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Correctional Institutions as a Criminogenic Factor in the Perspective of Abolitionism based on Laurence Meir Friedman's Legal Culture Theory

SYIFA AZZAHRA NADA ARANTHA¹, ACHMAD RIYADI² AND RISMA YULIA ASTUTI³

ABSTRACT

The cycle of legal culture in the criminal justice system, especially in imprisonment, has become a criminogenic factor. Prison is considered not as a solution to the problem of crime, but as The Graduate School of Crime. This is based on the notion of abolitionism that views the criminal justice system as a structural defect and the form of imprisonment as a form of social problem, so that an alternative punishment is needed. Short imprisonment such as 1 - 6 months will be too short for rehabilitation, too long for corruption, where short imprisonment will lead to large fraud, this is due to the influence of social interaction in the prison. Some alternatives of fines, supervision punishment, social work punishment, prevention and execution of punishment at night because the use of fines tends to be more effectively used because it can provide additional income for the state unlike imprisonment which pressures the state treasury. This discussion is elaborated using the content of Laurence Meir Friedman Theory which discusses related to legal substance, legal structure and legal culture.

Keywords: Correctional Institution, Criminal Justice System, Legal Culture, Abolitionism.

I. INTRODUCTION

The Criminal Justice System or what is often referred to as the Criminal Justice System is a working mechanism for dealing with crime by approaching it using a system. The criminal justice system is a law enforcement effort carried out by law enforcers from the investigation process to the process of convicting an offender. The institutional components in the criminal justice system in Indonesia consist of the police, prosecutor's office, courts and correctional institutions. In Law no. 8 of 1981 concerning Criminal Procedure Law, the Criminal Justice System is an integrated system (integrated criminal justice system) which is placed on the basis

¹ Author is a student at Faculty of Law, Slamet Riyadi University, Indonesia.

² Author is a student at Faculty of Law, Slamet Riyadi University, Indonesia.

³ Author is a student at Faculty of Law, Slamet Riyadi University, Indonesia.

of the principle of functional differentiation between law enforcement officers in accordance with the stages of the authority process given by law to each law enforcement officer to enforce, implement and decide a criminal law. (Nursyamsudin, Samud, 2022)

The concept of the criminal justice system was criticized by Louk Hulsman with the understanding of abolitionism which sees the criminal justice system as a social problem by considering that the criminal justice system causes suffering, the criminal justice system cannot work in accordance with its goals and ideals. , as well as the approaches used in the criminal justice system are fundamentally flawed. Apart from that, one of the efforts in the criminal justice system to reduce crime rates is through prison sentences. This attempt at punishment by limiting access to society (prison) often creates problems. Prisons are not considered a solution to crime problems, in fact prisons are considered The Graduate School of Crime. (G. Aryadi, Page 54, 2022)

Based on the theory put forward by Laurence Meir Friedman regarding legal culture, there is a correlation that a criminal justice system that is structurally flawed, if left without change, will become a legal culture and a cycle of bad crime prevention. Remember, legal culture is human attitudes towards law, values, thoughts and hopes. When a criminal justice system basically aims to reduce crime rates in society, sadly this is inversely proportional to The fact is that the legal culture that exists in the criminal justice system is actually a criminogenic (crime) factor. (Gami Hamaminata, Page 52, 2023)

When interpreting the purpose of punishment, special attention is needed, so that it is in line with the purpose of the law itself. For example, up to now, our problem of punishment has always focused on how much punishment is given to a thief, after the sentence is given, the thief will actually commit greater theft. On this basis, the most basic question arises, namely, what is the use of a lot of punishment if people cannot change? In the concept of punishment we need to explain the purpose of punishment which is to provide social order, such as improving human thought patterns and behavior through punishment itself. (John Graffithst , Page 371, 1970) Based on the background above, the author in this paper raises the title "Penitentiary Institutions as a Criminogenic Factor in the Perspective of Abolitionism Based on Lawrence Meir Friedman's Legal Culture Theory"

(A) Formulation of the problem

Based on the background description of problems related to legal culture in the criminal justice system, the problem formulation can be formulated as follows:

1. Why are correctional institutions in the criminal justice system referred to as

criminogenic factors according to the abolitionist perspective?

2. How can we improve the legal culture in the criminal justice system so that it is in line with the objectives of punishment?

(B) Research Method

This type of research is normative legal research using several types of legal research, namely research on legal principles and research to discover law in a concrete sense, namely in terms of criminal law enforcement. Legal research is carried out to propose appropriate laws to be applied to resolve a problem. In this approach method, research is focused on examining the application of rules or norms in positive law.

