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Orientation of the Aim of the Punishment seen from Ius Constituendum of Criminal Law and Local Wisdom Value in Gorontalo Correctional Institution

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ABSTRACT: The transformation of the criminal sanction concept currently adopted by Indonesia from the concept of imprisonment and retaliation to the concept of correctionalism and guidance is essentially directed at the recovery and improvement of behavior, the attitude of criminals to change as well as expected, but the empirical phenomenon that occurs shows that not infrequently in prisons riots occurred, including in Gorontalo Province. The occurrence of two cases of riots that occurred in Gorontalo correctional institution is always associated with the condition of Gorontalo correctional institution which is over capacity, even though it needs to be considered and reviewed about the use of the value of local wisdom as one approach that can be used in conducting coaching and correctional services in Gorontalo correctional institution, especially Gorontalo Province has wealth culture that has historically been included in the division of 19 customary territories delivered by Van Vollen Hoven and also known as the "SerambiMadinah" area. The purpose of this study is to find out the value of whatever local wisdom can develop and use as a strategy and approach in conducting guidance to inmates in Gorontalo Correctional Institution.

KEYWORDS: Punishment, Ius Constituendum, Criminal Law, Local Wisdom

1. INTRODUCTION

Since long ago it must be recognized that the concept and implementation of crimes in criminal law still cause various problems which until now have never been resolved. Criminal orientation in the concept of the Indonesian criminal law system, is basically not much different, but in reality what happens on the ground is beyond the desires of the desired criminal law political philosophy. This is based on various problems that arise in the order of the Indonesian criminal law system itself which never stops the problems that arise, including in the criminal system. Cases of human rights violations, acts of corruption in the form of bribery, drug trafficking in Correctional Institutions are records of events that must get a settlement.

The case that occurred in Gorontalo correctional institution in particular and several other correctional institution in Indonesia became a note that added to a series of problems of criminal law. As is known in Gorontalo prison two riots occurred. The classic reason is that residents are over the limit or over capacity. Indeed, if examined more deeply the answer is certainly not the most appropriate, there needs to be a more in-depth study of criminal law policies relating to criminal prosecution. It must be admitted that there are indeed many studies conducted by experts on this matter, but if examined more deeply it turns out that the research ultimately focuses more on theoretical matters on the development of its own criminal law policy. The solution to the problem of criminal prosecution is not enough to just look for answers to the current legal product, but it must also be seen in the idealized legal product. This is considering that the development of the law itself is so rapid, while the existing legal rules do not rule out the possibility of being left behind by the criminal law itself. This means that the existing criminal law rules through the existing Criminal Code or Criminal Code Procedure are no longer able to be the best solution in resolving any problems that arise, especially in terms of punishment.

In addition to the need for legal products that aspire to a better criminal orientation must also pay attention to the values of local wisdom in each region. Criminal orientation in Gorontalo Correctional institution which is in accordance with the criminal law better theory must also pay attention to local values, especially those related to criminal prosecution. The local value can actually be combined with existing legal products (Criminal Code and Criminal Code Procedure) and aspired legal products (Criminal Code Draft and Criminal Code Procedure Draft).

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I. INTRODUCTION

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The case that occurred in Gorontalo correctional institution in particular and several other correctional institution in Indonesia became a note that added to a series of problems of criminal law. As is known in Gorontalo prison two riots occurred. The classic reason is that residents are over the limit or over capacity. Indeed, if examined more deeply the answer is certainly not the most appropriate, there needs to be a more in-depth study of criminal law policies relating to criminal prosecution. It must be admitted that there are indeed many studies conducted by experts on this matter, but if examined more deeply it turns out that the research ultimately focuses more on theoretical matters on the development of its own criminal law policy. The solution to the problem of criminal prosecution is not enough to just look for answers to the current legal product, but it must also be seen in the idealized legal product. This is considering that the development of the law itself is so rapid, while the existing legal rules do not rule out the possibility of being left behind by the criminal law itself. This means that the existing criminal law rules through the existing Criminal Code or Criminal Code Procedure are no longer able to be the best solution in resolving any problems that arise, especially in terms of punishment.

