

The Relevance of Criminal Close to the Modern Criminal Justice System

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Article	Abstract.
Keywords: Concealment; Crime; Criminal; Punishment. Article History Received: 2022-11-24; Reviewed: 2022-12-02; Accepted: 2022-12-22; Published: 2022-12-23. DOI: 10.30659/jdh.v%vi%i.27 612	<i>This study aims to know the application of cover-up punishment in Indonesia has been regulated and as a legal basis for cover-up punishment can be seen first of all in Act No. 20 of 1946. Coverage punishment as the main crime appears through Act No. 20 of 1946 RI News II No. 24. In this article, the punishment for imprisonment is added for the Criminal Code and the Criminal Code. This punishment can be imposed on perpetrators who have committed criminal acts, but are motivated by intentions that deserve respect. Covering this system of criminal threats of cover up, it is clearly not adhered to in the Criminal Code. With the development of regulations regarding criminal law which contain new and increasingly progressive provisions, cover-up punishment still fills a place in the current list of principal crimes. In fact, the Draft Criminal Code which is currently being discussed as the Priority National Legislation Program (Prolegnas) still contains the existence of a cover-up crime as a form of principal crime. Coverage punishment, if it is related to the purpose of punishment according to the new Criminal Code Concept, it appears that the most prominent purpose of covert punishment is the protection of society. Judging from the background of the establishment of a cover sentence, there is no similarity in moral ideas from previous and future events, there are no limitations on the extent to which the intention of deserving respect can be used.</i>

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1. Introduction

Indonesia is a country of laws. All actions committed by Indonesian citizens must be tried and subject to sanctions according to applicable regulations. Cases that often occur in society are criminal offenses. These criminal offenses include criminal acts that are prohibited according to the rule of law and are punishable by a fine.

These laws are rules that are deliberately made to regulate people's lives and

are coercive, meaning that every citizen must be willing to obey every existing rule. That way every act that violates these rules as a consequence will receive a reward or punishment as a reaction from the will of the community towards the perpetrators of criminal acts.¹

The existence of criminal law is like a double-edged sword, on the one hand it aims to protect a person's human rights, but on the other hand it deprives a person of human rights as well. Criminal law is present as the embodiment of state action when a crime occurs that disturbs the community which aims to present justice and stay away from injustice.² The inclusion of the definition of an act classified as an offense and the sanctions against this offense in criminal law makes criminal law part of the state's repressive weapons.³ In other words, the crime becomes a reactive action for the offense in the form of imposing sorrow on the perpetrators of the offense committed by the state.⁴

The application of cover-up punishment in Indonesia has been regulated and as a legal basis for cover-up punishment can be seen first of all in Act No. 20 of 1946, the Preamble stated as follows :

“...it is necessary to introduce new principal punishments, apart from those punishments referred to in Article 10a of the Criminal Code and Articles 6a KUHPM (1).’

Concealment punishment as the main crime appears through Act No. 20 of 1946 RI News II No. 24. In this article, the punishment for imprisonment is added for the Criminal Code and the Criminal Code. This punishment can be imposed on perpetrators who have committed criminal acts, but are motivated by intentions that deserve respect. Covering this system of criminal threats of cover up, it is clearly not adhered to in the Criminal Code. A system like this can be found in the KUHPM, namely the permissibility of military judges imposing imprisonment even though the punishment is threatened or vice versa, but only in certain cases.⁵

Up to now, the judge has only sentenced cover-up to the perpetrators of a crime, namely on May 27, 1948 against the perpetrators of the July 3, 1946 coup.

¹ C.S.T. Kansil. *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, cet. Ke-8 Balai Pustaka, Jakarta, 1986, p. 29.

² Jan Rimmelink, *Hukum Pidana Komentar atas Pasal-pasal Terpenting dari KUHP Belanda dan Pidananya dalam KUHP Indonesia*, PT Gramedia Pustaka Utama, Jakarta, 2003, p. 604.

³ David Nelken, “What’s So Special About Criminal Law”, *Journal of Law and Society Critical Legal Studies*, Volume14, Nomor1, 1987, p. 107.

