

## Reconstruction of Life Imprisonment in Prison System in Indonesia

**Boma Wira Gumilar<sup>1</sup>, Gunarto<sup>2</sup> and Akhmad Khisni<sup>3</sup>**

**Abstract.** The most important part in a Book of Criminal Law (Penal Code) is a prison, because the prison contains rules about the size and implementation of the criminal. The position of life imprisonment in the national criminal justice system is still considered relevant as a means of crime prevention, it can be seen from the number of offenses punishable with life imprisonment. However, life imprisonment is considered contrary to the penal system. This study aims to investigate the implementation of life imprisonment, weaknesses, and the solution in the future. The approach used in the study is a non-doctrinal legal research with socio-legal research types (Juridical Sociological).

The results of research studies show that life imprisonment is contrary to prison system, and life imprisonment become an obstacle to fostering convicts back into society. Bill Criminal Code of September 2019 can be used as a solution to life imprisonment change in the future. Presented advice, in order to be disseminated to the application of the criminal purpose of the Criminal Code of Prison adopted in the future, so that the public and experts no longer make the criminal as a form of retaliation.

**Keywords:** Reconstruction; Crime; Prison; Life Imprisonment; System; Corrections.

### 1. Introduction

The law is the overall norms of life, develop, and apply in social life which contains the commands and prohibitions that take care of the order of a society. Laws made in order to protect the interests of certain people and to create an order, feel safe and comfortable in social life.

The state as a social organization of the strongest and highest, the only countries that hold the rights to criminal law enforcement in both the right to demand the punishment against any person who has allegedly violated the rules of criminal that has been formed by a body shaper Act and the right to run the offense to whoever the state has been convicted and punished for his mistakes it<sup>4</sup>,

The most important part in a Book of Criminal Law (Penal Code) is a prison. Prison offenses contained in the Criminal Code can be used as a measure to what extent the level of civilization is concerned, because the prison contains rules about the size and implementation of the criminal. From the type, size and how to implement it can be assessed how the attitude of the nation through the establishment of laws and the government against its own citizens or to foreigners who have violated criminal laws.<sup>5</sup>

Imprisonment is one kind of punishment imposed in the Criminal Code. According Koesnoe as quoted Barda Nawawi Arief, imprisonment was unknown in Indonesia

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<sup>1</sup> Student of Master of Law, Universitas Islam Sultan Agung Semarang and Attorney, email: [bomawira\\_gumilar@yahoo.com](mailto:bomawira_gumilar@yahoo.com)

<sup>2</sup> Lecturer of Master of Law, Faculty of Law, UNISSULA, Semarang

<sup>3</sup> Lecturer of Master of Law, Faculty of Law, UNISSULA, Semarang

<sup>4</sup> Adami Chazawi, 2002, *Pelajaran Hukum Pidana 2*, PT RajaGrafindo Persada, Jakarta, p. 151.

<sup>5</sup> Sudarto, 1981, *Hukum Dan Hukum Pidana*, Alumnus, Bandung, p. 21.

when the VOC (*Verenigde Oost Indische Compagnie*) introduced institution "jail/prison" in 1602 and then during the days of the Dutch East Indies became imprisonment.<sup>6</sup>

The position of life imprisonment in the national criminal justice system more robust in the presence of unification WvS (*Wetboek van Strafrecht*) in Indonesia with Stb. 1915 - 732 which came into force on 1 January 1918. With the enactment WvS in Indonesia, the official position of imprisonment, including life imprisonment to be one type of criminal in national criminal law.

Crime prevention with the use of criminal law is the best method as old as human civilization itself. The presence of criminal sanctions in crime prevention criticism, stating that the criminal is the response of our inhumanity in the past (vestige of our savage past)<sup>7</sup>, which should be avoided. That is because the criminal is part of the practice of humans' treatment of another human being as cruel as burned alive, stoned to death, drowned in the sea, or decapitated neck with a sword. This criticism led to the emergence of criminal abolition movement you want replaced with action (*treatment-maatregelen*), otherwise known as "Abolitionist Movement".