In addition to the need for legal products that aspire to a better criminal orientation must also pay attention to the values of local wisdom in each region. Criminal orientation in Gorontalo Correctional institution which is in accordance with the criminal law better theory must also pay attention to local values, especially those related to criminal prosecution. The local value can actually be combined with existing legal products (Criminal Code and Criminal Code Procedure) and inspired legal products (Criminal Code Draft and Criminal Code Procedure Draft).

PROBLEM STATEMENT

The results of interviews conducted with a number of inmates in Gorontalo correctional institution showed that there was a distrust of the inmates to communicate and mingle in the midst of the community after the guidance process in Gorontalo correctional institution, as well as a negative assessment and image attached by the community to former prisoners became the trigger for the emergence of negative thoughts of the inmates so that they were again trapped in criminal acts again. In addition, what was revealed in the interview was also a pattern of coaching in prisons which generally only a routine process for inmates who have to undergo sanctions in prisons. Even the pattern of coaching that has been implemented so far has not been maximized so as to cause riots in the Gorontalo correctional institution.[11] Therefore, we need a strategy and approach to be used so that the guidance process of the assisted people in Gorontalo correction institution can be carried out in accordance with the philosophy of criminal law politics, especially in the Gorontalo correctional institution, for example by applying the values of Gorontalo local wisdom.

II. THEORITICAL REVIEW

Criminal Justice System

RomliAtmasasmita[1] stated that the criminal justice system is an interconnection between the decisions of each agency involved in the criminal justice process. Based on this opinion, it can be said that the criminal justice system is a whole which is assembled and consists of elements that are functionally interconnected, the criminal justice system consists of elements, each of which is a subsystem by the system.

The criminal justice system can be said to be an integrated system even though each law enforcement agency has different operational standards of procedures, duties and authorities. The standard operating procedures, duties and authorities are not as differentiation gaps and are the reason for excluding the final goal of the criminal justice system. This as stated also by Rusli Muhammad[7] stated that the Criminal Justice System is a judicial network that works together in an integrated manner among its parts to achieve certain goals both short and long term.

As a system, in the mechanism there is a condition that must be fulfilled, namely the existence of cooperation between sub-systems. If one sub-system is not running properly, it will disrupt the system as a whole. Therefore, the four sub-systems have a close relationship with each other. In this regard PetrusIrawanPanjaitan and PandapotanSorangkir[6], stated that correctional institution or prison institutions as a sub-criminal justice system that has a very strategic task is to realize the ultimate goal of the criminal justice system in charge of rehabilitation and resocialization of perpetrators of crime within the framework of control and crime prevention. In its position as the guardian of prisoners, the position of the correctional institution after realizing the ultimate goal of the criminal justice system. In short, the task of the correctional institution is to restore social relations (social reintegration) of inmates with or into the community, through a process that involves elements of prison officers, prisoners, and the community.

The Aim of Punishment

It should be stated that criminal law is a special sanction law, or is a system of negative sanctions. Criminal law is applied if other means (efforts) are inadequate, so that criminal law is said to also have a function or characteristic that is subsidiar.

In the case of criminal purposes, the history of criminal law has confirmed that the criminal offense was not committed because of wrongdoing, but in order not to do evil, this is a fact that criminal law is preventive or preventive from committing crimes or violations.

The aim of the punishment will be concretized in the form of criminal guideline (*Straftoemetingleidraad*). Criminal guidelines will be influenced by the schools of criminal law. In criminal law there are 3 (three) streams, namely: classical flow; modern flow; and neoclassical flow. The classical flow focuses on actions and not on people who commit criminal acts. According to the modern school, one's actions cannot be seen abstractly from a juridical angle regardless of the person who did it, but it must be seen concretely that in reality a person's actions are influenced by his personal character, biological factors or social factors. According to the neoclassical school, the crime produced by the classical school is too heavy and damages the spirit of humanity.