⁴ Roeslan Saleh, *Stelsel Pidana Indonesia*, Aksara Baru, Jakarta, 1978, p. 5

⁵ Teguh Prastyo, *Hukum Pidana Materil*, Jilid I, Kurnia Kalam, Yogyakarta, 2005, p. 135

The July 3, 1946 coup was carried out by Republican fighters at the time, namely: Major General Soedarsono, Mr. Mohamad Yamin, Mr. Achmad Soebardjo, Mr. Iwa Kusuma Sumantri and friends, as well as the article charged with Article 107 of the Criminal Code in conjunction with Article 53 of the Criminal Code.⁶

Theoretically this indictment is understandable, but in practice it is difficult to understand. Why, because article 53 is an article that applies to all criminal acts. In practice treason is only an intention, there is no start of implementation because in treason it is not an issue that the action is not completed because of one's own will. The crime that was proven committed by accused I and II was leading an attempt to overthrow the legitimate government, while the other accused was an attempt to overthrow the legal government. For this reason, the accused were sentenced to imprisonment which ranged between 4 years and 2 years.⁷

In determining whether an act is a political crime, a legal expert, Hazewinkel Suringa, put forward four theories, namely:

1. Objective Theory or Absolute Theory. This theory suggests that political offenses are aimed at the state and the functioning of state institutions.
2. Subjective Theory or Relative Theory. According to this theory, basically all general crimes committed with a political purpose and background are political crimes.
3. Predominant Theory. This theory limits the broad understanding of political crime.
4. Political Incidence Theory. This theory looks at actions that are considered part of a political activity.

The four theories are not only required to determine whether an act constitutes a political crime, they are also required in terms of carrying out extradition. In the regulation regarding crimes against state security contained in the Indonesian Criminal Code, the Objective Theory is adhered to, in addition to the Subjective Theory in Act No. 11 PNPS of 1963 concerning the Eradication of

⁶ Saud Tua Marpaung, Eksistensi Pelaksanaan Pidana dan Pemidanaan Pidana Tutupan, *Reformasi Hukum*, Vol. XXIV No. 1, Januari-Juni 2020, P.97-113

⁷ Sianturi, S.R. *Hukum Penitensia di Indonesia*. Pusat Studi Hukum Militer Sekolah Tinggi Hukum Militer AHM-PTHM, Jakarta, 2013, p. 114

Subversion Activities.⁸

With the development of regulations regarding criminal law which contain new and increasingly progressive provisions, cover-up punishment still fills a place in the current list of principal crimes. In fact, the Draft Criminal Code which is currently being discussed as the Priority National Legislation Program (Prolegnas) still contains the existence of a cover-up crime as a form of principal crime. Article 78 paragraph (1) of the 2015 Draft Criminal Code also stipulates that: "A person who commits a crime punishable by imprisonment, considering his personal circumstances and actions may be subject to a closed sentence". If you look at this formulation, the problem that arises is the absence of parameters of personal circumstances and what kind of action classification can be subject to a penalty of imprisonment. Thus, these provisions appear so blurry and subjective to implement.

2. Research Methods

This research is normative legal research.⁹ This research is based on written normative legal studies and is supported by legal literature on the crime of concealment in Indonesia. This research is descriptive in nature because it provides descriptions to show a complete description of the legal situation that applies in a certain place and at a certain time. Meanwhile, it is referred to as evaluative research because it aims to provide an assessment of the activities or programs that have been carried out.¹⁰

3. Results and Discussion

3.1. The Relevance of Closing in the Modern Criminal Justice System

The cover-up punishment that was created in the early days of Indonesian independence was to accommodate political crimes that occurred at that time. This is because at that time there were political figures who held a "social revolution". The political figures referred to here are figures who at that time were partners in the struggle of the leaders of the Republic of Indonesia in achieving independence. Thus, it is considered that it is not appropriate to equalize their position with other criminals.¹¹

⁸ Djisman Samosir, *Pidana Tutupan dalam peristiwa Juli 1946* <http://notesoflaw.blogspot.com/2010/11/pidana-tutupan-dalam-peristiwa-3-juli.html>

⁹ Sri Mamudji, *Metode Penelitian dan Penulisan Hukum*, Badan Penerbit Fakultas Hukum Universitas Indonesia, Depok, 2005, p. 9-10