Implementation of imprisonment through the correctional system is a series of law enforcement aimed at keeping prisoners realized his mistake, improve ourselves and not to repeat the criminal act that can be received by the community, and can play an active role in development, and can live naturally as citizens nice and responsible.

With the above background, the writer interested to do research with the title: Reconstruction Of Life Imprisonment In Prison System In Indonesia.

Based on the background exposure above problem, formulated issue this study as follows:

- How the implementation of life imprisonment in positive law system in Indonesia at this time?
- What are the weaknesses of the imposition of life imprisonment in the criminal system and the prison system in Indonesia?
- How is life imprisonment solutions of positive law in future?

## Research methods

This study is a non-doctrinal law with the kind of socio legal research (Juridical Sociological). A study conducted on the real state of the public with the intent and purpose of finding facts, which then leads to the identification of the problem, and ultimately lead to the settlement of problems.<sup>8</sup> Legally by reviewing legislation and regulations relating to policy development in prisons, among other clauses in the Act No. 12 of 1995 concerning Corrections. In sociology by looking at the reality on the ground related to the issue that will be examined in light of the adoption of the law.

## 2. Results And Discussion

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<sup>6</sup> Barda Nawawi Arief, 1996, *Kebijakan Legislatif dan Penanggulangan Kejahatan dengan pidana Penjara*, Badan Penerbit Universitas Diponegoro Semarang, Semarang, p. 52.

<sup>7</sup> Muladi and Barda Nawawi Arief, 1984, *Teori-teori dan Kebijakan Pidana*, Alumni, Bandung, p. 150.

<sup>8</sup> Soejono Soekanto, *Pengantar Penelitian Hukum*, Jakarta, UI Press, 1982, p. 10.

## 2.1. The Implementation of Life Imprisonment in Positive Criminal Justice System In Indonesia

### 2.1.1. Position and arrangement of PSH in the Criminal Code

Early this research paper with a discussion of life imprisonment, not inspired by the case Reynhard Sinaga was widely reported in the media, since the case came after the authors will finalize the report on this study, however, the Reynhard Sinaga case can be used as material for comparison with life imprisonment.

Reynhard Tambos Maruli Tua Sinaga<sup>9</sup>, (Born February 19, 1983), Man from Indonesia, sentenced to life imprisonment by the Court of Manchester, England for rape. As proclaimed exclusive reports BBC, Reynhard Sinaga involved 159 cases of sexual abuse against 48 male victims, over a span of two and a half years from January 1, 2015 to June 2, 2017. Some 136 of the 159 cases of sexual assault is rape cases. In which some of the victims were raped repeatedly. Based on the British legal system, the identity of rape victims, including name can not be revealed for life unless the victim chooses to open his identity. British prosecutor institutions assess Reynhard Sinaga case as "the most prolific rapist" or most rape cases in British legal history. The judge ruled "a life sentence, which include a minimum of 30 years in prison,

According to Article 10 of the Code of Penal (Penal Code) as positive law in Indonesia, imposed criminal consists of (1) the principal criminal and (2) additional penalty, and policies that could be seen that the composition of criminal sorted from the heaviest to the lightest. Differences criminal principal and additional penalty is also clear that (1) the criminal can be added to the criminal principal with the exception of deprivation of certain goods handed over to the state, (2) additional penalty is optional, meaning that if the judges believe the criminal offense and the guilt of the accused, then the judge must not impose additional penalty, except for Article 250 and Article 275 of the criminal Code (deposit bonds, certificates, dividends, interest of the country with the intent to commit a crime) which is imperative, that the judge must convict the principal if a crime and error defendant proved.

Life Imprisonment or for a certain time in accordance with Article 12 paragraph (1) Penal Code imprisonment for a certain time of the day is the shortest and the longest fifteen consecutive years under Article 12 paragraph (2) of the Criminal Code.

