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Reconstruction of he Application of Short Prison Sentence in the New Criminal Code

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Abstract : There has been a lot of criticism on the effectiveness of short imprisonment which has not been able to reduce the crime rate in a country, thus requiring other alternative solutions in overcoming this problem. In addition, there are studies that show that judges in Indonesia have a tendency to impose punishment decisions on criminal acts with minor criminal threats. For this reason, the New Criminal Code has reconstructed the application of short imprisonment by applying other alternative punishments such as fines and community service based on the objectives of punishment and guidelines for punishment, which in turn is expected to reduce the existing crime rate

Keywords : reconstruction, short prison

I. INTRODUCTION

The forms of punishment as contained in the Criminal Code which is currently applicable as contained in Article 10 of the Criminal Code as well as in Law Number 1 Year 2023 on the Criminal Code which will come into force in 2026 (hereinafter abbreviated as "New Criminal Code") as contained in Article 64 and Article 65 of the New Criminal Code, still places "imprisonment" as one of the main punishments that are most often threatened and imposed to convicts in a criminal offense case which is scattered in its articles. In the New Criminal Code, there are other new forms of punishment in the form of fines and social work based on the objectives of punishment and guidelines for punishment, even though the application of imprisonment is not eliminated.

Based on the fact that in the stadia of criminal legislation that does not *expressive verbis* determine the limitations of short imprisonment or not short imprisonment, if the provision of imprisonment under 5 years is used as a lighter threat than imprisonment above 5 years, it can be assumed that imprisonment under 5 years is a short imprisonment threat, which is also based on the provisions in the Criminal Procedure Code, detention can only be imposed on suspects or defendants who commit criminal offenses and or attempt or provide assistance in criminal offenses punishable by imprisonment of five years or more or detention can also be imposed on criminal offenses punishable by imprisonment under five years.[1]

[1] Article 21 paragraph (4) number a and b Criminal Procedure Code.

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As for other forms of short imprisonment in the provisions of criminal procedure law in Indonesia, there is also a conditional punishment *(voorwaardelijke veroordeling)* or known as probation as regulated in Article 14a of the Criminal Code.[2] Historically, this conditional punishment is a sharp criticism of the existence of imprisonment, so that someone who is found guilty in a court process is still punished but does not experience the pain of imprisonment while serving the sentence.

In its development, many have questioned the benefits of the use of short imprisonment as a means to tackle the problem of crime, namely related to the issue of its effectiveness for those who undergo this type of punishment. There is a view that people do not become better but rather become more evil after serving short imprisonment, especially if this imprisonment is imposed on children or adolescents including elderly offenders. In this regard, it is often stated that prison houses are colleges of crime or crime factories.[3] Broadly speaking, the criticism against imprisonment consists of moderate and extreme criticism. Moderate criticism essentially still maintains imprisonment, but its use is limited. Meanwhile, extreme criticism calls for the abolition of imprisonment altogether.[4]

II. RESEARCH METHOD

This paper uses normative research methods conceptualized as a symptom that can be observed in real life.[5] In this research, a statutory approach is used, through a review of the laws and regulations that are related to the issues being discussed,[6] and in this case the various rules of law are the focus as well as the central point of the research. In addition, the legal concept analysis approach (conceptual approach) is also another approach used in this research. This research begins by describing legal facts, then looking for solutions to a legal case with the aim of resolving the legal case.[7] In this research, legal materials are used as contained in the law. Then for secondary legal materials in the form of books, journals and other literature related to the discussion of short imprisonment. The collection technique used is a document study conducted by reviewing legal materials relevant to the discussion of the research.

III. DISCUSSION

About Short Prison

Historically, the modification of short imprisonment was in line with the recommendations of the Commission of Ministers of the Council of Europe (Resolution No.10/1976 of March 9, 1976).[8] The resolution mandated that judges be given the right not to impose any punishment for minor offenses. Point 3 letter a reads as follows:

> "To study various new alternatives to prison with a view to their possible incorporation into their respective legislation and in particular:

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[2] Article 14 a paragraph (1) Criminal Code.

[3] Teguh Prasetyo, *Kriminalisasi Dalam Hukum Pidana* (Bandung: Nusamedia, 2011), page. 124.

[4] Barda Nawawi Arief, *Kapita Selekta Hukum Pidana,* (Bandung: Citra Aditya Bakti, 2013), page. 37.

[5] M. Fajar, ND. dan Y. Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*, (Yogyakarta: Pustaka Pelajar, 2010), page. 34.

[6] P.M. Marzuki, *Penelitian Hukum*, (Jakarta: Prenada Media, 2005), page. 93.

[7] Z.A. Amirudin, *Pengantar Metode Penelitian Hukum*, (Jakarta: Rajawali Pers, 2010), page. 118.

[8] Resolusi Nomor 10 tahun 1976 tentang *Altenative Penal Measures to Imprisonment* Pasal 3 huruf (a).

a. to consider the scope for penal measures which simply mark a finding of guilt but impose no subtantive penalty on the offender [...]".

