Concept of Punishment

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Abstract
Sentencing is an important part of criminal law. This is because sentencing is the culmination of the entire process of holding someone guilty of committing a crime accountable. "A criminal law without sentencing would more simply be a declaratory system pronouncing people guilty without any formal consequences following that guilt." Criminal law without sentencing means declaring someone guilty without any definite consequences for their guilt. Thus, the concept of guilt has a significant influence on the imposition of punishment and the process of its implementation. If guilt is understood as "blameable," then here punishment is the "embodiment of that blame."

I. INTRODUCTION

Law is a guideline that regulates human lifestyle patterns and plays an important role in achieving the goal of peace in society (Rosana, 2014). Therefore, the law recognizes the adage ibi societes ibiius. This adage arises because law exists because of society and the relationships between individuals within society. Relationships between individuals in society are something essential according to human nature that cannot live alone because humans are polis creatures, social creatures (zoon politicon) (Darji, 1995).

All of these relationships are regulated by law, all of them are legal relationships (rechtsbetrekkingen) (Apeldoorn, 2000). Therefore, to regulate legal relationships in society, a legal codification is carried out with the noble goal of creating legal certainty and maintaining the value of justice in 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 those related to public law because it directly touches the lives of many people and applies generally. The problem of crime and punishment itself is the object of study in the field of criminal law called penitentiary law (penitentiary recht). Because the criminal law issues discussed or discussed in penitentiary law are related to the problem of crime and punishment, penitentiary law itself in a narrow sense can be interpreted as all positive regulations regarding the criminal system (strafstelsel). Meanwhile, in a broad sense, penitentiary law can be interpreted as a part of criminal law that determines and provides rules regarding sanctions (sanction systems) in criminal law, which include both strafstelsel and maatregelstelsel (action systems) as well as policies.

II. RESEARCH METHODS

The type of research conducted is Normative Juridical legal research which is about what the concept of the criminal system is in criminal law in Indonesia, namely by collecting normative data and what is in the laws related to criminal law.

III. RESULTS AND DISCUSSION

A. Understanding the Concept of Criminalization

Criminal and criminal punishment in Indonesia began since the enactment of the Wetboek van Strafrecht (WvS) in 1915 and is valid in Indonesia based on Law No. 1 of 1946 concerning the Criminal Code (based on the principle of concordance). Criminal punishment is a misery/story imposed intentionally by the state (through the court) where the misery is imposed on someone who has legally violated criminal law and the

misery is imposed through the criminal court process (Ekaputra, 2010). Criminalization is the imposition of a sentence/sentencing as a legitimate effort based on law to impose the misery of suffering on someone through the criminal justice process proven legally and convincingly guilty of committing a crime (Simanungkalit, 2024). So, criminal speaks about the punishment while criminalization speaks about the process of imposing the sentence itself. The science that studies criminal and criminal punishment is called penitentiary law/sanction law. The doctrine distinguishes material criminal law and formal criminal law.

JM Van Bemmelen explains these two things as follows:

1. Material criminal law regulates the determination of criminal acts, perpetrators of criminal acts and penalties (sanctions) (Dedi, 2012).
2. Formal criminal law regulates how criminal proceedings should be conducted and determines the rules that must be observed on that occasion.

Based on the above opinion, it can be concluded that material criminal law contains prohibitions or orders that, if not fulfilled, are threatened with sanctions, while formal criminal law is a legal rule that regulates how to implement and implement material criminal law. Punishment is not imposed because of a crime, but so that the perpetrator of the crime does not commit another crime and others are afraid to commit similar crimes. Punishment is not at all intended as an effort of revenge but rather as an effort to develop a perpetrator of the crime as well as a preventative effort against similar crimes (Laila, 2022).

B. Penal System

A system is a network of several elements that function together. The penal system is a set of laws and regulations related to criminal sanctions and punishment (Fernando, 2014). This means that all laws and regulations concerning substantive criminal law, formal criminal law, and criminal enforcement law can be viewed as a unified penal system. According to Prof. Sudarto, the term "penalty" is synonymous with the term "punishment." Punishment comes from the root word "law," so it can be interpreted as establishing a law or deciding on the law. To refer to punishment in a criminal case, the term "punishment" or "imposition" of a sentence by a judge can be used. In imposing a sentence, the judge is bound by the types of criminal sanctions stipulated in the law.