¹⁰ *Ibid* p. 4

¹¹ Sudarto, *Hukum Pidana dan Perkembangan Masyarakat*, Sinar Baru, Bandung, 1983, p. 72-73

If seen from its implementation, the crime of concealment can be concluded as a crime of deprivation of liberty. Closing punishment is a manifestation of how to run a crime (*strafmodaliteit or strafmodus*).¹² Punishment punishment in the theory of sentencing purposes belongs to the combined theory, namely the absolute theory and the relative theory. Condemnation as a retaliation is something that can be morally justified. This is because the crime is a form of someone's responsibility for the evil deeds he has done. Furthermore, this aims to avoid harm or loss that will be experienced by innocent victims.¹³ Condemnation punishment can also be classified into objective or relative theory because it requires useful goals that can be achieved from its imposition. The convict punishment carried out at the *Rumah Tutupan* has clearly separated the convict from the people closest to him and his environment. In addition, convicts as part of society cannot carry out their lives as usual. From the imposition of a cover-up sentence, it can be seen that what actually needs to be done is to separate the convict from social life.

The implementation of imprisonment is different from prison because it is placed in a special place called *Rumah Tutupan*, which is generally handled by the Minister of Defense (Article 3 paragraph [1] PP 8/1948). Although the implementation is different, the occupants of the *Rumah Tutupan* are also required to carry out the work ordered by them with the type of work regulated by the Minister of Defense with the approval of the Minister of Justice (Article 3 paragraph [1] Law 20/1946 jo. Article 14 paragraph [1] PP 8/1948). The occupants of the *Rumah Tutupan* may not be employed on Sundays and holidays, unless they themselves so wish (Article 18 paragraph [1] PP 8/1948). In addition, the occupants of the *Rumah Tutupan* must be treated politely and fairly and with calm (Article 9 paragraph [1] PP 8/1948).¹⁴

According to Maro Anael, special or special treatment of closed convicts is included in *custodia honesta* or separate treatment in correctional institutions abandoned after the 2nd world war. According to him, the legislation that came later regarding political crimes focused on ensuring protection of the life of the state, in general no longer limiting criminal sanctions to the activities of someone who violently tries to overthrow a government.¹⁵

Giving preferential treatment to convicts who are sentenced to imprisonment

¹² Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep RKUHP Baru)*, Kencana, Jakarta, 2011, p. 166.

¹³ Jerry Cederblom, "The Retributive Liability Theory of Punishment", *Public Affairs Quarterly University of Illinois*, Vol 9, No 4, 1995, p. 306-307

¹⁴ Imam Hadi, *Mengenai Pidana Tutupan*, <https://www.hukumonline.com/klinik/a/pidana-tutupan-lt50c2ee2cbcf46>

¹⁵ Oemar Seno Adji, *Hukum- Hakim Pidana*, Erlangga, Jakarta, 1969, P. 136-137

for imprisonment because according to Barda Nawawi positions criminal imprisonment as one of the criminal reforms or a form of modification of political crimes which are sentenced to imprisonment for imprisonment, an act must be motivated by intentions that are worthy of respect (*custodia honesta*). This is also in line with the concept of the United Nations which avoids the crime of deprivation of liberty in the form of imprisonment so that other alternatives must be presented to impose a sentence.¹⁶

So it is appropriate that the punishment for cover-up regulated in Law Number 20 of 1946 concerning Closing Punishment is not detailed and there are no limitations related to the criteria for an act because it is motivated by intentions that deserve respect (*Custodia Honestata*) such as for reasons of improving the homeland and nation, so that can be the basis for judges to decide on a case/criminal action based on respectable actions.

Regarding the relevance of the crime of imprisonment with the aim of punishment, reference is made to the purpose of punishment which was formulated in the 1991/1992 draft of the new Criminal Code. Because in formulating the objectives of the punishment, of course the experts have conducted an in-depth study and are rooted in the life of the Indonesian people themselves which are based on Pancasila. It as the nation's view of life and as a source of all sources of law, including sources of criminal law, is a benchmark in determining what is acceptable in the Indonesian legal system or in other words Pancasila must be reflected in the purpose of the punishment. It is important to point this out so that in assessing the association of cover-up crimes with the aim of punishment, it remains in the context of views that are in accordance with the social conditions of Indonesian society. The purpose of sentencing in the RKHUP in Article 54 which states that sentencing has a purpose:

- a) Preventing the commission of criminal acts by enforcing legal norms for the protection of society;
- b) Socializing the convict by providing coaching so that he becomes a good and useful person;
- c) Resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of peace in society; and
- d) Release the guilt of the convict.