Extreme criticism calls for the complete abolition of imprisonment, among others, in the prison abolition movement at the International Conference on Prison Abolition (ICOPA) held for the first time in May 1983 in Toronto, Canada, the second on June 24-27, 1985 in Amsterdam, the Netherlands and the third in 1987 in Montreal, Canada. At this third conference the term prison abolition was changed to penal abolition.[9]

One of the leaders of the prison abolition movement is Herman Bianchi, who stated that, "The institution of prison and imprisonment are to be forever abolished, entirelly and totally. No trace should be lift of this dark side in human history".[10] While academics in Indonesia who embrace the view of the extreme abolition of imprisonment is Hazairin since 1992 in his writing entitled "State Without Prison".[11]

In Hazairin's opinion, imprisonment is of little benefit to law enforcement in this country. Its function as a place to curb the freedom of criminal offenders is only useful at that time. Prison becomes a place for criminals to relax for a while after committing a crime. Just like a snake that takes a long nap in a cave, after eating its prey. Similarly, prison is a cave for criminals to enjoy their satisfaction after committing a crime or to avoid the wrath of people who hate them.[12]

Hazairin also studied the regulation on imprisonment as one of the main punishments found in Article 10 of the Criminal Code. The Dutch had introduced the imprisonment system to Indonesia when they colonized Indonesia and then implemented their Wetboek van Strafrecht (WvS) in this country. This WvS then displaced the role of customary law and religious law that had been regulating the orderly life of the Indonesian people. In fact, neither Indonesian customary law, which consists of more than 250 (two hundred and fifty) varieties, nor religious law regulates imprisonment. Finally, Hazairin gave his thoughts on the form of punishment imposed in customary law such as death penalty, exile, beating or compensation. The implementation is adjusted to the character of each region.[13]

As part of criminal sanctions, imprisonment has caused negative effects on the convicted person. These negative effects occur during imprisonment and after release. Negative effects that are most felt while in prison, include restrictions on freedom, both in communicating and fulfilling physical and biological needs and a lack of security, because officers still beat prisoners. While the negative effects after serving a sentence, show the views of the community who still tend to suspect and reject former prisoners when they are in the community. In addition, there are doubts about whether prisoners can work after being in the community.[14]

Meanwhile, the moderate view on imprisonment can be grouped into three criticisms, namely from the angle of "strafmodus", 'strafmaat' and "strafsoort".[15] In relation to "short imprisonment", this relates to the critique of "strafmaat", which looks

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[9]Dwidja Priyatno, *Sistem Pelaksanaan Pidana Penjara di Indonesia,* (Bandung: Refika Aditama, 2006), page. 84-85.

[10]*Ibid.*, page. 28, dikutip dari Herman Bianchi, "The Strategies of Abolition", Amsterdam, Papers of International Conference on Prison Abolition 24-27 June 1985*,* hlm. 5.

[11]Hazairin*, Tujuh Serangkai Tentang Hukum*, (Jakarta: Bina Akasara, 1981), page. 9.

[12]*Ibid*, page. 2.

[13]*Ibid.*, page. 28.

[14]Petrus Irwan Pandjaitan dan Samuel Kikilaitety, *Pidana Penjara Mau Kemana,* (Jakarta: Indhill Co., 2007), page. 120.

[15]Barda Nawawi Arief, *Kapita Selekta Hukum Pidana*, *op.cit.*, page. 28.

at the length of imprisonment, and in particular seeks to limit or reduce the use of short imprisonment.[16]

In relation to the criticism of strafmaat that looks at the length of imprisonment, Andenaes said that short-term imprisonment has at least one major advantage, namely that the period of imprisonment is short, so that suffering is somewhat reduced and also the costs required are also less. However, in addition to these advantages, there are obvious limitations, namely that short-term imprisonment does not effectively support the function of imprisonment in the form of incapacitating convicts (incapacitative function) and in its function as a means of general deterrent (general deterrent) is clearly less than longer imprisonment.[17] Andenaes also stated that for almost a hundred years it has been considered a goal of penal reform to avoid short-term imprisonment. Such short-term imprisonment would not provide the possibility of rehabilitating the offender, but simply stigmatize him or her and create unpleasant contacts.[18]

Regarding short imprisonment, it was stated by Manuel Lopez Rey at the fourth UN congress (1970) that short imprisonment exists because with limited time, it will exclude the prospects of rehabilitation. He estimated that the world prison population in 1970 averaged between 1.5-2 million, of which around 1.3 million were less than 6 months and in many cases less than 3 months.[19] The thinking of Manuel Lopez Rey is in line with the results of research from the Freiburg Birth Cohort Study in 1970 in Germany which is shown in the following table:

Chart 1:
Criminal Suspect in thr 1970 Birth Cohort of German Males at the age of 30 (Baden Wuertemberg, N-104.000)

N arrest	All criminal offences	N suspect
1	31	31.834
2	15	15.702
3	10	10.428
4	7	7.730
5	6	6.157
6	5	5.062
7	4	4.310
8	4	3.700
9	3	3.238
10	3	2.859
10-19	1	1.096
20-49	0,1	147
>49	0,1	

Sumber: Freyburg Birth Cohort Study, tahun 1970.

[16] *Ibid.*
[17] Barda Nawawi Arief dan Muladi. *Teori-teori dan Kebijakan Pidana,* (Bandung: Alumni, 2005), page. 80.
[18] Barda Nawawi Arief, *Kapita Selekta Hukum Pidana*, *op.cit.*, page. 40-41.
[19] Manuel Lopez Rey, "Alternative Penal Sanction", Pidato di Fourth UN Congrats, Brusells, 1970.

Based on the data above, it is found that there are only a handful of perpetrators of serious crimes, while the majority of perpetrators are those with short sentences. In addition, from these statistics it can be concluded that imprisonment is only appropriate for serious crimes that require a long period of recovery, while for minor offenders it should be resolved with alternative punishments.[20]

One of the important characteristics of the desired criminal law reform process is the individualization of criminal law by giving discretion to judges in choosing and determining what sanctions (punishments/actions) are appropriate for individuals/criminal offenders.

