RLJ Ratio Legis Journal
ISSN 2830-4624
published by
Master of Law, Faculty of Law
Universitas Islam Sultan Agung
Volume 4 No. 1, March 2025

Problems of Indonesian Criminalization with Implications of Criminalization of Minor Criminal Cases

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Abstract. *The purpose of this study is to determine and analyze the implications of the misdemeanor criminal case process with the conditions of Indonesian criminal justice. In this writing, the author uses a normative juridical method with a research specification in the form of descriptive analysis. The Criminal Justice System in Indonesia currently, when handling criminal acts, mostly ends in prison which is carried out in correctional institutions. Prison is not an appropriate sanction to handle criminal acts, especially in handling minor crimes such as minor theft resulting from criminal acts that can still be restored, so that the situation can be returned to its original state. Handling minor crimes carried out with a retributive paradigm, with repressive actions against perpetrators of minor crimes, causes the number of prisoners in prisons. This can cause the ineffectiveness of the coaching and correctional functions in prisons, the suboptimal function of supervision in prisons and the occurrence of many violations of prisoners' rights in prisons. According to Romli Atmasasmitha, with the overcapacity in prisons, the institution cannot carry out the function of deterrence on prisoners because there are still many cases of recidivism in Indonesia.*

Keywords: *Criminalization; Minor Crimes; Problems.*

1. Introduction

The Republic of Indonesia, based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, clearly states that "Indonesia is a country based on law." In a country based on law, the law is the benchmark for community activities, both individually and in groups, so that every human activity is assessed based on legal provisions or on the basis of legal

regulations.[1]The law as referred to includes norms, rules, principles of legislation. All of these elements form a law that aims to realize welfare, order, peace, and justice as an expression of the ideals of justice of its society.

The discourse of crime has been discussed throughout the history of life and is said to be an old problem, as old as human civilization. Crime must be studied through a multidisciplinary approach, considering that crime has social and humanitarian dimensions, and develops rapidly along with the development of society. This has become an interesting object of attention for experts, both criminal law experts, criminologists, anthropologists, sociologists, and other social sciences. Each discipline has a major role in studying the problem of crime comprehensively and aims to find solutions to overcome these crimes.[2]

The problem of criminal acts, both minor (lichte misdrijven) and criminal acts in general are things that always exist and occur in society and must be seen with consideration for practical interests, namely so that these cases can be tried quickly to avoid the accumulation of cases in court, because the number of cases of this type is greater than other types of criminal acts. Although, initially the classification of minor crimes was the result of consideration of the lack of courts, currently the existence of minor crimes and minor crimes in general can be seen in another connection, namely in the aspect of the need for simple, fast and low-cost justice.

In the life of the nation and state, restorative justice can be used as a means or tool to avoid the formal process of resolving criminal acts through criminal justice. In law, all elements have the same role and position to uphold the law as stipulated in the constitution. Constitutionally, Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states. "Every citizen has the same position before the law and government without exception.[3]Therefore, everyone has the same opportunity in the process of resolving criminal cases in a non-litigation manner, especially since the very complex and diverse conditions of society create opportunities for various kinds of social problems to arise.

It can be seen in cases of minor crimes in Indonesia, where many cases are still resolved in criminal penalties which are considered by the community to be less than fair. To restore the situation that has been damaged by the perpetrator, retaliatory action is needed against the perpetrator who caused the damage or loss in the community. However, this paradigm has a weakness, namely the

[1]Sumaryono and Sri Kusriyah, (2020), The Criminal Enforcement of the Fraud Mode of Multiple Money (Case study Decision No.61 / Pid.B / 2019 / PN.Blora), Journal of Legal Sovereignty: 3 (1) March

[2]Ribut Baidi Sulaiman, (2023), Restorative Justice: Implementation of Sentencing Policy in the Indonesian Criminal Law System, Indonesia Criminal Law Review, 2 (1), February, p 2

[3]Dadang Suprijatna, (2019), Optimizing The Implementation Of Legal Aid Service In Civil Cases In The Territory Of The Sukabumi District Court, Jurnal Hukum De'rechtsstaat. 5 (2) September, p 106.

system for restoring the losses and suffering experienced by the victim is not yet optimal.