Sources of legal materials can be divided into two legal materials, namely primary legal materials in this research that focus on the concept or understanding of abolitionism in criminal justice specifically in the field of punishment and secondary legal materials, namely materials that provide an explanation of the concept or understanding of abolitionism in criminal justice specifically in the field of punishment. The technique for collecting legal materials is carried out by analyzing principles, conceptions, views, legal theories and the content of legal rules obtained through two main references, namely:

- a) General in nature, consisting of books, e-books, encyclopedias.
- b) Special in nature, consisting of research reports, magazines and journals related to criminal justice from an abolitionist perspective, criticism of the physical punishment model towards psychological punishment.

II. DISCUSSION

(A) Correctional Institutions as a Criminogenic Factor

One of the efforts in the criminal justice system to reduce crime rates is through prison sentences. This attempt at punishment by limiting access to society (prison) often creates problems. Prisons are not considered a solution to crime problems, in fact prisons are considered The Graduate School of Crime. (G. Aryadi, Page 58, 2022) In this case, various criminal justice regulations are part of criminal politics or crime prevention policies using criminal law. In principle, the criminal justice system aims to control the occurrence of crime so that it remains within the limits of acceptable tolerance. The four main components in criminal justice regulations are the Police, Prosecutor's Office, Courts and Correctional Institutions. Of course, we hope that these components can be integrated and coordinate with each other in order to achieve the objectives of the criminal justice regulations. (Ariska, 2022) The problem that then

arises is that the criminal justice regulations that we hope will be able to tackle crime often actually become the cause of crime itself (criminogenic factors). The effectiveness of criminal justice regulations will depend on many things and one of them is of course professionalism law enforcement officers. The unprofessionalism of law enforcement officers will have implications for many things. Starting from reducing suspected criminal acts that can be detected (hidden crimes). Especially in relation to high profile crimes, the emergence of judicial mafias and even torture during the legal process. (G. Aryadi, Page 59, 2022)

Meanwhile, the theory of punishment experienced development starting from the aim of punishment which was retributive in nature. So that they will see the imposition of a crime as suffering/misery that they have to give to the perpetrator of the crime (backward looking). Shifting to the goal of punishment which has a deterrent effect and is now starting to shift towards the goal of punishment which is rehabilitative in nature. Meanwhile, the aim of punishment according to Sahardjo is to cause suffering to the convict due to the loss of freedom of movement, guide the convict to repent and educate him so that he becomes a useful member of socialist society in Indonesia. In general, the reasons for punishment can be classified into three main groups, namely the theory of retaliation, the theory of purpose and the combined theory in the Absolute/Retaliation Theory. The perpetrator of a criminal act absolutely must have retribution in the form of a crime, so a criminal must absolutely be punished, like the proverb that says blood pati nyaur pati debt, life against life. (Nursyamsudin, Samud, 2022)

Concept of Absolute Theory/Retaliation This theory is divided into 3 (three) first: Retaliation is based on absolute demands and ethics. The adherent of this theory is Hegel who says that law is the embodiment of freedom, while crime is a challenge to the law and justice is retribution for the sake of beauty or satisfaction. This theory was put forward by Herbert who stated that the absolute demand for feelings of dissatisfaction in society was a result of crime. Second, retribution is in accordance with God's teachings. This theory was put forward by Stahl Gewin and Thomas Aquino, stating that crime is a violation of justice and must be eliminated, suffering must be given to criminals, for the sake of maintaining God's justice. Third, revenge is human will, this theory put forward by Jean Jacques Rousseau, Hugo De Groot, Grotius, Beccaria, viewing the state as the result of human will, based on punishment as also a manifestation of human will. (Gami Hamaminata, Page 60, 2023)

Furthermore, there is the Objective Theory (Relative Theory or Remedial Theory) that a criminal can be imposed to frighten potential criminals or criminals concerned, to improve or get rid of criminals, this theory is divided into the first 4 (four) Prevention of a crime by providing sufficient criminal threats heavy to scare away potential criminals. This theory was

put forward by Paul Anselm van Feuerbach secondly. Correction or education for criminals, criminals are given education in the form of punishment, so that they can later return to society in a better and more useful mental state. This theory was put forward by Grolman, Van Krause Roder. Third, remove criminals from the environment or society. Criminals who are immune to criminal threats in the form of attempts to intimidate them should be sentenced to a long period of deprivation of liberty, even if necessary, the death penalty. This theory was put forward by Ferri and Garofalo and Fourthly Guaranteeing legal order, establishing norms that become public order. This theory was put forward by Frans Von Litz, Van Hamel, Simons. (Gami Hamaminata, Page 61, 2023)