In this concept, it is assumed that the judge is given the possibility to impose other types of sanctions (main punishment/additional punishment/action) that are not listed, as long as it is possible/allowed according to the general rules of Book I as an alternative to imprisonment within the framework of the purpose of punishment. Considering the new characteristics of the pillars of punishment and punishment, it is not surprising that the government has always campaigned for the existence of new alternative punishments, for example in the form of social work in the material law. This form of punishment is expected to reduce the population pressure that currently occurs in detention centers and correctional institutions in Indonesia.[21]

This pressure is not only on the population in detention centers and correctional institutions, but also the pressure to increase the number of human resources in the Ministry of Law and Human Rights due to the uncontrolled population in detention centers and correctional institutions.[22] In addition, there is also a realization that putting minor criminals in prisons is actually detrimental to state finances. Based on this, although it is quite difficult to progressively eliminate imprisonment for criminal offenders, efforts in this direction must still be made, either in material or formal law.

Data of Criminal Verdicts in Indonesian Courts

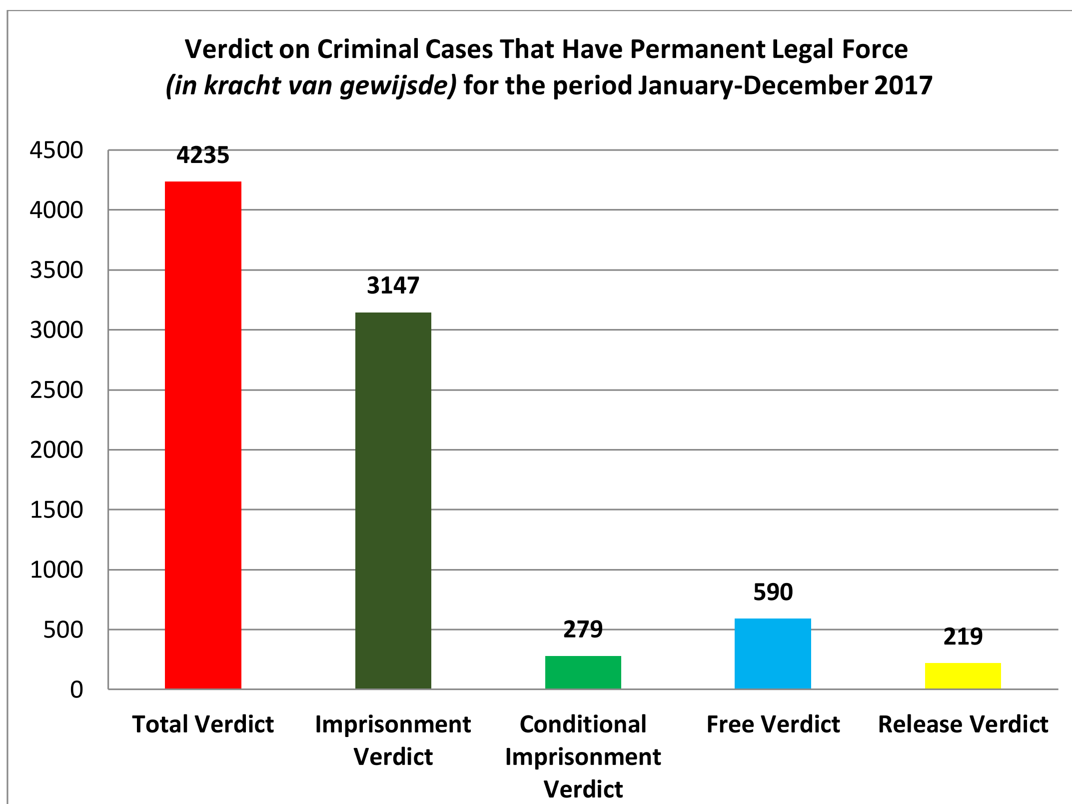
Based on research conducted by the author, in the period January to December 2017, there were 4235 criminal cases, both general and special, that had been handed down at the Supreme Court level. The following is a graph of the decision:

[20]*Ibid.*

[21]"Hukuman Sosial di RCC, Menkumham: Kita Tak Mampu Bangun Penjara Terus", (On-line), tersedia di:http://news.detik.com/berita/3006167/hukuman-sosial-di-ruu-CC-menkum-kita-tak-mampu-bangun-penjara-terus (30 Agustus 2018).

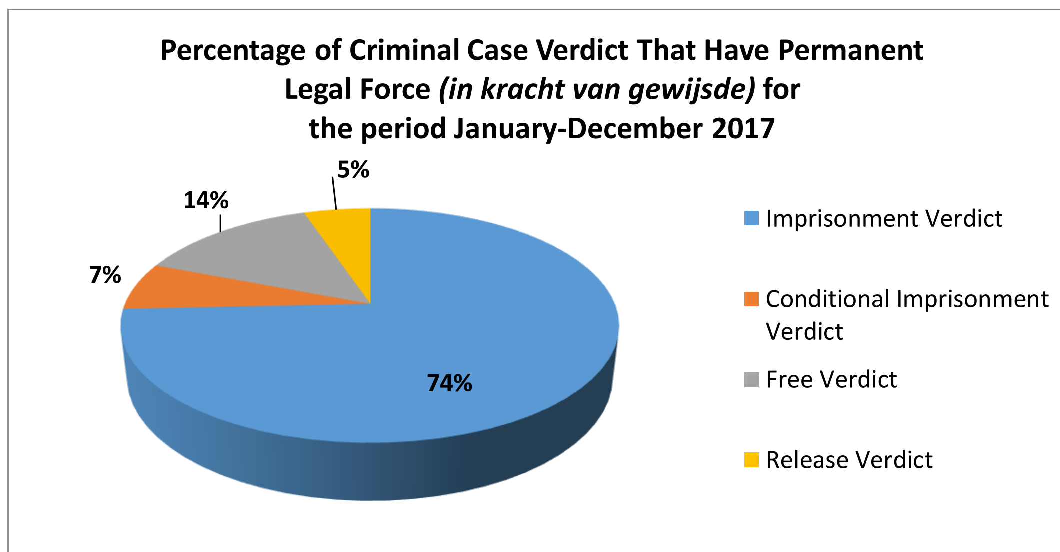
[22]"Kemenkumham butuh 19.000 pegawai baru, Menpan RB usulkan 11.000 saja", (On-line), tersedia di:http://www.pikiran-rakyat.com/nasional/2016/04/05/kemenkum-ham-butuh-19000-pegawai-baru-menpan-rb-usulkan-11000-saja-365886 2 (September 2018).

