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Reviewing the theory of punishment in criminological analysis

Irman Syahriar
Lecturer, Faculty of Law, University of 17 Agustus 1945, Samarinda, Indonesia

Abstract
Indonesia's criminal justice system tends to be very rigid, so that even the smallest cases will usually continue until they are detained or even imprisoned. Not to mention the lack of alternative detention and imprisonment alternatives that are not well available. In this study using a normative juridical approach. While the data analysis method used is a normative qualitative analysis. With the sentencing guidelines in legislative policies, judges in terms of implementing regulations as applicative policies can impose more just, humane punishments and have juridical, moral justice and social justice signs. Concretely, the logical consequence of this aspect is that the judge's decision or court decision is expected to be closer to justice that reflects the values that live in society. However, the reality is that in Indonesia there are no sentencing guidelines that can serve as a barometer and catalyst for judges. Understanding of the weaknesses of imprisonment, the lack of alternative efforts to imprisonment is also caused by the reluctance of other criminal justice sub-systems in implementing non-criminal measures. Developments in international legal instrumentation basically emphasize the need to implement community-based corrections, through changes in the national legal system, namely by encouraging the regulation of other basic crimes, such as supervision or social work, as well as encouraging the regulation of non-judicial mechanisms such as diversion policies and restorative justice.

Keywords: punishment, criminology and philosophy

Introduction

The state of Indonesia is a state of law, what is meant by a state of law is a state that upholds the rule of law to uphold truth and justice, and there is no power that cannot be accounted for or accountable [1]. The State of Indonesia has law enforcement agencies scattered throughout the territory of Indonesia, in order to facilitate the realization of a safe, just and prosperous country. In law enforcement in every country that adheres to the rule of law, there are three basic principles, namely the rule of law (supremacy of law), equality before the law (equality before the law), and law enforcement in a way that is not contrary to the law (due process of law). law) [2].

This concept encourages legal issues that end in punishment, because there has been evidence through the judiciary that the guilty must bear the legal consequences for what he did, especially violating the provisions made by public law on various aspects of life in this nation and state.

Indonesia's criminal justice system tends to be very rigid, so that even the smallest cases will usually continue until they are detained or even imprisoned. Not to mention the lack of alternative detention and imprisonment alternatives that are not well available. Even the policy of using imprisonment as the main purpose of sentencing is also reflected in the legal products designed and issued by the government which always have the nuances of imprisonment [3].

If it is directly related to the authority of law enforcement officers to detain, then the number of criminal acts that can be directly subject to detention (criminal threats above 5 years) in 2021 amounted to 822 criminal acts, a fairly large number. With this criminal approach to imprisonment, even though the DPR has agreed to increase the budget by Rp. 1.3 trillion for correctional facilities, the addition of the number of Detention Management Units (UPT) will always be too late to accompany the increasing number of occupants. This is evident from the number of excess occupants which is always increasing even though the number of Detention Management Units increases.

Overcrowding clearly resulted in not being accommodated for adequate services and facilities for the inmates. Adequate conditions can only occur when the prison accommodates residents according to capacity. How is it possible that eligibility can be obtained when the overload reaches 332 percent almost 3 times the normal condition? This overcrowding has also resulted in the minimum standard of service for prisons dropping to an increasingly worrying level. Basic services in the form of drinking water, food, communication, sleeping space including health will receive a direct impact. The state has proven to have difficulty financing the expenditure of prisons to meet this minimum standard. This situation encourages inmates to look for alternatives in supporting a minimum standard of living in prisons. This situation is also what ultimately encourages life support from outside parties, namely the families of the inmates. The problem is, this family support will definitely depend on their respective economic conditions, some are rich and many are poor [3] With this situation, the government needs to be encouraged to conduct a more serious evaluation of the sentencing policy, especially anticipating the

excess of occupants in prisons. The government should start optimizing alternatives to punishment outside of imprisonment and begin to make effective regulations that accommodate alternatives to detention outside places of detention. Problems in prisons will never be resolved if the government does design prisons as final places to accommodate the burden of criminal justice without seriously evaluating sentencing policies.
The problems that can be formulated are (1) how is the theory of punishment in criminological analysis, and (2) what is the view of the philosophy of punishment in the imprisonment process.