Then the Combined Theory provides an understanding that the imposition of a crime must provide a sense of satisfaction, both for the judge and the criminal himself, as well as for the community, there must be a balance between the sentence imposed and the criminal act committed. In the author's opinion, which is suitable to be applied in Indonesia is the theory combined, because it is more humane and balanced and reflects a sense of justice when applied, it is also in line with Human Rights which states that, every person has the right to be free from torture, punishment or treatment that is cruel, inhuman, degrading to the level and dignity of his humanity. (Nursyamsudin, Samud, 2022)

One of the problems facing prisons is their role as bureaucratic organizations. Prisons do not have adequate capacity to accommodate the population of detainees and convicts, resulting in overcrowded conditions which have implications for the rehabilitation and reintegration programs that should be carried out. At the time the Correctional System was created, the assumption was that the state had no right to make people worse or worse while before and in prison. In prison, prisoners can take proper training and eventually return to society, but the prisoners follow the behavior of other, more serious inmates can become increasingly violent, even professional. (John Graffithst, Pg 372, 1970)

The question that arises later in this change is what is the difference between the concept of correctional and imprisonment? In the correctional system, treatment of prisoners is considered to be more humane, non-committal, non-retaliatory in nature, and treatment in prison is coaching that aims to provide provisions for prisoners before returning to society. Although in the formulation of the objectives there is an emphasis on efforts to return prisoners so they can return to society, the main objective is to create changes in the prisoners' personalities and behavior (reform).

According to the Cultural Transmission Theory as quoted by Mukrima (1991) that "in a social

environment that is dense with criminological conditions, it is not impossible for there to be an inheritance of values that encourage the commission of legal violations." Likewise, based on Erwin H. Sutherland and D. Cressey's Differential Association Theory (Soekanto, 1997) that "a person behaves evilly in the same way as non-evil behavior." This means that evil behavior is learned in interactions with other people and the person acquires evil behavior as a result of interactions with people who behave with a tendency to go against existing legal norms. (Gami Hamaminata, Pages 52-64, 2023)

Based on data from the Directorate General of Corrections in August 2023, of the total 268,001 detainees and convicts, 18.12% were recidivists. Specifically for prisoners, 204,185 were recidivists. When the Decree of the Minister of Law and Human Rights was issued regarding assimilation and integration for more than 30,000 prisoners due to the Corona Virus, the public became worried and there was news about prisoners returning to commit crimes. In fact, the recidivism rate in Indonesia is still within the global ratio, namely 24-55%. In addition, related to data from the Directorate General of PAS, Ministry of Law and Human Rights, the prison density level in Indonesia has currently reached 196 percent, or in other words, from a capacity of 135,561 people, prisons in Indonesia are filled with 265,840 inmates. Overcrowding occurs unevenly in each prison. Of the 526 prisons and detention centers throughout Indonesia, 399 are experiencing overcapacity. Of this number, 215 are prisons/correctional institutions even experiencing overcapacity above 100 percent or more than double the original capacity. There are 6 prisons with overcapacity above 500 percent with the highest density occurring in the Class IIA Bagan Siapi-Api Prison, Riau Province, where the overcapacity reached 813 percent. The condition of penitentiary institutions in Indonesia is truly worrying. When overcapacity continues to increase and is left unchecked, there is a greater chance that the recidivism rate in Indonesia will continue to increase. This will further clarify that correctional institutions are a factor in the emergence of crime.

The public does need to be alert, but it is also important to know that negative stigma and the exclusion of former convicts from social life actually makes the situation worse. Being labeled as a criminal and receiving rejection from society as a trustworthy member of society when a person has left prison. Apart from that, prisoners who are free or who receive guidance from correctional centers have difficulty getting jobs outside prison. (John Graffithst, Pg 372, 1970)

The results of the guidance carried out by correctional officers in the form of self-reliance guidance are only provision for finding work and to be able to channel this, the prison itself cannot do so, so former prisoners have to look for work themselves. This is a dilemma for ex-convicts because on the one hand their existence is still considered evil in society, on the other

hand convicts or ex-convicts, although equipped with special skills, are not accompanied by distribution to the job market or provision of capital so that ex-convicts cannot develop their talents and skills. Even though the only opportunity for ex-convicts is to become self-employed or open their own business, the former inmate then has the perception that he is no longer accepted in his environment and is having difficulty finding work. The only way is to look for a shortcut, namely to repeat the action again by breaking the law. (G. Aryadi, Page 54, 2022)