Chart 2:



Source: Directory Supreme Court, 2 January 2019.

Chart 3:



Source: Directory Supreme Court, 2 January 2019.

Based on Charts 1 and 2 above, the total number of criminal case decisions in 2017 that have permanent legal force (inkracht van gewijsde) through the Supreme Court is 4235 cases. Furthermore, of the total 4235 case decisions, 590 cases were acquitted (vrijspraak) or 14%, 219 cases were acquitted (onslag) or 5% and 3426 cases were convicted or 81%.

From the results of the above research, it can be concluded that even though most of the criminal cases that have been decided, namely as many as 4235 cases, are

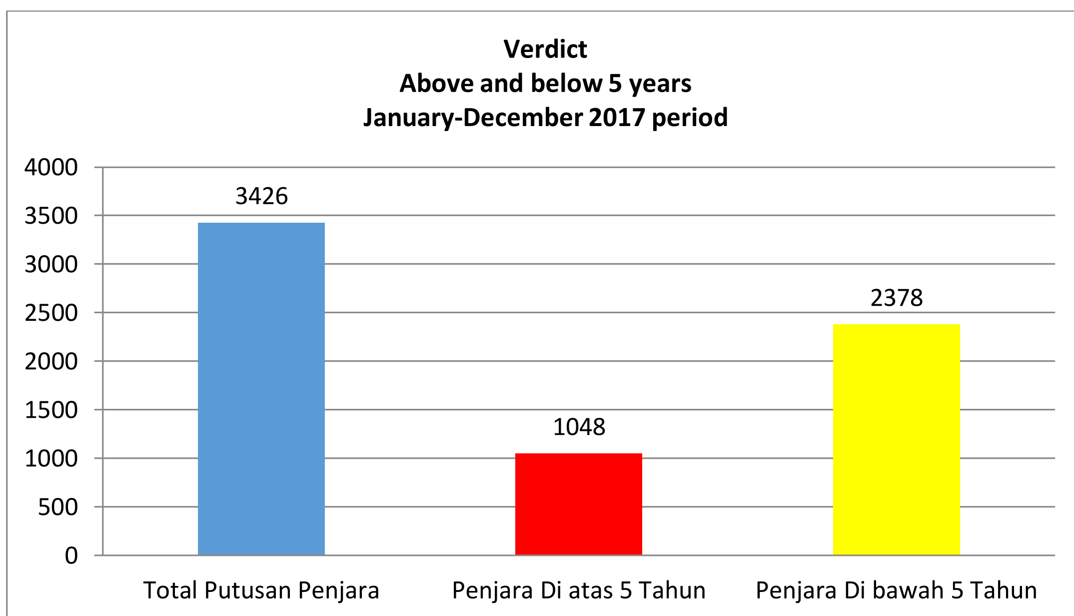
punishment decisions, which amount to 81%, it is found that 14% of acquittals and 5% of acquittals have a significant portion in the criminal case decisions. Furthermore, it was also found that of the 3426 conviction decisions that had been decided, it turned out that 7% were conviction decisions in the form of conditional criminal decisions (probation).

Based on the above, it can be concluded that the criminal justice system in Indonesia, both from the Judex Factie level (District Court and High Court) and the Judex Juris level (Supreme Court), has a tendency to resolve existing criminal cases with the imposition of punishment decisions. Even though in the punishment decision there is a conditional criminal decision, this type of decision has a fairly small portion, which is only around 7% of the total types of criminal decisions.

This tendency to impose criminal decisions is directly proportional to the number of crimes that are increasing every year. This means that the large number of sentencing decisions does not have a positive effect in order to reduce the level of criminality in society.

