

The Effectiveness of Prison Sentences on Narcotics Addicts

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Abstract : *Narcotics are substances or drugs that can cause a decrease or change of consciousness, loss of pain and can cause dependence. The dangerous potential of narcotics then becomes the reason of the issuance of Law No. 35 of 2009 concerning Narcotics. This study aims to analyze the effectiveness of prison sentences in guiding narcotics addicts and to identify alternative sanctions, other than prison sentences, which are more effective in guiding narcotics addicts. This study applied a normative juridical method. The results revealed that narcotics addicts or narcotics abusers have special characteristics because their status as both offenders and victims. Until now, the sanctions that are commonly sentenced to narcotics addicts by judges are prison sentences. This sanction is given in the hope that narcotics addicts could recover from their addictions while in prison. Yet, the lack of facilities and experts at the correctional institution cause many problems, ranging from prisonization to labeling ex-prisoners. As a result, narcotics addicts who are expected to recover themselves from their addictions through guidance have even more difficult to return to the community.*

Keywords: *Narcotics, Prison Sentences, Correctional Institution*

Efektivitas Pidana Penjara pada Pecandu Narkotika

Abstrak : Narkotika adalah zat atau obat yang dapat menyebabkan perubahan kesadaran, hilangnya rasa nyeri dan menimbulkan ketergantungan. Potensi berbahaya dari narkotika kemudian menjadi penyebab diundangkannya Undang-undang No. 35 Tahun 2009 tentang Narkotika. Tujuan penelitian ini yaitu untuk mengetahui dan menganalisis Efektifkah pidana penjara dalam membina pecandu Narkotika agar tidak lagi mengulangi perbuatannya dan Adakah alternatif lain selain penjara dalam membina para penyalahguna narkotika. Metode penelitian yang digunakan adalah yuridis normative. Hasil penelitian yaitu bahwa Pecandu Narkotika merupakan salah satu pelaku penyalahgunaan narkotika yang memiliki karakteristik istimewa, karena statusnya sebagai pelaku sekaligus korban. Sampai saat ini sanksi yang lazim diputus oleh hakim kepada pecandu narkotika adalah pidana penjara. Putusan ini dijatuhkan dengan harapan bahwa selama menjalani pembinaan dalam lembaga pemasyarakatan, narapidana pecandu narkotika bisa sembuh dari kecanduannya, namun minimnya fasilitas dan tenaga ahli di lembaga pemasyarakatan menimbulkan banyak permasalahan, mulai dari prisonisasi narapidana, sampai dengan pelabelan (labelling) mantan narapidana. Akibatnya pecandu narkotika yang setelah menjalani pembinaan, yang seharusnya sembuh dari kecanduannya justru semakin kesulitan kembali ke masyarakat.

Kata Kunci: Narkotika, Penjara, tujuan pemasyarakatan

INTRODUCTION

In principle, humans are social creatures who always gather and communicate with each other. This process of gathering and communicating is called social intercourse. Social intercourse is not always positive since, sometimes, there are people trying to offer narcotics. Narcotics are substances that can cause certain effects in the form of refraction, pain relief, excitement and hallucinations. This hallucinogenic effect is one of the reasons causing community members, especially among adolescents,

to want to use narcotics. Using narcotics uncontrollably will lead to addiction¹. Based on the 2015 report of National Narcotics Agency (BNN), the number of narcotics abusers in Indonesia was estimated to be 3.8 to 4.1 million people aged between 10-59 years-old who have used drugs in 2014. The number of narcotics abusers was estimated to be 4.3 million people in 2015 and 4.5 million people in 2016. Meanwhile, in West Java, the number of narcotics abusers reached 900.000 people in 2014².

The problem is that narcotics abuses have a negative effect on the users' body. Most narcotics can make users addicted and can damage their brain cells. The effects of narcotics are quite diverse, for example, loss of concentration, memory, attention, perception, and feeling; depression; convulsions; overdose; and kidney, heart and stomach disorders³. In terms of its function, narcotics is divided into 3 (three) types, namely; narcotics functioning for medical therapy, for research, and both for medical therapy and research. Narcotics for medical therapy can be used to relieve pain of patients while undergoing surgery. Meanwhile, narcotics for research can be used to develop new medicines. In terms of its type, narcotics are divided into three groups, namely; 1) Narcotics Group I which has a very high potential to cause addiction/dependency and cannot used for therapy (treatment); 2) Narcotics Group II which has a high potential to cause addiction/dependency but can be used for therapy as a last choice; and 3) Narcotics Group III which has a mild potential to cause addiction/dependency and is widely used for therapy⁴.

In terms of its subjects, narcotics abusers consist of narcotics addicts and narcotics dealers. Narcotics dealers are people who control the circulation of illegal narcotics as well as people who are couriers in the distribution and delivery of Narcotics.⁵ Meanwhile, narcotics addicts are people who consume and are in a condition of dependence on narcotics both physically or psychologically⁶.

