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Legal Reconstruction in Indonesia Based on Human Rights

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Faculty of Law, Sultan Agung Islamic University

Jalan Raya Kaligawe, KM.4 Semarang, Indonesia

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The 5th PROCEEDING

“Legal Reconstruction in Indonesia Based on Human Right”

IMAM AS SYAFEI BUILDING

Faculty of Law, Sultan Agung Islamic University
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“Legal Reconstruction in Indonesia Based on Human Right”

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

PROCEEDINGS

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Reconstruction Of Private Criminal System Implementation In The Commitment Values In Indonesia Justice

Sumanto⁴²⁶

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Abstract

56 years after the inauguration of the Penitentiary system by Sahardjo, the implementation of Imprisonment in the Penitentiary system has not lost the color of past incarceration, marked by various cases that surfaced, this condition requires the reconstruction of the pattern of Imprisonment in prison.

Keywords: Reconstruction, Criminal, Prison, Correctional System, Justice

A. Preliminary

Crime (crime) constitute unlawful behavior and violate social norms, so that the public opposed it⁴²⁷, In the social context, the crime is a social phenomenon that occurs in every place and time⁴²⁸, This shows that crime is not only a problem for a particular community scale, locally and nationally, but also the problems faced by all societies in the world, past, present and future, so it can be said that crime as a universal phenomenon⁴²⁹,

According to Bongger, evil sense in light of the formal (legally) is an act by the public (in this case the state) by a criminal. Furthermore, he also said that when viewed more deeply, a crime are some of the acts

that are contrary to morality⁴³⁰, Concluded that the crime is very anti-social acts are challenged with conscious of the state form of suffering (punishment or action)⁴³¹,

Imprisonment is a reaction to the country as a result of a crime and formulated into legislation criminal law. in some countries that embrace liberalism, imprisonment became principal prioritizes criminal exile⁴³² as well as in Indonesia. However, Indonesia as a country based on Pancasila constantly new ideas about the function of punishment which is no longer simply a deterrent but an attempt rehabilitation (repair, healing), the idea was poured Sahardjo when receiving the title of Doctor Honoris Causa at the University of Indonesia on July 5, 1963, with the title "Banyan Tree Legal Pengayoman Pan-

⁴²⁶ The author is a member of the National Police in Cirebon Police, Lecturer, is completing the Doctoral Program at the Law Faculty of Law, University Islam Sultan Agung Semarang.

⁴²⁷ Kartini Kartono, 1992, *Social Pathology, Volume I New Edition*. Rajawali Press, Jakarta, p. 134.

⁴²⁸ Andi Matalata, "Compensation for Victims", in *JE Sahetapy*. 1987, *victimology An Anthology*. Pustaka Sinar Harapan, Jakarta, p. 35.

⁴²⁹ Barda Nawawi Arief, 1994, *Legislative Policy in Combating Crime in Criminal Law*. Ananta, Semarang, p. 2.

⁴³⁰ WA Bongger, 1981 *Introduction On Criminology*. PT Pembangunan Ghalia Indonesia, Jakarta, p. 21

⁴³¹ *Ibid*, p. 25.

⁴³² *Criminal lost independence became the principal criminal everywhere until the whole world, which is increasingly affected by the flow of the individualist-liberalist. Penal system lost independence that began with the closure together day and night, changing closed alone day and night, then lunch together and nights alone. But still tightly confined in the four walls, RA, Koesnoen, 1961, the National Prison Politics, Wells Bandung, Bandung, p. 8, in Peter Irwan Panjaitan, and Mandy Sri Widiarty 2008, Thought Reform Dr. Regarding Sahardjo: Penitentiary Convicts, CV. Indhill Co., Tebet Jakaera, p. 13.*

casila Manipol / Usdek”⁴³³, Who gave birth to a guidance system called the penal system.

The enactment of Law No. 12 Year 1995 on Penal as a concept that is very humane, even no assessment of the idea was too advanced, it was not enough to bring improvements to people in prison, even events like the flight of prisoners, the riots at the Correctional Institution (prisons) as well as prison conditions are alarming because the number of inmates exceeds the capacity and inmates infected with HIV, reflecting the correctional system is not running properly, still overshadowed system penal system. Based on the background of the problem, formulated the research problem as follows:

1. Why is the implementation of imprisonment in the penal system in Indonesia has not been based on the values of justice?
2. What are the weaknesses of imprisonment in the penal system in Indonesia at this time?
3. How is the reconstruction of the implementation of the criminal justice penal system worth?