If considered a criminal arrangement (*strafstelsel*), both the principal and additional criminal punishment as above, then how general Criminal Life (*PSH*) is not explicitly listed (firmly) arranged in the order of the criminal (prison) on Article 10 of the Criminal Code. However *PSH* included in Article 12 paragraph (1) of the Criminal Code. Imposition of *PSH* acceptable but with a number of criticisms. The reason according to according to (former) Minister of Justice Netherlands Modderman, namely<sup>10</sup>:

Because the criminal thus will not be useful (effective). However, because the fear of the death penalty re-entry into the legal system (the Netherlands), then include any

<sup>9</sup> See: <https://tirto.id/reynhard-sinaga-pemerkosa-136-pria-di-inggris-dihukum-seumur-hidup-eq9o> See also <https://tirto.id/reynhard-sinaga-dibui-seumur-hidup-perkosa-ratusan-pria-di-inggris-eq9l> See also <https://nasional.tempo.co/read/1291968/reynhard-dihukum-seumur-hidup-kbri-hormati-pengadilan-inggris> See also <https://www.bbc.com/indonesia/dunia-50718337> see also <https://www.bbc.com/indonesia/dunia-50733361>, Accessed on January 13, 2020.

<sup>10</sup> Dwidja Priyatno, op.cit, p 73.

criminal sanctions, namely the act of making the convict permanently powerless poena proxima morti (criminal closest to the death penalty).

In the sense of pure juridical, *SH* will mean throughout their lives. Only through an extraordinary legal remedy, pardon, *PSH* can be converted to imprisonment for 20 years while e.g.<sup>11</sup>

Under the provisions of Article 12 of the Criminal Code of the above, it turns out that the provision of *PSH* only regulated in one paragraph only, namely Article 12, paragraph (1), and the setting was not as detailed arrangements *PSH* imprisonment for a certain time. For this purpose the necessary arrangements *PSH* implementation, although there are quite a lot of crime in the Book II of the Penal Code which carries a *PSH*. Tongat<sup>12</sup> No inventory of 8 (eight) type (group) Offense (crime) in Book II of the Penal Code which carries a *PSH* as follows:

**Table 1**  
**Crime Type in the Criminal Code**

**Its Threatened With *PSH***

No.	Crime Type	Article of the Criminal Code
1.	Crime of Against State Security	104, 106, 107 (2), 108 (2), 111 (2), 124 (2), 124 (3)
2.	The criminal action against countries friendly and against the head of State	140 (3)
3.	Crime endanger all public's interest	187 ke-3, 198 ke-2, 200 ke-3, 2002 (2), 204 (2)
4.	Criminal Acts Against Life	339, 340
5.	Crime of Theft with all at home or Threats of Violence	365 (4)
6.	Crime of Extortion and threats	368 (2)
7.	Crime of Sailing	444
8.	Crime of Air Force	479 f sub b, 479 k (1), (2) 479 (1), (2)

Table 1 above shows that out of 19 (nineteen) of the offenses in Book II of the Penal Code of *PSH* 9 (nine) of the offenses threatened as an alternative to capital punishment. (1) a criminal act caused the aircraft was destroyed, the dead, (2) the crime of violence caused someone in the ship was attacked, captain, leader and those who participate, (3) the crime of extortion and threats, (4) the crime of theft with violence, (5) the crime of murder, (6) the crime of treason against the life of the plan in advance, (7) the crime of giving aid to the enemy during the war, (8) a criminal offense relating to the enemy in war, (9) a criminal offense treason against the president or vice president.

Besides, in terms of a crime and criminal threat, then *PSH* terms of the policy formulation system settings criminal sanctions, it turns out in the Criminal Code of *PSH*

<sup>11</sup> Jan Rimmelink, 2003, *Hukum Pidana*, Gramedia Pustaka Utama, Jakarta, p.465.

<sup>12</sup> Tongat 2004, *Pidana Seumur Hidup Dalam Sistem Hukum Pidana di Indonesia*, Universitas Muhammadiyah Malang, UMM Press. Malang, p. 81.

always threatened to form an alternative formulation. One consideration is the *PSH* including the types of criminal sanctions are the toughest one rank below the death penalty. Therefore, it is difficult to imagine, and feel very heavy when placing shape regulatory policy formulation in the form of criminal sanction *PSH* with a cumulative formulation system or a combination (mixture, combined).