Impacts such as societal stigmatization of former convicts are the main cause of recidivism. The prison authorities have worked optimally to carry out various skills development to improve the environment. It is society that will be the final support for an ex-convict. If society can accept a former prisoner back, it will of course help them to develop the skills they gained in prison by getting a job. On the other hand, if there is a strong rejection, it will certainly have a negative impact on a former prisoner because they are not given the space to return to carrying out social functions like the rest of society, which will cause frustration for the former prisoner due to this exclusion. Of course, this condition has the potential to make an ex-convict repeat his crime as a last resort to continue his life. (Ariska, 2022)

(B) The Concept of the Criminal Justice System in the Perspective of Abolitionism

Abolitionist thinking can be used as the basis for a paradigm shift in providing criminal sanctions, from a physical punishment model to a psychological punishment model. This aims to provide legal balance which leads to upholding the values of justice and order because the use of criminal sanctions in dealing with crime is a legacy of our savage past (a vestige of our savage past). (John Graffithst, Pg 372, 1970)

From various historical accounts, the emergence of abolitionism was actually more prominent when it was developed by Louk Hulsman from the Netherlands when he became Chair of Criminal Law and Criminology at Erasmus University, Rotterdam in 1964. Hulsman's direction of thought, which explicitly had an abolitionist perspective, was evident in his graduation speech (*handhaving van recht: the maintenance of justice*) in his speech paid great attention to aspects of humanity which in his view could be eroded by justice achieved through the implementation of criminal law, in fact he argued that criminal law should be seen as a means to achieve the goal of preventing and correcting injustice in society. In Hulsman's perspective, the criminal justice system is seen as a social problem by considering that the criminal justice system causes suffering, the criminal justice system cannot work in accordance with its goals and ideals, the criminal justice system is uncontrolled and the approaches used in the system criminal justice is fundamentally flawed. (G. Aryadi, Pages 54-66, 2022)

The legal system in the social space, shows how the legal system cannot be separated from existing social spaces, society is built on the basis of the legal system, the outburst of criticism of the implementation of criminal justice brings new reflections to offer the development of criminal justice models. which has ontological juridical characteristics changes towards an alternative justice model or steering model (stuur model) with a juridical approach oriented towards the science of human behavior. (John Graffithst, Pg 372, 1970)

Abolitionism is also defined as an ideology that views the criminal justice system as structurally flawed and the form of prison punishment as a form of social problem, so that an alternative punishment is needed. Short prison sentences such as 1- 6 months will be too short for rehabilitation, too long for corruption, where a short prison will cause large violations, this is due to the influence of social interactions in the prison. (Ariska, 2019)

Thus, the understanding of abolitionism assumes that criminal justice which is oriented towards providing punishment for anyone who commits a crime still receives criticism and at the same time has a record that must be corrected, starting from suspicion of someone committing a criminal act to the imposition of punishment because they are proven to have made a mistake, but this is not as easy as As we can imagine, the criticism of abolitionism, apart from inefficient criminal impositions, also has a lot to do with procedural matters which injure justice so that social order cannot be created as a legal ideal, so that our criminal justice in Indonesia needs to be reformed in the field of punishment by considering what it is for. procedural matters are carried out while justice cannot be realized. (Nursyamsudin, Samud, 2022)

(C) Legal Culture in the Criminal Justice System Based on Laurence Meir Friedman's Theory

A legal culture is an atmosphere of social thought and human attitudes towards the law in determining how the law is used, avoided or misused. Laurence Meir Friedman explained that legal culture is the most important component in a criminal justice system, because legal culture is what will make the legal substance and structure become lively and dynamic. Without a legal culture, the criminal justice system will not be able to function as it should. However, the problem is when the legal culture applied in the criminal justice system is not in accordance with its goals and ideals. A criminal justice system which basically aims to reduce crime rates actually becomes a criminogenic factor or a factor in the emergence of crime itself.