Research Methods

Time and place

The research was carried out from January to March 2022 at the Untag 1945 Library of Samarinda and the Regional Library of Samarinda City.

Approach Method

This study uses a normative juridical/doctrinal approach, so the data required includes secondary data conducted by literature study or "literature study".

Data analysis

The data analysis used is a normative qualitative analysis. This research is qualitative because it relies on depth of data with descriptive-analytical method [4].

Results and Discussion

A. Punishment theory in criminological analysis

1. Criminology Spectrum

Spectrum of Criminology Criminology is no longer understood as the science of crime or criminals but is already a science that studies the world of crime, or the whole aspects of crime (all aspects related to crime). Criminology can be defined as a science that studies crime, criminals, social reactions to crime and criminals, and the position of victims of crime.
Studying crime means studying things related to acts committed by certain people where the act is an act that violates the law (or violates other social norms of behavior). Why certain people commit acts that are categorized as crimes while other people do not commit these acts, is something that must also be explained by criminology - which cannot be separated from the explanation of the crime itself. Social reaction to crime and criminals is also an important factor in explaining why crime occurs in society and is committed by certain people [5]. The criminal justice system is what gave birth to punishment (penology). The word penology comes from the Greek, namely poena which means pain or suffering or punishment and logos which means knowledge. Penology means the study of punishment.
Penology itself has various definitions put forward by various experts such as Francis Lieber which states that "Penology is a part of criminology that studies the principles and management of prisons, reformers, and detention units." [6]. Then Rajendra K Sharma stated that in order to increase a full understanding of penology, it is important to understand the salient characteristics of penology, namely penology as: (1) A technique of punishing and redressing criminals; (2) The function of criminology is to formulate effective and constructive techniques to maintain and maintain social security and order; (3) Help establish and manage an institution for improvement, trial, and correction; (4) Helpers to bring peace and social harmony; and (5) Formulating and applying certain collective principles to reform society in general and crime in particular. In the perspective of penology, Rajendra Kumar Sharma argues that in penology, imprisonment is a means of re-education, re-socialization, rehabilitation, and reform of prisoners, and must be implemented to avoid recidivism [7].
Many other literatures try to explain the definition of penology, one of which is that penology is part of the study of criminology which focuses more on the study of the philosophy and practice of society in an effort to curb various criminal activities. So it can be concluded that the study of penology includes: the purpose of punishment, the basics of justification/philosophy of punishment, forms of punishment, history of development, and the idea of de-institutionalization and alternative punishment as a substitute for imprisonment.
To explain the relationship between penology and criminology, it can be seen from the various definitions that have been offered above which state that penology is part of the study of criminology. This was stated by various experts when explaining the scope of the study of criminology itself. Criminology is a scientific study of crime and criminals which includes an analysis of: the nature and extent of crime; the causes of crime; development of criminal law and implementation of criminal justice; criminal traits; criminal training; criminal patterns; and the consequences of crime for social change [8].
Penology and criminology have a very close relationship because the study of penology talks about the science of punishment and its effectiveness as an instrument of control against crime, this can be used by criminologists to review existing criminological theories regarding punishment. While penology provides a practical system of punishment, criminology provides a theoretical basis. Thus, it can be concluded that penology is one of the objects of criminology study that studies all aspects of punishment [8].

2. Definition of punishment

Punishment in Indonesian law is a method or process to impose sanctions or penalties for someone who has committed a crime or violation. Punishment is another word for punishment. According to Prof. Sudarto, that punishment comes from the basic word "law", so it can be interpreted as "stipulating the law" or "deciding on the punishment". In this sense, it sets the law not only for a criminal law event but also for civil law.