The sentencing system listed in the Criminal Code recognizes two types of systems, namely, the alternative sentencing system and the single sentencing system.

1. The alternative sentencing system means that judges in deciding cases may be selective in issuing their verdicts, whereas
2. The single sentencing system means that the judge in handing down his decision must be in accordance with the formulation contained in the Article. The single sentencing system as adopted by the Criminal Code can be seen in Article 489 paragraph (1) of Book III of the Criminal Code concerning violations of public security for people and property.

Meanwhile, the concept of the new Criminal Code also regulates the criminal punishment system or new criminal punishment rules, including the following:

a. Even though criminal sanctions are formulated singly (imperative/rigid), the judge can choose other alternative punishments that are not listed in the formulation of the crime or impose a penalty cumulatively with other punishments;
b. Even though criminal sanctions are formulated alternatively, judges can impose criminal sanctions cumulatively;
c. Even though there is a criminal decision that has permanent legal force, it is still possible for there to be modifications/ changes/adjustments/reviews (principle of “modification of sanction”, principle of “the alteration/annulment/revocation of sanction”) to the decision based on:
    1) There are changes to the law or changes to "legislative policy"
    2) There is a change in the convict's self
d. Although in principle the concept of the Criminal Code Bill is based on the idea of balance, in the event of a conflict between legal certainty and justice, the concept provides guidelines so that "in considering

the law to be applied, judges should as far as possible prioritize justice over legal certainty."

C. Types of Criminal Sanctions

1. Types of criminal law according to the current Criminal Code.

Indonesian criminal law defines the types of criminal sanctions for principal and additional crimes. This is explicitly stated in Article 10 of the Criminal Code, which reads (Arief, 1996): Criminal penalties consist of:

a. Principal Criminal Penalties, namely: Death penalty, Imprisonment, Detention, Fines, Additional Penalties, Revocation of certain rights.
b. Confiscation of certain goods;
c. Announcement of the judge's decision

The methods for securing these criminal provisions within criminal law norms are regulated in Articles 11 to 43 of the Criminal Code. The sentencing provisions in Book I of the Criminal Code are formulated consistently within the criminal law norms in Books II and III of the Criminal Code. The general provisions of criminal law in Book I serve as a guideline for formulating criminal threats within criminal law norms and for implementing criminal penalties.

Then, in 1916, with Law No. 20 of 1946, Indonesian criminal law introduced a new type of principal punishment: the so-called "closed sentence." This closed sentence is essentially a prison sentence. However, when trying someone who commits a crime punishable by imprisonment, the judge, motivated by a respectable intention, may impose a closed sentence. These are all types of punishments currently covered by the Criminal Code.

2. Types of criminal penalties according to the new Criminal Code concept.

The types of crimes contained in Article 60 of the draft of the new Criminal Code are as follows:

a. The main penalties are: imprisonment, detention, supervision, fines, and community service. Meanwhile, Article 61 of the new Criminal Code regulates the death penalty, which is formulated as a special punishment and is always threatened as an alternative.
b. Additional Criminal Procedure, Additional criminal procedures are regulated in Article 62 of the new Criminal Code concept which stipulates that additional criminal procedures consist of: Revocation of certain rights, Confiscation of certain goods and/or bills, Announcement of the judge's decision, Payment of compensation, Fulfillment of customary law obligations.

In addition to the types of criminal sanctions mentioned above, the new Criminal Code concept also plans special types of sanctions for children. These special types of sanctions for children also consist of principal and additional penalties. Article 109 (1) of the new Criminal Code concept states that the principal penalties for children consist of:

a) Nominal Penalties, namely: Warning Penalties; or Severe Reprimand Penalties.
b) Criminal penalties with conditions, namely; Criminal penalties for development outside the institution; Criminal penalties for community work; or Criminal penalties for supervision.
c) Criminal fine; or
d) Restrictions on freedom, namely; criminal sanctions in the form of development in an institution; imprisonment or detention.