This study uses empirical juridical approach, which is a method used to solve the problem by first examining the primary data in the field followed by a study of the data of the existing secondary⁴³⁴, This study will generate data descriptive data in the form of written or

spoken of the research object holistic (whole), which deals with the problems examined

B. Results and Discussion

relative theory pivot⁴³⁵ on three main goals of punishment, namely; lead to action and remedies (preventive), deterrence, and reformative⁴³⁶, Preventive purpose of sentencing is to protect the public by placing separate offenders from society, or placed in a particular place in this case is a prison.

The legal system according to Bellefroid, is as a continuum of legal regulations that are arranged in an orderly according to its principles⁴³⁷, While Sudikno Mertokusumo states, the legal system is a unit consisting of the elements that have interaction with each other and work together to achieve this unity⁴³⁸, The legal system according to Lawrence M. Friedman is composed of three elements, namely the structural elements of the law (legal structure), the substance of the law (legal substance), and the legal culture (legal culture)⁴³⁹.

The theory of the legal system related to the implementation of the system pemyarakatan imprisonment, has not happened continuum (cooperate) of elements from one another that the element of correctional officers, correctional law, the correctional culture that is still running for prison culture. Thus in the correctional system its only law that has become Penal Law, while

433 See R. Achmad S. Soemadi Pradja and Romli Atmasasmita, 1979, *the Correctional System Indonesia*, Bina Cipta, Bandung, p. 12-13.

434 Soerjono Soekanto, 1984, *Introduction to Legal Research*, UI Press, Jakarta, p. 52.

435 According to this theory a crime mutlaq not be followed by a criminal, untukitu the existence of a crime is not enough but must be questioned as well and criminal manfaatnyasuatu for the community or for the villain was sendiri.tidak only be seen from the past, but also the future, then there must be a further purpose than just menjatuhkanpidana only. thus this theory also called theory of interest “doel Theorien”.

436 Especially with regard to the purpose of prevention and deterrence, one of the leading classical flow, Jeremy Bentham known as the doctrine of utilitarianism its ever filed four tujuanutama of criminal law: (1) Prevent all violations, (2) Prevent violations palingjahat, (3) Suppress crime, and (4) Pressing any damages or costs as small as possible. See Muladi and Barda Nawawi Arif, 1984, *Theories and Criminal Policy*, Alumni, Bandung, p. 25-26.

437 Surojo Wignjodipoero, 1973, *Introduction to Law*, Mold II, Alumni, Bandung, p. 103 ..

438 Sudikno Mertokusumo, 1986, *Know the Law*, First edition, Liberty, Yogyakarta, p. 100.

439 Lawrence M. Friedman, *Law and Society, an introduction*, (New Jersey: Prentice Hall, 1977), p. 7. (Hereinafter referred to Lawrence M. Friedman I) In principle, according to Friedman that the legal system consists of the legal structure, the substance of law and legal culture. The legal structure concerning its institutions, the substance of the law covers all legal regulations, while the legal culture includes an overview of the attitudes and behavior of law, and the factors that determine the acceptance of a particular legal system in a society.

the clerk and culture is still a prison affair. This gives rise to injustice to convict as Citizens Patronage of Corrections (WBP).

Law and justice are like two pieces sides of the coin and is the inseparable unity. Justice comes from the base affixes to the fair to get late, become justice. Justice means being able to put things in proportion, and equality in accordance with the capacity and ability to do something problem⁴⁴⁰,

In tune with the development of the legal field today has evolved various establishments of the sajana about the law, one of which is thought of Satjipto Rahardjo regarding Progressive Law. Progressive law is one of the most interesting ideas in the legal literature Indonesia at this time, because the Progressive Law has sued the existence of modern laws which have been considered to be established⁴⁴¹,

Through this progressive legal thought Satjipto Rahardjo then perform in-depth elaboration on the role of the law and how the law should be played in regulating

the life of Indonesian society⁴⁴², The idea of a progressive law that sparked Satjipto Rahardjo delivered in a variety of seminars, discussions and scientific meetings and has invited comments from various groups in criticizing the progressive legal thought⁴⁴³, The basic assumption of progressive law is the view of the relationship between law and human. There affirmation principle that “the law is for man” and not vice versa⁴⁴⁴, In line with the theory of progressive law prisoners can not be the object of a penal system because the system correctional precisely for WBP, so the implementation of imprisonment in the penal system in Indonesia should be based on the values of justice, to correct the weaknesses of imprisonment in the penal system in Indonesia today, it must be done reconstruction of criminal enforcement in the correctional system so valuable justice..

