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Reformulation Policy for Detention of Criminal Offenders who are Treated with Prison for Less than 5 Years

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Abstract
Article 21 paragraph 4 of the Criminal Procedure Code regulates that detention can only be carried out if the criminal act allegedly committed by the suspect or defendant is punishable by imprisonment for five years or more. However, sometimes there are differences in interpretation regarding the threat of a sentence of less than five years in Article 21 paragraph 4 letter b of the Criminal Procedure Code, which can give rise to differences of opinion regarding the detention of suspects or defendants. Thethreat of a criminal sentence of less than 5 years can be classified as a minor crime. with, the classification of criminal acts (Article 296 of the Criminal Code, Article 335 of the Criminal Code, and Article 351 of the Criminal Code requires detention) apart from these articles, other alternative criminal penalties can be imposed in the context of efficiency and ultimately reducing the burden on correctional institutions. This type of normative juridical research is carried out by examining various kinds of formal legal rules such as laws, literature that is theoretical concepts which are then connected to the problem that is the subject of discussion. In relation to the type of research used, namely normative juridical, the approaches taken are a statutory approach, a conceptual approach and a case approach. research results, namely: First, the threat of a criminal sentence of less than 5 years can be classified as a criminal act under Article 296 of the Criminal Code, Article 335 of the Criminal Code and Article 351 of the Criminal Code, requiring detention. Second, the threat of a criminal sentence under 5 years for the crime of Article 296 of the Criminal Code, Article 335 of the Criminal Code, and Article 351 of the Criminal Code must be carried out in detention to avoid the negative impact caused by the perpetrator of the criminal act to the community or the victim of the criminal act and provide a deterrent effect for perpetrators of criminal acts so that they do not repeat their actions. Third, Article 21 paragraph (4) letter b of the Criminal Procedure Code is under five years, namely Article 296 of the Criminal Code, Article 335 of the Criminal Code, and Article 351 of the Criminal Code, apart from the articles that are determined in a limitative manner, detention must be carried out.

Keywords: Reformulation Policy, Criminal Offenders, Imprisonment Less Than 5 Years

Introduction

Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP), replaces criminal procedure law regulations originating from the colonial period. The Criminal Procedure Code brought fundamental changes in the Indonesian criminal procedural law system which previously followed the HIR (*Herziene Inlandsch Reglement*) and Rbg (*Recht Reglement voor de Buitengewesten*) guidelines in Java, especially in Indonesia. KUHAP is a legal reform effort carried out in Indonesia in the field of criminal procedural law to replace HIR.[1] The Criminal Procedure Code regulates how law enforcement is carried out with reference to human rights and in accordance with the functions and authority of each law enforcement agency.

The aim is to uphold law, justice and protection of human dignity, order and legal certainty in accordance with the 1945 Constitution of the Unitary State of the Republic of Indonesia. Furthermore, this law emphasizes "*Through this law, it provides protection for human rights and the dignity and dignity of the entire Indonesian nation without dividing them into several*

[1] Apri Listiyanto, "*Pembaharuan Sistem Hukum Acara Pidana*", (Rechts Vinding Online, 2017), h. 1.

groups as was the case during colonial rule."[2] The enactment of the KUHAP was intended by the legislators to "improve" previous legal practices which were inadequate in protecting human rights based on HIR regulations.

The KUHAP legalized the human rights of suspects or defendants to defend their interests in the legal process. In the experience of the HIR era, we often hear complaints about prolonged, endless arrests, detention without a warrant, and without explanation of the alleged crime.[3] The criminal justice system in Indonesia uses the legal principles regulated in the Criminal Procedure Code, including the principle that everyone is equal before the law, the principle of presumption of innocence, the principle of simplicity, speed and low costs, and the principle of opportunity.

The principle of simple, fast and low-cost justice is explained in Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power which states that "Justice is carried out simply, quickly and at low cost." In this context, what is meant by "simple" refers to the examination and resolution of cases carried out in an efficient and effective manner. Meanwhile, what is meant by "low costs" refers to case costs that can be afforded by the public. In the Big Indonesian Dictionary, fast can be interpreted as taking a short time. However, the principles of simple justice, speed and low costs in examining and resolving cases in court do not exclude thoroughness and thoroughness in seeking truth and justice.