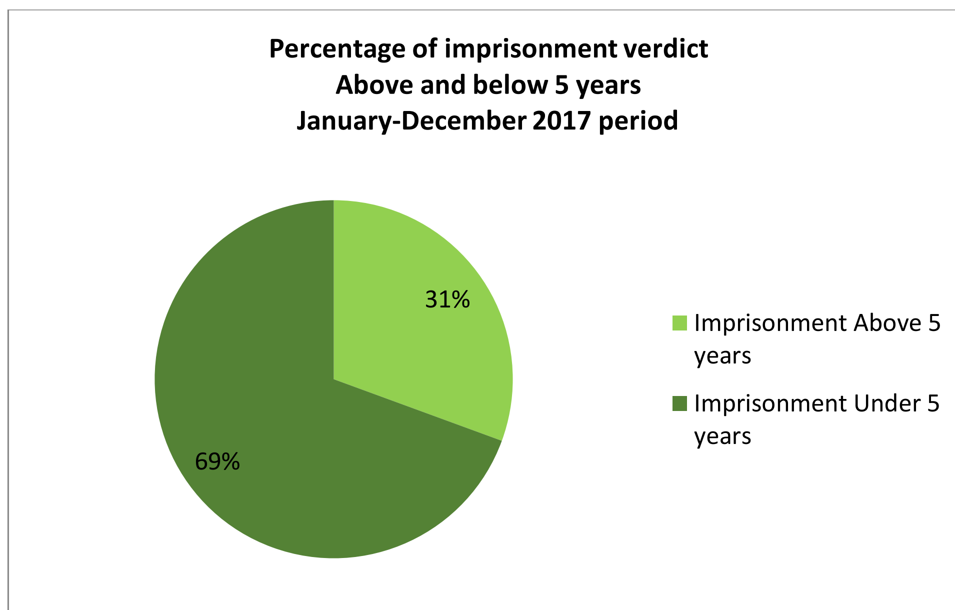
Further to the above, if it is related to the sentencing decision itself, it turns out that the majority of sentencing decisions handed down are for cases that have a principal punishment of under 5 (five) years and not above 5 (five) years, as illustrated in the graph below:

Chart 4:



Source: Directory Supreme Court, 2 January 2019.

Chart 5:



Source: Directory Supreme Court, 2 January 2019.

Based on Graphs 3 and 4 above, the total number of prison sentences totaling 3426 cases is divided into 2 (two), namely with a principal punishment of more than 5 (five) years is 1048 cases or 31%. Meanwhile, cases with a basic punishment of less than 5 (five) years amounted to 2378 cases or 69%.

Based on the illustration above, decisions of imprisonment with a principal punishment of less than 5 (five) years, apparently have a greater portion than decisions of imprisonment with a principal punishment of more than 5 (five) years. Based on this, it can be concluded that many minor cases that are punishable with a principal punishment of 5 (five) years can basically be resolved with other alternative solutions other than the imposition of a punishment decision.

In relation to the problem of criminality, Moeljatno said that although people have imposed punishment on people who commit crimes for centuries, people still commit crimes. This indicates that punishment is unable to prevent crime, so it is not a cure for criminals. How is it possible that if the criminal is likened to a sick person, and the punishment that gives pain as a retribution for the crime committed, it is used as a medicine for the sick person? To be able to treat it, of course, it is first necessary to know the causes of the disease. That what is needed is not punishment that gives pain as a retribution for the crime that has been committed, but rather measures that can be used to treat the disease.[23] Other alternatives to imprisonment are needed to overcome the increasing crime rate.

Furthermore, Moeljatno stated that the view that punishment is solely as retribution for crimes committed, has now been abandoned, and it has been realized that the reality is more complex. Other and more important facets are to reassure the society that has been shaken by the criminal act on the one hand, and on the other hand, to re-educate the person who committed the criminal act in order to become a useful member of society. Punishment should change, no longer as physical suffering and degradation of human dignity in retaliation for the crime committed, but to include all means deemed

[23]Moeljatno, *Asas-asas Hukum Pidana*, (Jakarta: Penerbit Rineka Cipta, 2008), page. 15.

appropriate and practicable in a particular society.[24] As far as possible, punishment policy should practically have an impact on reducing the desire to commit these criminal acts. At a practical level, punishment should be able to prevent the increase in the level of criminality in society.

Further to the above, even in relation to the lightest form of imprisonment, namely short-term imprisonment, Sudarto stated, [25] When discussing the concept of the Draft Criminal Code in 1972, it was stated that the concept of guidance in the punishment of the perpetrator was clear. One of the consequences is that a short period of deprivation of liberty is not desired, because it is impossible to have a good result if the period of development is too short.

As for the negative effects of short-term imprisonment, Andi Hamzah said that criminals who commit minor offenses punished with short-term imprisonment can take lessons from seasoned criminals so that after leaving prison, they will turn into master criminals who are dangerous to society. Thus, the purpose of correctional facilities is not achieved at all.[26]

The current criminal law formulation policy does not have a pure value of forgiveness from the judge, the current criminal law still uses a rigid legal principle "there is no forgiveness for you" so that it seems that imprisonment is the last remedy for offenders who commit criminal acts according to the Criminal Code / *WvS* which is very liberalist. The humanitarian values contained in Pancasila are not reflected in the Dutch Criminal Code that we currently use. This is not surprising because the Criminal Code itself is a rigid (substantive) punishment system that stems from three criminal law issues, namely *(strafbaarfeit)*, guilt *(schuld)*, and punishment *(straf/punishment/poena)*.[27]

Based on the above, if it is described using a scheme, it will be seen:

Criminal= Crime+Fault (Criminal responsibility)

From the formula/model/pattern of the Criminal Code above, there is no variable of the purpose of punishment, because it is not explicitly formulated in the Criminal Code, so it seems that the "purpose" is outside the system. With such a model, it seems that the basis of justification or justification for punishment only lies in the criminal offense (objective requirement as the basis of justification) and guilt (subjective requirement as the basis of excuse).[28] Therefore, it is as if punishment is considered as an absolute consequence that must exist, if these two conditions are proven. This framework provides legitimacy that the current Criminal Code is a rigid "certainty model".[29]

Factually, there are several materials that are not explicitly formulated in the Criminal Code, including provisions regarding the objectives and guidelines for punishment, the definition / nature of criminal acts, the nature of unlawfulness (including the principle of no criminal liability without unlawfulness, the principle of the complete

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[24]*Ibid.*

[25]Sudarto dalam Barda Nawawi dan Muladi, *op.cit.*, page. 81.

