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Lifetime Prison Crime: Perspectives of Criminal Objectives and Community Protection in Indonesia

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Abstract

This study aims to understand the life imprisonment policy in the Criminal Code and the 2018 Criminal Code Bill, understand the Life imprisonment policy for convicts and their families viewed from aspects of community welfare and community protection as well as analyzing the formulation of life imprisonment policy modifications in order to achieve the purpose of sentencing. The method used is a qualitative research with a normative juridical approach. The results of this study (1) The policy of life imprisonment in the Criminal Code aims to balance suffering, maintain a peaceful society and deter perpetrators. The 2018 Criminal Code Bill aims at preventing criminal acts, resolving conflicts, restoring balance and bringing a sense of peace in society, re-socializing the convicts, and freeing the convicts from guilt; (2) Life imprisonment policy for convicts and their families is only oriented towards protecting the community. because the convict must serve the sentence of imprisonment for the rest of his life. Community welfare is not realized, because judges are only oriented towards equality of suffering; (3) Indonesia's life imprisonment policy lags behind that of other countries, because there is no modification of punishment as a protection for individual convicts. Conclusions (1) The Criminal Code focuses on community protection while the 2018 Criminal Code Bill is oriented towards community protection and individual protection; (2) Life imprisonment is only oriented to the protection of the community.

Keywords

community protection, crime, prison

1. Introduction

Imprisonment is the main crime that is often imposed by judges in their decisions to resolve or decide on a criminal case. Imprisonment in its classification is divided into 2 (two) parts, as regulated in Article 12 paragraph (1) of the Criminal Code, namely in the form of life imprisonment and imprisonment for a certain time. If you look at the regulation of life imprisonment which is only regulated in one article and one paragraph and is not contained in Article 15 of the Criminal Code regarding conditional release for convicts to life imprisonment, life imprisonment can be interpreted as a punishment for a defendant based on a judge's decision to live the rest of his life continuously languishing in prison.

Tongat revealed that the existence of life imprisonment tends to be oriented only to community protection as a reflection of the criminal function for crime prevention. Because this is actually not in accordance with the values that live in Indonesian society which always prioritizes the aspect of balance, as written in the fifth precept of Pancasila as the nation's ideology, namely: "Social Justice for All Indonesian People". Based on these precepts, protection should not only be oriented to the protection of the community, but the protection for convicts should also be an important part to pay attention to. Therefore, protection for the perpetrators and their families is also an urgent matter to be reviewed. ²

Soedarto as quoted by Barda Nawawi Arief in his professor inauguration speech in 1994, stated that: The regulation in criminal law is a reflection of the ideology of a nation where the law is developing and it is important that all legal structures are based on sound and consistent political views.³

Based on what Soedarto stated, the provision of life imprisonment as a reflection of the ideology of the Indonesian nation should adopt the balance value contained in Pancasila. said as quoted by Barda Nawawi Arief, criminal policy is "a rational effort by the community to tackle crime". Policies or efforts to overcome these crimes are essentially an integral part of efforts to protect the community (social defense) and social welfare (social welfare)."

Based on the above background, the problems and objectives of this research, (1) Intend to find out what is the purpose of the Life Prison Policy according to the Criminal Code and the 2018 Draft Law on the Criminal Code, (2) What are the objectives of the Life Prison Policy for convicts and his family is seen from the aspect of Community Welfare and Community Protection.

This paper is an original scientific paper or not the same as the previous scientific work. The scientific work related to the author's scientific writing is a scientific paper from: 1) Herlita Eryke in 2016 with the title "Kaj ian Comparative

 $^{^{1}}$ Tongat, *Pidana Semur Hidup Dalam Sistem Hukum Pidana di Indonesia*, UMM Press, Malang, 2004, h. 28

 $^{^2}$ Ward, Tony. "Addressing the dual relationship problem in forensic and correctional practice." *Aggression and Violent Behavior* 18, no. 1 (2013): 92-100.