Minor crimes (Tipiring) are minor or non-dangerous crimes. Minor crimes are not only violations but also include minor crimes written in Book II of the Criminal Code consisting of minor animal abuse, minor insults, minor abuse, minor theft, minor embezzlement, minor fraud, minor vandalism, and minor receiving.

The Criminal Justice System in Indonesia currently when handling criminal acts mostly ends in prison which is done in a correctional institution. Prison is not an appropriate sanction to handle criminal acts, especially in dealing with minor crimes such as minor theft resulting from criminal acts that can still be restored, so that the situation can be returned to its original state.[4]With this restoration, it is possible for the perpetrator to recoup the losses experienced by the victim, family, and society.

Based on this background, the researcher is interested in discussing and conducting this research withThe purpose of this research is to find out and analyzeimplications of the misdemeanor criminal case process with the conditions of Indonesian criminal justice.

2. Research Methods

The normative legal research method uses an approach by studying legislation, theories and concepts related to the problems to be studied. Determining the sample is a process of selecting a representative part of the entire population. This study does not use samples as research materials but uses literature studies as data sources. The use of secondary data as raw data is used as well as the addition of expert opinions as additional data so that it is processed as a research result.

3. Results and Discussion

3.1. Minor Crimes

The enactment of the Criminal Procedure Code (KUHAP) introduced the term minor criminal offense; in practice, this minor criminal offense is usually abbreviated as: Tipiring. From the use of the word "minor" for this type of criminal offense, it can be immediately understood that the criminal threat for this criminal offense is relatively light compared to other criminal offenses.

Insociety, there is a negative view of this minor crime. According to the assumption of some people, namely even though an act should be examined and tried as an ordinary crime, it can be arranged in such a way that only Tipiring is charged. By being charged with Tipiring, people expect that the verdict to be

[4]Satriadi, (2022), Restorative Justice Approach in Resolving Minor Theft Crimes from an Islamic Law Perspective, Al-Syakhishiyyah: Journal of Islamic Family Law and Humanity, 4 (1) June, p 20

handed down by the Judge will also be light, namely if found guilty, only a conditional sentence will be imposed, which is known as a sentence but not implemented.

In the Criminal Procedure Code (Law No. 81981 concerning Criminal Procedure Law), a distinction is made between 3 (three) types of examination procedures, namely:

1. Regular Inspection Event;
2. Brief Examination Event; and,
3. Quick Examination Event. This Quick Examination Event consists of: (a) Minor Crime Examination Event; and, (b) Road Traffic Violation Case Examination Event.

In Article 205 paragraph (1) of the Criminal Procedure Code, it is stated that what is examined according to the examination procedure for minor crimes is a case that is threatened with a prison sentence or imprisonment of a maximum of 3 (three) months and/or a fine of up to Rp. 7,500,- and minor insults except as specified in Paragraph 2 of this Section. In this article it is stated that what is examined according to the examination procedure for minor crimes, namely: (1) Cases that are threatened with a prison sentence or imprisonment of a maximum of 3 (three) months and/or a fine of up to Rp. 7,500,- and, (2) Minor insults.

3.2. Implications of Minor Criminal Case Processes on the Conditions of Indonesian Criminal Justice

Judging from the systematics of the Criminal Code, criminal acts only consist of crimes (misdrijven) and violations (overtredingen). However, by studying the articles in the Criminal Code, it turns out that in Book II on crimes there are also a number of criminal acts that can be grouped as minor crimes (lichte misdrijven). These minor crimes are not placed in a separate chapter but are spread across various chapters in Book II of the Criminal Code.[5]

The articles that constitute minor crimes are Minor animal abuse (Article 302 paragraph (1) of the Criminal Code); Minor insult (Article 315 of the Criminal Code); Minor assault (Article 352 paragraph (1) of the Criminal Code); Minor theft (Article 364 of the Criminal Code); Minor embezzlement (Article 373); Minor fraud (Article 379 of the Criminal Code); Minor vandalism (Article 407 paragraph 1 of the Criminal Code); Minor receiving (Article 482).

Of the eight forms of Minor Crimes, 6 (six) of them are difficult to find cases of at present because in addition to having to fulfill the element of the value of the goods in the case which is not more than Rp. 250,- (two hundred and fifty rupiah), the six forms of Minor Crimes are contained in: Article 364, 373, 379,

[5]Fransico Loleng, et al. (2021), Minor Crimes in Criminal Law and the Indonesian Criminal Procedure Code, Lex Crimen, X (1) January-March, p 96

407 paragraph (1) and Article 482 of the Criminal Code which require the value of the goods in the case to be fulfilled.

