Global Journal of Politics and Law Research
Vol.11, No.3, pp.54-71, 2023
ISSN: ISSN 2053-6321(Print),
ISSN: ISSN 2053-6593(Online)
Website: https://www.eajournals.org/
Publication of the European Centre for Research Training and Development -UK

Criminal Law Study on the Effectiveness of Prison Criminal in the Settlement of General Criminal Actions Related to the Indonesian Criminal Justice System

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doi: https://doi.org/10.37745/gjplr.2013/vol11n35471 Published May 14, 2023

Citation: Asphianto A. (2023) Criminal Law Study on the Effectiveness of Prison Criminal in the Settlement of General Criminal Actions Related to the Indonesian Criminal Justice System, *Global Journal of Politics and Law Research*, Vol.11, No.3, pp.54-71,

ABSTRAK: *The effectiveness and negative consequences of imprisonment have led to a new wave of penal policies, namely the tendency to avoid or limit the use of imprisonment and to improve the implementation of imprisonment. In other words, the study of criminal law on alternative crimes is intended for crimes that are classified as minor and one of the considerations is to address prison overcapacity. The problem of overcapacity of prisons is related to the judicial process of criminal cases, especially general crimes that are classified as light, because the criminal system itself causes problems due to the frequent imposition of prison sentences resulting in overcapacity of prisons. The purpose of this study is to identify and analyze criminal law studies on imprisonment in the settlement of general crimes, as well as to determine and analyze the effectiveness of imprisonment in the Indonesian justice system. This study uses normative juridical research, secondary data sources, and is analyzed qualitatively.*

KEYWORDS: criminal law, effectiveness, imprisonment, general crime, system criminal justice

INTRODUCTION

Criminal exists in this world together with human existence, the will to do evil in human life. On the other hand, humans want to be peaceful, orderly, calm, and just, meaning not to be disturbed by evil deeds. In accordance with Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUDNRI), it states that: "Indonesia is a country based on law", so as a country based on law, to run a country and uphold human rights, it must be according to law, (Ibrahim, 2020). In simple terms, it can be said that the State of Indonesia upholds the value of law which aims to create justice, benefit, and certainty. This goal exists to protect all Indonesian people from various legal conflicts and uphold justice.

The existence of Indonesia as a rule of law state is marked by several main elements, such as recognition and protection of human rights, equality before the law, government organized based on law and so on. Therefore, the purpose of punishment is inseparable

from the objectives of law in general, namely the achievement of social welfare materially and spiritually as well as unwanted actions, criminal threats against an act that is not desired by society as a criminal act, namely an act that causes harm to society, (Widowaty , 2022). The definition of a criminal act according to Moeljatno's opinion, is as follows: "A criminal act is an act that harms society, in the sense that it contradicts or hinders the implementation of good and fair, and anti-social social order, (Muljatno, 2017).

The function of criminal law in particular is to protect legal interests against disgraceful acts. According to Satochid Kartanegara and Hermien Hadiati Koeswadji, as quoted by Suyanto, those categorized as legal interests are human life, human body or body, one's honor, one's property, and one's independence. While the function of criminal law in general is to regulate people's lives. According to Andi Hamzah, as quoted by Anna Maria and Rasji, that criminal law is a nation's moral code.

There it can be seen what exactly is prohibited, not allowed and what must be done in a society or country. According to Abdurrahman: "Current punishment in Indonesia is currently to protect individual interests, human rights, and protect the interests of society as well as the state from evil or disgraceful acts that harm individuals, citizens, the state and also keep the authorities from acting arbitrarily on individuals as well. public. It is to be expected that if the public demands justice through the criminal law process, the impact caused by criminal law violations will face obstacles, namely material criminal law, formal criminal law, and the philosophy of criminal law and punishment that is designed not to respond to the direct impact of crime on victims and criminal justice. society or social humanitarian problems that accompany it, (Magdalena, 2021).

The characteristics of criminal law as mentioned above are often referred to as the law of sanctions. So when sanctions have been imposed on the violator, the criminal law violation case is declared complete. So if the criminal law violator has not been sentenced, the settlement of the violation case has not been considered complete, even though the resulting loss has received compensation. When criminal law is placed as a law of sanctions imposing criminal sanctions as a parameter of justice related to real life problems, the settlement model becomes unrealistic. Because the most reliable imposition of criminal sanctions is imprisonment. Physical and psychological suffering, loss of family members, property, honour, and other social and humanitarian problems due to crime are not a concern in criminal law.

