

The Construction of Conditional Criminal Regulations in Indonesian Criminal Code (KUHP)

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Abstract: Imprisonment is the sharpest and harshest sanction, so there are efforts to avoid the application of imprisonment for certain crimes. The purpose of this study is to analyze the construction of conditional criminal regulations in the Indonesian Criminal Code. The approach method in this research is sociological juridical. The research specification is descriptive analysis. Research locations in various Cirebon District Courts and Correctional Centers (BAPAS) in West Java, Indonesia. Primary data sources were obtained directly by conducting interviews with respondents, both judges and BAPAS officers. Secondary data was obtained by conducting a literature study. The data is presented in the form of descriptions that are arranged systematically, logically, and rationally, analyzed using qualitative descriptive techniques. The results of the study that conditional criminal regulations in Indonesia are currently not based on the value of justice, this can be seen from the weaknesses of imposing conditional crimes which include the following: (1) The substance of the law, related laws and regulations there are no guidelines for implementing conditional sentence. (2) The legal structure, human resources, still need improvement as well as facilities and infrastructure, supervision applies conditional criminal sanctions. (3) Legal culture, people's views on the law have not been fully understood by the community. Conditional criminal regulations in Indonesia today, are a way out to overcome or reduce overcrowding in Correctional Institutions, as an alternative, especially the short-term criminal deprivation of liberty. Conditional punishment as stipulated in Article 14a -14f of the Criminal Code (KUHP).

Keywords: Conditional criminal, Criminal code (KUHP), Indonesia.

1. Introduction

The provisions in the Indonesian Criminal Code if the judge imposes a maximum imprisonment of one year in prison, but does not include substitute confinement, then the decision may also order that the sentence does not have to be served unless later there is a judge's decision that determines otherwise, because the convicted person has committed a criminal act before the probation period specified in the above-mentioned order expires or because the convicted person during the probationary period does not meet the special conditions that may be specified in the order. The benefits of this conditional criminal institution will be clear when it is associated with a universal problem, namely the existence of public dissatisfaction with the crime of deprivation of liberty, which in

various studies has proven to be very detrimental to both individuals who are subject to the crime, as well as to society [1].

In various countries in the world, including Indonesia, efforts continue to be made to always seek alternatives to criminal acts of deprivation of liberty, among others in the form of increasing non-institutional punishments in the form of conditional punishment (*voorwaardelijke verordeling*). Even though efforts have been made to reform and improve, both practical and theoretical in nature to reduce the excesses of the crime of deprivation of liberty, it is a fact that on the one hand the crime of deprivation of liberty will still exist, and on the other hand the disadvantages inherent in the crime of deprivation of liberty have been made. deprivation of liberty is difficult to avoid. So even though the crime of deprivation of liberty is endeavored to grow as a means of reform with a human approach, its original nature as an institution that must take measures to secure and control prisoners cannot be left behind [2].

On the other hand, conditional punishment as an alternative to criminal deprivation of liberty has its own advantages over the crime of deprivation of liberty, because in this case the development of perpetrators of criminal acts is carried out in the community, so that losses that may occur as a result of the application of the crime of deprivation of liberty can be avoided. To be able to achieve the benefits of conditional punishment, it is necessary to evaluate the implementation of the application of conditional punishment, as a material for taking steps to utilize conditional punishment, because based on observations it appears that the determination of conditional punishment in Indonesia cannot be effective due to the many obstacles that occur [3].

The benefit of this conditional crime is to repair the criminal without having to put him in prison, meaning without causing suffering for himself and his family, considering that socializing in prison often brings a bad influence for a convicted person, especially for people who commit criminal acts with the encouragement of certain factors. the convict himself does not have the ability to control himself [4].

Judges in making criminal decisions must pay attention to several aspects, one of which is that the purpose of sentencing is a last resort. According to Roeslan Saleh: "Criminalization should only be carried out if the relevant norms are very

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important for the life and independence of other members of the community. Or for the proper functioning of people's lives themselves, and what is more important is that violations of norms can be resisted in other ways than punishment.”