The meaning of speedy justice or commonly called contante justitie comes from Dutch which means justice is given in cash. This postulate can also be interpreted as meaning that the process of law enforcement and justice must be carried out quickly/contactly. Meanwhile, in English it is known as a speedy trial or justice carried out quickly. Detention as referred to above, at the investigation level is regulated in Article 24 paragraph (1) and paragraph (2) of the Criminal Procedure Code, the detention period is a maximum of 20 days and can be extended by the public prosecutor for a maximum of 40 days, detention by the Prosecutor or Public Prosecutor at the Prosecution is regulated in Article 25 paragraph (1) and paragraph (2) of the Criminal Procedure Code, the maximum detention period is 20 days and can be extended by the Chairman of the District Court for a maximum of 30 days.[4]

Based on Article 21 paragraph (4) of the Criminal Procedure Code, detention can only be imposed on suspects or defendants who commit criminal acts and/or attempt or provide assistance in criminal acts which are punishable by imprisonment of five years or more, and certain criminal acts which have been determined and designated. limitedly in Article 21 paragraph (4) letter b, the threat of criminal punishment under five years includes: Criminal cases of people whose occupation or habit of carrying out or facilitating obscene acts with other people are called (pimps) in the name of the defendant Lilik Nur Lindawati Binti Sutik, violating Article 296 of the Criminal Code: In his indictment at that time, the prosecutor charged the defendant under Article 296 of the Criminal Code with a prison sentence of six months in prison.

Furthermore, during the trial process the defendant was detained. Criminal case of forcing a person to commit an act in such a way that the person being forced acts against his own will (threat of violence using a sharp sickle type weapon) in the name of the defendant Bobi Fajar Januar Bin Husain violates Article 335 paragraph (1) of the Criminal Code: In In the indictment at that time, the prosecutor charged the defendant with Article 335 paragraph (1) of the Criminal Code with a prison sentence of 1 (one) year in prison. Article 21 paragraph (4) of the Criminal Procedure Code classifies suspects or defendants who may be subject to detention into two groups, namely:

a) Criminal acts which are punishable by imprisonment for five years or more;
b) Certain criminal acts are determined in a limitative manner (Article 21 paragraph (4) letter b KUHAP). The criminal threat for all criminal acts mentioned in Article 21 paragraph (4) letter b of the Criminal Procedure Code of less than five years, can still be subject to detention. Article 21 paragraph (4) letter b is an exception to the general principle in Article 21 paragraph (4) letter a of the Criminal Procedure Code.

Based on the description above, there are two reasons for reviewing exceptions to the detention of perpetrators of criminal acts as in Article 21 paragraph (4) letter b, namely: Juridical Reasons Article 21 paragraph (4) of the Criminal Procedure Code states that detention can only be carried out if the alleged criminal act was committed by the suspect. or the defendant is threatened with imprisonment for five years or more.

However, sometimes there are differences in interpretation regarding the threat of criminal penalties above or below five years in Article 21 paragraph (4) letter b of the Criminal Procedure Code, which can cause differences of opinion regarding the detention of suspects or defendants. Sociological reasons for more substantial law are not laws that operate in rigid and exclusive articles. Law in a sociological perspective is law that moves in actual and factual dynamics in a social-community network. Sociological laws are born, live and develop in complex social networks of society. And sociological law has variants of socio-juridical mechanisms in resolving various social conflicts that arise in society.[5]

So based on this background there are interesting legal issues to write about, namely: 1). What is the urgency of detaining criminal perpetrators who are detained under the threat of a sentence of less than 5 (five) years based on Article 21 paragraph (4) letter b of the Criminal Procedure Code based on the principle of justice? 2). Is the detention of perpetrators of criminal acts based on Article 21 paragraph (4) letter b of the Criminal Procedure Code in accordance with the principle of expediency? 3). How will the reformulation relate to the detention of criminal offenders based on Article 21 paragraph (4) letter b of the Criminal Procedure Code in the future?

[2] A. Samsan Nganro, "*Praktik Penerapan KUHAP dan Perlindungan HAM,*" hukumonline.com, accessed September 12, 2023.

[3] Ibid,h.2

[4] M Karjadi and R Susilo, *Kitab Undang Undang Acara Pidana Dengan Penjelasan Resmi Dan Komentar* (Bogor: Pelita-Bogor, 1986).h.45

[5] Sholahudin,U. *Hukum dan Keadilan Masyarakat (Analisis Sosiologi Hukum terhadap Kasus Hukum Masyarakat Miskin "Asyani" di Kabupaten Situbondo)*. *DIMENSI-Journal of Sociology*, 2016. Vol. 9,No.1. h 34-45

Research Methods

Peter Mahmud Marzuki[6] formulated legal research as a process to discover legal rules, legal principles and legal doctrines in order to answer the legal issues faced. The type of research in this article is Normative Juridical, the approach used is a statutory approach, a conceptual approach and a case approach.

Discussion

1. The Urgency of Detaining Criminal Perpetrators Who Are Detained under Criminal Threats of Less Than 5 (five) Years Based on Article 21 paragraph (4) letter b of the Criminal Procedure Code Based on the Principles of Justice

Detention is very important and aims to curb a person's basic freedoms, law enforcement officials (police, prosecutors) should be very careful in using this force. In connection with this detention, Van Bemmelen reminded that detention is a sword that cuts both parties, because this cruel action can be imposed on people who have not received a decision from the judge, so perhaps also on innocent people.[7]

For this forced action (arrest/detention), law enforcement officials must first make a decision whether to detain the suspect, and they must try to collect facts or evidence that is strong enough so that they are truly convinced of the suspect's guilt. If there is doubt, then the option that must be taken is softer action, namely not detaining the suspect. This principle in the legal context is known as the in dubio pro reo principle.[8]

Detention can be carried out in 2 (two) ways. First, when the suspect is caught red-handed. The definition and under what circumstances it is called being caught red-handed is stated in Article 1 point 19 of the Criminal Procedure Code.[9]

> "Caught red-handed is the arrest of a person while committing a criminal act, or immediately after a while after the crime has been committed, or a moment later he is called out by the public as the person who committed it, or if a moment later an object is found on him which is strongly suspected to have been used to commit the crime. This criminal act shows that he was the perpetrator or participated in committing or helping to commit the criminal act."