³ Barda Nawawi Arief, Kebijakan Legislatif Dalam Penanggulangan Kejahatan, Kencana Prenada Media Group, Jakarta, 2010, h. 11

⁴ *Ibid*, h. 12

Criminal Sanctions in *Extra Ordinary Crimes* in Indonesia and the Zambara Code of Penal Law of Nigeria", with the formulation of the problem being: What are the criteria for judges in convicting perpetrators of extraordinary crimes, and what are the criteria for extraordinary crimes?⁵ The next scientific work of 2). Anis Widiyanti in 2017, with the title "Policy Formulation of Criminal Law Against Serious Crime Perpetrators in Renewing Criminal Law Based on Justice Values", with the formulation of the problem: 1. How is the setting of sanctions for criminals with qualifications such as murder with mutilation for the future? 2. What is the difference between a life sentence and a death penalty?⁶ Another scientific work by Diah Gustiniati Maulani in 2018, with the title "Lifetime Imprisonment in the Correctional System", with the formulation of the problem: 1) Is there any effect of imposing a life sentence on the overcapacity level *of* the Correctional Institution? 2) Does it not violate the principle of human rights of life imprisonment?⁷

Based on the explanation in the respective papers above, it is clear that the author's scientific writings have different meanings and objectives, because the author's paper discusses and analyzes life imprisonment from the perspective of the Criminal Code policy and the 2018 Criminal Code Bill for the use of the convict and protection for the community.

2. Research Method

Penelitian ini menggunakan jenis penelitian hukum normatif. I Made Pasek Diantha stated that normative law research is a method that examines positive legal rules from an internal perspective whose object of research is legal norms..⁸ The approach used in this scientific work is a statutory approach. The sources of legal materials used are primary legal materials relating to applicable laws and regulations related to crime and punishment as well as correctional facilities. Secondary legal materials involve the results of previous research, legal text books, scientific journals, newspapers and news on the internet that are relevant and related to the problems studied. Other non-legal materials such as law dictionaries and encyclopedias

3. Results and Discussion

3.1. Imposition of Life imprisonment from Historical Perspective

⁵ Herlita Eryke, *Kajian Komparatif Sanksi Pidana Dalam Tindak Pidana Extra Ordinary Crime di Indoensia dan Code Penal Law Zambara of Nigeria*, Jurnal Ilmiah Kutei, 1 No. 10, 2012, hlm: 2, DOI: http://dx.doi.org//10.34927/eratik/V.712/4520

⁶ Anis Widiyanti, "*Kebijakan Formulasi Hukum Pidana Terhadap Pelaku Kejahatan Berat Dalam Pembaharuan Hukum Pidana Berdasarkan Nilai Keadilan"*, Jurnal Pembaharuan Hukum, 1 No. 1. 2014, h. 103, DOI: http://doi.org/10.4561/mlh.17335. h. 231.

⁷ Maulani, Diah Gustiniati. "Pidana Seumur Hidup Dalam Sistem Pemasyarakatan." *Fiat Justisia: Jurnal Ilmu Hukum* 6, no. 2, 2012. DOI: https://doi.org/1244052/ihskv13i2911. h. 187

⁸ I Made Pasek Diantha, *Metodelogi Penelitian Hukum Normatif Dalam Yuridiksi Teori Hukum,* Prenada Media Grouop, Jakarta, 2017. h. 12

and Juridical Facts and Jurisprudence

The historical perspective writes and reminds that the initial conceptual debate around the use of life imprisonment as a means of crime prevention has emerged since the development of the treatment philosophy in sentencing perpetrators. crime. In fact, the debate regarding life imprisonment is increasingly escalating as the issue of human rights increases and becomes globalized all over the world.

For Indonesia, in the context of a life sentence criminal policy, its existence is still considered relevant as one of the efforts to combat crime. Therefore, according to Mahkmud Silitonga, this type of crime almost appears in every Indonesian criminal policy in its criminal law through positive law in the scope of general and specific crimes in the Criminal Code and outside the Criminal Code, especially if it is classified as a serious crime whose socio-juridical impact is broad and complex..⁹

The imposition of this long-term loss of independence, even until the end of life and ending up in a Correctional Institution (formerly prison) does not provide the opportunity and space for the convict to repent in the hope of being able to and being able to return to the midst of his family and the environment where he was born. So that for ordinary people, the law raises frequent and many questions regarding the essence and limits of the meaning of this type of extended imprisonment with the addition of lifelong words. There are those who think that the life imprisonment sentence is imposed by the judge when the defendant's age begins when he is being tried. Of course, this view is very different from the meaning of life imprisonment when examined from the perspective of penitents, which limits that the convict must spend the rest of his life forever in the detention room of the high walls of the prison (Sano, 2021).