Punishment is an act against a criminal, where the punishment is intended not because someone has done evil but so that the perpetrators of crimes no longer do evil and other people are afraid to commit similar crimes. So from the statement above, it can be concluded that punishment or punishment is an act against the perpetrators of crimes whose purpose is not to give revenge to the perpetrators but the perpetrators are given guidance so that later they will not repeat their actions again.

Criminal Theory

In criminal law there are elements or characteristics of a crime, namely: (1) the crime is essentially an imposition of suffering or misery or other unpleasant consequences; (2) the punishment is given intentionally by a person or entity that has power; and (3) the punishment is imposed on a person who has committed a crime according to the law. From these three elements, experts have formulated several theories regarding sentencing, which are the legal basis and objectives of sentencing (Strafrecht Theori), namely:

1. De Vergelding Theori (Theory of Absolute or vengeance)

This theory has been known since the 18th century, where in this theory the basis of punishment is based on the thought of retaliation. According to Immanuel Kant, that "crimes cause injustice, must also be repaid with injustice". This theory is called the absolute theory or retaliation [9].

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. Every crime must be followed by a criminal, may not be, without bargaining. Retaliation as a reason to convict a crime. The imposition of a criminal is basically suffering on criminals justified because criminals have made suffering for others. The main characteristics or characteristics of the theory of Absolute or vengeance, namely: the criminal purpose is solely for retaliation; retaliation is the main goal and it does not contain means for other purposes such as for the welfare of society; guilt is the only condition for the existence of a crime; punishment must be adjusted to the fault of the offender; and criminal looking back, it is a pure rebuke and the aim is not to correct, educate or re-socialize the offender.

The theory of retaliation or absolute theory is divided into two types, namely: the theory of objective revenge, oriented to the fulfillment of satisfaction from feelings of revenge from the community; and the theory of subjective retaliation, oriented towards criminals. According to this theory, it is the fault of the perpetrator who must be repaid. If the big loss or misery is caused by a minor mistake, then the perpetrator of the crime should be given a light sentence [10].

2. *De Relatif Theori* (Relative Theory or Goals)

This theory assumes that the basis of punishment is the purpose of the crime itself, because the crime has a specific purpose. According to this theory as the basis for the crime is the main goal, namely to maintain public order. The way to achieve that goal from the crime is known by several theories, namely: Preventive theory, which includes:

a. Generale Preventive (general prevention), which is addressed to the general public, to the wider community; and Special Preventive (special prevention), which is aimed at the perpetrators of crimes specifically, so as not to repeat the crime again'
b. Verbetering van dader (fix the criminal), the way is by imposing a sentence and providing education while he is serving a sentence.

Relative theory (deterrence), this theory views punishment not as retaliation for the perpetrator's mistakes, but as a means of achieving useful goals to protect society towards prosperity. From this theory emerged the purpose of punishment as a means of prevention, namely general prevention aimed at the community. Based on this theory, punishment is imposed to carry out the purpose or purpose of the punishment, namely to improve public dissatisfaction as a result of the crime. The purpose of punishment must be viewed as ideal, apart from that, the purpose of punishment is to prevent (prevention) crime.

Based on this theory, punishment is carried out to provide the intent and purpose of a punishment, namely to improve public dissatisfaction as a result of the crime. In this case, this theory can also be interpreted as a prevention of crime and as a protection for society. The proponent of this theory is Paul Anselm van Feurbach who argues that only imposing criminal penalties will not be sufficient, but it is necessary to impose a criminal sentence on the criminal [11].

Regarding this goal, there are three theories, namely as follows

1. To scare;

The theory of Anselm van Feurbach, the punishment should be given in such a way, so that people are afraid to commit crimes. The result of this theory is that the punishment given must be as severe as possible and can be in the form of torture.