[26]Andi Hamzah, *Asas-asas Hukum Pidana*, (Jakarta: Rineka Cipta, 2014), page. 181.

[27]Tim Penyusun, "Naskah Rancangan Kitab Undang-Undang Hukum Pidana (RKUHP)" Hasil Pembahasan Panitia Kerja (RKUHP)-DPR RI 24 September 2018", Jakarta: BPHN & Menkumham, 2018, hal 18. Saur menyebutnya sebagai "trias hukum pidana" (berupa sifat melawan hukum, kesalahan, dan pidana) dan Packer menyebutnya sebagai "*the three concept*" atau "*the three basic problems*"(berupa *Offence, Guilt, dan Punishment*)". Lihat Herbert L. Packer, *op.cit.*, hlm.17, dikutip oleh Barda Nawawi Arief, "Tujuan dan Pedoman Dalam Konsep RKUHP" termuat dalam Mardjono Reksodiputro, *Pengabdian Seoarang Guru Besar Pidana,* (Depok: Badan Penerbit FHUI, 2007), hlm. 63.

[28]*Ibid.*

[29]*Ibid.*

absence of material unlawfulness or known as the principle of *afwezig-heids van alle materiele wederrechtelijkheid (AVAW*), the issue of causality, the issue of fault or criminal liability (including the principle of no punishment without fault; principle of culpability, no liability without blameworthiness; *afwezigheids van alle schuld (AVAS)*; consequential liability/erfolgshaftung; mistake/error; corporate liability).[30]

As a result of the above, the problem of general conceptual construction is often forgotten, and may even be 'forbidden' in practice or court decisions. Similarly, the issue of punishment objectives and guidelines may be forgotten, ignored, or 'forbidden' simply because there is no explicit formulation in the Criminal Code. From a system perspective, the position of the purpose of punishment is very central and fundamental. The purpose of punishment is the soul/spirit of the punishment system. Therefore, the explicit formulation is intended to avoid being forgotten, and especially to emphasize that the purpose of punishment is an integral part of the punishment system.[31]

The basis for determining whether an act is punishable is closely related to the issue of legal sources or the foundation of legality in declaring an act as a criminal offense or not. The primary source of law is legislation (written law/principle of legality). However, unlike the principle of legality as formulated in the current Criminal Code, its formulation has also been materially expanded, emphasizing that the provisions do not reduce the applicability of the "living law" within the community. Thus, in addition to written legal sources (legislation) as the main formal criterion/benchmark, there is also room for unwritten legal sources that exist within the community to serve as a basis for determining the punishability of an act.[32]

Based on the existing national legislative policy as mentioned above, it can be said that the material expansion of the principle of legality is not actually a new concept or idea but merely continues and implements the policy/idea that already exists. In fact, the policy/idea of formulating the principle of legality materially had been drafted as a "constitutional policy" in Article 14 paragraph (2) of the Provisional Constitution of 1950, which states: "No one may be prosecuted, punished, or sentenced except in accordance with a 'law' that already exists and applies to them.". [33] The term 'Law *(Recht)*' has a broader meaning compared to the term "legislation" (wet), as the concept of "law" *(recht)* can take the form of both "written law" and "unwritten law."

With the formulation of the principle of the act and its perpetrator, criminal acts and criminal accountability receive clear regulation. Criminal accountability refers to the continuation of the blame objectively present in the criminal act based on applicable legal provisions, and subjectively directed at the perpetrator who meets the criteria in the (criminal) law to be subject to punishment for their actions.[34]

The existence of criminal accountability arises from the continuation of objective blame associated with the criminal act based on applicable provisions, and subjectively to the perpetrator who meets the criteria in the (criminal) law to be subject to punishment for their actions. The question is whether the perpetrator can be blamed for committing the prohibited act. If so, it means they can be punished, provided their fault can be proven,

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[30]*Ibid.*, page. 20.
[31]*Ibid.*
[32]*Ibid.*
[33]Moeljatno, *Asas-asas Hukum Pidana*, *op.cit.*, page. 28. Moeljatno mengatakan, "Dengan demikian, juga untuk berlakunya hukum pidana adat diberikan dasar yang kuat. Meskipun sekarang UUD sementara sudah tidak berlaku lagi, namun hemat saya, dari bunyinya pasal 5 ayat 3b Undang-Undang Darurat 1951 No. 1, di atas, kiranya tidak seorang pun yang akan menyanggah sahnya ketentuan tersebut berdasar tidak berlakunya Pasal 14 Ayat 2 UUD Sementara tadi".
[34]Tim Penyusun, Naskah Akademis RKUHP, *op.cit.*, page. 29.

whether intentionally or through negligence.[35]

A person is said to be at fault if they can be blamed from a societal perspective, as it is assumed they should have acted differently if they did not intend to perform such actions. Fault refers to the state of mind of an individual when committing an act in relation to the act itself, and this relationship is such that the person can be reproached for their actions.[36]

If a person can be reproached for their actions, then they can be punished. This demonstrates that the principle of fault is a fundamental principle in criminal law. Apart from the fact that a perpetrator of a criminal act cannot be punished in the absence of fault, there are also other reasons for not punishing someone even though they have committed a criminal act. These are exculpatory reasons and justifying reasons.[37]

By affirming that every criminal act is always considered contrary to law, the element of unlawfulness becomes an absolute aspect of a criminal act. This means that even if the element of unlawfulness is not explicitly formulated in the definition of the offense, the offense must always be regarded as unlawful. Therefore, the formulation of the objective measure to declare an act as unlawful must still be materially tested on the perpetrator, whether there are justifying reasons or not, and whether the act genuinely contradicts the legal consciousness of society..[38]

With such provisions, it becomes evident that there is a principle of balance between formal benchmarks (legal certainty) and material benchmarks (justice values). However, recognizing that in concrete situations these two values (legal certainty and justice) may conflict with one another, it should be emphasized in the drafting of articles that judges must prioritize the value of justice over legal certainty as much as possible.

