

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Alternative to Prison Institutional Sentence as an Effort to Overcome Overcapacity of Community Institutions (Comparatory Study of Article 58 of The Crime of The State of Albania)

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Abstract. *Handling criminal acts carried out using a retributive paradigm, with repressive action against perpetrators of criminal acts, has resulted in an excess number of prisoners in prisons. One effort that can be made to deal with overcapacity in prisons is a policy approach to resolving criminal acts through prison sentences in installments. Regulations regarding installment prison sentences are not currently regulated in the Indonesian Criminal Code. The concept of installment imprisonment adopts the concept from the Albanian Criminal Code, which is regulated in Article 58 and Article 62 of the Albanian Criminal Code. The concept of reforming criminal law by regulating prison sentences in installments is regulated in the RKUHP in Article 73 Book I to reduce the problems currently facing prisons, namely those related to prison overcapacity. It is hoped that the concept formed by the legislators will be useful, from the advantages described above, such as reducing Over Capacity, overcoming dehumanization, and so on. This installment prison sentence also has a weakness, namely that there is no supervision provided by the government for convicts who are serving installment prison sentences.*

Keywords: *Community; Crime; Institutions; State.*

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1. Introduction

The punishment system consists of the principles and objectives of punishment, the rules of punishment and also the material of the punishment. The foundation of the criminal system in Indonesia cannot be separated from the Criminal Code (KUHP) which was established through Law Number 1 of 1946, which is still a legacy of the Dutch East Indies government. According to the current Criminal Code, it is not formulated in writing regarding the objectives and guidelines for punishment in Indonesia.¹

In Bambang Waluyo's opinion, the criminal system based on the Criminal Code in Indonesia is still repressive-oriented, which means it is still focused on taking action or retaliating against perpetrators of criminal acts. The punishment system in the Criminal Code still adheres to the retributive paradigm, namely providing appropriate retribution to criminals for the crimes they have committed. Based on this retributive paradigm, the aim of punishment is to provide a deterrent effect to perpetrators of criminal acts so that in the future they will no longer commit criminal acts and prevent society from committing criminal acts.²

One application of criminal sanctions in Indonesia is to rely on imprisonment as regulated in Article 10 of the Criminal Code. Crime is the main means of realizing the objectives of punishment in the retributive paradigm, namely creating a deterrent effect on perpetrators and preventing people from committing criminal acts. Apart from that, the concept of imprisonment is also to create a sense of security in society and protect society from crime. However, in practice the concept of punishment through imprisonment is not in accordance with its initial objectives. This happens because imprisonment is the main sanction imposed in punishing perpetrators of criminal acts, as if every perpetrator of a criminal act is sentenced to prison. Also, the aim of imprisonment is to create a deterrent effect on perpetrators, which is less effective because there are still many criminals who, after being sentenced to prison, commit crimes again (recidivist).³

The criminal system must be able to fulfill the sense of justice, usefulness and legal certainty in society. The existing criminal system should also be in line with the values that live and develop in Indonesian society. A criminal system and criminal objectives that are not in accordance with

¹Barda Nawawi Arief, 2016, Policy Formulation of Criminal Provisions in Legislative Regulations, Semarang: Pustaka Magister, p. 7

²Bambang Waluyo, 2017, Law Enforcement in Indonesia, Jakarta: Sinar Graphics, p. 107

³Marlina, 2011, Penitentiary Law, Bandung: Refika Aditama, p. 26

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the initial concept will have a negative impact on social and legal aspects in Indonesia.⁴In connection with this legal aspect, the negative impact that arises is the failure to carry out criminal execution which can have an overcapacity impact on Correctional Institutions (LAPAS) as a place where prisoners are sentenced to prison.

Handling criminal acts carried out using a retributive paradigm, with repressive action against perpetrators of criminal acts, has resulted in an excess number of prisoners in prisons. This can lead to less effective guidance and correctional functions in prisons, less than optimal supervision functions in prisons and the occurrence of many violations of prisoners' rights in prisons. In Romli Atmasasmitha's opinion, he stated that with overcapacity in prisons, this institution cannot carry out its deterrent function for prisoners because there are still many cases of recidivism in Indonesia.⁵

According to data from the Directorate General of Correctional Institutions, Ministry of Law and Human Rights, in June 2021, it was stated that of the 33 Correctional Institutions located at Regional Offices in the Province, as many as 30 Correctional Institution Regional Offices experienced overcapacity and only 3 Correctional Institution Regional Offices did not experience overcapacity. Prisons that do not experience overcapacity are the Regional Office of Corrections in Yogyakarta, the Regional Office of Corrections in North Maluku, and the Regional Office of Corrections in Gorontalo. Meanwhile, according to the numbers, currently there are 266,270 prisoners and the prison capacity is only 135,647 people.⁶