2. To fix;
The sentence imposed with the aim of improving the convicted person so that in the future he becomes a useful person for society and will not violate the rule of law.

3. To protect
The purpose of punishment is to protect the public against crimes. With the exile of the criminal for a while, the community will be given a sense of security and feel protected by the people who did the evil. Thus, in this theory of goals the oldest is the theory of general prevention in which the theory of fear is contained. The understanding of this theory is that to protect the public against crime or a criminal act, the perpetrator who is caught must be given a punishment, which will later serve as an example that by committing a crime they will get a reward in the form of punishment so that they are afraid to commit a criminal act. it [9]. While the theory of a more modern goal with a special theory of prevention. According to Frans von Liszt, van Hamel, and D. Simons, crime is not just to retaliate or reward people who have committed a crime, but it has certain useful purposes. Retaliation itself has no value, but only as a means to protect the interests of society. The basis of criminal justification lies in its aim is to reduce the frequency of crime. Criminals are imposed not because people commit crimes, but so that people do not commit crimes. So this theory is often also called the theory of goals (utilitarian theory). The main characteristics or characteristics of the relative theory (utilitarian), namely: (1) the purpose of the crime is prevention; (2) prevention is not the final goal but only as a means to achieve a higher goal, namely the welfare of the community; (3) only violations of the law that can be blamed on the perpetrator (for example, on purpose or culpa) that meet the requirements for the existence of a crime; (4) punishment must be determined based on its purpose as a tool for crime prevention; and (5) the criminal is looking forward (prospective in nature), the criminal can contain an element of reproach, but the element of retaliation cannot be accepted if it does not help prevent crime for the benefit of the community's welfare [10].

3. De Verenigings Theori (Combined Theory)
This theory includes the two theories above, namely the absolute theory (retaliation) and the relative theory (goal). Based on this theory, punishment is based on revenge and the purpose of the crime itself. Therefore, there must be a balance between retaliation and the purpose of punishing someone who commits a crime, in order to achieve justice and community satisfaction.

This combined theory can be divided into two major groups, namely
1. A combined theory that prioritizes retaliation, but that retaliation must not exceed the limits of what is necessary and sufficient for the maintenance of social order;
2. A combined theory that prioritizes the protection of public order, but the suffering of being sentenced to a sentence must not be more severe than the actions committed by the convict [11].

Treatment theory, suggests that punishment is very appropriate to be directed to the perpetrators of crimes, not to their actions. This theory has a special feature in terms of the process of re-socialization of the perpetrators so that it is expected to be able to restore the social and moral quality of the community so that they can be integrated again into society. According to Albert Camus, criminals are still human offenders, however, as a human being, a criminal is still free to learn new values and new adaptations. Therefore, the imposition of sanctions must also educate, in this case a criminal requires sanctions that are treatment. Treatment as a sentencing goal is put forward by the positive stream. This flow is based on the notion of determination which states that people do not have free will in carrying out an action because it is influenced by their personal character, environmental and social factors. Thus crime is a manifestation of an abnormal mental state of a person. Therefore, the perpetrator of the crime cannot be blamed for his actions and cannot be subject to a crime, but must be given treatment (treatment) for the reconciliation of the perpetrator. The theory of social protection (social defense) is a further development of the modern school with the famous figure Filippo Grammatica, the main goal of this theory is to integrate individuals into social order and not to punish their actions. Social protection law requires the abolition of criminal responsibility (mistake) to be replaced by a view of anti-social acts, namely the existence of a set of regulations that are not only in accordance with the needs for living together but in accordance with the aspirations of society in general.

4. Integrated Theori of Kriminal Punisment (The theory of unified sentencing justification)
There are 5 (five) theoretical approaches as reasons for justifying the imposition of a crime, namely:
1. Retribution, which covers

Revenge Theory, namely punishment is revenge for the actions committed; and
Expiation Theory namely the theory of repentance to make the perpetrators of criminal acts become aware and at the same time a penance for the mistakes they have committed [13].