It is clear that the judge must therefore take into account all the purposes of sentencing, he cannot only pay attention to the interests of the community, or the interests of the maker, or only pay attention to the feelings of the victim and his family. Nor does he need to satisfy all of the purposes of the punishment at once, and it is impossible for him to do so. In concrete incidents the judge can put pressure on certain things and this is precisely where the main problem lies [5].

If the judge imposes a maximum imprisonment of one year or confinement, but does not include substitute confinement, then in his decision he may also order that the sentence should not be carried out unless in the future there is a judge's decision that determines otherwise, because the convicted person committed a criminal act before the probationary period. Those specified in the abovementioned order have expired or because the convicted person during the probationary period does not meet the special conditions that may be specified in the order. So a conditional sentence can be imposed if the judge imposes a maximum imprisonment of one year, which determines that it is not the crime listed or the offense committed but the sentence imposed. It should be noted that the judge can impose a sentence between the minimum criminal limit and the maximum criminal limit threatened for the offense committed. Judges are free to move between these two boundaries [6].

The judge in practice imposes a conditional sentence if he thinks that the convict is sensitive enough with a warning so that he will not commit another criminal act and will also carry out the conditions if it is carried out. The convict must meet certain conditions, namely general conditions and special conditions. The general condition is that the convict during the probation period does not commit a criminal act. This condition is always held in imposing a conditional sentence. It is said that this condition is a negative aspect of conditional punishment. The positive side is the specified conditions. These conditions can vary and must be about the behavior of the convicted person, but with the understanding that the conditions imposed must not reduce his freedom in politics or religion. It is said that the social meaning of conditional punishment is especially in its special conditions, and the most important thing in conditional punishment is good supervision. Supervision of compliance with the conditions determined by the judge [7].

Based on the description of the background above, a research was conducted on the Construction of Conditional Criminal Regulations in the Indonesian Criminal Code (KUHP).

2. Research Method

The approach method used in this research is the juridical-sociological approach (socio-legal-research). The data used are primary data and secondary data. Primary data was obtained by conducting observations and interviews at the District Court and BAPAS in the West Java region of Indonesia. The secondary data was obtained through a literature study consisting of primary legal materials, secondary legal materials

and tertiary legal materials. The data obtained were then analyzed using a qualitative descriptive method.

3. Results and Discussion

In order to avoid the bad influence of prison life, there is a tendency to look for alternatives to the punishment for independence, which is thought to be able to serve the needs of the convict's development. meaning that the crime does not have to be carried out inside the prison walls, as long as later it can return the convict to his community. Therefore, various types of alternative crimes that are non-institutional (non-costudial) have been developed [8].

There are two approaches that can be used to understand alternative criminal problems, the first approach is to see alternative punishments as punishments that can replace the crime of independence. According to this widely adopted approach, a criminal sanction can only be accepted as an alternative punishment if the sanction can serve the purpose and use of the independence penalty which is deemed ineffective. Another approach, which is radical in nature, defines alternative punishments as those that can achieve alternative goals that are impossible to achieve with the punishment of independence. The alternative goal to be achieved according to this approach is to replace the punishment for independence with a non-punitive system. In Indonesia itself, short-term imprisonment imposed can be avoided for perpetrators of criminal acts, this is because in the Criminal Code it is known that there are alternative criminal penalties for deprivation of liberty or short-term imprisonment, namely conditional punishment as regulated in Articles 14a to 14f of the Criminal Code [9].

However, in reality the implementation of this conditional sentence is not going well, this can be seen from the lack of conditional criminal decisions against defendants who are sentenced to under 1 (one) year, the absence of supervision and observation from the Wasmat Judge, the lack of supervision by the Prosecutor and there is no guidance on conditional convicts by the Community Advisor at the Correctional Center. So here it is interesting to see the ideal type or model that can be applied so that the implementation of conditional criminal decisions is as expected [10].

It is explained how the ideal implementation of the implementation of conditional criminal decisions starts from the judge who imposes a conditional criminal decision on the defendant, supervision and observation by the Wasmat Judge, supervision by the Prosecutor and also guidance on conditional convicts by the Community Advisor. Judges in imposing conditional criminal decisions are limited by the provisions in Article 14 a of the Criminal Code that if the judge imposes a maximum sentence of one year or imprisonment, except for cases involving state income or rental related to opium cases. This limitation is still very large in giving authority to judges because this guideline determines the measure that conditional punishment can be used is the maximum sanction imposed by the judge, so it still depends on the judge's judgment [11].