Traditionally, criminal theories as a justification basis and criminal objectives can be divided into 2 (two) groups of theories, namely: a) absolute or retaliatory theory (retributive/ *vergeldingtheorieen*); b) relative theory or objective theory (utilitarian/ *doeltheorieen*). Based on absolute theory, the crime is imposed solely because people have committed a crime or criminal act. Every crime must be followed by a crime. A person is subject to criminal sanctions because he has committed a criminal act. Based on relative theory, criminal imposition is not to have value, but only as a means to protect the interests of society.

Muladi and Barda Nawawi Arief[8] in his book on Criminal Policy Theories explain that criminal is not just to retaliate or pay back to someone who has committed a criminal act, but has certain useful goals, so this theory is often called the goal theory (utilitarian theory). So the basis for criminal justification according to the relative theory lies on its purpose. Criminal punishment is not *Quia peccatum est* (because people commit crimes) but *ne peccatum* (so that people do not commit crime).

In connection with the problem of purpose or purpose of holding a criminal case, John Kaplan[7] stated that there were several provisions on the basis of criminal justification, namely:

- a. to avoid revenge;
- b. the existence of an educational effect;
- c. has the function of maintaining peace.

***Ius Constituendum* (New Concept of Criminal Code and Criminal Code Procedure).**

The difference between the *ius constituendum* and the *ius constitutum* is placed on the factor of time- that is, the present and the future. In this case, the law is defined as a legal order that is identified with a positive legal term. The tendency of this understanding is very strong, because E. Utrecht argues that after being promulgated the *ius constituendum* becomes *ius constitutum*. [10]

Soerjono Soekanto and Purnadi Purbacaraka [10] also explained that *Ius constituendum* turned into *ius constitutum* by:

- a) Replace a law with a new law (the new law was originally an *ius constituendum* design).
- b) Changes to the existing law by entering new elements (new elements were originally in the form of *ius constituendum*).
- c) Interpretation of laws and regulations. Existing interpretations may not be the same as past interpretations. Interpretation in the present, formerly the *ius constituendum*.
- d) Development of doctrines or opinions of prominent legal scholars in the field of legal theory.

The aim of the punishment according to the draft 2012 Criminal Code is stated in article 54 paragraph (1), is as follows [4]:

- a) Preventing criminal acts by enforcing legal norms for the protection of society.
- b) Promote the convicted person by providing coaching to make him a good and useful person.
- c) Resolve conflicts caused by criminal acts, restore balance and bring a sense of peace in society.
- d) Freeing guilt in the convicted person.

In Article 54 paragraph (2) it is also stated that punishment is not intended to tell and demean human dignity.

Local Wisdom Value

Basically the local wisdom can be interpreted as good cultural values that exist within a society. This means, to know a local wisdom in an area, it must understand the good cultural values that exist within the region. Actually the values of local wisdom have been taught from generation to generation. Mutual cooperation, mutual respect are small examples of local wisdom.

M. Sholehuddin [5] stated that the issue of sanctions is central in criminal law because it often describes the social and cultural values of a nation. This means that the crime contains values in a society about what is good and what is not good, what is moral and what is immoral and what is permissible and what is forbidden.

Indonesia itself, with its starting point in the national/ cultural personality of the nation, the aim of the punishment will be a reference in the application of criminal sanctions must always be oriented towards the values implied in *Pancasila*, namely in the form of recognition of equality, equal rights and obligations between fellow human beings, love each other, not behave arbitrarily towards others, uphold human values.

The approach of the criminal justice system must adjust to the character of the community in which the crime occurred, because the factors causing the crime were very complex.

III. METHODOLOGY

The type of research used in this study is normative legal research that aims to look for methods, norms or *das sollen*, or research that includes research on the principle of law, systematic law, level of vertical and horizontal synchronization, legal comparison and legal history.[9] So this study will examine aspects of rehabilitation in the Gorontalo correctional institution using existing norms both in the Criminal Code, as well as the law on correctional, as well as describing the value of local wisdom that can be used as an approach in coaching/ rehabilitation in Gorontalo correctional institution. While the source of primary legal materials or sources that have authority (legislation), secondary legal materials and tertiary legal materials, with qualitative descriptive legal analysis.