¹⁶ Nasrullah, *Kajian Yuridis Pidana Tutupan Perspektif Hermeneutika Double Movement*, *Legal Spirit*, Vol. 3, No. 2, 2019, p. 1-14

If the purpose of cover-up punishment is related to the purpose of punishment according to the new Criminal Code Concept, it appears that the most prominent purpose of cover-up punishment is public protection. With the application of imprisonment, it is hoped that the impact of general prevention will have on society, while the placement of convicts in confinement houses contains a special prevention dimension through rehabilitation and resocialization of convicts so that they become better and more useful. Regarding the purpose of punishment in the form of conflict resolution, restoring balance and signing a sense of peace in society, which is in line with the view of customary law, covert punishment as well as other types of punishment functions as an "customary reaction" to crimes that have occurred.¹⁷

3.2. Effectiveness of Condemnation in the Criminal Justice System

The characteristic that distinguishes punishment from imprisonment which is equally a form of crime for deprivation of liberty is the existence of an element of intent that deserves respect in its regulation. This element is an element that must be present in the defendant so that he can be sentenced to a closed sentence and not a prison sentence. Since the enactment of Law Number 20 of 1946 concerning Closing Punishment, the element of intention that deserves respect has become a requirement for imposing or imposing capital punishment. Even so, the law does not provide further explanation regarding what kind of criminal act arises from an impulse worthy of respect.

Although the element of intention that deserves respect is not a new characteristic in the formulation of covert punishment arrangements, this element still raises debates in its understanding and implementation. The element of intention that deserves respect is seen as an ambiguous formulation and has the potential to be interpreted differently. Indeed, if you only look at the editorial, equating an understanding of the elements of intent that should be respected becomes a difficult thing. This is because the cover-up punishment was imposed on the perpetrators of the crime, so what kind of crime can be considered as an act that arises because of an intention that deserves respect. Furthermore, what kind of motivation can be considered as something worthy of respect. This statement is what needs to be answered in making arrangements regarding the punishment of imprisonment so that it can be implemented.

According to Article 87 of the Criminal Code, it is said that there is treason to carry out an act from the start of the implementation, as referred to in Article 53 of the Criminal Code. This act of "treason" means different from "trial". If the meaning of "treason" is synonymous with "trial", of course the legislators will not formulate

¹⁷ Djisman Samosir, *Op Cit.*

Article 87 of the Criminal Code to mean whether the act was completed or not completed, but everything has been included in the making which has been perfectly carried out as well as trials, and for that it is threatened with the maximum penalty is the same. Cover punishment is provided for perpetrators of political crimes who commit crimes for reasons that deserve respect, but in terms of current judicial practice, cover-up punishment has never been applied again.

This raises a dilemma in the imposition of cover-up punishment. In terms of the background of the establishment of cover-up punishment, there is no similarity in moral ideas from previous and future events, and there are no limitations on the extent to which the intentions worthy of respect can be used.¹⁸

If you look at the definition of cover-up punishment as explained by Mardjono Reksodiputro, it can be understood that the initial idea of cover-up punishment in the RKUHP was to provide better treatment to a convict whose actions were committed because the motive deserved respect. So, when examining the explanation above, it can be understood that there is the shift in the aim of cover-up punishment, namely from previously to isolate convicts from society in order to avoid the bad influence of convicts on society, is now an attempt to provide better treatment for convicts who commit crimes with honorable motives. Because of this honorable motive, the convict may be subject to a closed sentence which is actually a crime of deprivation of liberty with better treatment in serving his sentence. Furthermore, for the prospect of carrying out this cover-up crime, it can actually be carried out in Correctional Institutions. However, considering the overcrowded data that occurs in many Correctional Institutions in Indonesia, the next task for the Government is to overcome this for the needs of criminal closure.¹⁹