The effectiveness and negative consequences of imprisonment have led to a new wave of penal policies, namely the tendency to avoid or limit the use of imprisonment and to improve the implementation of imprisonment. In other words, in its development, several studies regarding the effectiveness of a punishment argue that imprisonment is not the right choice, because criminal law was created to make people aware, obedient, obedient, so that humans do not break the law a second time. Meanwhile, Jimly Asshiddiqie explained as follows: "In Indonesia, the conceptual transformation in the criminal and

criminal system that occurs in the world in general, from the conception of retribution to the conception of reform, has also contributed to the emergence of a spirit to seek alternative punishments that are more humane. This alternative criminal discourse on deprivation of liberty is primarily aimed at criminals who are sentenced to short-term criminal sentences or in other words for the category of crimes that are classified as light. In other words, that the study of criminal law on alternative crimes is intended for crimes that are classified as minor and one of the considerations is to overcome overcapacity of prisons. Based on data from the Ministry of Law and Human Rights as of September 2021, the capacity of prisons in 33 (thirty three) Regional Offices (Kanwil) for 134,835 thousand people, but the number of residents reaches 271,007 people. This means that there is an overcapacity of 136,173 prison inmates or double the total (101%). Then out of 271,007 (two hundred seventy one thousand and seven) people, divided into 221,616 (two hundred twenty one thousand six hundred sixteen) inmates with the status of convicts, and 49,391 (forty nine thousand three hundred ninety one) others prisoner status. In addition, as many as 129,946 (one hundred twenty nine thousand nine hundred and forty six) residents of prisons for committing general crimes and as many as 141,061 (one hundred forty one thousand sixty one) people for committing special crimes. The prison in Banten is included in the top 10 Regional Offices of the Director General of Corrections with the most prison occupants in September 2021, with 10,730 people (200.75%) inmates, while the capacity is only 5,347 (five thousand three hundred and forty seven) people, (Kusnandar , 2021).

The problem of prison overcapacity is related to the judicial process in criminal cases, especially general crimes that are classified as minor. The judicial process in minor crimes generally continues according to the judicial process, namely until trial. This can be seen from the following cases: Grandmother Minah picked 3 cocoa pods owned by a company on August 2, 2009. Tails picked 3 cocoa pods worth IDR 30,000 ,- it gets long. The police processed Minah's grandmother as a thief until she finally sat down as a defendant, then was convicted. Grandma Minah was sentenced to 1 month and 15 days with a probation period of 3 months by the Purwokerto District Court on November 19, 2009.

Proven to have violated Article 362 of the Criminal Code regarding theft. The case of theft at a Selindung minimarket, Pangkalpinang City, Bangka Belitung which ensnared Desy Haumulu (41 years) a resident of Cipayung was charged under Article 364 of the Criminal Code. The item stolen was a child's milk drink. However, this woman was sentenced to 1 month in prison with three months in prison. Samirin, 68, was sentenced to 2 months and 4 days (total 64 days) in prison by the Judge of the Simalungun District Court on January 15, 2020. He was found guilty of picking up remaining rubber tree sap weighing 1.9 kilograms for IDR 17,000. After being sentenced, Samirin was immediately released because he had been detained for 63 days.

Furthermore, the case experienced by RMS (31 years), a mother in Riau. He stole palm fruit bunches belonging to a state company worth IDR 75,000 on May 30 2020. RMS

admitted to the police that he had to steal palm fruit bunches to buy rice because the rice to feed his three young children had run out. Even though the police tried to mediate so that the case could be resolved amicably, the company still insisted on punishing RMS. The Pasir Pengaraian District Court sentenced RMS to 7 days in prison because he was proven to have violated Article 364 of the Criminal Code concerning the crime of petty theft, (Abdurrahman, 2021).

Based on the cases described above, it can be said that cases in minor crimes continue through the trial process in court, but do not end in punishment. The existence of the criminal justice process can be used as a last resort (ultimum remidium) if other systems/processes cannot be used or function as ultimum remidium. As for the cases of the crime of theft, if it is associated with the factors of the occurrence of the crime, then there are several factors that cause the crime of theft, namely internal factors in the form of education and the conditions of society that force theft. External factors are economic factors, victim factors, and environmental factors, (Kurniawan, 2021). In other words, that a crime committed by the maker does not stand alone, as in the classical view which is indeterminism, but must be seen from the facts of the cause (determinism).

The study of criminal law in the concept of punishment is in accordance with the development of a rule of law and democratic principles based on human rights. That the economic factors that led to the crime of petty theft committed by the perpetrators were none other than to fulfill their daily needs, so that what the perpetrators did was one way to maintain their lives. This is related to Human Rights in relation to Article 28A of the 1945 Constitution of the Republic of Indonesia, that: "Everyone has the right to live and has the right to defend his life and existence". Thus, the difficulties faced by perpetrators in making ends meet cause them to commit criminal acts of theft, this is so that they can maintain their lives.

Based on this, it can be seen that the state is negligent in carrying out the mandate of the constitution, because the state is obliged to fulfill the constitutional rights of every citizen, one of which is the perpetrator of petty theft. The crime of theft will not occur if the state carries out its obligations to fulfill citizens' constitutional rights. So that the occurrence of the crime of theft is due to the negligence of the state in carrying out the mandate of the Constitution.

Based on this, it can be seen that there are still cases of theft crimes that are punished with imprisonment, thus causing an increase in the number of prisoners not directly proportional to the capacity that can be accepted by Correctional Institutions. The condition of over capacity in Correctional Institutions, not only in terms of facilities or facilities from the government, but also from the punishment system itself because it creates problems due to the frequent imposition of prison sentences, resulting in over capacity of Correctional Institutions. Even though in practice there are obstacles in the implementation of sentencing in Indonesia, a solution is needed in the penal system at

this time, so that sentencing will be more effective, because the form of retaliation punishment must be changed with punishment that is more humane in nature, one of which is by using a restorative justice approach that emphasizes on restoration and repair to the original state before the crime occurred.