Second, the suspect was not caught red-handed. In such circumstances, it can be seen that there are conditions that must be met for detention to be carried out. Referring to Article 21 paragraph (1) of the Criminal Procedure Code, detention can be carried out by investigators, public prosecutors or judges with their determination based on sufficient evidence. According to the Decision of the Constitutional Court of the Republic of Indonesia Number 21/PUU-XII/2014, dated April 28 2015, sufficient evidence is a minimum of two pieces of evidence as contained in Article 184 of the Criminal Procedure Code. Failure to fulfill this condition will result in the detention being invalid.

The next condition for the detention carried out against a suspect or defendant to be legal according to law is that a copy of the detention order be given to the family. This obligation is stipulated in Article 21 paragraph (3) of the Criminal Procedure Code, "a copy of the warrant for detention or further detention or judge's decision as intended in paragraph (2) must be given to the family." Ramdhan Kasim and Apriyanto Nusa[10] revealed that this first element is referred to as the legal basis (for carrying out detention), because the law has determined the qualifications for criminal acts which result in the detention of a suspect or defendant. This means that when committing a criminal offense that carries a penalty of less than 5 (five) years, detention cannot be carried out immediately against the suspect or defendant.

According to Article 21 paragraph (4) letter b of the Criminal Procedure Code, law enforcement officers can detain suspects or defendants who commit criminal acts that carry a sentence of less than 5 (five) years. Even though the threat of imprisonment is less than 5 (five) years, this criminal act is considered to seriously affect the interests of public order in general and threatens the safety of people's bodies in particular.[11] The next element is the subjective element. This element focuses on the circumstances or need for detention in terms of the circumstances surrounding the suspect or defendant.

In accordance with Article 21 paragraph (1) of the Criminal Procedure Code, the situation that requires detention is that the suspect or defendant is feared to run away, destroy or destroy evidence, and/or repeat a criminal act. In various references, this element is appropriately referred to as a subjective element, because basically the assessment of the situation and concerns about the suspect or defendant becomes a subjective assessment by investigators, public prosecutors and judges.[12]

Supriyadi said,[13] there are 2 (two) indicators that can be used to see these subjective elements. First, the potential for a suspect or accused to flee can be seen from the level of mobility, employment, family, no domicile or permanent residential address found. Second, destroying or eliminating

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[6] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011), h.35.

[7] I Ketut Sudjada, *Hukum Acara Pidana Dan Praktek Peradilan Pidana*, accessed August 28, 2023.

[8] Rahman, A., & Fahmanadie, D. *Upaya Paksa Dikaitkan dengan Penetapan Tersangka sebagai Objek Praperadilan dalam Perspektif Kepastian Hukum.* Banua Law Review, (2021). 3(1), h. 51-66.

[9] R Atang Ranoemihardja, *Hukum Acara Pidana: Studi Perbandingan Antara Hukum Acara Pidana Lama (HIR) Dengan Hukum Acara Pidana Baru (KUHAP) (Bandung: Penerbit Tarsito, 1983)*, (Tarsito Bandung, 1983), h.40.

[10] Ramadhan Kasim and Apriyanto Nusa, *Hukum Acara Pidana: Teori, Asas, Dan Perkembangannya Pasca Putusan Mahkamah Konstitusi* (Malang: Malang Setara Press, 2019), h.74.

[11] Asmadi, E. *Rumusan Delik Dan Pemidanaan Bagi Tindak Pidana Pencemaran Nama Baik Di Media Sosial*. *De Lega Lata: Jurnal Ilmu Hukum*, (2021). *6*(1), h.16-32.

[12] Dewi, S. C. *Penahanan menurut Undang-Undang Republik Indonesia Nomor 8 Tahun 1981 tentang Hukum Acara Pidana*. *Jurnal Studi Hukum Pidana*, (2021). *1*(1), h.1-11.

[13] Supriyadi Widodo Eddyono, *Praperadilan Di Indonesia: Teori, Sejarah, Dan Praktiknya* (Jakarta: Institute For Criminal Justice Reform, 2014), h.89.

evidence can be seen from the percentage of evidence obtained by investigators and/or what kind of access, ability, and support the suspect or defendant has during the criminal justice process. That in this type of City Detention the scope or process of supervision is less effective due to the limited number of police personnel or prosecutor's personnel to be able to guard it 24 hours/day.