4. Conclusion

The Relevance of Confinement Crimes in the Modern Criminal Justice System, when it is associated with the purposes of imprisonment according to the new Criminal Code Concept, it appears that the most prominent objective of closed sentences is the protection of society. With the application of imprisonment, it is hoped that the impact of general prevention will have on society, while the placement of convicts in confinement houses contains a special prevention dimension through the rehabilitation and resocialization of convicts so that they become better and more useful. The Effectiveness of Covert Punishment in the

¹⁸ Fina Febriyanti, dkk, Efektivitas Hukum Pidana Tutupan Sebagai Sanksi Pidana Dalam Pembaharuan Hukum Pidana Indonesia, *S.L.R* Vol.3 (No.4), 2021, p. 628-635

¹⁹ Nadia Salsabila Hartindan Nathalina, Urgensi Pidana Tutupan: Harapan Dan Tantangan, *Jurnal Ilmiah Hukum De'Jure*, Vol 4 No. 2, 2019, p. 282-299

Criminal Justice System, Covert Punishment is provided for perpetrators of political crimes who commit crimes for reasons that deserve respect, but in terms of current judicial practice the cover-up punishment has never been applied again. Judging from the background of the establishment of a cover sentence, there is no similarity in moral ideas from previous and future events, there are no limits to the extent to which the intention of deserving respect can be used.

5. References

Journals:

- [1] David Nelken, "What's So Special About Criminal Law", *Journal of Law and Society Critical Legal Studies*, Volume 14, No. 1, 1987,
- [2] Fina Febriyanti, dkk, Efektivitas Hukum Pidana Tutupan Sebagai Sanksi Pidana Dalam Pembaharuan Hukum Pidana Indonesia, *S.L.R Vol.3 (No.4)*, 2021,
- [3] Jerry Cederblom, "The Retributive Liability Theory of Punishment", *Public Affairs Quarterly University of Illinois*, Vol 9, No 4, 1995,
- [4] Nadia Salsabila Hartindan Nathalina, Urgensi Pidana Tutupan: Harapan Dan Tantangan, *Jurnal Ilmiah Hukum De'Jure*, Vol 4 No. 2, Thn 2019,
- [5] Nasrullah, Kajian Yuridis Pidana Tutupan Perspektif Hermeneutika Double Movement, *Legal Spirit*, Vol. 3, No. 2, 2019,
- [6] Saud Tua Marpaung, Eksistensi Pelaksanaan Pidana dan Pemidanaan Pidana Tutupan, *Reformasi Hukum*, Vol. XXIV No. 1, January-June 2020,

Books:

- [1] Barda Nawawi Arief, 2011, *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep RKUHP Baru)*, Kencana, Jakarta,
- [2] C.S.T. Kansil. 1986, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, cet. Ke-8 Balai Pustaka, Jakarta,
- [3] Jan Remmelink, 2003, *Hukum Pidana Komentar atas Pasal-pasal Terpenting dari KUHP Belanda dan Pidananya dalam KUHP Indonesia*, PT Gramedia Pustaka Utama, Jakarta,
- [4] Oemar Seno Adji, 1969, *Hukum- Hakim Pidana*, Erlangga, Jakarta,
- [5] Roeslan Saleh, 1978, *Stelsel Pidana Indonesia*, Aksara Baru, Jakarta,

- [6] Sianturi, S.R. 2013, *Hukum Penitensia di Indonesia*. Pusat Studi Hukum Militer Sekolah Tinggi Hukum Militer AHM-PTHM, Jakarta,
- [7] Sri Mamudji, 2005, *Metode Penelitian dan Penulisan Hukum*, Badan Penerbit Fakultas Hukum Universitas Indonesia, Depok,
- [8] Sudarto, 1983, *Hukum Pidana dan Perkembangan Masyarakat*, Sinar Baru, Bandung,
- [9] Teguh Prastyo, 2005, *Hukum Pidana Materil*, Jilid I, Kurnia Kalam, Yogyakarta,

Internet:

- [1] Djisman Samosir, *Pidana Tutupan dalam peristiwa Juli 1946*
<http://notesoflaw.blogspot.com/2010/11/pidana-tutupan-dalam-peristiwa-3-juli.html>
- [2] Imam Hadi, *Mengenai Pidana Tutupan*,
<https://www.hukumonline.com/klinik/a/pidana-tutupan-lt50c2ee2cbcf46>