Thus, with regard to the over-capacity of prisons described above, it can be analyzed the effectiveness of imprisonment in the settlement of general crimes related to the Indonesian criminal justice system as an effort to determine the effectiveness or ineffectiveness of a punishment associated with the current over-capacity of prisons. This happens, by stopping prosecution based on restorative justice, because the restorative justice approach can be used as an effort to deal with over-capacity of Correctional Institutions in Indonesia to anticipate the increasing number of convicts. The condition of prisons in Indonesia is over capacity where the ratio of the number of prison inmates to the capacity of prisons is not proportional. Over-capacity of convicts in prisons occurs due to several factors, not only because of the increase in crime but one of the factors that gets special attention that causes over-capacity of prisoners in prisons is the criminal system..

METHOD

The type of research used is normative legal research or doctrinal research, namely legal research conducted by examining legal materials, whether in the form of doctrines or legal principles in the science of law. Meanwhile, the approach used in this study is the statutory approach, the case approach, and the conceptual approach. The types and sources of legal materials used in this normative legal research consist of Primary Legal Materials, Secondary Legal Materials, and Tertierm Legal Materials, (Ibrahim, 2018).
Legal material analysis techniques are carried out by interpreting, evaluating, and assessing all legal materials, which are then identified to determine patterns or themes in these legal materials in accordance with the focus of the problems specified in this research, (Mamudji, 2021).

FINDINGS AND DISCUSSION

Criminal Law Studies in the Criminal Justice System

The study of criminal law on crime and sentencing (imprisonment) in the settlement of general crimes is currently still viewed in a normative-systematic way only, although that first the review of criminal law must be normative-systematic which precipitates into a unanimity in the teachings general teachings of criminal law. Thus, this systematic and comprehensive response is indeed a normative response, which in turn creates legal realities as well. However, such assumptions and views have grown in people's lives in the past and are currently reaching a new phase where facts show that there are further views on reflection of thought that must be renewed. Things that were previously considered "should be like that according to the law" are now starting to blur and reach a

level that considers "it shouldn't be like that according to the law". In other words, there is currently a legal reform that criminalizes and sentences related to minor crimes do not have to end with the misery of imprisonment.

Altogether, imprisonment is the punishment with the most threats, amounting to 395 crimes (+67.29%). This data shows that imprisonment is the punishment that is most threatened in the Criminal Code, but no reason is found that underlies imprisonment as a type of criminal sanction to deal with crime. So far, there has never been an explanation of the reasons why crime must be dealt with with the threat of imprisonment, because studies of criminal law so far have considered it reasonable to use imprisonment and criminal law sanctions against convicts. Likewise, in legislation outside the Criminal Code, imprisonment is still the most widely threatened criminal threat, so this has resulted in overcapacity of correctional institutions in Indonesia.

The use of criminal law for crime prevention needs to pay attention to the subsidiary function of criminal law, namely criminal law is only used if other efforts are expected to produce less satisfactory or inappropriate results (Sudarto, 2018). There is a need for a systematic approach to crime prevention policies which is an integral part of the national development policy, starting from the overall determination of substantive criminal law and criminal procedural law; includes the inclusion of processes of decriminalization, depenalization and diversion, both in terms of renewing procedures that guarantee the support of the community and conducting a review of the existence of all policies taking into account all their consequences; as well as establishing a close relationship between the criminal justice system and other development sectors, (Saleh, 2018).

Efforts to deal with crime with criminal law are part of criminal politics, and must also be an integral part of social politics, namely policies to achieve social welfare and community protection. In connection with this problem, in the preamble of the 1945 UUDNRI, it was included as a national goal, which stated, among other things: "... to protect the entire nation and all of Indonesia's bloodshed and to promote general welfare". This shows that the issue of community protection and efforts to create social welfare are already the basic ideas set forth in the 1945 UUDNRI. Thus this becomes an obligation for the government and the entire community to realize it by carrying out national development.

However, the occurrence of a crime cannot be separated from the responsibility of the state in fulfilling the rights of its citizens, because one of the factors in the occurrence of a crime is an economic factor, in which a suspect commits a crime in order to make ends meet. This is in accordance with the provisions of Article 28A UUDNRI 1945, which states that everyone has the right to live and defend his life. By not fulfilling the right of the suspect as a citizen to live and defend his life, this can be said to be negligence by the state which has not fulfilled its responsibility for the welfare of society.

The economic factor is one of the important things in human life, especially to maintain his life, so the economic factor of the perpetrators of the crime of theft often arises as a background for a person committing a crime of theft. The perpetrators often do not have a permanent job or even do not have a job, so that the economic needs of having to meet family needs, buy clothing or food, or to treat a family who is sick, this encourages the perpetrators to commit crimes of petty theft.