Handling of minor crimes (Tipiring) processed to the court level cannot always resolve conflicts in society. In several cases that are considered minor crimes (tipiring), for example in the case of Nenek Minah (55 years old) who stole 3 cocoa pods in Banyumas, the case of Basar Suyanto (45 years old) and Kholil (49 years old) who stole a watermelon worth 30 thousand in Kediri, the case of Aal (15 years old) who stole flip-flops in Palu and the case of Prita Mulyasari who was considered to have tarnished the good name of a hospital, the existing court decisions are considered unsatisfactory and injure the sense of justice for the poor in Indonesia. The laws that are made and applied in society will have no meaning if they are not followed by law enforcement by law enforcement officers. However, current law enforcement is considered not to reflect a sense of justice, especially for lower-class people. The reason is, law enforcement is considered sharp downwards and blunt upwards.[6]

The criminal justice system must be able to fulfill the sense of justice, benefit and legal certainty in society. The existing criminal justice system should also be in line with the values that live and develop in Indonesian society. The criminal justice system and the purpose of criminal justice that are not in accordance with the initial concept will have a negative impact on the social and legal aspects of society in Indonesia.[7]

Related to this legal aspect, the negative impact caused is the failure to implement criminal penalties which can cause an overcapacity impact on Correctional Institutions (LAPAS) as a place for prisoners to be sentenced to prison. The problem of law enforcement against minor crimes, some of which have brought about reactions of dissatisfaction from several groups of society, where the justice imposed is considered disproportionate. Based on this, it should be seen in actual terms which are inseparable from a realistic phenomenon in society. Thus, in essence, it can be done with the approach of the law enforcement theory "actual enforcement", as in Joseph Goldstein's theory. In this law enforcement, law enforcement must be seen realistically, so that actual law enforcement must be seen as part of discretion that cannot be avoided due to limitations, even though integrated monitoring will have a positive impact. Handling minor crimes (Tipiring) which is carried out with a retributive paradigm, with repressive actions against perpetrators of minor crimes, causes the number of prisoners in LAPAS. This can cause the ineffectiveness of the coaching and correctional functions in the prison, the less than optimal function of supervision in the prison and the occurrence of many

[6]Muhammad Taufiq, (2014), Substantial Justice Cuts the Chain of Legal Bureaucracy, First Edition, Yogyakarta: Pustaka Pelajar, p 161

[7]Sigit Suseno, (2012), The Criminal System in Indonesian Criminal Law Inside and Outside the Criminal Code, Jakarta: National Legal Development Agency, Ministry of Law and Human Rights, p. 2

violations of prisoners' rights in the prison. According to Romli Atmasasmitha, with the overcapacity in the prison, the institution cannot carry out the function of deterrence on prisoners because there are still many cases of recidivism in Indonesia.[8]

Criminalization in Indonesia is a way to impose punishment or sanctions on perpetrators who have committed a crime. According to Andi Hamzah, the definition of criminalization is punishment derived from the basic word law, so it can be interpreted as establishing the law or deciding on the punishment.[9]So, criminalization or punishment is a process in which the judge determines/imposes a sentence given by the judge. The purpose of criminalization, in addition to being a form of retribution for the perpetrator's mistake, is also to deter criminals and as an example for society so that they do not commit crimes. Initially, the Indonesian state used a prison criminal system, then since 1964 the prison criminal system was updated to a correctional system and the term prison institution was replaced with a correctional institution. The Prison Criminal System is considered less humane in its punishment process, where a prisoner is considered an outcast and treated inhumanely such as being shackled, having his hands tied and his feet handcuffed, this actually causes physical suffering. Then there was a shift in the paradigm of Punishment towards rehabilitative to treat criminals and place them back into society through a combination of coaching, education, and training. This system is then known as the correctional criminal system.[10]

Since the implementation of the correctional system in Indonesia, problems have begun to emerge in the Correctional Institution due to the large number of prisoners entering the prison. Currently, the problem that is a specter in the correctional system is Overcapacity in prisons (Overcrowded Prisons). The condition of excess inmates is a situation where there is excess capacity in prisons/detention centers or when the number of prisoners is greater than the number of available spaces. While Overcrowding itself is a crisis situation due to the density of prison residents.[11]