2. Utilitarian Prevention: Detterence

That is punishment as a general preventive measure for the community so they don't commit crimes;

3. Special Detterence or Intimidation

That is to prevent crimes that are specific to the perpetrator so they don't do evil again, in this case it is closely related to recidivists;

4. Behavioral Prevention: Incapacitation

That is, criminals are made to be incapable of committing crimes again temporarily or permanently; and

5. Behavioral Prevention: Rehabilitation

That is in order to improve the mental and personality of the perpetrator.

Basically the purpose of sentencing is:

1. To inflict affliction upon the offender; and
2. To prevent the occurrence of crime, both specifically for the perpetrators so that they do not do it again, and in general so that the community does not commit crimes.

Because he was not satisfied with the various existing theories, L. Packer proposed an integrated theory of justification for criminal punishment, namely the ambiguity (double meaning) in sentencing, namely: "Criminalization is necessary, but it should be completed". Therefore, in imposing a sentence, it is necessary to have a condition for the fault of the perpetrator. According to Packer, 3 (three) things must be considered in imposing a crime, namely: an act against the law; perpetrator's fault; and criminal sanctions that are threatened.

With this triangular relationship, not everyone who commits a crime can be punished, therefore it is necessary to have an error condition. In this regard, L. Packer proposes to the legislators, namely: (1) to pay more attention to the limits of thinking about criminal sanctions; and (2) the need for careful supervision from institutions that handle the criminal justice process; and what criteria can be used to determine something as a criminal act [13]

B. View of the philosophy of punishment in the process of imprisonment

According to M. Sholehuddin, the philosophy of punishment essentially has two main functions. First, the fundamental function, namely as the basis and normative principles or rules that provide guidelines, criteria or paradigms for criminal and sentencing issues. This function is formally and intrinsically primary and is contained in every teaching of a philosophical system. That is, every principle that is determined as a principle or rule is recognized as a truth or norm that must be enforced, developed and applied. Second, the function of theory: in this case as a meta-theory. That is, the philosophy of punishment serves as the theory that underlies and underlies every criminal theory [14].

From this context, it is clear that the "philosophy of punishment" is oriented to "criminal", "criminal system" and "criminal theory". Now the main problem is whether there is a "philosophy of punishment" in the legislative policy framework or is it an applicable policy in Indonesia? According to Harkristuti Harkrisnowo, in the legislative policy, there is uncertainty about the philosophy of punishment.

This aspect is emphasized by the editorial as follows: "However, the role of the legislature is no less important, because as an institution that (supposedly) represents the people's conscience and sense of justice, establishing criminal law is one of their duties. this institution to work based on the philosophy of punishment that departs from the basic values that live in Indonesian society today.

According to Syaiful Bakhri, the current ambiguity in the philosophy of punishment is a serious obstacle for law enforcement efforts in Indonesia, which is moving towards a more democratic state. This philosophy must also underlie criminal policies, which have not yet been formulated. It is a criminal justician's dream, so that decision makers in the field of law, especially the Supreme Court, the Attorney General's Office, the Ministry of Justice and Human Rights, the Police and the DPR to sit together, negotiate and produce criminal policies, based on the philosophy of punishment that is right for Indonesia."

Indeed, in essence, for now, criminal policies, especially legislative policies, especially criminal policies in applicative measures are needed and urgent in nature. There are several aspects why this policy needs to be formulated, namely: First, it is hoped that as far as possible it is hoped that there will be relative disparities in the sentencing of similar cases or cases, which are almost identical and the provisions of the crimes violated are relatively the same. In essence, disparity is the application of unequal punishment to the same crime or to criminal acts whose dangerous nature can be compared without a clear justification [15].