The facts on the ground show that out of the many cases in Indonesia where criminal sanctions were imposed for committing minor crimes of theft, there were three cases with a similar pattern on grandmothers for minor crimes they committed. Geoffrey Hunt et.al., explains that: The complex dynamics of prison life occur due to the emergence of gangs, increased population (over capacity) and new prison policies using inmates. Prison problems are compounded by increased fragmentation of prisoners, disorder, and even those who are repeatedly incarcerated will be confronted with a changing prison culture and transient events. Likewise, decision-making in prison is not solely taken from the behavior of prisoners, but together with official and unofficial decisions by officials. The close relationship between activity outside prison and activity within prison is an important and accurate factor in assessing prison culture and governance.

Based on this explanation, it becomes interesting when grandmothers who have no physical strength, are not dangerous, are put together with other criminals, which will only add to the excess capacity of the prison space. The case of Minah's grandmother who was sentenced to 1 month and 15 days in prison for stealing 3 cocoa pods in Sidoharjo Hamlet, Ajibarang District, Banyumas Regency. The case is still being processed and decided in court by convicting Grandma Minah for theft which is not justified and violates the Criminal Code, the other reasons are as follows: If the crime of petty theft is not processed, then the law does not provide an example of learning to the public that the crime of theft is not justified. If the law cannot provide learning to the public, then there is a risk that other thieves will appear with the excuse that they do not have the money to buy it.

The law should not only be formally and rigidly fixated in resolving problems, because it is necessary to consider the consequences of punishment in the form of imprisonment which is processed formally in court, of course it takes time, effort, and budget, so that the principle of a fast, simple and low-cost trial does not work.

Prison sentences imposed on perpetrators mean placing them in the company of other serious criminals, will create new crimes and this will result in overcapacity of prisons. As for the implementation of supervision over the probation sentence given to Minah's grandmother, which is carried out outside the Correctional Institution and if the convict violates the terms and/or requirements, the judge has the right to issue a decision with permanent legal force so that imprisonment is applied to the sentence.

The principle of proportionality refers to the idea that the severity of the penalty should reflect the harm done as a result of the offender's guilt. Imprisonment is considered as the most serious punishment in the case of the crime of theft classified as light, while probation is considered as a relatively light sentence. So that from the court decision of Minah's grandmother it was found that the value of the loss was not more than Rp. 2,500,000 (two million five hundred thousand rupiah) and the cocoa evidence was eventually destroyed instead of being returned to the victim so that the victim's loss could not be recovered. So, it can be said that the punishment that will be given is more of an immaterial recovery of losses than material. The verdict for this case is 3 months probation so that Minah's grandmother does not need to go to prison, but if during the 3 month probationary period Minah's grandmother again commits a crime, then Minah's grandmother must serve a prison term of 1 month and 15 days.

The court decision against Minah's grandmother can be interpreted that the judge chose to interpret the law in a humane way rather than interpret it formally according to the provisions in the Criminal Code, because the purpose of punishment is actually a deterrent effect not for revenge. Thus, prison sentences imposed in cases of minor crimes are inappropriate and ineffective, and do not adhere to the principle of a quick, simple and low-cost trial. It is said to be inappropriate and ineffective because the purpose of punishment in the form of imprisonment is more on revenge than the utilitarian form of this punishment. It is not fast and simple because the process that must be passed from the investigation to the sentencing trial at the court takes a long time, which takes time and energy. Costs are not light because costs during the court process and while in prison can cut the court and prison budgets, the costs of which can be more than the value of the losses suffered by the victims.

There are still other alternative punishments that can be considered for punishment other than just a formality of imprisonment, such as probation is an effective example, the authority of the law still exists with sanctions that do not discriminate between individuals, but the purpose of the deterrent effect is also fulfilled. In addition to suspended sentences for light crimes, there can also be other alternatives that are more useful, for example by social work within a certain period of time if indeed peace efforts (through restorative justice) do not reach an agreement. For cases of theft that are classified as minor, as compensation if you are unable to pay, you can also be employed at the location of the theft for a certain period of time until the amount of the loss can be met, so that the purpose of the deterrent and utilitarian effect remains.

Not all criminal acts must be resolved by placing the perpetrators in prison as a form of punishment, this of course returns to the purpose and function of punishment. This quoted Moeljatno's opinion, that: "Not all actions that violate the law or harm society are subject to criminal sanctions. As for the size, which unlawful act is determined as a criminal act, this includes government policy, which is influenced by various factors. Usually actions that may cause great harm to society are subject to criminal sanctions. However, it cannot

be said that only acts that cause large losses (according to their quality) are considered criminal acts, because on the one hand, petty theft, for example, is seen as an offense, while on the other hand, not all actions that result in large losses (eg. corruption) has been included in the criminal law pages. This is probably due to the consideration that petty thefts occur a lot (so in terms of quantity)."

Thus, in the event that the crime of theft is classified as light in which the consequences of its actions do not cause major losses to the victim, it can be considered not to be tried with a prison sentence, because the occurrence of the crime of theft is classified as light in direct proportion to the economic factors faced by the perpetrator. So that the punishment that can be imposed on the perpetrators of theft is classified as light, it can be in the form of social work sanctions. The criminal justice process applied to theft is relatively light, still using the usual judicial process which takes quite a long time. Supposedly in cases of criminal acts of theft classified as light, a quick, simple and low-cost judicial process should be applied.