The imposition of a criminal is an effort to maintain the material criminal law. However, in the social and state dimensions, law is the order of national life, both in the fields

of politics, economy, social culture, and defense and security. The imposition of a crime is an effort to create order, security, justice, and legal certainty. For those concerned to be able to realize their mistakes, improve themselves, and not repeat the crime [12].

Criminal imposition as a process, apart from being bound by the system and rules, it also involves certain parties. The parties in question are suspects, defendants, investigators, public prosecutors, judges, legal advisors. Sentencing and sentencing can be said to be a mirror of our criminal justice system. If the judicial process, which for example ends with the imposition of a crime, proceeds according to the principles of justice, our judiciary will be judged as good. If it is better, of course it is judged otherwise. It can even be labeled as a decline in the authority of the law [13].

1) Purpose of Criminal Imposition

Theoretically, Herman and H. Manan Ceylon stated that the purpose of a punishment or criminal imposition is known as three theories, namely:

- a) The absolute theory, the purpose of holding a punishment lies in the punishment itself, punishment is the absolute result of an offense, a response to something done by the perpetrator.
- b) Relative theory holds that the purpose of punishment is to improve criminals into good people in social life. Included in the relative theory is to provide protection to the public against crime, the punishment also provides the power to frighten and educate the public.
- c) The combined theory is a combination of absolute and relative theory, namely the purpose of punishment is carried out because the person has committed a crime and prevents that person from committing another crime.

2) Sentencing Decision

Sentencing decisions are a form of District Court decisions. Other forms of decision include acquittal (Article 191 paragraph (1) KUHAP) and acquittal (Article 191 paragraph (2) KUHAP). From a juridical point of view, the decision has binding force since it was pronounced in court, but its formal validity as an official deed is when it is signed. Formally and even materially, the authenticity and power of execution have only been attached to him since the decision was signed. So, the sentencing decision as an official deed does need to be signed. A sentencing verdict occurs if the court is of the opinion that the defendant is guilty of committing the crime he is accused of. The formulation of Article 183 of the Criminal Procedure Code is that a judge may not impose a sentence on a person unless, with at least two valid pieces of evidence, he obtains the belief that a criminal act has actually occurred and that the defendant is guilty of committing it [1].

The decision-making process begins with the judge's statement that the examination of the trial court is declared sufficient or completed. For this reason, public prosecutors are welcome to file criminal charges. Furthermore, the defendant and/or legal adviser submits a defense which is answered by the public prosecutor and so on in which the legal advisor must get the last turn. The basis for imposing a crime, the Court shall impose a sentence if the court is of the opinion that the

defendant is guilty of committing the crime he is accused of. The defendant can not just be found guilty and sentenced to a crime, but must be supported by a minimum of valid evidence. The minimum evidence must be able to convince the judge of the defendant's guilt. After that, the sentence can be imposed. The law requires the existence of a minimum of evidence, namely two pieces of evidence that can convince the judge or the guilt of the defendant and the crime he has committed. The purpose of the law to do so is to guarantee the establishment of truth, justice, and legal certainty for a person. Article 184 paragraph (1) of the Criminal Procedure Code states that valid evidence is witness testimony, expert testimony, letters, instructions and statements of the defendant [14].

The factors that must be considered in imposing a sentence, presumably the formulation of Article 58 (Article 52) of the Draft (new) Criminal Code Draft resulting from the improvement of the Internal Team of the Ministry of Justice, can be used as a reference. It is stated that in imposing a criminal the following must be considered:

- a) Error of criminal act;
- b) The motive and purpose of committing the crime;
- c) How to commit a crime;
- d) The inner attitude of the perpetrator of the crime;
- e) Curriculum vitae and socio-economic conditions of the perpetrators of the crime;
- f) Attitudes and actions of the maker after committing a crime;
- g) The effect of the crime on the future of the perpetrator of the crime;
- h) The public's view of the crime committed;
- i) Management of criminal acts against the victim or the victim's family; and
- j) Whether the crime was committed with a plan.