The potential danger of narcotics encourages the government to issue Law No. 35 of 2009 concerning Narcotics. Sanctions for narcotics abusers are rehabilitation, prison sentence, fines and death sentence. Addicts caught red-handed carrying and/or consuming narcotics are generally sentenced to prison by a judge. A prison sentence is a sanction in the form of a deprivation of liberty of a prisoner by closing him in a correctional institution with the obligation to obey all regulations or rules in force⁷. In Islamic criminal law, narcotics abuse is regulated in *uqubah* or illegal act. Some verses forbidding narcotics are:

“*And makes lawful for them the good things and prohibits for them the evil*” (QS. Al A'raf: 157). Every *khobits* is forbidden by this verse. Here, *khobits* means everything that gives a negative effect.

“*And do not throw yourselves into destruction*” (Surah al-Baqarah: 195)

“*And do not kill yourselves; indeed, Allah is to you ever Merciful*” (Surah an-Nisa': 29)

The two verses show how unlawful it is to destroy ourselves. Drugs can damage a person's body and mind. Thus, from this verse, it can be declared that drugs are *haram* or unlawful.

¹ Agustin, R., 2014. Persepsi Masyarakat Tentang Sosialisasi Bahaya Narkoba Di Kelurahan Sidomulyo Kecamatan Samarinda Ilir Kota Samarinda. eJournal Ilmu Komunikasi, 2(Persepsi, bahaya narkoba, sosialisasi.), pp. 294-308

² Iskandar, A., 2015. In: Laporan Akhir Survei Nasional Perkembangan Penyalahgunaan Narkoba Tahun Anggaran 2014. Bandung: BNN, pp. 16-30

³ Waluyo, M., 2007. In: Pedoman Pelaksanaan P4GN Melalui Peran Serta Kepala Desa/Lurah Babinkamtibnas dan PLKB di tingkat desa/kelurahan. Jakarta: BNN, p. 32

⁴ Waluyo, M., 2007. In: Pedoman Pelaksanaan P4GN Melalui Peran Serta Kepala Desa/Lurah Babinkamtibnas dan PLKB di tingkat desa/kelurahan. Jakarta: BNN, p. 32

⁵ Pramesti, T. J. A., 2016. apakah bandar narkotika sama dengan pengedar. [Online] Available at: <http://www.hukumonline.com/klinik/detail/lt56cf393b411a0/apakah-bandar-narkotika-sama-dengan-pengedar> [Accessed 20 september 2017].

⁶ Endri, Problematika Penegakan Hukum Tindak Pidana Narkotika dan Obat/Bahan Berbahaya (Narkoba) di Indonesia, *Jurnal Unifikasi*, ISSN 2354-5976 Vol. 03 Nomor 01 Januari 2016.1-27

⁷ Lamintang, P., 1984. In: Hukum Penitensier Indonesia. Bandung: Armico, p. 56

A prison sentence is the most dominant type of sanction taken by judges in Indonesia in dealing with narcotics cases. The prison sentence, according to Roeslan Saleh, is the main criminal sentence between the deprivation of liberty and can be sentenced for life or for a period of time⁸. A prison sentence is aimed at criminals who misbehave⁹. A prison sentence can contain multiple characteristics, namely as criminal sanctions, it can be felt unpleasant and in its implementation, variety of feelings will grow in entering treatment philosophy which shows a dynamic and/or plastic nature¹⁰. In Indonesia, the implementation of punishment against prisoners is carried out by applying prisoner's correctional philosophy which is a concept aiming at guiding prisoners to be able to return to the community successfully. Thus, the success of this guidance is measured by the prisoners' behavior who does not repeat the violations and can be reintegrated into society as law-abiding citizens¹¹. The whole process of guiding prisoners during the prison is an integral unity towards the goal of returning prisoners to the community with the abilities (mental, physical, expertise, skills, financial and material) needed to become good and useful citizens¹². Although the criminal act of retaliation must be abandoned, the nature of retaliation cannot be completely eliminated since this trait is a phase or a small aspect.¹³

In 1963, the concept of correctional was proposed by the Minister of Justice, Sahardjo, who stated the purpose of imprisonment is: to provide guidance to prisoners so that they will not repeat the violations as well as to equip them with various skills that can be used in their lives¹⁴.

In the same vein, John Howard states the purpose of imprisonment is to provide guidance to prisoners so that after their prison sentence, they can be a better community member. The guidance itself includes physical and mental development, general education, health education, etc.¹⁵ Guidance for prisoners is not much different from the prevailing educational patterns in society. Besides, its objectives also pursuant to the objectives of national development as stipulated in the Preamble of the 1945 Constitution stating "to develop the nation's intellectual life". In relation to this objective, the principle of corrections is also stated in the article that: "During their loss of freedom, prisoners must be introduced to the community and must not be exiled therefrom"¹⁶.