For life imprisonment convicts will spend a very long time serving a sentence. This crime is referred to as the crime of loss of independence. Except by taking certain types of legal remedies and being granted by state law, then there is a solution for changing the reduction of the sentence from life imprisonment to 20 years or 15 years in prison. This step can be obtained by the convict, such as submitting an appeal, reconsideration or pardon to the President.

The imposition of imprisonment for a long time will also be a burden for the state. The government must bear the burden of living regularly and continuously for the convict. Besides that, the convicts also feel the traumatic psychological burden without the possibility of improving their fate in order to change their life expectancy to a better life as a savior being able to get out of isolation in an unknown space and time to predict when the end of their life will be, so that life imprisonment is a humanitarian perspective. remains a problem and the question is what is the basis for the juridical philosophical justification for the implementation

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⁹ Makhmud Silitonga, Pidana Penjara Seumur Hidup Dalam Tindak Pidana Luar Biasa (Extra Ordinary Crime) di Indonesia, Jurnal Hukum Samudra Keadilan 13 No. 2, 2018,. DOI: https://doi/org/10.33059/ihsk. V. 13i2.910. h. 210

of life imprisonment? and also in the future, is it still relevant to impose this longterm prison sentence for missing independence?

In the practice of law enforcement in Indonesia to date, both general criminal acts based on the Criminal Code, especially those involving criminal acts with severe qualifications and several crimes outside the Criminal Code or including special criminal acts imposing life imprisonment by judges are still being carried out. Several cases in the Indonesian criminal court have defendants sentenced to life imprisonment, including in cases of corruption, such as Adrian Herling Woworuntu (2005), M. Akhil Mochtar (2015), Teddy Hernayadi (2017), Ali Imron in the Bali Bombing Case I (2015). 2003) convicted terrorist, Nyoman Susrama (Year 2009) in the case of premeditated murder of journalist Radar Bali AA Gde Bagus Narendra Prabangsa and various drug cases, the convict was sentenced to life in prison (Selvaraj, 2021). 10

3.1.1. The Purpose of Life Imprisonment According to the Criminal Code and the 2018 Draft Criminal Code

Talking about imprisonment in Indonesia, of course, cannot be separated from the history of the Indonesian nation's criminal system, which in its journey adopted the provisions of Dutch law as a criminal law provision. The unification of the Dutch WvS in Indonesia as a criminal provision, turned out to have a great impact. Because in this provision the priority is the protection of the community. This is evident from the policy objectives of life imprisonment in the Criminal Code, which are oriented towards protecting the community through deterrence, balancing suffering, education for the convicts and convicting themselves as well as being an example for the community not to commit / acts similar to the convict's actions. The non-accommodation of the purpose of punishment in the Criminal Code has resulted in the purpose of life imprisonment being interpreted according to the understanding or flow of punishment adopted by each law enforcer which as a whole leads to the protection of the community. This understanding was strengthened by several legal experts, such as Cardinand Septiono who concluded that the purpose of sentencing in the Criminal Code is to deter and not to improve and the existence of this goal is still abstract so that judges have complete freedom interpretation without limits and tend to find reasons.¹¹ of

3.1.2. The Purpose of Life Prison Policy According to the 2018 Criminal Code Bill

When comparing the provisions regarding the purpose of sentencing

 $^{\rm 10}$ Situs Informasi Penelusuran Perkara, *Pengadilan Negeri Denpasar*, 2019, URL : http://sipp.pn.denpasar.go.id/,

¹¹ Cardinand Septiono, *Keyakinan Hakim Dalam Memidana Seumur Hidup Pelaku Pembunuhan Dengan Mutilasi,* Jurnal Jurisprudensie 8 no. 1 2017,. DOI: https://doi.org/10.2391/jurisprudence. V6i1.2992. h. 9

between the Criminal Code and the 2018 Criminal Code Bill, course there will be significant differences. Because in the provisions of the 2018 Criminal Code Bill, the purpose of punishment is explicitly formulated in Article 54 of the Criminal Code Bill, namely:

- 1. Sentencing aims to:
- a) Preventing the commission of criminal acts by enforcing legal norms for the protection of society.
- b) socialize the convicts by conducting coaching so that they become good and useful people.
- c) resolve conflicts caused by criminal acts, restore balance, and bring a sense of peace in society; and
- d) release the guilt of the convict.
 - 2. Punishment is not intended to suffer and demean human dignity.