In relation to the conditional criminal regulation in Indonesia, it is based on the value of justice. Criminal law is divided into two, namely material criminal law and formal criminal law. The material criminal law that applies in Indonesia is the Criminal Code and central and regional laws and regulations that contain criminal sanctions. Criminal law is part of the overall law that applies in a country, which provides the basics and rules to regulate what actions are prohibited or required to provide sanctions in the form of punishment for those who violate them [15].

According to the flow of modern law, the purpose of criminal law is to protect society against crime, thus criminal law must pay attention to crime and the circumstances of criminals. Therefore, this school is influenced by the development of criminology. The characteristic of criminal law that distinguishes it from other legal fields is that criminal law does not actually establish its own norms but is already located in other legal fields, and criminal sanctions are held to strengthen adherence to norms outside of criminal law. On the other hand, according to the classical flow, the purpose of criminal law is to protect individuals from the power of the ruler or the state [16].

As stated by Muladi that one of the goals of conditional punishment is to try to avoid and weaken the negative

consequences of the crime of deprivation of liberty which often hinders efforts to reincarnate prisoners into society [17].

The formulation of Article 14 b of the Criminal Code determines a probationary period of 3 (three) years for the crimes and violations referred to in Article 492, Article 504, Article 505, Article 506 and Article 536 of the Criminal Code. Article 14 c of the Criminal Code states that in addition to the general requirement that the convict will not commit other criminal acts, the Judge may stipulate special conditions that the convict, within a shorter period of time than his probationary period, must compensate all or part of the loss caused by his criminal act. In addition, other special conditions can be stipulated regarding the behavior of the convict which must be met during the probationary period or during part of the probationary period [18].

In general, it can be said that conditional punishment is a system of imposing criminal penalties by judges whose implementation depends on certain conditions. This means that the sentence imposed by the judge is determined not to need to be carried out on the convict as long as the specified conditions are not violated, and the sentence can be carried out if the specified conditions are not obeyed or violated. Of course this conditional punishment is given with a purpose. This conditional punishment aims to provide an opportunity for the convict so that within the specified time to improve himself not to commit a criminal act again. Conditional criminal institutions arise based on a thought, namely that not all criminals (convicts) must be put in prison, but especially for first-time offenses in order to prevent the influence of the community environment, the inmates are given the opportunity to improve themselves outside the prison [19].

Conditional criminal decisions basically have similarities with criminal decisions in general, where to reach a final decision there are the same methods or procedures and requirements. As for the difference, it is significant only regarding the criminal system where as stated in the passage above, a person convicted of a conditional sentence is not required to serve his sentence behind bars like other convicts in general [20].

The meaning of implementation is "efforts to implement a decision" where only conditional criminal decisions have permanent legal force and there are no other legal remedies that can be executed. Conditional punishment is a punishment that is not a physical punishment that is given with anguish, but is only a form of punishment given with the intention of providing a mere guidance given and hung with certain conditions (Article 14 b paragraph (2) of the Criminal Code) [9].

In carrying out conditional criminal decisions, the convict in carrying out his sentence basically only does the things listed in the good and responsible decision and obeys the rules and conditions imposed on him. Convicts still have the freedom to continue to carry out their daily activities where there are no restrictions by law like imprisonment. If during the time determined the convict carries out the decision properly and always behaves well, then after the sentence is over, the convict will be released automatically. Conditional punishment in Indonesian criminal law is a criminal development that is more

humane and provides resocialization to criminals. The conditional criminal arrangements in the Criminal Code are as follows. The first is regarding the provisions for imposing conditional penalties contained in Article 14a paragraphs (1), (2), (3), (4) and (5) of the Criminal Code [1].

The imposition of a conditional sentence is determined by a probationary period by the judge, namely during that time the convict is obliged to carry out or not to carry out the conditions given by the judge. Then the probationary period is regulated in Article 14b of the Criminal Code. As for the conditions that must be fulfilled by the convict during the probationary period, it has been regulated in Article 14 c of the Criminal Code. Then in terms of supervision of conditional criminals, it is regulated in Article 14d of the Criminal Code [21].