As for the effectiveness of the criminal justice system, according to Barda Nawawi Arief, quoting what was stated by La Patra, that crime policy (which includes the criminal justice system) is said to be effective if it is able to reduce crime, both in the sense of being able to prevent crime (prevention). of crime) as well as in the sense of improving the perpetrators of crimes (rehabilitation of criminals). With regard to the effectiveness of the criminal justice system, Barda Nawawi Arief further explained that: In its development the attention focused on the criminal justice system seems to be quite serious. Criminal justice is not only seen as a crime prevention system, but is seen as a social problem that is the same as the crime itself. This is because in reality crime has actually increased as an indicator of the ineffectiveness of punishment and also the criminal justice system in certain cases can be seen as a criminogenic factor (a factor that can lead to crime) and a victimogen (a factor that can cause victims).

The study of criminal law on the effectiveness of punishment when associated with the theory of punishment used in this research, namely contemporary theory, where the contemporary theory used is the theory of deterrent effect and restorative justice, according to Wayne R. Lafave, as quoted by Eddy O.S. Hiariej, stated that one of the purposes of crime is as a deterrence effect or a deterrent effect so that criminals do not repeat their actions. The purpose of punishment as a deterrence effect is essentially the same as the relative theory related to special prevention. If general prevention aims to prevent other people from committing crimes, then special prevention is aimed at perpetrators who have been sentenced so they don't repeat their actions.

Punishment is not only given because of the perpetrator's actions in the past but also has a purpose in the future, so that the purpose of punishment is to prevent crime and to frighten other people from committing crimes. As for the development of punishment theory in contemporary theory, namely the theory of deterrence effect. This theory can be

divided into two types, namely: Deterence theory: The preventive effect is expected to arise before the crime is committed, for example through threats. Prevention can be done with threats and criminal penalties imposed openly so that other people can be prevented from committing crimes. Intimidation theory: Criminal punishment is a means to mentally intimidate criminals. According to this theory, if the perpetrator has been sentenced to a criminal sentence, then mentally the perpetrator will be conditioned to avoid similar acts which he knows will be possible to be punished again.

Thus, deterrent theory has a concept which argues that punishment can prevent subsequent crimes. The essence of the deterrent effect is the idea of punishing criminals so they can set an example for others not to commit crimes. The deterrence effect is a new offer which is actually from the influence of criminology, that criminal law does not only look at the actions as adhered to by classical theory, but is seen from the person who committed the crime, because there are factors that cause the person to commit a crime, one of them is due to economic factors. It has been proven from year to year that prisons have overcapacity in prisons, where the government should have a program to build prisons.

As a comparison, it can be seen from the empty prisons in the Netherlands, as expressed by Muhyi Mohas, that this could happen not only because the legal factors were being fixed, but political, social, economic and cultural factors were also being fixed by the Dutch government. So it can't be only one sided, because the law is only one of the sub-systems of the existing system that must be corrected, it doesn't stand alone. In line with the above thoughts, Francis Fukuyama stated that there is a close relationship between social capital and crime, crime arises because there is no social capital. On the other hand, according to Satjipto Rahardjo, Indonesian law should be able to keep up with the times, be able to respond to changing times with all the foundations in it and be able to serve society by relying on aspects of morality from the law enforcement human resources themselves.

The prison system where torture still exists can also make people commit crimes again. Torture in prison (Lapas) is still going on. The cultural factor of violence still exists, so that it makes people become recidivists, and it is not in line with the goals of Correctional Institutions to humanize humans. For example, the right to breastfeed should be given this right because this right is guaranteed by law, but this right is not fulfilled because of the overcapacity of prisons, there is no room for this right to be fulfilled.

The sentences imposed on perpetrators of general crimes are relatively light at this time should be based on the values of responsibility, openness, trust, hope, healing, preventing injustice, gratitude, forgiveness, forgetting past events and "inclusiveness", which focuses on reparation for losses caused by crime, encouraging perpetrators to be responsible for their actions, through providing opportunities for parties directly affected by crime, namely victims, perpetrators and society, by identifying and paying attention to their

needs after the crime has occurred, and seeking a solution to the problem in the form of healing, reparation, reconciliation and reintegration and preventing subsequent losses. According to Andreas, the basic principle of restorative justice is recovery for victims who suffer from crimes by providing compensation to victims, peace, perpetrators doing social work, and other agreements. In other words, imprisonment is not the only solution in the development of criminal law and punishment.

In Article 54 paragraph (2) the Criminal Code Bill formulates that the lightness of the act, the personal circumstances of the perpetrator, or the circumstances at the time the crime was committed and what happened later can be used as a basis for consideration not to impose a crime or not to take action by considering the aspects of justice and humanity. Therefore, imprisonment is not the only solution for general crimes that are classified as mild. In line with the development of democratic law, the criminal justice system adopted is a due process of law which places human rights in a central position in the criminal justice process.