Meanwhile, in Article 109 paragraph (2) of the new Criminal Code Concept, additional types of punishment for children are formulated, which consist of:

a) Confiscation of certain goods and or bills;
b) Payment of compensation; or
c) Fulfillment of customary obligations

From this, we can see that children are not subject to the death penalty or life imprisonment. One of the novelties in the new Criminal Code concept is a very new type of punishment in Indonesia, namely community service, in addition to the new concept of fines in this criminal law reform. The current Indonesian criminal law does not yet regulate this type of community service, but it is still being drafted in Book I of the 2005 Criminal Code Bill. Socialization of the plan to implement this new type of

punishment is necessary to gain public support.

Chronologically, social work punishment is a type of fourth generation criminal sanction which emerged because of the assumption that fines (as a third generation criminal sanction) are less effective if applied widely in society (Hamzah, 1993).

D. Theory of Punishment

In criminal law there are elements or characteristics of crime, namely:

1. In essence, punishment is the imposition of suffering or misery or other unpleasant consequences;
2. The punishment was given intentionally by a person or body that has power; and
3. This punishment is imposed on someone who has committed a crime according to the law.

From these three elements, experts have formulated several theories regarding punishment, which form the legal basis and purpose of punishment (Strafrecht Theori), namely:

a. Absolute Theory or Retribution (De Vergelding Theori)

This theory has been known since the 18th century, and it bases punishment on the idea of retribution. According to Immanuel Kant, "Crime causes injustice, and it must be repaid with injustice."

The absolute theory views punishment as retribution for a wrong that has been committed (Zainal, 2007), so it is oriented towards the act and lies in the crime itself. According to this theory, the basis for punishment must be sought from the crime itself, because the crime has caused suffering to others, in return (vergelding) the perpetrator must be given suffering. The main characteristics of the Absolute or retribution theory are:

1) The purpose of punishment is solely for retribution;
2) Revenge is the main goal and does not contain means for other goals, for example for the welfare of society;
3) Guilt is the only condition for the existence of a crime;
4) The punishment must be adjusted to the offender's fault; and
5) Criminal law looks back, it is pure condemnation and its purpose is not to reform, educate or resocialize the offender.

b. Relative or Objective Theory (De Relatif Theori)

This theory assumes that the basis of punishment is the purpose of the punishment itself, because punishment has a specific purpose. According to this theory, the basis of punishment is the primary goal, namely maintaining social order. Several theories exist for achieving this goal through punishment, namely:

1. Preventive theory (prevention theory), which includes:
   a) Generale Preventive (general prevention), namely aimed at the general public, at the wider community; and
   b) Special Preventive (special prevention), which is aimed specifically at perpetrators of crimes, so that they do not repeat their crimes.
2. Verbetering van dader (correcting the criminal), the method is by imposing a sentence and providing education while he is serving his sentence.

The relative theory (deterrence) views punishment not as retribution for the perpetrator's wrongdoing, but as a means to achieve the beneficial goal of protecting society towards prosperity. From this theory emerges the goal of punishment as a means of prevention, namely general deterrence aimed at society.

Based on this theory, punishment is imposed to carry out the intent or purpose of the punishment, namely to correct the dissatisfaction of society as a result of the crime. The purpose of punishment must be viewed ideally, besides that, the purpose of punishment is to prevent crime. Punishment is not merely to carry out revenge or retribution on those who have committed a crime, but has certain beneficial goals. Retribution itself has no value, but only as a means to protect the interests of society. Punishment is not imposed because people commit crimes, but rather to prevent people from committing crimes. Therefore, this theory is often also called the theory of goals (utilitarian theory). The main

characteristics or characteristics of the relative (utilitarian) theory are:

1) The purpose of punishment is prevention;
2) Prevention is not the ultimate goal but only a means to achieve a higher goal, namely the welfare of society;
3) Only violations of the law that can be blamed on the perpetrator alone (e.g. due to intent or culpa) meet the requirements for criminal penalties;
4) Criminal penalties must be determined based on their purpose as a tool for crime prevention;
5) Criminal law looks forward (is prospective), criminal law can contain elements of reproach, but the element of retribution cannot be accepted if it does not help prevent crime in the interests of public welfare.

c. Combined Theory (De Verenigings Theori)

This theory encompasses both of the above theories: the absolute theory (retribution) and the relative theory (purpose). According to this theory, punishment is based on retribution and the purpose of the punishment itself. Therefore, there must be a balance between retribution and the purpose of punishing a person who commits a crime to achieve justice and societal satisfaction. This combined theory can be divided into two broad categories:

1) A combined theory that prioritizes revenge, but this revenge must not exceed the limits of what is necessary and sufficient to maintain social order;
2) A combined theory that prioritizes the protection of social order, but the suffering resulting from the imposition of a criminal penalty must not be greater than the act committed by the convict.