The legal culture that has become a cycle in the criminal justice system has led to a vicious circle. Starting from a feeling of revenge caused by law enforcement officials and also public stigma, this will have a negative impact on the sustainability of prisoners. They will actually

commit crimes that are greater than the crimes they previously committed and will lead to an increase in the percentage of recidivism. When convicts who commit these crimes serve their sentences again, this will give rise to a new stigma from society. This kind of legal culture will continue to repeat itself and the goals of the criminal justice system will never be achieved. In fact, crime rates will increase and this will have a negative impact on the sustainability of many sectors in the Indonesian government system. (Yudi, Page 142, 2020)

Social stigma is the next problem. In the labeling theory that we know in Criminology, the reason why people become criminals for the second time (secondary deviants) is because they have been given a stigma or label of "evil" by the Criminal Justice System and society at large. They accept a criminal self-image of themselves and ultimately make a commitment to a criminal career because society will not accept their existence. We often call this stigmatization or labeling a reactive definition of crime because crime is not in itself significant, but it is the social reaction to it that is much more important in determining an individual's view of themselves and their subsequent behavior. (G. Aryadi, Page 58, 2022)

In line with this problem, a question will of course arise regarding how to overcome legal culture in the criminal sanctions system? Referring to the abolitionist perspective which views the criminal justice system as structurally flawed and the form of prison punishment as a form of social problem, so that an alternative punishment is needed. A short prison sentence such as 1 - 6 months will be too short for rehabilitation, too long for corruption, where a short prison sentence will cause major abuse, this is due to the influence of social interaction in the prison. (John Graffithst, Pg 372, 1970)

Several criminal alternatives that can be implemented include prevention, fines, supervision, social work (community service order) and execution of the crime at night (week end detention). The use of fines tends to be more effective because it provides additional income for the state, unlike prison which puts pressure on state coffers. Then, the abolitionist movement in Indonesia also opposes the death penalty because the death penalty cannot be corrected if there is a mistake, the death penalty is not in accordance with the concept of protection & protection of society, the death penalty is not in accordance with modern developments and the death penalty is unconstitutional because it is contrary to Article 1945 of the Constitution. 28 I. (Ariska, 2019)

III. CONCLUSION

Based on the findings in this research, it can be concluded as follows:

1. The criminal justice system which implements prison sentences with the aim of reducing crime rates, often results in crimes problem. Prisons are not considered a solution to

crime problems, in fact prisons are considered The Graduate School of Crime.

2. This abolitionist thinking can be used as the basis for a paradigm shift in the provision of criminal sanctions through criminal justice, from a physical punishment model to a psychological punishment model, this aims to provide legal balance which leads to upholding the values of justice and public order, so that it should be in the concept of punishment we need to explain the purpose of punishment which is to provide social order, as what must be improved is the pattern of human thought and behavior through punishment itself, the understanding of abolitionism tries to change the human view from punishment which focuses on physical punishment to psychological punishment, as part of criminal purposes.
3. Legal culture in Laurence Meir Friedman's theory which focuses on a criminal justice system is the most important component. However, the legal culture that exists in the criminal justice system, especially in the concept of punishment in the form of prison, actually becomes a cycle in a vicious circle. Cases of handling of prisoners by law enforcement officers in prisons, increasing recidivism rates and public stigma against prisoners have resulted in more massive crimes occurring and have slowly become a legal culture.

(A) Suggestion

1. Legal reform policies in the criminal justice system actually do not only maximize the protection of human dignity and rights, but must be directed at changing human thought patterns and behavior as Indonesian citizens to be able to understand legal policies that can overcome human crime, for legal development. National criminal law, more specifically related to the renewal of the physical punishment model towards psychological punishment.
2. The legal culture in the criminal justice system in Indonesia must continue to improve. Policy direction that focuses more on preventive (prevention) characteristics. Before a crime occurs, this is important because it covers a very wide area across all social policy sectors. Then, the policy leads to the point of public education in stigmatizing or labeling prisoners. This is important to break the vicious circle in the legal culture cycle that exists in the criminal justice system.
3. Alternatives in the criminal justice system that can be implemented to improve the legal culture cycle in punishment include fines, supervision sentences, social work sentences (community service orders) and execution of crimes at night (week end detention).

Coupled with more focus on prevention efforts. The use of fines tends to be more effective because it provides additional income for the state, unlike prison which puts pressure on state coffers. Then, the abolitionist movement in Indonesia also opposes the death penalty because the death penalty cannot be corrected if there is a mistake, the death penalty is not in accordance with the concept of protection & protection of society, the death penalty is not in accordance with modern developments and the death penalty is unconstitutional because it is contrary to Article 1945 of the Constitution. 28 I.

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