In relation to criminal accountability, based on the monodualistic balance of thought, the principle of fault (the principle of culpability) is the counterpart of the principle of legality, which must be explicitly formulated by law. Explicitly, the principle of "no punishment without fault" (*geen straf zonder schuld*), which is absent in the current Criminal Code, must be established. With the adoption of this principle, a person cannot be punished unless it is proven that they are at fault for committing a criminal act, whether through active action or passive inaction that is punishable under the law.

A person is considered guilty of committing a criminal act if they do so intentionally (*dolus*) or through negligence (*culpa*) in all its forms. Therefore, the formulation related to criminal accountability is primarily based on fault and is mainly limited to actions committed intentionally (*dolus*). The punishability of negligent offenses (*culpa*) is exceptional and applies only if explicitly stated in the law. Furthermore, accountability for certain consequences of a criminal act, where the penalty is heightened by law, is only imposed on the defendant if it can reasonably be concluded that they could not foresee the possibility of such consequences, provided there is at least negligence. Thus, the approach does not adhere to the doctrine of purely bearing consequences but remains oriented toward the principle of fault.[39]

Criminal accountability is a crucial substance that goes hand in hand with the regulation of criminal acts. It is an implementation of the idea of balance, particularly demonstrated by the principle of "no punishment without fault". This principle ensures

[35]*Ibid.*
[36]*Ibid.*
[37]*Ibid.*
[38]*Ibid.*
[39]*Ibid.*

fairness by upholding the humanistic values that underline criminal law. (*principal culpabilitas/asas geen straf zonder schuld*) which represents the principle of humanity, paired with the principle of legality. This balance reflects the dual commitment of criminal law to uphold both human dignity and societal order, ensuring fairness and justice within its framework. (*principle of legality*) which represents the principle of societal values.[40]

The foundation for formulating the objectives of punishment stems from the notion that punishment is essentially a tool to achieve goals. The identification of these objectives is based on the balance between two primary targets, namely "protection of society," including the victims of crimes, and "protection/rehabilitation of the individual offender."

Based on this balance between the two primary targets, the conditions and nature of punishment also arise from monodualistic balance thinking, between societal interests and individual interests, and between objective factors and subjective factors. Consequently, the conditions for punishment are rooted in two fundamental pillars of criminal law: the "principle of legality" (representing the principle of societal values) and the "principle of fault/culpability" (representing the principle of humanity). In other words, the conceptual framework of punishment is closely tied to the concepts of criminal acts and criminal accountability, as previously mentioned.[41]

Ultimately, the New Criminal Code remains grounded in the "certainty model," but its previously rigid nature has been transformed into a more flexible approach. This change is essentially aimed at addressing cases that, although proven, do not necessarily warrant punishment. Therefore, the issue of sentencing objectives, which were not explicitly present in the previous Criminal Code, will now be included in the New Criminal Code, considering its central role in the criminal justice system. These sentencing objectives are regarded as the soul, essence, and spirit of the criminal justice system.[42]

Essentially, the New Criminal Code has explicitly included the objectives of sentencing in Article 51 paragraph (1), which states that sentencing aims:

a. Preventing the commission of criminal acts by enforcing legal norms for the protection of society;
b. Reintegrating the convicted individual into society through rehabilitation so that they become a good and useful person;
c. Resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of peace to society; and
d. Relieving the convicted individual of their sense of guilt.

With the inclusion of sentencing objectives in the New Criminal Code (CC), it can be concluded that, based on Article 55 paragraph (1) letters a and b, the objectives of retribution are formulated more explicitly. Meanwhile, based on Article 55 paragraph (1) letters c and d, the objectives of retribution are formulated more implicitly.

Furthermore, Article 52 of the New Criminal Code also states...: "That punishment is not intended to cause suffering or degrade human dignity".

The subsequent objectives of sentencing outlined in the New Criminal Code reflect a perspective centered on two main interests: protecting society and rehabilitating offenders. These sentencing objectives adopt a neo-classical approach, characterized by

[40] *Ibid.*
[41] *Ibid.*
[42] *Ibid.*

the establishment of minimum and maximum penalties, acknowledgment of mitigating circumstances, reliance on objective conditions, and consideration for the need for individual rehabilitation of offenders.