The condition and situation of prison overcapacity can give rise to various problems in prisons, among which have occurred are riots in prisons, burning of prisons, prisoners escaping from prisons, crimes in prisons, and encouraging the development of illegal levies by prison officers. Furthermore, overcapacity of prisoners in prisons causes losses both for prisoners whose rights are not fulfilled, as well as for the state which causes budget losses and social losses. The prisoner overcapacity situation also does not support the existence of healthy prison conditions for training and education for prisoners as an effort to return to society as better individuals. In

⁴Sigit Suseno, 2012, Sentencing System in Indonesian Criminal Law Inside and Outside the Criminal Code, Jakarta: National Legal Development Agency Ministry of Law and Human Rights, p. 2

⁵Romli Atmasasmitha, 2017, "The Principle of No Crime Without Error, No Mistake Without Benefit (Geen Straf Zonder Schuld, Schuld Zonder Nut)", in Paper for Arranging National Level Criminal Law & Criminology Lecturers and Practitioners 2017, Surabaya on November 29-1 December 2017, p. 3

⁶<http://smslap.ditjenpas.go.id/public/grl/current/monthly>

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fact, with this overcapacity situation, prisoners are even more stressed and do not receive proper guidance.

One effort that can be made to deal with overcapacity in prisons is a policy approach to resolving criminal acts through prison sentences in installments. Installment imprisonment is a new concept in criminal law policy in Indonesia which is regulated in the new Draft Criminal Code. This concept adopts a comparison in the criminal law system in Albania, which is regulated in Article 58 of the Albanian Criminal Code. In this article, it is regulated regarding acts that are only punishable by a prison sentence of 1 (one) year in prison, the court can impose a prison sentence in installments by considering the convict's commitment to work, education, professional training, responsibilities towards his family and the convict's medical needs. So this policy is expected to be able to overcome the problem of prison overcapacity in Indonesia

Based on the background above, the author can formulate the problem that will serve as a reference in this writing, namely: How are installment penalties regulated in the Albanian criminal law system? What is the concept of installment prison sentences as an effort to overcome prison overcapacity in Indonesia?

2. Research Methods

This research is legal research, using normative (juridical) legal research methods. This legal research uses a statutory approach and a comparative approach. This research was carried out using primary legal materials, namely in the form of statutory regulations and secondary legal materials in the form of law books and legal journals related to the problem under study. This research uses library and internet studies in collecting legal materials. The legal material analysis technique used is syllogism using deductive logic.

3. Results and Discussion

3.1. Regulation of Installment Penalty in the Albanian Criminal Law System

The legal system in each country, especially with regard to criminal law, has its own characteristics. This can be influenced by the legal system adopted by each country, whether it uses the Continental European legal system or the Anglo Saxon legal system. However, the differences in criminal law systems can be used as a legal comparison in order to examine the extent to which the criminal law system can be implemented in Indonesia. The advantages and disadvantages of each Criminal Code will certainly be very influential in Indonesia's efforts to reform the Criminal Code.

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One interesting comparative study of criminal law is the concept of imprisonment in the Albanian Criminal Code. One of the concepts of imprisonment in the Albanian Criminal Code is the concept of installment imprisonment, which is the implementation of a prison sentence by the defendant but is not carried out continuously. The defendant only served a prison sentence which was carried out only on weekends when he was off work.

. Albania is one of the countries that has regulations governing installment prison sentences, which are clearly regulated in the Albanian Criminal Code. The installment prison arrangements are contained in article 58 of the Albanian Criminal Code which states that:⁷

"For sentences up to one year of imprisonment, the court may, due to the obligations of convict in relation to work, education, qualification or professional training, essential family responsibilities or the need for medical treatment or rehabilitation, murder the execution of the sentence in open prison. The convict serving the sentence in open prison is obliged to return to prison, after carrying out responsibilities outside of prison, within the deadline set out by the court. When the convict does not fulfill the obligations according to this article, Article 62 of this Code shall apply"

The installment criminal regulations in Article 58 of the Albanian Criminal Code states that for a sentence of up to 1 (one) year in prison, the court or judge can consider certain conditions of the convict related to his work duties, related to his education, related to his professional activities, family responsibilities. or the medical needs of the convict, can be imposed by executing the prison sentence in installments. Then the convict who is serving a prison sentence in installments is obliged to return to prison after carrying out his responsibilities outside prison within the time period determined by the court.⁸

However, convicts cannot freely carry out activities in society, because they are convicted criminals in society. The convict can only carry out obligations related to work, education and health. The convict must be able to return to prison, if the convict does not return he will be subject to Article 62 of the Albanian Criminal Code, which regulates the abolition of prison sentences in installments if the convict violates the obligations that have been determined. Article 62 of the Albanian Criminal Code states that:⁹