Enforcement of criminal law in the future can certainly be based on the ideals of Pancasila law, namely the realization of justice for all parties without any loss for any of the parties. With this, it can also change the paradigm used in the purpose of punishment, which is to repair damage that is individual and social (individual and social damage) caused by the perpetrators of criminal acts (dader strafrecht). Bearing in mind, victims have human rights to get repair, recovery, and justice for criminal acts committed by perpetrators. An important problem is in fact the Indonesian legal system which prioritizes legislation as a source of law which is a political product that cannot be separated from the interests of those in power, (Gustina, 2022).

Based on this description, it can be concluded that criminal law studies on the effectiveness of imprisonment in solving general crimes related to the current criminal justice system have not been effective, because current criminal justice does not use a comprehensive approach that does not only look at the crime of the perpetrator's actions, but looks at from the human side. Whereas the criminal law in general crimes adheres to ultimum remedium, the perspective is to carry out criminal law and punishment for welfare, including recovery for victims who suffer from crime by providing compensation to victims, peace, perpetrators doing social work, and other agreements, and aims to repair individual and social damages caused by general criminal acts classified as mild.

The Effectiveness of Imprisonment in the Justice System in Indonesia

Punishment, as previously described, based on the Criminal Code (KUHP) there are two types of punishment, namely principal punishment and additional punishment. Principal punishments consist of: death penalty, imprisonment, imprisonment, and fines. Meanwhile, additional punishment consists of revocation of certain rights, confiscation of certain items, and announcement of a judge's decision (Article 10 of the Criminal Code).

Imprisonment is the most widely applied form of punishment in Indonesia. The imposition of prison sentences is realized by fostering them in Correctional Institutions (Lapas) with the justification that law violators can only be fostered if they are alienated from their social environment, and law violators are declared as individuals who have been corrupted in everything, so that they cannot be expected to be friendly. to the social environment. This assumption is a stigma with the pretext of retaliation. Retaliation is not always in the form of physical torture, but also in the form of psychological suppression. Sometimes, the aim is not only towards the perpetrator but also towards the perpetrator's family.

To find out the effectiveness of imprisonment which is a product of formal law in the Criminal Code, it is necessary to understand criminology (in this case penology) rather than just understanding the application of formal law. Schuyt argues that justice without effectiveness is not justice. Then the question arises about the meaning of justice. According to John Rawls, as quoted by Petrus and Pandapotan, that justice is equality between rights and obligations. Social cooperation schemes must be stable, social cooperation must be regularly complied with and its ground rules are voluntarily followed up; and when a breach occurs, a stabilizing force must be in place which prevents further breach and tends to restore order. The distinctive role of the concept of justice is to determine basic rights and duties and to determine the proper distributive apportionment, the way in which a conception does this will inevitably affect issues of efficiency, coordination, and stability.

Whether imprisonment is effective or not, the criterion is the success or failure of the imprisonment in achieving its goals, not the severity of the imprisonment imposed on the perpetrators of the crime. However, the problem is whether the effectiveness of imprisonment can be measured and proven to provide a basis for justifying the stipulation of imprisonment in legislation. So to see the effectiveness of imprisonment will be reviewed from two main aspects of the purpose of punishment, namely from the aspect of protecting the community and aspects of improving the perpetrator.

The Effectiveness of Prison Sentences Seen from the aspect of Community Protection. Viewed from the aspect of public protection/interest, a crime is said to be effective if the punishment is as far as possible to prevent or reduce crime. So the criterion of effectiveness is seen from how far the frequency of crimes can be reduced. In other words, the criterion lies in how far the general prevention effect of imprisonment is in preventing society in general from committing crimes. Based on research that has been conducted, it is obtained an illustration that imprisonment is the type of punishment most often imposed by judges compared to other types of punishment. In Indonesia, currently there is still a dominance of imprisonment, compared to the imposition of other types of punishment. Even in material criminal law, imprisonment is the type of crime that is most threatened. Knowing the effect of imprisonment is not easy, because as it has been said that the operation of criminal law must always be seen from its entire cultural context. There is

an interplay between law and other factors that shape our attitudes and actions. In connection with this 'mutual influence', it is only natural that Wolf Middendorf says that it is very difficult to evaluate the effectiveness of general deterrence (general prevention) because the mechanism of prevention/early prevention is unknown. Society cannot know the real relationship between cause and effect. People may commit a crime or may repeat it again regardless of whether there is a law or punishment imposed. Moreover, according to Middendorf, other means of social control such as parental power, habits or religion, may be able to prevent evil acts as strong as people's fear of punishment. The effectiveness of criminal law cannot be measured accurately. It is emphasized that the law is only one means of social control. Habits, religious beliefs, group support and disapproval, pressure from interest groups and the influence of public opinion are more efficient means of regulating human behavior than legal sanctions.

From the description above, it can be said that indicators of the ups and downs of the frequency of crimes cannot simply be used as a measure to determine whether imprisonment is effective or not. Moreover, there is the other side of the "community protection aspect", namely that punishment also aims to "restore the balance of society". The effectiveness of imprisonment in achieving this goal cannot be measured by indicators of the ups and downs of the frequency of crimes which are more quantitative in nature. Indicators of community balance being restored include conflict resolution, peace and security in society, taints in society have disappeared or values that live in society have recovered. These indicators are more qualitative in nature and this is also what according to Roger Hood and Richard Sparks are other aspects of "general prevention" that are difficult to study.