This theory is unique in terms of the resocialization process of the perpetrator, so it is hoped that it can restore the social and moral quality of the community so that they can reintegrate into society. Treatment as the goal of punishment is put forward by the positive school. This school is based on the concept of determinism, which states that people do not have free will in carrying out an act because they are influenced by their personal character, environmental factors, and society. Thus, crime is a manifestation of an abnormal mental state. Therefore, the perpetrator of the crime cannot be blamed for his actions and cannot be subject to criminal punishment; instead, he must be given treatment for the perpetrator's reconciliation.

The theory of social defense is a further development of the modern school of thought, with its famous figure, Filippo Gramatica. The main goal of this theory is to integrate individuals into the social order, rather than to punish their actions. Social defense law requires the elimination of criminal responsibility (error) and its replacement by a view of antisocial behavior, namely the existence of a set of regulations that are not only in accordance with the needs of communal life but also in accordance with the aspirations of society in general.

d. Integrated Theory of Criminal Punishment

There are 5 (five) theoretical approaches as reasons for justifying criminal penalties, namely:

1. Retribution, which includes:
   a) Revenge Theory, namely that punishment is revenge for actions committed; and
   b) Expiation Theory is a theory of repentance to make criminals repent and at the same time serve as atonement for the mistakes they have made.
2. Utilitarian Prevention: Deterrence, namely punishment as a general preventive measure for society so that they do not commit crimes;
3. Special Deterrence or Intimidation, namely crime prevention which is specific to the perpetrator so that he does not commit crimes again, in this case it is closely related to recidivism;
4. Behavioral Prevention: Incapacitation, namely the perpetrator of a crime is made unable to commit another crime temporarily or permanently; and
5. Behavioral Prevention: Rehabilitation: This is done to improve the mental and personality of the perpetrator. The basic goals of punishment are:
   a) To give suffering to the perpetrator; and

b) To prevent crime from occurring, both specifically for the perpetrator so that he does not do it again, and in general so that society does not commit crime.

Due to dissatisfaction with various existing theories, L. Packer proposed an integrated theory of criminal punishment justification (Integrated Theory of Criminal Punishment). According to L. Packer, there is ambiguity (double meaning) in punishment, namely: "Punishment is necessary, but it should be completed." Therefore, in imposing punishment, there is a requirement for the perpetrator's guilt.

According to Packer, in sentencing, 3 (three) things must be considered, namely:

1) Act against the law;
2) The perpetrator's fault; and
3) Threatened criminal sanctions.

Given this triangular relationship, not everyone who commits a crime can be punished; therefore, a guilty verdict is required. In this regard, L. Packer proposed to the lawmakers:

1) Must pay more attention to the limits of thinking about criminal sanctions;
2) There is a need for careful supervision from institutions handling the criminal justice process; and
3) What criteria can be used to determine something as a criminal act?

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Criminal and criminal penalties in Indonesia began when the Criminal Code (WvS) was enacted in 1915 and is valid in Indonesia based on Law No. 1 of 1946 concerning the Criminal Code (based on the principle of concordance). Criminal penalties refer to the punishment while criminal penalties refer to the sentencing process itself. The criminal penalty system stipulated in the Criminal Code recognizes two types of systems, namely, the alternative criminal penalty system and the single criminal penalty system. Indonesian criminal law determines the types of criminal sanctions for principal and additional criminal penalties. This is expressly formulated in Article 10 of the Criminal Code. Criminal penalties have several theories, namely: Absolute or retaliatory theory, Relative or objective theory, Combined theory, and Integrated justification theory of criminal penalties.

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