C. Conclusions and suggestions

1. knot

- a. Implementation of imprisonment in the penal system in Indonesia has not been

⁴⁴⁰ Abdullah Yatimin 2006, *Introduction to the Study of Ethics*, PT. King Grafindo Persada, Jakarta, p. 537.

⁴⁴¹ Satjipto Rahardjo, 2009, *Progressive Law A Synthesis of Indonesian law*, Genta Publishing, Yogyakarta, p. v.

⁴⁴² Romly Atmasasmita, 2012, *Integrative Legal Theory; Reconstruction Of Legal Theory and Legal Theory Progressive Development*, Genta Publishing, Yogyakarta, p. 86

⁴⁴³ *Progressive Legal Theory outlook by Satjipto Rahardjo, the brainchild of the core 9 (Nine) principal idea as follows;*

1) *The law rejecting the tradition of analytical jurisprudence or rechtsdogmatik and understand the various streams such as legal realism, freirechtslekre, sociological jurisprudence, interessenjuriprudenz in Germany, the theory of natural law and critical legal studies.*

2) *The law rejects the argument that the order (order) only work through state institutions.*

3) *progressive law aims to protect the people towards the ideal of law.*

4) *Legal reject the status quo and do not want to make the law as a technology that is not conscience, but rather a moral institution.*

5) *The law is an institution that aims to deliver a fair man in life, prosperous and make people happy.*

6) *The law is the law of progressive pro-people and pro-justice laws.*

7) *The basic assumption is that the legal progressive law for man, and not vice versa.*

8) *The law is not an institution that is absolute and final, but very tergnatung on how people see and use. It is man who is decisive.*

9) *The law is always in the process to continue to be the (law as a process, law in the making) ibid, h. 88-89.*

⁴⁴⁴ Satjipto Rahardjo, *Progressive Law, Law That Frees, Progressive Law Journal, PDIH Semarang, Volume I No. 1, April, 2005, p. 5.*

based on the values of justice due to the implementation of correctional still use the prison culture.

- b. The weaknesses of imprisonment in the penal system in Indonesia when this happens because not happened continuum (cooperate) of the elements of the correctional system
- c. Reconstruction of the implementation of the criminal justice system valuable correctional needs to be done in the

correctional system.

2. Suggestion

- a. Pembinaan patterns in prisons should no longer use the pattern for prison.
- b. PLT should be treated as a convict who is undergoing training to be promoted back.
- c. Law should be reconstructed into a criminal imprisonment pemsaryakatn.

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Reconstruction Of Private Criminal System Implementation In The Commitment Values In Indonesia Justice

Sumanto⁴⁴⁵

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Imprisonment is a reaction to the country as a result of a crime and formulated into legislation criminal law. in some countries that embrace liberalism, imprisonment became principal prioritizes criminal exile⁴⁵¹ as well as in Indonesia. However, Indonesia as a country based on Pancasila constantly new ideas about the function of punishment which is no longer simply a deterrent but an attempt rehabilitation (repair, healing), the idea was poured Sahardjo when receiving the title of Doctor Honoris Causa at the University of Indonesia on July 5, 1963, with the title "Banyan Tree Legal Pengayoman Pancasila Manipol / Usdek"⁴⁵², Who gave birth to a guidance system called the penal system.

The enactment of Law No. 12 Year 1995 on Penal as a concept that is very humane, even no assessment of the idea was

⁴⁴⁵ The author is a member of the National Police in Cirebon Police, Lecturer, is completing the Doctoral Program at the Law Faculty of Law, University Islam Sultan Agung Semarang.

⁴⁴⁶ Kartini Kartono, 1992, *Social Pathology, Volume I New Edition*. Rajawali Press, Jakarta, p. 134

⁴⁴⁷ Andi Matalata, "Compensation for Victims", in *JE Sahetapy*. 1987, *victimology An Anthology*. Pustaka Sinar Harapan, Jakarta, p. 35.