In detention in this city, what can be done by the police, prosecutor's office and/or the court can only provide reporting space for the suspect/defendant on the day determined by the party concerned for the suspect/defendant. If the suspect/accused cannot fulfill the reporting schedule, the party concerned can change the type of prisoner in the city in accordance with Article 23 of the Criminal Procedure Code (KUHAP) which reads:[14]

1) The investigator or public prosecutor or judge has the authority to transfer one type of detention to another type of detention as intended in Article (22).
2) The transfer of the type of detainee is stated separately by means of an order from the investigator or public prosecutor or a judge's decision, a copy of which is given to the suspect or accused as well as his family and to the interested agencies.

In calculating the amount of bodily confinement that has been decided by a court that has permanent legal force (inkrach) for this type of detention in the city, one-fifth of the number of prison decisions given by the court that has permanent legal force is taken into account.

2. Detention of criminal perpetrators based on Article 21 paragraph (4) letter b of the Criminal Procedure Code is in accordance with the principle of expediency

The legal theory used in this research is the theory of utility or utilitarianism. The basic concept of the theory of Utilitarianism is generally very simple, namely how to maximize the utility of an action, so that from this process you can enjoy benefits, benefits, happiness and enjoyment, advantage, pleasure, good, or happiness). From the process of maximizing efficiency, it is also hoped that it will be able to prevent the emergence of pain, evil, suffering, or feelings that cause unhappiness.[15]

So by applying the concept of utilitarianism, an assessment of actions (whether carried out actively or not (commission or omission)), phenomena that occur in society, and/or a concrete event, will be based on how powerful and how useful the action, phenomenon, and/or the event to the individual who experienced it. Therefore, in the concept of classical utilitarianism, if something has great utility for the wider community, then it will increase happiness and reduce pain.

This is also what makes the concept of utilitarianism also thick with the process of calculating between happiness (pleasure) and suffering (pain), because if an action/phenomenon/event gives rise to happiness that is greater than the suffering, then that action/phenomenon/event has "utility". towards society, and vice versa, if the action/phenomenon/event gives rise to greater suffering, then the action/phenomenon/event has no "effectiveness". Detention is carried out for the purposes of the investigation process or resolving the case. Therefore then:[16]

a. The investigator or assistant investigator, upon delegation of authority from the investigator, carries out detention for the purposes of the investigation.
b. The public prosecutor carries out detention for the purposes of prosecution.
c. The judge made the detention for the purposes of examining the case in court. An order for further detention or detention (in the case of extended detention) is issued to a suspect or defendant who is strongly suspected of committing a crime based on sufficient evidence, if there is concern that the suspect or defendant will run away, destroy or destroy evidence and/or repeat the crime.

An order for further detention or detention (in the case of extended detention) is issued to a suspect or accused who is strongly suspected of committing a criminal act based on sufficient evidence, if there is concern that the suspect or accused will run away, destroy or destroy evidence and/or repeat the criminal act. The reason for detaining is the concern of law enforcement officials who have the right to detain. If the officials concerned (investigators, public prosecutors, judges) are not worried that the suspect or defendant will run away, damage or lose evidence or repeat a criminal act, then the suspect/defendant does not need to be detained. The examination takes place without detention, and the suspect or accused will be summoned if necessary for the purposes of the examination.[17]

The interest/subjective basis refers to the interests of law enforcement officials in carrying out detention, namely for the purposes of examination. In accordance with the purpose of detention, when the examination at the investigative level has been completed, the file (Investigation Minutes) must be immediately handed over to the district attorney (public prosecutor), and so on with the transfer of the case from the public prosecutor to the court and the examination during the trial at the court. In this way, the period of detention and/or extension of detention at the investigation level that has not been completed automatically does not need to be served again after the Investigation Minutes which have been declared complete are handed over to the prosecutor's office.

[14] Indonesia, P. R. *Undang Undang No. 8 Tahun 1981 Tentang: Kitab Undang Undang Hukum Acara Pidana.* (Jakarta.Sinar Grafika. 1981),h.67

[15] Igor V. Kolosov dan Konstantin E. Sigalov, "*Was J. Bentham the First Legal Utilitarian*?," RUDN Journal of Law 24, no. 2 (2020): 438–71, https://doi.org/10.22363/2313-2337-2020-24-2-438-471.

[16] Renggong, R. *Hukum Acara Pidana Memahami Perlindungan HAM dalam Proses Penahanan di Indonesia*, (Jakarta,Kencana. 2016),h.75

[17] Simarmata, B. *Menanti Pelaksanaan Penahanan dan Pidana Penjara Yang Lebih Humanis Di Indonesia*. Jurnal Konstitusi, (2010). 7(3), 069-096.