The Effectiveness of Imprisonment in View of the Improvement Aspect of the Perpetrator. The measure of effectiveness lies in the aspect of special prevention; the measure lies in the problem of how far the punishment (imprisonment) has an influence on the perpetrator/convict. There are two (2) aspects of criminal influence on convicts, namely aspects of initial prevention and aspects of improvement. The first aspect is usually measured using recidivist indicators. Based on this indicator R.M. Jackson stated that a sentence is effective if the violator is not convicted again within a certain period. Furthermore, it was emphasized that effectiveness is a measurement of the ratio between the number of offenders who were sentenced again and those who were not sentenced again. Research with this recidivism indicator is difficult to do in Indonesia, because the available data is usually very brief, namely only stating the number of recidivists at the end of each month or year.

From the data presented, it cannot be known with certainty the type and severity of the previous sentence, the type of crime that was committed before and which was repeated later, and the time limit for the repetition. By only knowing the amount, it is impossible to know the level of effectiveness of imprisonment and its comparison with other types of punishment. Measuring a comparison of the effectiveness of punishment cannot be

done simply by knowing the number of recidivists, but it is also necessary to know the number of people who have been convicted for the first time, with each type of punishment they received and how many of them have not repeated it. It is also necessary to know how long the resumption period has been since the previous sentencing decision. The second aspect is the improvement aspect. Related to the problem of changing the attitude of convicts. How far imprisonment can change the convict's attitude is still a question that cannot be answered satisfactorily. This is because there are several method problems that have not been resolved and there is no agreement, in particular regarding: Is the measure to determine whether there have been 'signs of improvement' or there has been a 'change of attitude' in the perpetrator; the measure of the 'recidivism rate' (recidivism) or the 'reconviction rate' (re-sentencement) is still widely doubted. How long is the 'certain period' to evaluate whether there is a change in attitude after the convict has served his prison sentence?

Based on the description above, what has been stated above can be stated that studies so far have not been able to prove with certainty whether imprisonment is effective or not. The problem of effectiveness is actually related to the problem of the functioning/operation of criminal sanctions. In addition, based on the observations of several research results and the opinions of scholars, the effectiveness of imprisonment is more specific, that is, it is closely related to the characteristics of certain crimes and perpetrators. Therefore, it may be more appropriate to consider it at the stage of criminal application rather than the stage of determining an in abstracto sentence which requires matters that are generally accepted.

The basis for justifying the need for imprisonment is not solely based on the problem or seen from the point of view of the effectiveness of the application of sanctions/criminals, prevention of recidivism is not the only goal of punishment and therefore it is impossible to abolish imprisonment as a means of dealing with crime. Imprisonment at least separates the criminal from society, thus eliminating the opportunity for him to commit another crime. So preventing re-sentence (reconviction) although not always preventing. Even though imprisonment is not successful or effective in preventing recidivism, it still has justification to be maintained, because it is to 'separate criminals from society'.

Whereas the existence of imprisonment seen from the perspective of the effectiveness of sanctions must/can be seen from two main aspects of the purpose of punishment, namely the aspect of protecting the community and the aspect of improving the offender. From the aspect of community protection, the aim is to prevent, reduce or control crime, and restore social balance, including: resolving conflicts, bringing a sense of security, repairing losses/damage, removing stains, and reinforcing the values that live in society, while the aspect of improving the perpetrators includes various objectives, including to rehabilitate and re-socialize the perpetrators and protect them from arbitrary treatment outside the law.

Prison sentences are basically still needed/maintained in the Criminal Code, because even though the deterrent effect seems to be no longer being obtained, in order to protect society and to improve the behavior of the perpetrators of criminal acts, prison sentences are still very much needed. By including the perpetrator of a crime in prison, then with the existing correctional system and regulated in Law Number 12 of 1995, more or less it can make the perpetrator of a crime change his behavior. However, when viewed from the excess prison capacity that is currently occurring in almost all prisons in Indonesia, new policy breakthroughs are needed, one of which is the existence of a restorative justice system for perpetrators of minor crimes.

This is because the perpetrators of minor crimes basically commit crimes due to economic factors, namely to fulfill their daily needs, so a special policy is needed that regulates sentencing for perpetrators of minor crimes that are more humane while still protecting the rights of victims. So that the existence of a policy in the criminal justice system can be one way to reduce the burden on prison capacity.

Based on the description above, it can be said that the effectiveness of imprisonment will be reviewed from two main aspects of the purpose of punishment, namely from the aspect of protecting the community and aspects of improving the offender. In relation to this research, it can be seen that these two aspects influence the development of criminal and sentencing theory, which requires more humane treatment of perpetrators of crimes and protects the rights of victims as well as families and communities, so that in the process of settling minor criminal cases each party have a balanced position and no one dominates, because the focus of the solution lies in penal mediation and restoring the relationship between the perpetrator and the victim, (Edward, 2019). This is due to these two aspects, namely aspects of community protection and aspects of improvement of the perpetrator, which are still considered ineffective because the victim and perpetrator do not have an unequal position and there is no restoration of the relationship between the victim and the perpetrator, then in the end a prison sentence is imposed. to perpetrators will only add to the burden of prison capacity in accommodating convicts sentenced to imprisonment.