⁴⁴⁸ Barda Nawawi Arief, 1994, *Legislative Policy in Combating Crime in Criminal Law*. Ananta, Semarang, p. 2.

⁴⁴⁹ WA Bonger, 1981 *Introduction On Criminology*. PT Pembangunan Ghalia Indonesia, Jakarta, p. 21.

⁴⁵⁰ *Ibid*, p. 25

⁴⁵¹ Criminal lost independence became the principal criminal everywhere until the whole world, which is increasingly affected by the flow of the individualist-liberalist. Penal system lost independence that began with the closure together day and night, changing closed alone day and night, then lunch together and nights alone. But still tightly confined in the four walls, RA, Koesnoen, 1961, *the National Prison Politics*, Wells Bandung, Bandung, p. 8, in Peter Irwan Panjaitan, and Mandy Sri Widiarty 2008, *Thought Reform Dr. Regarding Sahardjo: Penitentiary Convicts*, CV. Indhill Co., Tebet Jakaera, p. 13.

⁴⁵² See R. Achmad S. Soemadi Pradja and Romli Atmasasmita, 1979, *the Correctional System Indonesia*, Bina Cipta, Bandung, p. 12-13.

too advanced, it was not enough to bring improvements to people in prison, even events like the flight of prisoners, the riots at the Correctional Institution (prisons) as well as prison conditions are alarming because the number of inmates exceeds the capacity and inmates infected with HIV, reflecting the correctional system is not running properly, still overshadowed system penal system. Based on the background of the problem, formulated the research problem as follows:

1. Why is the implementation of imprisonment in the penal system in Indonesia has not been based on the values of justice?
2. What are the weaknesses of imprisonment in the penal system in Indonesia at this time?
3. How is the reconstruction of the implementation of the criminal justice penal system worth?

This study uses empirical juridical approach, which is a method used to solve the problem by first examining the primary data in the field followed by a study of the data of the existing secondary⁴⁵³, This study will generate data descriptive data in the form of written or spoken of the research object holistic (whole), which deals with the problems examined

B.Results and Discussion

relative theory pivot⁴⁵⁴ on three main goals of punishment, namely; lead to action and remedies (preven-

453 Soerjono Soekanto, 1984, *Introduction to Legal Research*, UI Press, Jakarta, p. 52.

454 According to this theory a crime mutlaq not be followed by a criminal, untukitu the existence of a crime is not enough but must be questioned as well and criminal manfaatnyasuatu for the community or for the villain was sendiri.tidak only be seen from the past, but also the future, then there must be a further purpose than just menjatuhkanpidana only. thus this theory also called theory of interest "doel Theorien".

455 Especially with regard to the purpose of prevention and deterrence, one of the leading classical flow, Jeremy Bentham known as the doctrine of utilitarianism its ever filed four tujuanutama of criminal law: (1) Prevent all violations, (2) Prevent violations palingjahat, (3) Suppress crime, and (4) Pressing any damages or costs as small as possible. See Muladi and Barda Nawawi Arif, 1984, *Theories and Criminal Policy*, Alumni, Bandung, p. 25-26.

456 Surojo Wignjodipoero, 1973, *Introduction to Law*, Mold II, Alumni, Bandung, p. 103 ..

457 Sudikno Mertokusumo, 1986, *Know the Law*, First edition, Liberty, Yogyakarta, p. 100.

458 Lawrence M. Friedman, *Law and Society, an introduction*, (New Jersey: Prentice Hall, 1977), p. 7. (Hereinafter referred to Lawrence M. Friedman I) In principle, according to Friedman that the legal system consists of the legal structure, the substance of law and legal culture. The legal structure concerning its institutions, the substance of the law covers all legal regulations, while the legal culture includes an overview of the attitudes and behavior of law, and the factors that determine the acceptance of a particular legal system in a society.

tive), deterrence, and reformative⁴⁵⁵, Preventive purpose of sentencing is to protect the public by placing separate offenders from society, or placed in a particular place in this case is a prison.

The legal system according to Bellefroid, is as a continuum of legal regulations that are arranged in an orderly according to its principles⁴⁵⁶, While Sudikno Mertokusumo states, the legal system is a unit consisting of the elements that have interaction with each other and work together to achieve this unity⁴⁵⁷, The legal system according to Lawrence M. Friedman is composed of three elements, namely the structural elements of the law (legal structure), the substance of the law (legal substance), and the legal culture (legal culture)⁴⁵⁸.