Position Case	Alleged Article	Reason for Detention
The defendant on Monday 23 May 2023 at approximately 00.15 WIB at the "DOLOG" localization in Sumbersuko Village, Kab. Lumajang was carried out by the defendant against witness RIANI LIA PRAPUTRI (as Commercial Secretary Worker) at a rate of Rp. 50,000,- (fifty thousand rupiah) per sexual intercourse, after there is an agreement with the prostitute service user, then the service user has sexual intercourse in the place provided, after having sexual intercourse with the service user pays Rp. 150,000,- (one hundred and fifty thousand rupiah) then witness RIANI LIA PRAPUTRI provided pimping services amounting to Rp. 50,000,- to the defendant. In his indictment at that time, the prosecutor charged the defendant under Article 296 of the Criminal Code with a prison sentence of 6 (six) months in prison.	Criminal case involving a person whose occupation or habit of carrying out or facilitating obscene acts with other people is called (pimping) in the name of the defendant Lilik Nur Lindawati Binti Sutik (aged 27 years), violating Article 296 of the Criminal Code with a penalty of 1 (one) year and 4 (4) years. four months	During the investigation process, it was discovered that no arrests had been made from the case history received by the Lumajang District Prosecutor's Office from the Lumajang Police. The detention of the suspect was made by the Prosecutor, the considerations for detaining the defendant were based on T-7, namely that the suspect had committed a criminal act as specified in Article 21 Paragraph (4) letter a of the Criminal Procedure Code, there were concerns that the suspect would run away, destroy or lose evidence and/or repeat his actions
On Tuesday 10 January 2023 at approximately 02.30 WIB in Jakarta Village, District. Lumajang threatened the victim witness, Mr. AFIFUDIN used a sharp sickle type weapon and challenged the victim to carok, but the victim did not respond so the defendant became angry and hit the speedometer of the victim's motorbike.	Criminal case of forcing someone to commit an act in such a way that the person being forced acts against their own will (threat of violence using a sharp sickle type weapon) on behalf of the defendant Bobi Fajar Januar Bin Husain (aged 36 years) violating Article 335 paragraph (1) Criminal Procedure Code with the threat of imprisonment for 1 (one) year	During the trial process the defendant is detained. Both in the investigation and prosecution processes. In the minutes of opinion made by the Prosecutor, the consideration for detaining the defendant based on T-7 is that the suspect has committed a criminal act as specified in Article 21 Paragraph (4) letter a of the Criminal Procedure Code, there is concern that the suspect will run away, destroy or lose evidence and/ or repeat the action
The case of the criminal act of abuse in the name of the defendant Misnar Bin Sudar violates Article 351 paragraph (1) of the Criminal Code: The criminal act of abuse committed by the defendant Misnar Bin Sudar resulted in the victim witness Joto Purnomo suffering lacerations from a sickle stab, by the defendant stabbing the victim witness with a knife. used a sharp sickle type weapon using his right hand which ultimately resulted in the victim witness suffering a laceration on the left side of his waist	The criminal case of maltreatment in the name of the defendant Misnar Bin Sudar violates Article 351 paragraph (1) of the Criminal Code with the threat of imprisonment for 2 (two) years and 8 (eight) months	During the trial process the defendant is detained. Both in the investigation and prosecution processes. In the minutes of opinion made by the Prosecutor, the consideration for detaining the defendant based on T-7 is that the suspect has committed a criminal act as specified in Article 21 Paragraph (4) letter a of the Criminal Procedure Code, there is concern that the suspect will run away, destroy or lose evidence and/ or repeat the action

Detention at the investigation level automatically ends, and so on at the prosecution and court examination levels. Furthermore, if the period of detention or extension of detention has ended, while the examination has not been completed, the suspect/defendant must by law be released from detention. Being released from detention does not mean that the case is stopped, but rather that it is still being processed, however the suspect/defendant may not be detained again at the relevant level of investigation. Investigators, public prosecutors and judges as subjects of detention, detained suspects/defendants because they were concerned that. the suspect/defendant will run away, destroy or destroy evidence and/or repeat the crime.[18]

Detention of criminals can be seen from the perspective of the impact on society as a whole. Utilitarianism measures the morality of actions based on the degree to which they provide happiness or benefit to society. Utilitarianism is a rationality that influences many thoughts in social sciences, law, economics, and psychology.Of the many cases in Indonesia that were subject to imprisonment, the author chose to use case studies related to prison sentences in three cases with similar patterns in the crime of pimping, threats with sharp weapons, and abuse.

Many studies are more interested in big cases or extreme cases. However, the author is interested in studying the effectiveness of punishment for criminal acts that carry a criminal sentence of less than 5 years as explained in Article 21 paragraph (4) letter b of the Criminal Procedure Code. Jeremy Bentham's approach to the purpose of punishment, especially imprisonment, is based on the principle of utilitarianism which emphasizes achieving the greatest happiness for society. In the context of violent offenders, Bentham saw imprisonment as a social instrument that could fulfill several main objectives:[19]

1. **Deterrent Effect:** Bentham believed that punishment, including imprisonment, should create a deterrent effect. This means that punishment must set an example that is frightening enough for other individuals so that they are encouraged not to involve themselves in acts of violence. This deterrent effect is expected to reduce incentives to break the law.