### 2.1.2. Position and arrangements of *PSH* Outside of the Criminal Code

*PSH* settings other than the Criminal Code, is also regulated (listed) in a variety of legislation outside the Criminal Code. For analysis by 4 (four) legislation outside the Criminal Code which load and set the *PSH* criminal sanction that will be revealed, namely (1) of Act No. 12 / Drt / 1951 on Firearms and Explosives, (2) Act No. 5 of 1997 on Psychotropic Substances, (3) of Act No. 22 of 1997 on Narcotics, and (4) of Act No. 31 of 1999 on Corruption.

## 2.2. Imposition of Criminal Weaknesses of Life Imprisonment And Punishment System In Penal System of Indonesia

Specifically about the criminal life, Barda Nawawi Arief, found<sup>13</sup>: Life Imprisonment (*SH*) as well as the death penalty, basically a kind of absolute criminal.

Therefore, life imprisonment is still classed as, a criminal who is certain (definite sentence) because the criminal imposed definitive period (a definite period of time) that is undergoing a criminal all his life, even though people do not know for sure how long his life on earth this.

Because of uncertainty about the life of a convict sentenced for life that, then raised another opinion that life imprisonment is actually kind of criminal uncertain (indeterminate sentence). This view of life imprisonment as an indeterminate sentence is supported also by the absence of explicitly defined in the Criminal Code concerning limits on the term of life imprisonment. In Article 12 of the Criminal Code only specified that the deadline of imprisonment for a specified time that is at least one day and a maximum of 15 (fifteen) years in a row, and the basic limitation period of criminal, which gives minimum limit (*straf minima*) and maximum (*straf maxima*).

In doctrinal life imprisonment commonly interpreted as a criminal for life, or often referred to as absolute criminal. Traced the history of the criminal system and the criminalization of the history of Majapahit did not record their imprisonment, including life imprisonment. Imprisonment of newly known as VOC (*Verenigde Oost Indische Compagnie*) introduced institution jail in 1602 followed the Dutch East Indies era into imprisonment. The existence of imprisonment increasingly exist in the criminal justice systems in Indonesia with unification of WvS (*Wetboek van Strafrecht*) in Indonesia with Stb. 1915-732 which took effect January 1, 1918.<sup>14</sup>

*PSH* criminal policy in the criminal law system in Indonesia that have so far not implemented the idea or ideas monodualistic as basic values in Indonesian society. Unimplemented monodualistic values in *PSH* in legislative policy in Indonesia is not

<sup>13</sup> Barda Nawawi Arief, 2008. *Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru*, Kencana Prenada Media Group. Jakarta, p. 226.

<sup>14</sup> Diah Gustiniati Maulani, 2011, "*Pidana Penjara Seumur Hidup Dalam Sistem Pemasarakatan*", *Journal praevia*, Vol. 5, No. By January 1-June 2011, Lampung, p. 53-54.

able to provide the balance of protection to individuals and to society. Inability criminal integrative *PSH* provide protection to individuals and society appears from the fact as follows<sup>15</sup>:

- Policy on life imprisonment in criminal law in Indonesia, both in the Criminal Code and the Act outside the Criminal Code including the provisions or rules of procedure tend to only oriented towards the protection of society as a reflection on the function of the criminal as a means of crime prevention.
- *PSH* criminal policy in legislation in Indonesia does not provide the possibility of modification for consideration of changes or improvements to themselves perpetrators of criminal acts while undergoing criminal.

### 2.3. Criminal Solution of Life Imprisonment In Criminal Law Positive Future to Come

The views of the purpose of punishment is not really loose and closely associated with the development of theories of punishment. Traditionally, theories of punishment in general can be divided into two groups of theories, namely the theory of Absolut or retaliation (retributive), and Theory of Relative or Purpose (Utilitarian). Both of these theories do not escape also from the growing influence of the two schools / streams in criminal law. Both of these ideas are classic and positive thinking.