IV. DISCUSSION

Orientation of the Aim of the Punishment in Gorontalo Correctional Institution

At present the assessment of the objectives of the conviction is still having a debate, this then highlights the success of the objectives of the conviction that are considered unsuccessful. These considerations raise the need for renewal of the concept of criminal law in Indonesia, especially in the concept of crime prevention and treatment of criminals. In the concept of crime prevention it is stated that the criminal law that has existed in various countries that still originate or products of foreign law are unfair and outdated and do not conform to reality. Another reason is that the law is not rooted in cultural values and is not responsive to today's social needs.

In realizing the law in the community, of course a process that is not playful is needed. Building and realizing the law in people's lives will certainly be faced with various challenges, both caused by internal and external factors of the community itself. Thus between the law and the interests of the community there must be a balance, in the sense that the law was created to protect the interests of the community.

The orientation of the aim of the punishment objectives at the Correctional Institution, including the Correctional Institution in Gorontalo City, is time to think of a format that is in line with the current development of criminal law. Various incidents that occurred at Gorontalo City Penitentiary started from fights between the inmates, over capacity, the burning of prison, even the most recent was the fights between the assisted residents and prison officers showed poor management or criminal management. In accordance with the data[11] obtained from the Correctional Institution, the number of prisoners currently available is 600 people. This amount has been calculated by the number of temporary detainees who are quoted by the Police and Prosecutors Office.

Particularly, in law enforcement, the management of the aim of the punishment orientation is needed by other companies that support each other. Other components in the criminal orientation include the law making process about the concept of punishment that is in the direction of positive criminal law. The process of establishing a law for criminal purpose orientation will have an impact on the practice of criminal law enforcement.

In other hand, the criminal law enforcement including the purpose of prosecution in the Gorontalo City correctional institution must have three dimensions of purpose that must be realized. Three dimensions must be considered, namely legal certainty, usefulness, and justice. This is needed as a basic capital in designing the concept of criminal objectives orientation that is in accordance with positive criminal law that matches the character of the Indonesian cultural values.

As it is known to form a criminal goal orientation that fits three dimensions namely justice, legal certainty and usefulness are not as easy as imagined. This is because the debate between the values of justice can sometimes not be carried out together with the value of legal certainty. Likewise the value of legal certainty is sometimes not in tune with the value of benefits, and so on. In enforcing criminal law that is oriented towards the purpose of prosecution that is in accordance with positive legal ideals there must be a compromise between the three dimensions, although in practice it is not always easy to seek proportional compromise in these three dimensions.

In an effort to establish a criminal law, it must be in accordance with the demands of social development, among others in the fields of economics, agriculture, culture, and so forth. Therefore, the role of the government and the parliament is strongly demanded to be aware of the various forces that play in the process of making laws relating to the intended orientation of the sentence. This is very important in formulating each legislation in a better and balanced manner without harming certain parties or groups.

In the end, to reach a criminal purpose orientation policy that is better than now and in accordance with the *iusconstituendum* of criminal law, the responsibility is not only in the hands of the government, but that responsibility is the joint responsibility of the community in terms of control or supervision. The demand for the community to contribute more in terms of control or supervision of the implementation of the fostering pattern in

Gorontalo correctional institution. All parties must be involved in the fostering process in Gorontalo correctional institution

Local Wisdom Value that Can be Developed Criminalization in Gorontalo Correctional Institution

The value of local wisdom is one small example that is trying to be accommodated by the drafters of the Draft Criminal Code and the Draft Criminal Procedure Code. The appreciation of the value of local wisdom that lives in the midst of the community can be seen from various regulations on legislation that are born today. The legal changes that are fair and in accordance with the reality rooted in the values that exist in the community then expressly also stated in the consideration of the Criminal Code draft which states that the material of national criminal law must be adjusted to legal politics, circumstances, and the development of the life of the Indonesian nation and state. While the purpose of drafting criminal law is stated as the embodiment of efforts to reform the national law of the Republic of Indonesia based on *Pancasila* and the 1945 Constitution of the Republic of Indonesia, as well as to respect and uphold human rights.