[18] Simarmata, B. *Pengawasan terhadap Pelaksanaan Penahanan Menurut KUHAP dan Konsep RUU KUHAP*. Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada, (2011). 23(1), 191-209.

[19] Yani, M. A. *Pengendalian Sosial Kejahatan (Suatu Tinjauan Terhadap Masalah Penghukuman Dalam Perspektif Sosiologi)*. Jurnal Cita Hukum, (2015). 3(1), 95338.

2. **Protection of Society:** Imprisonment is also considered a means of protecting society from potential dangers that may be caused by perpetrators of violence. By isolating perpetrators of violence from society, imprisonment can prevent them from committing acts that could harm other people. This creates a sense of security among community members.
3. **Behavioral Reform:** While Bentham emphasized deterrence and protection, he also recognized the potential for behavioral reform through punishment. A prison sentence should provide an opportunity for violent offenders to reflect on their behavior, gain an understanding of the consequences of their actions, and possibly experience rehabilitation. In a utilitarian view, this can create better individuals and reduce the risk of them returning to violent behavior.
4. **Prevention of Revenge (Non-Revengeful):** Bentham rejected approaches that were purely vengeful or punitive. Imprisonment should not just be about inflicting suffering on the offender, but rather about striking a balance between justice, protection of society, and the possibility of reform. The aim of punishment should be more constructive, namely preventing future criminal acts.

3. Reformulation Relating to the Detention of Criminal Perpetrators Based on Article 21 paragraph (4) letter b of the Criminal Procedure Code in the Future

The formulation policy regarding Article 21 paragraph (4) letter b of the Criminal Procedure Code relating to the detention of perpetrators of criminal acts which are punishable by imprisonment for less than 5 (five) years is deemed necessary to carry out reformulation, while what is meant by reformulation is changing or reformulating the criminal sanction arrangements regulated in The Criminal Procedure Code contains prison sanctions. In several developed countries such as the United States, Australia and several developing countries such as Malaysia, Vietnam, the criminal act of pimping, the criminal act of threatening violence against people and the criminal act of assault are criminal acts with a maximum penalty, life imprisonment or the death penalty.

In the United States, the handling of criminal acts of pimping is regulated by the Human Trafficking Crimes Act. In the United States, the handling of criminal acts of pimping or human trafficking is regulated by various federal and state laws. One of the federal laws that is very relevant in this regard is the Human Trafficking Criminal Act (Trafficking Victims Protection Act) which has undergone several changes since it was first adopted in 2000.[20]

According to Barda Nawawi Arief, the increase in crime is an indication of inappropriate policies in determining criminal sanctions that have been implemented so far. Providing punishment as part of the problem of criminal law enforcement mechanisms, is closely related to the policy problem of dealing with criminal acts. Seen as part of the law enforcement mechanism (criminal), ordinary punishment is also interpreted as giving punishment as nothing more than a deliberately planned policy process. The formulation stage as the first stage in a criminal policy is a planning stage that must be carefully planned regarding what policies should be taken in establishing a rule. In the case of punishment for general crimes, to formulate what type of sanctions are considered best and most appropriate so that they are in accordance with the purpose of the punishment, the cause of the crime must be sought.[21]

Improper formulation of sanctions in eradicating criminal acts is one of the various factors that is the cause of the increasing number of criminals. It can be seen that criminal actors are emerging with various modus operandi. The perpetrators range from people who are educated, have high socio-economic conditions and live as respected people to those who have low education, live in poverty but have opportunities.[22] Currently, the system of sanctions is experiencing development, namely that it does not only include punishments that are suffering in nature but also actions.

According to Sudarto, this is the influence of the modern school of criminal law which enriches criminal law with sanctions called actions. Dogmatically, crime is seen as compensation or retaliation for the mistakes of the perpetrator of a crime, while action is intended to protect society against crimes committed by the perpetrator. This opinion is also in line with the opinion of Roeslan Saleh who stated that action is to maintain the security of society against people who are small in number and are dangerous and will commit criminal acts.[23] Reorientation and reevaluation of criminal and criminal matters, especially through statutory regulations, as one of the results of the formulation stage in particular or the legislative process in general, is something that is necessary in connection with the development of society and the increase in crime in Indonesia and internationally.[24]

The determination of criminal sanctions in statutory regulations cannot be separated from one of the objectives to be achieved by the criminal law itself, namely suppressing and overcoming the problem of crime and in the long term creating prosperity which includes protecting the community. In essence, it is a system of authority/power to impose criminal penalties. It should be noted that the meaning of "criminal" is not only seen in a narrow/formal sense, but can also be seen in a broad/material sense. In a narrow/formal sense, the criminal system means the authority to impose/impose criminal sanctions according to law by authorized officials (judges). In a broad/material sense, the criminal system is a chain of legal action processes from authorized officials, starting from the process of investigation, prosecution, to the criminal

[20] Toule, E. R. M. *Kebijakan Kriminal Terhadap Pencegahan Tindak Pidana Perdagangan Orang.* Mizan: Jurnal Ilmu Hukum, (2020). 9(1), h.7-19.