With the sentencing guidelines in legislative policies, judges in terms of implementing regulations as applicative policies can impose more just, humane punishments and have juridical, moral justice and social justice signs. Concretely, the logical consequence of this aspect is that the judge's decision or court decision is expected to be closer to justice that reflects the values that live in society. However, the reality is that in Indonesia there are no sentencing guidelines that can serve as a barometer and catalyst for judges. This aspect is emphasized by Sudarto as follows: "Our Criminal Code does not contain general guidelines for giving punishment (straftoemetingsleiddraad), it is a guideline made by legislators that contains principles that need to be considered by judges in imposing a criminal, there are only rules for granting criminal law (straftoemetingsregels)". Dimensions and actualization to judges in terms of explaining the law as a legislative policy in accordance with the nuances desired by the legislators.

This aspect is important because actually legislative policy is a strategic and decisive policy because mistakes in legislative policies will have a major effect on applicable policies implemented in the field. Therefore, of course,

synchronization, transparency and juridical background are needed regarding the nature of a law, what legislators want concretized so that judges as an applicative policy do not misapply and embody the law.

The sentencing guidelines provide and function as a catalyst to become a "safety valve" for judges in imposing crimes on defendants so that judges can make decisions that are more fair, wise, humane and relatively adequate for the mistakes that have been made by the defendant. Therefore, with the sentencing guidelines, it is hoped that in addition to finding justice that can be accepted by all parties, it is also reflected in the value of legal certainty imposed by the judge in his decision.

With such benchmarks, essentially the "philosophy of punishment" is also oriented to the "model of justice" to be achieved in a Criminal Justice System. Concretely, how judges as controllers of applicable policies in terms of making decisions are also oriented to the theoretical dimension and must also refer to the values of justice to be achieved by all parties. Sue Titus Reid further stated this element as follows: "model of justice" as a modern justification for punishment.

This model is called the justice approach or the Just desert model, which is based on two theories (objectives) of punishment, namely prevention and retribution. The basis for retribution assumes that violators will be judged with appropriate sanctions for the crimes they have committed. It is also presumed that appropriate sanctions will prevent the pre-criminal from committing crimes again and also prevent others from committing crimes."

If the "common thread" is drawn to the "model of justice" there is an implicit "criminal philosophy" in it. Basically, the "model of justice" is correlated with the theory of punishment in which this dimension also has an integrative scope orientation of "punishment philosophy" in the sense of a combined scope of "retributive, deterrent and rehabilitation philosophy". Concretely, according to Muladi. because the objective is integrative, the objectives of the sentencing are: general and specific prevention, community protection, maintaining community solidarity, and compensation/balancing. However, Muladi noted that which goal is the focus, this is casuistic in nature. Furthermore, on this aspect, Muladi expressed his opinion in more detail that: the concept of the purpose of sentencing which he called an integrative sentencing goal (humanity in the Pancasila system).

The logical consequence is that with the application of an "integrative penal philosophy", it is hoped that the sentence handed down by the sentencing judge contains elements of a criminal nature. Humanity in the sense that the sentence imposed by the judge still upholds the dignity of the perpetrators; Educational in the sense that the punishment is able to make people fully aware of the actions they have committed and cause the perpetrator to have a positive and constructive mental attitude for crime prevention efforts; and Justice in the sense that the punishment is perceived as fair both by the convict and by the victim or by the community. Conceptually, F. Geny also argues that the purpose of law is justice, and as an element of the notion of justice is society and the interests of usability. This aspect was also emphasized by D.H.M. Meuwissen indeed the purpose of law lies in part in realizing "justice".

From such benchmarks, it can be seen that the philosophy of punishment is also oriented to the model of justice to be achieved in a criminal justice system. In the realm of in-conreto law, how judges as controllers of applicable policies in terms of making decisions are also oriented to the theoretical dimension and must also refer to the values of justice to be achieved by all parties. Sue Titus Reid further stated this element as follows: "The Justice Model is a modern justification for the punishment.