⁷Muhammad Fauzar Rivaldy and Mety Rahmawati, 2018, "The Concept of Installment Prison Sanctions as an Alternative to New Imprisonment in Efforts to Overcome Over Capacity in Correctional Institutions", Adigama Law Journal, pp. 5

⁸Ibid, p. 6

⁹Ibid,

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“If the conviction, during the term of probation, commits another criminal offense, the court may change the imposed obligations, replace the sentence rendered with another one or revoke fully or partly the suspension decision. If the convict, during the probation term, violates the conditions or obligations that were set, the probation services shall report immediately to the prosecutor. Due to minor violations of conditions and obligations decided by the court, which were committed for the first time, the prosecutor has the right to give a warning, which is registered in the personal file of the convict. For severe and repeated violations, the prosecutor shall request the court to change the imposed obligations, add up other obligations, replace them with other sanctions or revoke the decision for the suspension of the sentence and get the remainder of the sentence to be served in prison”

According to the provisions in Article 62 of the Criminal Code of the Republic of Albania, it is explained regarding violations of the convict's obligations, which states that if the convict, during the probation period, commits another criminal offense, then the court can change the previously determined obligations, and replace them with a decision in accordance with the new offense, or to revoke all or part of the prison sentence in installments. If a convict on probation violates previously established obligations, the supervisor must immediately report this to the public prosecutor. Then, for minor violations of obligations determined by the court, which are committed for the first time, the public prosecutor has the right to give a warning, which will be recorded in the convict's personal record.

In relation to serious and repeated violations, the public prosecutor can ask the court to change obligations, add other obligations, replace them with other sanctions or revoke the decision to prison in installments so that the convict must serve the remainder of his sentence in prison in full.

This arrangement is currently unknown in the criminal system in Indonesia, especially in the current Indonesian Criminal Code. The Indonesian Criminal Code is currently more oriented towards repressive punishment which relies on imprisonment. As a result, prisons in Indonesia which are expected to be able to carry out social reintegration are in a very critical problem where there is an Over Capacity in prisons. Reform of the criminal law system is very urgent to be carried out as well as trying to realize installment prison sentences as the main punishment which This has been regulated in the new RKUHP in book I which is expected to reduce the Over Capacity that occurs in prisons.

3.2. The Concept of Installment Prison Sentencing as an Effort to Overcome Prison Overcapacity in Indonesia

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The concept of punishment in the criminal law system in Indonesia cannot be separated from criminal law policy. Criminal law policies or crime prevention efforts are essentially an integral part of efforts to protect society and efforts to achieve community welfare. Therefore, it can be said that the ultimate goal or main objective of criminal policy is to protect society and to achieve social welfare. Criminal acts are human behavior that is formulated in law, is against the law, is worthy of punishment and is committed with error.¹⁰

Efforts to reform the Criminal Code are not only a national demand but also an international trend. The Criminal Code that is currently used by law enforcers, almost all of it is an "outdated" Criminal Code, so that in its use it is not impossible that it will become an obstacle in their efforts to enforce the law and it is also not impossible, that the use of the Criminal Code that has been Outdatedness will lead to incorrect application of the law, which will ultimately reduce the authority of the law enforcers themselves.¹¹

Reform of the criminal system in Indonesia has currently been carried out by drafting the concept of a new Criminal Code, which has been carried out since 1963, but has not been ratified until now. One form of reform in the new RKUHP is related to the concept of imprisonment which can be carried out in installments. This concept adopts the concept of imprisonment in the Albanian Criminal Code, as regulated in Article 58 of the Albanian Criminal Code.

The renewal of the installment prison sentence system in the new RKUHP is contained in Article 73 of the RKUHP which states that:

- 1) In the event that the judge imposes a prison sentence of 1 (one) year, the judge can determine the implementation of the sentence in installments.
- 2) The judge in determining the implementation of the criminal installments/installments is obliged to consider the serious or emergency situation for the defendant
- 3) Provisions regarding the implementation of criminal installments/installments as intended in paragraph (1) can be implemented no later than 2 (two) days in 1 (one) week or 10 (ten) days in a month provided that the number/length of installments/installments does not exceed 3 (three)) year.

¹⁰Barda Nawawi Arief, 1998, Several Aspects of Criminal Law Enforcement and Development Policy, 1st Printing, Bandung: Citra Aditya Bakti, p. 47

¹¹Sri Endah Wahyuningsih, 2014, "The Urgency of Reforming Indonesian Material Criminal Law Based on the Values of the Almighty God", Journal of Legal Reform Volume 1 Number 1 April 2014, p. 20

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4) The provisions as intended in paragraph (1) do not apply if the very critical situation as intended in paragraph (2) has ended/disappeared or due to other reasons determined by the judge.