[21] Barda Nawawi Arief, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, (Badan Penerbit Universitas Diponegoro, Semarang, 2000), h.4.

[22] Hariyono, B. Kebijakan Formulasi Sanksi Pidana Terhadap Pelaku Tindak Pidana Narkoba Di Indonesia (Doctoral dissertation, program Pascasarjana Universitas Diponegoro). (2009).

[23] Sumaryanto, A. D., & SH, M. *Buku Ajar Hukum Pidana*. (Jakad Media Publishing. 2019),h.53

[24] IK, M. N., & Juita, S. R. *Kebijakan Penerapan Sanksi Pidana Penjara Terhadap Perempuan Pelaku Tindak Pidana Dalam Hukum Positif.*

decision handed down by the court and implemented by the implementing apparatus.

There are several considerations for the need to review formulative/legislative policies regarding the objectives and guidelines of punishment in reforming the criminal system in Indonesia, including:[25]

1) That the Criminal Code currently in force does not explicitly formulate objectives and guidelines for the criminal system;
2) That the strategic position of the objectives and guidelines for criminal punishment is intended to provide direction, guidance and means for law administrators to implement criminal provisions;
3) That formulating goals and guidelines is a fundamental prerequisite in formulating a method, method or action;
4) Whereas the Indonesian nation is currently preparing the Criminal Code which will replace the Criminal Code (WvS), therefore it is necessary to study the objectives and guidelines for punishment which are adapted to the development of contemporary society and the philosophy and outlook on life, namely Pancasila.

This legislative policy on the objectives and guidelines of punishment is the most strategic thing in the imposition of a crime because at this stage the boundaries/lines/ directions/ directions of the policy objectives and guidelines for punishment are formulated which are also the basis of legality for Judges (Law Executing Apparatus) in implementing the sentence so that it can function effectively in crime prevention efforts. The aim of punishment is to carry out a supporting function of the general function of criminal law which is to be achieved as the ultimate goal is the realization of welfare and protection of society (social defense and social welfare), which is oriented towards the aim of protecting society to achieve social welfare.[26]

One of the efforts to overcome crime is to use criminal law facilities along with criminal sanctions. The use of criminal law as an effort to overcome crime problems is included in the field of law enforcement policy. In addition, because the aim is to achieve the welfare of society in general, this law enforcement policy also includes policies in the social sector. Thus the problem of controlling and/or overcoming crime using criminal law means is a policy problem (the problem of policy). Therefore, it must not be forgotten that criminal law or more precisely the criminal system is part of criminal politics. Social policy can be interpreted as all rational efforts to achieve community welfare and at the same time include community protection.

Article 21 paragraph (4) of the Criminal Procedure Code classifies suspects or defendants who may be subject to detention into two groups, namely:

1. A criminal offense punishable by imprisonment of five years or more. All criminal acts, whether regulated within or outside the Criminal Code, which are punishable by imprisonment for five years or more are automatically 'subject to' detention.

Criminal offenses are regulated and punished by imprisonment of five years or more, these are often considered serious crimes in the legal system. This type of crime may include serious crimes such as murder, kidnapping, or corruption. Serious crime can refer to various types of crimes that are considered very serious and have a major impact on society. Some examples of serious crimes that can be found in various laws in Indonesia include:

1. Terrorism: Terrorism is considered a serious crime and carries severe penalties. Law Number 5 of 2018 concerning Eradication of Criminal Acts of Terrorism calls terrorism a serious crime.[27]
2. Domestic violence (KDRT): Domestic violence is also considered a serious crime and has the potential to happen again to the victim. Police investigators are expected to treat domestic violence as a serious crime.[28]
3. Serious human rights violations: Serious human rights violations, such as crimes of genocide and crimes against humanity, are also considered serious crimes and can be subject to severe sanctions.[29]
4. Sexual violence: Several laws in Indonesia, such as Law no. 1 of 2016 concerning the Second Amendment to Law no. 23 of 2002 concerning Child Protection, states that sexual violence against children is a serious crime.[30]

The imposition of detention is usually related to the seriousness of the crime, risk of flight, or risk of influence on the investigation. In some jurisdictions, incarceration may be applied automatically for certain criminal offenses that carry a prison sentence of five years or more. This is done to ensure public safety, prevent escapes, and protect the judicial process.

2. Certain criminal acts are determined in a limitative manner (Article 21 paragraph (4) letter b KUHAP). The criminal threat for all criminal acts mentioned in Article 21 paragraph (4) letter b of the Criminal Procedure Code is less than five years in prison, but because it has been designated, even though the criminal threat is less than five years, it can still be subject to detention. Article 21 paragraph (4) letter b KUHAP is an exception to the general principle in Article 21 paragraph (4) letter a KUHAP).