Referring to Article 54 of the 2018 Criminal Code Bill, it provides an illustration that the criminal policy, especially the provision of life imprisonment, is not only oriented to the protection of the community, but also to the protection of individuals. The protection of the community is manifested in Article 54 paragraph (1) letters a and c of the 2018 Criminal Code Bill, which includes preventing the occurrence of criminal acts through the enforcement of legal norms for the sake of protecting the community, resolving conflicts, restoring balance and bringing a sense of peace in the community which was previously disturbed due to an incident. criminal act. While the orientation of the protection of individual convicts in the 2018 Criminal Code Bill is regulated in Article 54 paragraph (1) letters b and d, which states that sentencing intends to re-socialize the convict (modification of the implementation of the decision for a person sentenced to life imprisonment) by first providing guidance for the convict so that he becomes a convicted person. a better and more useful person in society, and the punishment is aimed at freeing the convict's guilt. From the sentencing orientation, the sentencing of convicts in the 2018 KUHP Bill aims to balance the protection of the community and the protection of the individual convicts.

3.2. The Purpose of Lifetime Prison Policy for Convicts and Their Families Seen from Aspect Social Welfare and Social Defence

Aim The applicable criminal law is only oriented to the protection of the community, without paying attention to the protection of the convict and the welfare of the convict's family. It is true that in his threat, the policy of life imprisonment is always threatened alternatively in the Criminal Code. However, judging from the length of the criminal threats, the regulation of life imprisonment in the Criminal Code is of a *definite sentence*, i.e. the convict will definitely serve the sentence of imprisonment for the rest of his life without the possibility of returning to society. This has resulted in the orientation of life imprisonment in the Criminal Code, which focuses more on the protection of the community compared to the protection of the individual convicts.

Meanwhile, in terms of community welfare, the judge in his decision gave life imprisonment to the convict, with the aim of balancing the suffering between the convict's family and the victim's family. The purpose of balancing suffering certainly does not reflect a decision that is oriented towards the welfare of the community. Because in the provisions of Article 1 and Article 4 of Law no. 11 of 2009 concerning Social Welfare, the state is responsible for the implementation of social welfare which includes the fulfillment of the material, spiritual and social needs of citizens so that they can live properly and be able to develop themselves, so that they can carry out their social functions and welfare is actually oriented to individuals, families, and communities. groups and communities as regulated in Article 5 of it. Therefore, judges as parties who represent the state in the judicial realm should make decisions that are also oriented to the welfare of the community (social).

Judges in order to give sentencing decisions, only rely on considerations of social damage that occurs as a result of criminal acts committed by perpetrators. Therefore, even though the material, spiritual, and social needs of the convict's family and the victim's family are not fulfilled, law enforcement officials consider it complete if they both experience the same suffering. Based on the provisions in the articles of Law no. 11 of 2009 concerning Social Welfare mentioned above when juxtaposed with the judge's decision which intends to provide a balance of suffering is certainly not in line with or in line with the objectives to be achieved by Law no. 11 of 2009 concerning Social Welfare.

3.2.1. Policy Formulation of Life Imprisonment in the Context of Modifying the Implementation of Judge's Decisions to Achieve Sentencing Goals for Convicts of Life imprisonment

Indonesian Life Imprisonment Convicts in the punishment system for a person sentenced to life imprisonment in order to be able to adapt back to society is only possible by granting clemency from the president in accordance with UU no. 22 of 2002 *juncto* (jo) Law no. 5 of 2010 concerning Clemency. This has become a fundamental weakness of the life imprisonment policy in criminal legislation in Indonesia, which in fact contradicts the purpose of punishment as regulated in Article 2 of Law no. 12 of 1995 concerning Corrections which intends to convict convicts to be educated and returned to the community.

Kuntoro Wibisono reviewed with several other countries such as Japan which regulates life imprisonment and provides conditional release if the convict shows improvement in treatment and has served 10 years. ¹² of his sentence, heLife who has served 20 years of imprisonment may be subject to conditional release in accordance with the provisions or conditions specified. In line with Japan and Argentina, the Republic of Korea determines that if a person sentenced to life imprisonment has served ten years of his sentence, he can be subject to conditional release.

