrella for the implementation of restorative justice, revising Law No. 35/2009 on Narcotics and issuing regulations implementing the Criminal Code. In addition, designing technical regulations such as the Draft Government Regulation on the Terms and Procedures for Implementing Rights and Obligations.

Law No. 22 of 2022 on Corrections has brought a spirit of change and progress to the

correctional system. This new regulation answers the challenges of legal developments in society and the needs of implementing the correctional system. Some important points regulated in the new Corrections Law include:

1. The Law clarifies the definition and meaning of correctional and correctional system, as well as the objectives to be achieved in the implementation of the correctional system.
2. Legal Protection and Respect for Human Rights: The treatment of law offenders must be based on the principles of legal protection and respect for human rights based on Pancasila and the 1945 Constitution.
3. Corrections as Part of the Criminal Justice System: The law makes corrections an integral part of an integrated criminal justice system.
4. Reformulation of Corrections and Correctional System: The Law contains reformulation of correctional, correctional system, as well as affirmation of the purpose of organizing the correctional system.
5. Rights and Obligations of Prisoners: The regulation of the rights and obligations of prisoners is an important part of this Law.
6. Implementation of Correctional Intelligence and Correctional Information Technology System: The law regulates correctional intelligence and the use of information technology in the correctional system.
7. Strengthening Cooperation and Community Participation: The Law emphasizes the importance of cooperation and community participation in the implementation of the correctional system.

CONCLUSION

Based on previous studies, it is found that Article 378 of the Criminal Code can be Law is a guideline that regulates the pattern of human life which has an important role in achieving the goal of peace of life for the community. The relationship between individuals in society is an essential thing according to human nature which cannot live alone because humans are polis creatures, creatures of society. So for this reason, in regulating legal relations in society, a legal codification is held which has the lofty goal of creating legal certainty and maintaining the value of justice from the substance of the law. Even though it has been codified, the law cannot be static because the law must continue to adapt to society, especially with regard to public law because it is in direct contact with the lives of many people and applies generally.

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