Conditional punishment, namely punishment for the freedom of a person in which the judge can determine a general condition, namely that the convicted person during the probation period is determined not to commit a criminal act, and special conditions are specifically aimed at the behavior of the convicted person. Conditional punishment can be imposed if the judge imposes a maximum imprisonment of 1 (one) year. In the Criminal Code there is no term probation but the term "conditional punishment" but the meaning is the same [22].

During the probationary period, in an effort to improve his behavior, the convict is guided and monitored for his every behavior. According to Adami Chazawi, judging from the name, which is a conditional criminal, there are conditions set out in the judge's decision, which the convict must obey in order to be released from the execution of the crime. These conditions are distinguished between:

a) General terms

That is, if the judge imposes a conditional sentence in his decision, general conditions must be stipulated. The general conditions must be determined by the judge within a certain time (probation period) the convict may not commit a crime.

b) Special conditions

Special requirements are facultative (not mandatory to be set). Under special conditions, the judge may determine things such as compensation for losses arising from the commission of a criminal act, either in whole or in part.

The implementation of conditional criminal decisions remains the duty and authority of the Prosecutor as the executor. Apart from being the executor, the Prosecutor also has the task of supervising and observing the execution. This also applies to conditional criminal decisions in which the supervision and observation carried out basically must be carried out continuously and responsibly. Periodically, the prosecutor is obliged and responsible for reporting the results of his supervision and observations to the Head of the Prosecutor's Office and the Judge. This is a form of coordination that basically must be done, in order to realize a better supervision and observation of conditional criminal decisions [23].

The purpose of the implementation of conditional punishment is to try to avoid and weaken the negative consequences of the crime of deprivation of liberty which often hinders efforts to reincarnate prisoners into the midst of society. In a decision that imposes a prison sentence, provided that the

duration is not more than one year, a conditional sentence may be imposed, provided that the judge does not wish to impose a sentence of more than one year. The basis or reason for imposing a conditional sentence is to improve the convict himself so that he can be better trained and avoid a bad environment, as well as educate good mental and social attitudes in society [24].

Conditional punishment is one of the forms of punishment that applies in Indonesia, where the sentence imposed does not need to be served, conditional punishment as regulated in Article 14a - 14f of the Criminal Code. This requires supervision from the court and the prosecutor's office so that the objectives of the punishment can be achieved. The provision of conditional punishment is a way out to overcome minor crimes, reducing overcrowding in Correctional Institutions. So conditional punishment is an alternative to punishment, especially the crime of deprivation of liberty for the short term, which in this case is very detrimental to both the perpetrators of the crime, as well as to the community. This is based on the premise that not all criminals should be put in prison, but especially for first-time offenders in order to prevent negative influences from the prison community [25].

4. Conclusion

Conditional punishment is a form of punishment that applies in Indonesia, where the sentence imposed does not need to be subject to conditional punishment as stipulated in Article 14a - 14f of the Criminal Code (KUHP). The provision of conditional punishment is a way out to overcome minor crimes, reducing overcrowding in Correctional Institutions. So conditional punishment is an alternative to punishment, especially the crime of deprivation of liberty for the short term, which in this case is very detrimental to both the perpetrators of the crime, as well as to the community. This is based on the premise that not all criminals should be put in prison, but especially for first-time offenders in order to prevent negative influences from the prison community. However, the Criminal Code has not yet formulated a sentencing guideline so that there is no unified view of the guidelines for the application of conditional punishment which includes the nature, objectives to be achieved, as well as the measures in imposing the conditional sentence. Thus, in substance, the law regarding regulations related to the imposition of conditional criminal sanctions encounters obstacles or obstacles in their application.

5. Suggestion

The House of Representatives needs to immediately ratify the Criminal Code Bill in which there are sentencing guidelines as a guide in the application of conditional crimes in the criminal system in Indonesia. These guidelines are intended to avoid the emergence of criminal disparities and the existence of considerations based on the subjectivity of the judge in deciding a case which is sometimes psychological in nature so that it is completely irrelevant to be used as the basis for imposing a conditional sentence.

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