These articles in the Indonesian Criminal Code (KUHP) have an important role in the context of law enforcement

[25] Santoso, W. *Restorative Justice Dalam Sistem Pidana Di Indonesia*. Jurnal Yusthima, (2023). 3(1), h.10-20.

[26] Kusuma, J. D. *Tujuan dan pedoman pemidanaan dalam pembaharuan sistem pemidanaan di Indonesia.* Jurnal Muhakkamah, (2016). 1(2).

[27] Alfitrah, M. H. *Perlindungan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana Terorisme Perspektif Hukum Positif Dan Hukum Islam* (Bachelor's thesis, Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta). (2021).

[28] Munifah, M. *Rekonstruksi Perlindungan Hukum Terhadap Perempuan Korban Kekerasan Dalam Rumah Tangga Berbasis Nilai-Nilai Keadilan* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang). (2021).

[29] Arianta, K., Mangku, D. G. S., & Yuliartini, N. P. R. *Perlindungan Hukum Bagi Kaum Etnis Rohingya Dalam Perspektif Hak Asasi Manusia Internasional.* Jurnal Komunitas Yustisia, (2020) 3(2), h.166-176.

[30] Yulianti, S. W. *Kebijakan Penegakan Hukum Terhadap Kejahatan Kekerasan Seksual Kepada Anak Dalam Sistem Peradilan Pidana Di Indonesia.* Amnesti Jurnal Hukum, (2022). 4(1), h.11-29.

and protection of human rights, especially in cases involving criminal acts of abuse. Here are some reasons why these articles are of concern and important:[31]

1. Severity Level of the Crime: Article 296 of the Criminal Code regulates the crime of Pimping, which is a crime with the highest level of severity. Article 335 of the Criminal Code regulates abuse that causes serious injury, indicating a focus on the severity of criminal acts involving physical violence and serious injury. Article 351 of the Criminal Code covers simple assault, which involves criminal acts with a lower level of severity compared to other articles.
2. Protection of Human Rights: These articles provide a legal basis for law enforcers to protect human rights, especially the right to life and personal security. Through this legal provision, perpetrators of violence can be subject to sanctions in accordance with the severity of the crime, which also provides protection for victims.
3. Prevention of Violence: These articles not only function as a law enforcement tool, but also play a role in preventing violence by providing sanctions that can act as a deterrent for potential perpetrators of crimes. It is hoped that this legal provision will provide a preventive effect and disincentivize perpetrators from committing criminal acts.
4. Sanctions for Violations of the Law: These articles provide the legal basis for imposing sanctions on perpetrators of criminal acts of abuse according to the severity of their actions. These sanctions may include imprisonment, fines, or both, depending on the penalties provided for in each article.

With these provisions in the Criminal Code, it is hoped that a safer society can be created and protect human rights, as well as provide a legal basis for law enforcers in handling cases of abuse. Based on these provisions, a convict who violates a criminal offense in Article 296 of the Criminal Code, Article 335 of the Criminal Code, and Article 351 of the Criminal Code must be sentenced to prison even though he is threatened with imprisonment for less than 5 (five) years which is included in the limitative article Article 21 paragraph (4) letter b KUHAP.

Conclusions

1. The current system of detention authority seems to be only suitable for certain criminal acts where the average perpetrator is instinctively likely to escape from legal responsibility and the method is brutal as specified in Article 21 paragraph (4) letter a. Meanwhile, in Article 21 paragraph (4) letter b, the threat of a criminal sentence of less than 5 years with the classification of criminal acts under Article 296 of the Criminal Code, Article 335 of the Criminal Code and Article 351 of the Criminal Code requires detention by considering the level of public interest of the criminal act committed.
2. The threat of a criminal sentence of less than 5 years for criminal acts under Article 296 of the Criminal Code, Article 335 of the Criminal Code and Article 351 of the Criminal Code must be carried out in detention to avoid the negative impact caused by the perpetrator of the crime to the community or the victim of the crime and to provide a deterrent effect for the perpetrator of the crime. punishment so that they do not repeat their actions.
3. Article 21 paragraph (4) letter b of the Criminal Procedure Code is under five years, namely Article 296 of the Criminal Code, Article 335 of the Criminal Code, and Article 351 of the Criminal Code, apart from the articles that are determined in a limited way, detention must be carried out, but alternative punishment can be carried out to reduce the defendant's stay in prison. alternative sanctions better reflect aspects of humanity and welfare, sanctions in modern criminal law are no longer based on 'retaliation' (crime is opposed to crime, so that the crime is as evil as the crime itself).

[31] Yusyanti, D. *Perlindungan Hukum Terhadap Anak Korban Dari Pelaku Tindak Pidana Kekerasan Seksual (Legal Protection Of Children Victims From Criminal Actors Of Sexual Violence).* Jurnal De Jure, Badan Penelitian Dan Pengembangan Hukum Dan Ham, Kementerian Hukum Dan HAM RI, Jakarta. (2020).

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