¹² Kuntoro Wibisono, Manfaat Penjatuhan Sanksi Pidana Berat Bagi Terpidana Seumur Hidup Oleh Hakim di Pengadilan Negeri Medan, Jurnal Mercatoria 6 No. 1, 2014, DOI: http://dx.doi.org/10.31289/mercatoria. V. 611.632. h. 88

Efforts to provide a balance of protection between individuals and society can in fact be carried out by referring to the idea of monodualistic balance and the purpose of punishment in integrative theory. In the monodualistic balance idea, there is community protection and the protection of criminals (the idea of criminal individualization). In which Japan, Argentina, the Republic of Korea as comparison countries in the policy of life imprisonment, have already contained criminal individualization through conditional release for convicts of life imprisonment in their criminal law provisions.

According to Januar Siregar, criminal acts that are punishable by life imprisonment are actually still relevant provisions to be maintained." The problem is how the life imprisonment policy made by this nation is able to balance two sides of protection, namely community protection and individual protection which later on. leads to restoration of balance. ¹³

3.2.2. Criminal Policy Formulation

formulation of a life imprisonment policy in the context of modifying the implementation of the judge's decision to achieve the purpose of punishment, should contain:

- 1. The provision of life imprisonment must continue to take into account the national development goals, namely realizing a just and prosperous society (material and/or spiritual) based on Pancasila.
- 2. Life imprisonment will only be imposed for perpetrators who commit crimes against values that should be protected by criminal law and crimes that are very difficult to recover from. For example, crimes that are oriented towards crimes against people, crimes that have an impact on the environment/natural wealth of the country, or other crimes that *extraordinary crimes* which are classified as special crimes.
- 3. There is a guarantee that the punishment and education given to the convicts for life will bring about changes for the better for the convicts and are able to provide a sense of satisfaction for the community or victims.
- 4. There is the possibility of modification of life imprisonment which has legal force face-to-face (re-socializes violators of the law) for consideration of improvement in the perpetrator while serving his sentence as a form of integrity to maintain basic views on social justice, human dignity and individual justice.
- 5. The development of criminal law through life imprisonment must also take into account the principle of costs and results while the convict is serving his sentence.
- 6. There is a guarantee that life imprisonment is not imposed for perpetrators who are classified as children/adolescents and parents who are over 60 years old.
- 7. There is a guarantee that life imprisonment is not formulated in an *imperative* (required) but *exception* (exception).should not be formulated without any other alternative (death penalty or imprisonment for a certain period of time)

¹³ Januar Siregar, *Antara Pidana Penjara Seumur Hidup Dengan Pidana Mati Sebagai Alternatif Yang Dilematis*" Jurnal Mimbar Hukum 24 No. 3. 2013, DOI: https://doi.org/10.22146/jmh. 16123. h.570

But on the other hand, the author adds that criminal individualization for life imprisonment can also be balanced through the provision of *weekend detention*. This is intended to avoid the rigidity of the regulation of life imprisonment which has led to the protection of the community. The provision of *weekend detention* for convicts is expected to speed up the process of adaptation of the convict to the environment and his rights as ordinary citizens which had previously been limited through a sentence.

4. Conclusion

The conclusions in this study are: (1) The purpose of the life imprisonment policy in the Criminal Code is only oriented to balancing suffering, administering a peaceful society and deterring criminals. While the 2018 Criminal Code Bill includes community protection in the form of preventing criminal acts, resolving conflicts, restoring balance and bringing a sense of peace in society. (2) The purpose of the Policy on Life imprisonment for convicts and their families is seen from the aspect of community protection and community welfare, only oriented towards community protection. This can be seen from the length of the punishment, life imprisonment in the Criminal Code which is a defhitie sentence, that is, the convict will definitely serve a sentence of imprisonment for the rest of his life. because in his consideration only focused on social damage. Therefore, even though the welfare needs are not fulfilled, it is a side that is considered complete by the judge if they both experience the same suffering; The life imprisonment policy in Indonesia as regulated in the Criminal Code is actually lagging behind other countries. This is due to the absence of an individual protection orientation through the modification of the punishment and the conflict of the policy with the idea of correctional.

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