The objectives formulated in the New Criminal Code are rooted in the principles of relative sentencing theory, aiming to provide benefits by protecting society and promoting societal welfare. Sentencing is not viewed as retribution for the offender, but rather its sanctions emphasize preventive goals, specifically to deter individuals from committing crimes. This perspective is also based on the notion. *utilitarian* as classified by Herbert L. Packer.[43] which views sentencing from the perspective of its utility or benefit, focusing on the situation or condition that the punishment aims to achieve. The objectives of sentencing include resolving conflicts caused by criminal acts, restoring balance, and bringing peace to society. Thus, the sentencing objectives in the New Criminal Code are forward-looking in nature *(forward-looking)*.[44]

The New Criminal Code also acknowledges mitigating circumstances inherent to the offender and objective conditions as outlined in Articles 53 and 54 regarding sentencing guidelines. The foundation for the implementation of sentencing, based on the provisions it regulates, leans more toward the application of relative theory and tends toward integrative theory when viewed from the characteristics of this model. This theory advocates the possibility of articulating sentencing theories that integrate multiple functions, including retribution with a utilitarian nature, where prevention and rehabilitation are simultaneously considered as goals to be achieved within a sentencing plan.[45]

Regarding the principal punishments in the New Criminal Code, they include imprisonment, confinement, supervision, fines, and social work. Meanwhile, the death penalty is categorized as a principal punishment of a special nature and is imposed alternatively. As for additional punishments, they consist of the revocation of certain rights; confiscation of specific goods and/or claims; the announcement of judicial decisions; compensation payments; and the fulfillment of customary obligations or obligations according to the living law in the community.

Although the classification of criminal acts (Book II) and violations (Book III) as found in the current Criminal Code is no longer recognized, the New Criminal Code still applies a sentencing weighting pattern divided into very light, serious, and very serious offenses.[46] This weighting refers to the criminal penalties outlined in the New Criminal Code, where crimes punishable by 1-7 years of imprisonment are categorized as serious or grave crimes.

With regard to this weighting, it has indeed been stated that, as far as possible, imprisonment should be avoided by prioritizing alternatives to deprivation of liberty. (*alternatives to imprisonment*) such as fines and conditional sentences (supervisory punishment). Therefore, according to the academic manuscript of the New Criminal Code, *The Standard Minimum Rulesfor The Treatment Of Prisoners* (SMR) which was adopted by the First UN Congress and should, as far as possible, be applied as a guideline for developing alternatives to deprivation of liberty and inmate rehabilitation programs outside of institutions *(the institutionalization of corrections)*.[47]

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[43]Herbert L. Packer, *The Limits of The Criminal Sanction,* (Stanford California University: Stanford California Press, 1968), page. 17.
[44]Zainal Abidin, *Pemidanaan, Pidana dan Tindakan,* (Jakarta: ELSAM, 2005), page. 16.
[45]Zainal Abidin, *op.cit.*, page. 16.
[46]Tim Penyusun, Naskah Akademis RKUHP, *op.cit.*, page. 32-33.
[47]*Ibid*, page. 55.

Based on the above, the New Criminal Code establishes various important conditions to affirm sentencing guidelines by considering the following:

a. The nature of the offender's fault in committing the crime;
b. The motives and objectives behind committing the crime;
c. The mental attitude of the offender;
d. Whether the crime was committed intentionally or unintentionally;
e. The method of committing the crime;
f. The offender's attitude and actions after committing the crime;
g. The offender's life history, social conditions, and economic circumstances;
h. The impact of the punishment on the offender's future;
i. The impact of the crime on the victim or the victim's family;
j. Forgiveness from the victim and/or the victim's family; and/or
k. The legal values and justice inherent in society. [48]

The provisions regarding sentencing guidelines above indicate a tendency toward characteristics of the integrative model. For example, considerations include the life history and socioeconomic conditions of the offender, the impact of punishment on their future, forgiveness from the victim and/or their family, and societal views on the committed crime. The explanation within the provisions of these sentencing guidelines also stipulates that judges may add other considerations as outlined in this article. The aim is to ensure that the punishment imposed is proportional and comprehensible to both society and the offender.

With the affirmation of the norm "sentencing objectives," it will alter the sentencing scheme currently found in the existing Criminal Code. The formula that will be included in the New Criminal Code is as follows:

Punishment = Criminal Act + Fault + Sentencing Objectives

With the explicit formulation of sentencing objectives, it can be said that the New Criminal Code is more advanced than the current Criminal Code. Although the sentencing objectives do not clearly explain the relationship between one objective and another, nor their application in specific cases, it is ultimately the judge who must assess whether the decision to be handed down fulfills the aspects outlined in the sentencing objectives. that will be imposed meets the aspects outlined in the sentencing objectives.

This provision allows judges to refrain from imposing criminal penalties on defendants, even if they are proven to have committed a minor and non-serious offense, if the judge considers it appropriate in relation to the trivial nature of the act, the personality of the offender, or the circumstances at the time the act was committed. Furthermore, if the offender demonstrates exemplary behavior afterward, the judge may decide in the ruling that no punishment or measures will be imposed, taking into account considerations of justice and humanity.[49] Furthermore, the sentencing guidelines are underpinned by a philosophy or fundamental idea aimed at avoiding rigidity or absolutism within the sentencing system implemented by law enforcement officials. Beyond that, considering the overcrowding of prisons, as though incarceration is the sole remedy for offenders, this serves as a judicial corrective to the legality principle. This principle has been rigidly applied by law enforcement officials in a manner inconsistent with the implementation or integration of the values or paradigms embodied in Pancasila.

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[48] Undang-Undang Nomor 1 Tahun 2023 tentang KUHP, Pasal 54 ayat (1).

[49]A.Z. Abidin dan Andi Hamzah, *Pengantar Dalam Hukum Pidana Indonesia,* (Jakarta: Yarsif Watampone, 2010), hlm. 170-171.

IV. CONCLUSION

The widespread criticism of the effectiveness of short-term imprisonment as a means of addressing crime has prompted countries around the world, including Indonesia, to reconstruct the application of such punishment. To address this issue, the New Criminal Code introduces new forms of punishment, such as fines and social work, based on the objectives of sentencing and sentencing guidelines, while still maintaining the application of imprisonment.

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