This model is called the justice approach or the Just desert model, which is based on two theories (objectives) of punishment, namely prevention and retribution. The basis for retribution assumes that violators will be judged with appropriate sanctions for the crimes they have committed. It is also assumed that appropriate sanctions will prevent the pre-criminal from committing crimes again and also prevent others from committing crimes. "Philosophically, correctional facilities are a punishment system that has moved far away from the philosophy of retributive (retaliation), deterrence (deterrence), and resocialization. In other words, punishment (punishment) is not intended to cause suffering as a form of retaliation, is not intended to deter suffering, nor does it assume the convict is someone who lacks socialization. Correctional is in line with the philosophy of social reintegration which assumes that crime is a conflict that occurs between the convict and the community. So that sentencing (punishment) is intended to restore conflict or reunite the convict with the community (reintegration)." [16]

The explanation of the correctional philosophy (system) in the Blueprint document can be interpreted further as follows. First, ontologically (at the level of understanding the essence), crime does not occur because of the free will of the perpetrator, so that his actions deserve punishment or punishment. However, due to social factors, a person is unable to adapt so that in the end he chooses to commit a crime. Second, therefore, when a crime occurs, the act of punishing with the principle of retaliation and causing suffering is considered inappropriate.

Punishment is more directed at restoring the life of the criminal and preparing him to return to society. This is why crime is called conflict, because there is a mismatch between community expectations and the adaptation choices of the perpetrators. This is why in the coaching process, the Penitentiary (system), through the Correctional Institution, provides education, production job training and other skills as an effort to increase the capacity of prisoners when they return to society and do not commit crimes again.

While the positivist view sees certain determinants in the emergence of crime. Both biologically, psychologically, and socially. Bahroedin's explanation is basically influenced by this deterministic view, in its social aspect, where he explains crime as something that the perpetrators are forced to do because they are left behind or abandoned by society.

Another interesting interpretation of this correctional philosophy (system) is an explanation of the main function of prisons in protecting human rights. Correctional law enforcement is an effort to humanize humans.

The Indonesian Correctional System, which adheres to a reintegrative philosophy, is basically very adaptive to community-based corrections. Corrections consider that coaching is not only carried out in institutions, but requires a certain phase in which prisoners interact with the community until they are reintegrated, even though they are still in a criminal period. Interaction and reintegration are efforts made to increase the community's willingness to accept back prisoners and minimize stigma, so that when released, ex-convicts are expected to be able to live normally again as members of the community.

If we look further at the reintegrative philosophy which emphasizes the restoration of the convict's relationship with the community, punishment can basically be carried out outside of imprisonment. Regarding the nature of reintegration itself which seeks to restore conflict, then punishment should be carried out outside the prison institution (an alternative to imprisonment), by returning the perpetrators of the crime to the community without a criminal justice process (alternative to sentencing). The United Nations Office on Drugs and Crime/UNODC (2007) explains that there are a number of reasons behind the emergence of thoughts towards community-based correction, namely; The counterproductivity of imprisonment lies in the extent to which these development programs are carried out based on the community or not. Coaching in isolation tends to be ineffective. Third, community involvement in the coaching process is important, especially in the form of acceptance of convicts who want to return to society [17].

Conclusion

The current legal system in Indonesia has basically provided the possibility for alternative practices to imprisonment. Such as the existence of fines, counseling, rehabilitation, parole, and open prison. However, in terms of implementation, the instrument has not really supported the de-institutionalization of sentencing and imprisonment. In particular for a number of categories of crimes and the subject of the perpetrators that have been mentioned previously.

Besides being caused by the lack of understanding of the weaknesses of imprisonment, the lack of alternative efforts to imprisonment is also caused by the reluctance of other criminal justice sub-systems in implementing non-criminal measures. Developments in international legal instrumentation basically emphasize the need to implement community-based corrections, through changes in the national legal system, namely by encouraging the regulation of other basic crimes, such as supervision or social work, as well as encouraging the regulation of non-judicial mechanisms such as diversion policies and restorative justice.

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