When linked to the theory of criminal law and punishment, in fact the use of criminal law is not the only way to deal with crimes that occur in society, especially the use of criminal law as the ultimate weapon (ultimum remidium) in tackling crime. However, if criminal law is chosen as a means of overcoming crime, it must be prepared in a planned and systematic manner. This means that choosing and establishing criminal law as a means of overcoming crime must consider factors that can support the functioning and operation of criminal law in reality.

Because basically every law functions to regulate and protect, so does criminal law which generally functions to regulate and organize people's lives so that public order can be created and maintained. In addition, criminal law also has other functions, such as a

subsidiary function whereby criminal law is able to infiltrate other norm systems and can be used as a last resort if the relevant norm system cannot be used or functions as ultimum remidium. Thus associated with the implementation of criminal penalties against perpetrators of minor crimes, it can be seen that the function of criminal law is to protect various interests, as well as as a norm that is implemented to provide a warning to perpetrators of minor crimes not to repeat crimes.

In this regard, the author uses contemporary sentencing theory, which according to Wayne R. Lafave, as quoted by Eddy O.S. Hiariej, said that one of the purposes of crime is as a deterrence effect or a deterrent effect so that criminals do not repeat their actions. The purpose of punishment as a deterrence effect is essentially the same as the relative theory related to special prevention. If general prevention aims to prevent other people from committing crimes, then special prevention is aimed at perpetrators who have been sentenced so they don't repeat their actions.

Based on the theory of criminal law and sentencing described above, this theory is used to analyze criminal law studies on the effectiveness of imprisonment in the settlement of general crimes related to the Criminal Justice System, because the current criminal justice system in Indonesia causes prisons to become overcrowded (overcapacity). In principle, the problem of excess capacity in correctional institutions can be overcome by prioritizing justice for victims and perpetrators of criminal acts, so that alternative punishments such as supervision sentences, fines, social work and others can be applied. Furthermore, by applying alternative punishments to perpetrators of minor crimes, one of which is to apply the democratic principles of human rights for perpetrators, the policy is made as a non-penal policy effort that is basically based on human rights, as previously stated according to Mardjono Reksodiputro, that the principle the presumption of innocence is the main principle of a fair legal process (due process of law), which includes at least: protection against arbitrary actions by state officials; that it is the court that has the right to determine whether the defendant is guilty or not; that court hearings must be open (should not be confidential); and that suspects and defendants must be given guarantees to fully defend themselves.

According to Heri Tahir, in the enforcement or implementation of due process of law, a set of rights must be provided that suspects and defendants can use in order to avoid arbitrary actions by the authorities. The minimal elements of a just legal process as found, both by Tobias and Petersen or the Tenth UN Congress on the prevention of crime and the treatment of offenders, are more procedural justice oriented. This procedural justice means placing the constitution or law as the basis for implementing a fair legal process. Procedural justice can provide the advantage that it can guarantee legal certainty to everyone and be treated equally.

Discussions about a fair legal process (due process of law) basically cannot be separated from the criminal justice system, and is also related to legal aid. The implementation of a

fair legal process must reflect the protection of the rights of suspects and defendants, or in other words in achieving a fair legal process (due process of law), criminal justice must also reflect the protection of the rights of suspects and defendants as a requirement for the implementation of a legal process. fair laws. Thus, due process of law contains protection and enforcement of human rights (HAM).

With the non-penal process as an effort to resolve minor crimes from a human rights perspective, the method of examination is to place the suspect as a subject where the perpetrators of minor crimes have the right not to admit their guilt, as well as one of the efforts to suppress overcapacity of correctional institutions. In terms of imposing prison sentences on minor criminal offenders it is not effective, because the criminal justice process is costly, the administrative process is long, and the prison capacity is overcrowded. Correctional Institutions as coaching institutions make it possible for new crimes to arise due to the over-capacity of these prisons. The settlement of non-penal cases is also one of the offers of criminal law that perpetrators of minor crimes do not have to be punished, if there is not enough evidence, old parents are convicted, and/or recovery/rehabilitation has taken place.

CONCLUSION

Based on the discussion described above, the following conclusions can be drawn: The study of criminal law on imprisonment in the settlement of general crimes related to the current criminal justice system does not use a comprehensive approach, which does not only look at the crime of the perpetrator's actions but also looks at from the human side. Whereas criminal law in general crimes adheres to ultimum remedium, the perspective is that carrying out criminal law and punishment aims to obtain justice, including restoration of victims who suffer from crime by providing compensation to victims, peace, perpetrators doing social work, as well as agreements others, as well as aiming to repair individual and social damages caused by general criminal acts classified as mild. The effectiveness of imprisonment related to the justice system in Indonesia currently shows that it is not yet effective, because the settlement of general criminal cases, especially minor crimes, is still oriented towards penal settlement where the sentences handed down to perpetrators of minor crimes are imprisonment, so this causes the right to not be fulfilled. -the rights of perpetrators and victims are balanced, and the aftermath results in overcapacity of prisons, and this does not fulfill the objectives of criminal law.

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