Furthermore, in fact, Indonesia is ranked seventh with the largest number of prisoners based on data collected by the World Prison Brief, the number of prisoners in Indonesia reached 269,275 people as of November 6, 2023. The report of the Indonesian National Police (Polri) stated that there were around

[8]Romli Atmasasmitha, (2017), The Principle of No Crime Without Error, No Error Without Benefit (Geen Straf Zonder Schud, Schuld Zonder Nut), in the Paper on the Arrangement of Lecturers and Practitioners of Criminal Law & Criminology at the National Level in 2017, Surabaya, 29 November-1 December 2017, p. 3

[9]Tolib Setiady, (2010), Principles of Indonesian Invention Law, Alphabet, p 21

[10]Satria Nenda Eka Saputra & Muridah Isnawati, (2022), Overcrowding of Correctional Institutions (LAPAS) in the Indonesian Criminal Penal System, Pagaruyung Law Journal, 6 (1) July, p 57

[11]Ruli Novian (ICJR), (2018), Strategy for Handling Overcrowding in Indonesia: Causes, Impacts and Solutions, Institute for Criminal Justice Reform (ICJR), p 4

137,419 cases of crime that had occurred in the country throughout January-April 2023. When compared to the same period last year which was 105,133 cases, this number appears to have increased by 30.7%. This excess capacity was also mentioned by the Directorate General of Corrections (Dirjen PAS) of the Ministry of Law and Human Rights, that the level of overpopulation or overcrowding in Correctional Institutions (Lapas) and Detention Centers (Rutan) reached 92 percent based on the correctional database system, as of June 12, 2023. He explained that there are 526 prisons and detention centers in Indonesia with a capacity of 140,424 people, while the number of prison and detention center residents in 2023 reached 269,263 people, and the impacts caused by these less than ideal conditions include disruption of service and guidance functions, declining health quality of residents, (and) increasing opportunities for security disturbances.[12]

Due to the influence of the large number of prisoners who are dominated by minor criminal cases, the high number of prison inmates will make community service officers not comparable to the number of prison inmates so that problems are found regarding the suboptimal development program, declining quality of services, increasing potential for security disturbances such as violent fights.[13]Seeing the increasingly mushrooming problems in prisons certainly requires immediate handling. This condition is not only the responsibility of prison officers but it is also important to cooperate with various parties because there are still many institutions that have views that are considered wrong, causing overcrowding.

Research conducted by the Institute for Criminal Justice Reform (ICJR) concluded several factors that trigger overcrowding in prisons in Indonesia, namely: imprisonment-oriented criminal policy, excessive punishment for minor crimes, victimless crimes, excessive pre-trial detention, administrative procedures, suboptimal assimilation and reintegration, minimal access for suspects/convicts to advocates to prevent them from the trap of excessive detention and imprisonment, and institutional problems, human resources, and infrastructure from the Directorate General of Corrections to the Correctional UPT are also factors driving overcrowding in prisons.[14]

If we look objectively at the cause of overcrowding in prisons, it is not solely triggered by the lack of prison buildings or the increasing trend of crime, but rather because of errors in the substance of criminal law. In the correctional system which is part of the substance of the criminal justice system, it is likened to a form of final disposal site. For example, prisons cannot reject perpetrators

[12]Anjar Astriani, et al. (2024), Legal Analysis of the Implementation of Criminal Policy that Causes Destructive Impacts on Convicts, Karimah Tauhid, 3 (8). p 8557
[13]Abdurrahman, (2021), Optimizing the Implementation of Alternative Criminal Procedures in Indonesia as a Solution to Overcrowding in Correctional Institutions, Justitia Journal: Journal of Humanitarian Law, 8 (1), p 15
[14]Ruli Novian (ICJR), (2018), Op.Cit, Institute For Criminal Justice Reform (ICJR), p 147

who have been sentenced by the court to be placed in Prison A. Basically, prisons are the ones affected by the execution carried out by law enforcement, and also prisons are the ones that have never been involved in judicial policies. So that prisons cannot intervene in the criminal justice system from the start and also added to the habit of law enforcement in imposing prison sentences because concurrent criminal sentences are a suitable space as a form of revenge for the perpetrator's actions. The existence of legislation relating to criminal law provisions actually provides a response that is not in accordance with the current context. The influence of dependence on the use of prison criminal law can be seen from all legislative provisions in Indonesia, the majority of which use prison sentences. This indicates a dependence both in terms of application and the system depends on prison sentences. Errors in legislative policies or criminal policies must be responded to comprehensively by the government and the DPR to evaluate the provisions of criminal law that no longer depend on criminal law and the use of imprisonment as a last resort.