The General Explanation of the Criminal Code draft also states that the compilation of the National Criminal Code to replace the Criminal Code legacy of the Dutch colonial government with all its amendments is one of the businesses in the framework of national law development. The business is carried out in a directed and integrated manner so that it can support national development in various fields in accordance with the demands of development and the level of legal awareness and dynamics that develop in the community. A general explanation of the Draft Criminal Code on the last words can be interpreted that the development of national law in the future or legal ideals (*iusconstituendum*) still pay attention to the development of values in the midst of society. This can mean that the values in question are the values of local wisdom that live in society.

The direction of the policy of criminalization is oriented to *iusconstituendum* by paying attention to the order of the value of local wisdom that lives in the midst of the community, especially in Gorontalo Province, presumably a general explanation in the Draft Criminal Code above needs to be noted in its implementation. The wealth of local wisdom values in Gorontalo is irrefutable. Since the days of colonial rule until now the value of Gorontalo local wisdom has been recognized. Even in the distribution of 19 (nineteen) customary law circles made by Van Vollenhoven, Gorontalo customs are included. Such a concept is a routine of carrying out criminal acts just as this must be immediately reformed in accordance with the ideals of the law of *iusconstituendum*, the direction of the policy of punishment. The concept of punishment must be made changes that can bring influence to the inmates not to commit criminal acts again when they have finished serving the crime.

In terms of the value of local wisdom that can be used in coaching in Gorontalo correctional institution one of them is the older age culture (*moharaga ta mohula* or *moharaga mongo panggola*). One of the values of local wisdom that lives in our society is culture like this. Culture like this if applied in fostering foster citizens in Gorontalo correctional institution will certainly have an influence in the fostering process.

Another value of local wisdom that can be further developed in the process of fostering inmates in Gorontalo prison is the culture of respecting religion, so that this area is often called the Medina portico. The value of local wisdom by appreciating what has become the commandment of the religion applied in Gorontalo correctional institution is very good. The inmates do not only carry out the rules of regulation made by humans or the government, but the inmates must also carry out orders from God, for example praying five times, fasting and others.

Next the value of local wisdom that can be applied in the development process in Gorontalo correctional institution is the value of *huyula's* local wisdom which can be interpreted as a culture of mutual cooperation. This value can teach the inmates how to live together between the inmates and other inmates and inmates with the officers in Gorontalo correctional institution. The benefits that can be taken in the application of *huyula's* local deity values is actually a culture of cooperation and attitude of having a shared responsibility in maintaining the prison itself.

If referring to the institutional structure of the value of Gorontalo local wisdom, the existence of a traditional institution called *DuangoAdati Lo Hulonthalo* can actually be involved by correctional institution in fostering assistance to Gorontalo prisoners, so that the aspects of Gorontalo local and indigenous wisdom are Islam can be a mental spirit and attitude for inmates in Gorontalo correctional institution, in addition, the collaboration between the Gorontalo correctional institution and *DuangoAdati lo Hulonthalo* can also be used to provide understanding to the community in general to accept former prisoners as well as the general public.

V. CONCLUSION

The orientation of the aim of the punishment in Gorontalo Correctional Institution is not only seen from the positive law in the form of legislation, but also it's time in the process of fostering patterns in Gorontalo correctional institution to pay attention to the potential of cultural strength in the form of local wisdom values. The combination

of various legislative regulations that govern the pattern of guidance of the assisted citizens is time to synchronize with the potential strength of the value of local wisdom.

The value of local wisdom that can be developed in criminal proceedings in Gorontalo correctional institution is the value of local cultural wisdom towards older people (*moharaga ta mohula* or *moharaga mongo panggola*), a culture of respecting religion that is obeying what is the command of God, and the value of local wisdom culture *huyula* or work together namely the value that teaches how to behave responsibly, as well as the need to involve the traditional council or *DuangoAdati lo Hulonthalo* as a party that also has a sociological strategic role in Gorontalo Province.

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