The theory of the legal system related to the implementation of the system pemyarakatan imprisonment, has not happened continuum (cooperate) of elements from one another that the element of correctional officers, correctional law, the correctional culture that is still running for prison culture. Thus in the correctional system its only law that has become Penal Law, while the clerk and culture is still a prison affair. This gives rise to injustice to convict as Citizens Patronage of Corrections (WBP).

Law and justice are like two pieces sides of the coin and is the inseparable unity. Justice comes from the

base affixes to the fair to get late, become justice. Justice means being able to put things in proportion, and equality in accordance with the capacity and ability to do something problem⁴⁵⁹.

In tune with the development of the legal field today has evolved various establishments of the sajana about the law, one of which is thought of Satjipto Rahardjo regarding Progressive Law. Progressive law is one of the most interesting ideas in the legal literature Indonesia at this time, because the Progressive Law has sued the existence of modern laws which have been considered to be established⁴⁶⁰.

Through this progressive legal thought Satjipto Rahardjo then perform in-depth elaboration on the role of the law and how the law should be played in regulating the life of Indonesian society⁴⁶¹, The idea of a progressive law that sparked Satjipto Rahardjo delivered in a variety of seminars, discussions and scientific meetings and has invited com-

ments from various groups in criticizing the progressive legal thought⁴⁶², The basic assumption of progressive law is the view of the relationship between law and human. There affirmation principle that "the law is for man" and not vice versa⁴⁶³, In line with the theory of progressive law prisoners can not be the object of a penal system because the system correctional precisely for WBP, so the implementation of imprisonment in the penal system in Indonesia should be based on the values of justice, to correct the weaknesses of imprisonment in the penal system in Indonesia today, it must be done reconstruction of criminal enforcement in the correctional system so valuable justice.

C. Conclusions and suggestions

1. knot

- a. Implementation of imprisonment in the penal system in Indonesia has not been based on the values of justice due to the implementation of correctional still use the prison culture.

⁴⁵⁹ Abdullah Yatimin 2006, *Introduction to the Study of Ethics*, PT. King Grafindo Persada, Jakarta, p. 537.

⁴⁶⁰ Satjipto Rahardjo, 2009, *Progressive Law A Synthesis of Indonesian law*, Genta Publishing, Yogyakarta, p. v.

⁴⁶¹ Romly Atmasasmita, 2012, *Integrative Legal Theory; Reconstruction Of Legal Theory and Legal Theory Progressive Development*, Genta Publishing, Yogyakarta, p. 86

⁴⁶² *Progressive Legal Theory outlook by Satjipto Rahardjo, the brainchild of the core 9 (Nine) principal idea as follows;*

1) *The law rejecting the tradition of analytical jurisprudence or rechtsdogmatik and understand the various streams such as legal realism, freirechtslekre, sociological jurisprudence, interessenjuriprudenz in Germany, the theory of natural law and critical legal studies.*

2) *The law rejects the argument that the order (order) only work through state institutions.*

3) *progressive law aims to protect the people towards the ideal of law.*

4) *Legal reject the status quo and do not want to make the law as a technology that is not conscience, but rather a moral institution.*

5) *The law is an institution that aims to deliver a fair man in life, prosperous and make people happy.*

6) *The law is the law of progressive pro-people and pro-justice laws.*

7) *The basic assumption is that the legal progressive law for man, and not vice versa.*

8) *The law is not an institution that is absolute and final, but very tergnatung on how people see and use. It is man who is decisive.*

9) *The law is always in the process to continue to be the (law as a process, law in the making) ibid, h. 88-89.*

⁴⁶³ Satjipto Rahardjo, *Progressive Law, Law That Frees, Progressive Law Journal, PDIH Semarang, Volume I No. 1, April, 2005, p. 5.*

- b. The weaknesses of imprisonment in the penal system in Indonesia when this happens because not happened continuum (cooperate) of the elements of the correctional system
- c. Reconstruction of the implementation of the criminal justice system valuable correctional needs to be done in the correctional system.

2.Suggestion

- a. Pembinaan patterns in prisons should no longer use the pattern for prison.
- b. PLT should be treated as a convict who is undergoing training to be promoted back.
- c. Law should be reconstructed into a criminal imprisonment pemsyarakatn.

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