As a legal correction to the principle of legality and as a prevention of unnecessary punishment.[15]This is in line with what Andi Hamzah said that if an act is a crime, but has little social significance, then there is no need to impose a criminal penalty or action.[16]Andi Hamzah further said that if criminals who commit minor crimes are imprisoned for a short period of time, they can learn from seasoned criminals so that after they are released from prison, they will actually turn into seasoned criminals who are dangerous to society and thus the goal of correctional services cannot be achieved.[17]

In addition, overcrowding will cause the state budget for financing the management of detention centers and prisons to swell. In 2019, the government prepared a budget for the cost of food for prisoners and detainees of Rp. 1.79 trillion with an average cost of food of Rp. 20 thousand per prisoner/detainee per day.[18]The cost does not include the cost of maintaining facilities and infrastructure of the prison or detention center. The available budget does not match the number of prisoners and inmates, so that prisoners and inmates do not get adequate basic facilities. The facilities in question are adequate housing (cell size), clean sanitation, and medical care.

Prisoners and inmates in detention centers and correctional facilities who are dissatisfied with these conditions are easily provoked into emotions which then have the potential to create riots in detention centers and correctional facilities. This is proven by the many riots in detention centers and correctional facilities

[15]Mufatikhatul Farikhah, (2021), The Judicial Pardon as a Method of Court Decision in the Reform of Indonesian Criminal Law Procedure, Padjadjaran Journal of Law, 8 (1), p 5
[16]Andi Hamzah, (1994), Principles of Criminal Law, Jakarta: Rineka Cipta, p 137.
[17]Lukman Hakim, (2019), Implementation of the Concept of Judicial Forgiveness as an Alternative to Reducing the Crime Rate in Indonesia, National Security Journal, 5 (2), p 196
[18]Marfuatul Latifah, (2019), Overcrowded Prisons and Correctional Institutions in Indonesia; Impacts and Solutions, Brief Info: A Brief Study of Current and Strategic Issues, XI (10) May p 3

triggered by prisoners and inmates. Especially for correctional facilities, all the limitations caused by overcrowding can cause correctional goals to fail to be achieved. So that prisoners are not ready enough to return to society when they have finished serving their prison sentences. For example, the limited rehabilitation program for prisoners means that not all prisoners serving their sentences participate in skills improvement programs.

Legal factors are a major problem that affects overcrowding in the majority of prisons in Indonesia. Currently, many legal provisions include the threat of imprisonment, while other penalties such as fines and imprisonment are not popular among lawmakers. In addition, many perpetrators of minor crimes (tipiring) who should be processed using the fast examination procedure law (Articles 205-211 of the Criminal Procedure Code) are still processed using ordinary procedural law. So that suspects/defendants who should not be detained based on the fast examination procedure law, must be put in detention because they are processed using ordinary procedural law.

Based on the discussion, it is known that there are practices of law formation and law enforcement that encourage many criminals to serve prison sentences. Therefore, it is necessary to improve criminal provisions, especially for minor crimes. Minor crimes should no longer be threatened with imprisonment. In addition, in an effort to reduce the number of overcrowded law enforcement officers must also optimize penal mediation efforts in minor cases so that they can be resolved outside the trial.

4. Conclusion

Handling of minor crimes (Tipiring) carried out with a retributive paradigm, with repressive actions against perpetrators of minor crimes, has resulted in an overcrowding of prisoners in prisons. This can lead to ineffective coaching and correctional functions in prisons, suboptimal supervision functions in prisons and the occurrence of many violations of prisoners' rights in prisons. According to Romli Atmasasmitha, with overcapacity in prisons, the institution cannot carry out its deterrent function on prisoners because there are still many cases of recidivism in Indonesia.

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