The RKUHP which was formed by the legislators aims to prevent the occurrence of criminal acts, no longer viewing prison as a form of retribution, but is expected to provide a deterrent effect to perpetrators of criminal acts, and also provide education to other people so that they do not commit such acts. which is prohibited by law. Apart from that, our current RKUHP does not only think about victims and society, but also sees criminal individualization as one of the considerations, because the aim of Prisons is also to return convicts to society so they can socialize again and become fully human.

One of the efforts of law makers to provide social protection and combat crime is by providing an alternative to imprisonment, namely installment prison sentences which previously did not exist in our Criminal Code. This is indeed quite foreign, but other countries have already used this rule. it is like the country of Albania. The concept formed by the creators of this law, which is given specifically to perpetrators of criminal acts whose threat is under 5 years, in accordance with the convict's emergency situation such as medical, family, work and educational needs, can serve prison sentences in installments over a period of time. 2 days in 1 week, 10 days in 1 month.

From this concept we can see that this concept is given to perpetrators of minor crimes whose threat is less than 5 years, besides that, the installment prison sentence is one of the humane sanctions, because it gives the convict the opportunity to socialize with the community, so that it can reduce the stigmas that currently exist, and it is hoped that this can restore a sense of trust between the convict and society. Therefore, the sanction of imprisonment in installments must be given with full consideration in accordance with the emergency situation that the defendant has. The convict's emergency situation is as follows:

1) Family, is one of the important points for giving a prison sentence in installments to the defendant, in this case giving prison sentences in installments is expected to provide unity in the defendant's family, as in the case of the defendant who is the backbone of the family, if the defendant is not given a prison sentence installments, the judge not only gives a sanction to the defendant, but also gives a sanction to his family as well as the innocent, because a family backbone who plays an important role in maintaining the family has been removed, the consequences of which are not only felt by the defendant but also felt by his family, and Unconsciously, it can destroy a family.

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2) Health/medical is a factor that the judge considers when giving a prison sentence in installments to a defendant, because if the defendant has a history of illness that requires medical treatment, then this prison sentence in installments provides a precaution so that the disease the convict has can be treated, in addition Also, medical needs are a right that everyone must have in order to provide care to everyone.

3) Occupation/profession is also an important thing for the judge to consider, because it will be difficult for the convict to work and earn money to continue his life if he is not given a prison sentence in installments, besides that if we look at a former convict it will be very difficult to get a job because of his criminal history.

4) Education is one of the important things for every person whose goal is to advance a nation, and here the concept of installment imprisonment sanctions provides a way so that the convict can also continue his/her education, this installment imprisonment sentence is a sanction that provides an opportunity to to educate the nation, and the purpose of this punishment is to provide education to the convict so that the convict's education is not left behind by the rest of society.

From this description we can see that the concept formed by the legislators is expected to be useful, from the advantages described above, such as reducing Over Capacity, overcoming dehumanization, and so on. This installment prison sentence also has a weakness, namely that there is no supervision provided by the government for convicts who are serving installment prison sentences. If we compare this with the country of Albania, the country of Albania in Article 62 of the Albanian Criminal Code explains about violations of the convict's obligations which is said to be if If the convict, during the period of installment imprisonment, commits another criminal offence, the court may change the obligation previously determined, and replace it with a decision in accordance with the new offense, or to revoke the whole or part of the installment imprisonment sentence that is in effect at that time.

If the convict during the installment prison sentence violates previously established obligations, the supervisor must immediately report this to the public prosecutor. Then, for minor violations of obligations determined by the court, which are committed for the first time, the public prosecutor has the right to give a warning, which will be recorded in the convict's personal record. And for serious and repeated violations, the public prosecutor can ask the court to replace the obligation, add another obligation, replace it with another sanction or revoke the decision on prison installments so that the convict must serve the remainder of his sentence in prison in full.

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4. Conclusion

Based on the description of the results of the previous discussion, the author draws a conclusion that:

- a. Regulations regarding installment prison sentences are not currently regulated in the Indonesian Criminal Code. The concept of installment imprisonment adopts the concept from the Albanian Criminal Code, which is regulated in Article 58 and Article 62 of the Albanian Criminal Code.
- b. The concept of reforming criminal law through setting prison sentences in installments is regulated in the RKUHP in Article 73 Book I to be able to reduce the problems currently facing prisons, namely related to prison overcapacity. It is hoped that the concept formed by the legislators will be useful, from the advantages described above, such as reducing Over Capacity, overcoming dehumanization, and so on. This installment prison sentence also has a weakness, namely that there is no supervision provided by the government for convicts who are serving prison sentences in installments.
- c. The government needs to immediately ratify the new RKUHP so that it is in line with current developments and the development of modern society.
- d. The community is expected to have active participation in maintaining security and order so as to reduce crime in society.

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