Based on the concept of the Penal Code Book I of the year 1982/1983, the purpose of the criminal formulated as follows<sup>16</sup>:

- Punishment aims to:
  - To-1 prevented any crime by enforcing legal norms for the sake of the community shelter;
  - 2nd conduct correction of the convict and thus make people good and useful, as well as being able to live in a society;
  - 3rd resolving conflicts that arise by crime, restore balance and bring a sense of peace in the community, to relieve guilt-4 on the convict.
- Criminalization is not intended to humiliate human dignity.

As noted above, Indonesia itself in positive law had never formulates the objective of sentencing. During this discourse on the purpose of punishment is still in the theoretical level. Given the importance of the criminal purpose as a guideline in giving or convict, then in the draft Criminal Code draft-September 2019 were formulated in article 51 of the Penal Code Bill-September 2019, it has been agreed that the purpose of punishment is<sup>17</sup>:

- preventing the use of Crime by enforcing legal norms for the sake of protection and protection of society;
- socializing convicted by conducting coaching and mentoring in order to be good and useful;
- resolve conflicts caused by Crime, restore balance, and bring a sense of security and peace in the society; and

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<sup>15</sup> *Loc.cit.*

<sup>16</sup> *Loc.cit.*

<sup>17</sup> The concept of the Criminal Code of the National Edition of September 2019, see also Mahrus Ali, p. 192. Also read, Muladi and Barda Nawawi Arif, p.24-25. Also, Dwidja Priyatno, p. 28-29.

- foster a sense of remorse and guilt freeing the convict.

Based on the formula criminal purpose as defined in the Criminal Code draft-September 2019, is in line with Act No. 12 of 1995 About Corrections. Similarly, in relation to criminal *PSH*, in line with the criminal purpose identifies, Bill-September 2019 Penal Code stipulates that the criminal can be turned into a criminal *PSH* 20 (twenty) years, or the provisions mentioned in Article 69.

### 3. Closing

#### 3.1. Conclusion

- Implementation of life imprisonment in positive law system in Indonesia at this time prior to the enactment Presidential Decree No. 174 of 1999 concerning Remission was absolute, which is not fair because it is not in line with the penitentiary system, while after the promulgation of Presidential Decree No. 174 of 1999 concerning Remission, this regulation would have the injustice, because remission can be granted to the convict *PSH* equate of crime *PSH* the convict prison suspended for 20 (twenty) years.
- The inadequacies of the imposition of life imprisonment in the criminal system and the prison system in Indonesia are inherently paradoxical with the penal system regulated in Act No. 12 of 1995 regarding Corrections, the enactment Presidential Decree No. 174 of 1999 concerning Remission who want to change the nature of absolute criminal *PSH* it gave birth to injustice to convict prison while 20 (twenty) years, since the provisions of the changes stipulated in Presidential Decree No. 174 of 1999 concerning Remission equate criminal *PSH* with imprisonment while 20 (twenty) years.
- Solution life imprisonment in positive law future in Criminal Code draft-September 2019, the *PSH* criminal gradual change, of criminal *PSH* to imprisonment suspended for 20 (twenty) years, does not equate as set forth in Presidential Decree No. 174 of 1999 concerning Remission.

#### 3.2. Suggestion

In line with the objectives and the benefits to be achieved in this thesis legal research, then put forward suggestions as follows:

- In line with the enactment of the legal and political purpose Act No. 12 of 1995 regarding Correctional namely for the rehabilitation of the convict and the purpose of criminal adopted in the Draft Bill-September 2019, should government and the House of Representatives as lawmakers do socialization prior to the purpose of the criminal who want embraced by the Homeland as included in the draft bill-September 2019.
- Before Criminal Code draft-September 2019 was enacted and passed, then it should be a reconstruction of the bill to the Penal Code-September 2019, for the public and legal experts assume there are chapters that are still considered to be controversial.
- Reconstruction of the Criminal Code and the Criminal Code draft-September 2019 which had already been forced to be authorized, should not contradict the theory of

progressive advanced by Satjipto Rahardjo, that the law is for man, not man for the law, as well as the statement of Machfud MD which indicated the existence of chapters and law order, as well as a member of Parliament who expressed no urgency or pressure from the outside to criminalize certain acts.

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