Yet, whether or not prison sentence is able to guide prisoners in accordance with their objectives, the social sciences provide an overview concerning the extent of suffering experienced by prisoners. They describe that there is nothing good that can be expected from prison sentence for all people, both for the prisoner, his family as well as for the community. The regulation in correctional institution make relationships passive-aggressive and control-being controlled; no place for initiative and consideration; grow a low view of humans; and lead people to be a fool. Besides, during the detention, sexual needs cannot be fulfilled leading to masturbation or homosexuality. A climate of total force kills self-confidence, eliminates genuine relationships between people, paralyzes the development of attitudes and behavior that can be accepted by the community. In correctional institution, people are depersonalized and desocialized¹⁷.

⁸ Setiady, T., 2010. In: Pokok-pokok Hukum Petinensier Indonesia. Bandung: Alfabeta, p. 92

⁹ Marpaung, L., 2008. In: Asas Teori Praktik Hukum Pidana . Jakarta: Sinar Grafika, p. 108

¹⁰ Poernomo, B., 1986. In: Pelaksanaan Pidana Penjara dengan Sistem Pemasyarakatan. Yogyakarta: Liberty, p. 73.

¹¹ Muhammad, M., 2007. In: Kriminologi Kajian Sosiologi Terhadap Kriminalitas Perilaku Menyimpang dan Pelanggaran Hukum. Depok: Fisip UI pRes, pp. 15-28

¹² Saroso, 1977. In: Sistem Pemasyarakatan. s.l.:BPHN, p. 62.

¹³ Moeljatno, 1993. In: Asas-asa Hukum Pidana. Jakarta: Rineka Cipta, p. 14

¹⁴ Susanto, 2011. In: Kriminologi. Yogyakarta: Genta Publisher, p. 111.

¹⁵ HS, C. H., 1995. In: System Baru Pembinaan narapidana. Jakarta: Djambatan, p. 46

¹⁶ Soeroso, 1975. Sistem Pemasyarakatan : Ceramah pada Lokakarya Evaluasi Sistem Pemasyarakatan. Bandung, s.n

¹⁷ Hulsmann, L., 1983. In: Selamat Tinggal Hukum Pidana Menuju Swaregulasi. Surakarta: Forum Studi Hukum Pidana, p. 42

Further, there is also the so-called ill of prison. As stated by Gerald Leiward (1972) in his book entitled 'Prison', various issues in prison include lack of funds, lack of professional staff, haphazard parole procedures, poor and inadequate food, lack of constructive work and recreational time, lack of educational activities, homosexuality, drugs addiction, crimes among prisoners, harsh and cruel punishment for regulation violations, racial violence, etc.¹⁸

Most narcotics abusers who are generally narcotics users and dealers are usually sentenced to imprisonment and fines. Considering the consequences of imprisonment, this study tries to analyze whether prison sentence as regulated in Law No. 35 of 2009 is able to guide Narcotics abusers or, conversely, prison sentences will worsen the situation where the addicts are getting smarter in hiding their actions or even turns them into narcotics dealers. Hence, the issues discussed in this study is formulated into the following questions; 1) Is prison sentence effective in guiding Narcotics addicts so that they no longer repeat their actions? and 2) Are there alternatives sanctions other than prison sentence in guiding narcotics addicts?

RESEARCH METHODS

The method used in this study was a normative juridical method. The data were collected through literature study in the form of primary legal material, namely the 1945 Constitution of the Republic of Indonesia and secondary legal materials, namely books, journals, and theories. The collected data were then analyzed qualitatively and were interpreted in a narration form.

RESULTS AND DISCUSSION

1. Narcotics Viewed from the Perspective of Indonesian Criminal Law and Islamic Criminal Law

The term "drugs" refers to a group of compounds that generally have a risk of addiction for their users. According to health experts, drugs are psychotropic compounds commonly used to anesthetize patients when they are about to be operated on or drugs for certain diseases.

Narcotics are substances or drugs originating either from plants or not as well as both synthetic and semi-synthetics which can cause a decrease or change of consciousness, loss of pain and can cause dependence (Article 1 paragraph 1 of Law No. 35 of 2009). In 2015, there were 35 (thirty-five) types of drugs consumed by drug abusers in Indonesia from the cheapest to the most expensive ones, such as LSD. In the world, there are 354 (three hundred and five fifty-four) types of drugs. Criminal sanctions against narcotics abusers based on Law No. 35 of 2009 concerning Narcotics can be grouped as follows:

- a) Singular sanction (imprisonment or fine only);
- b) Alternative sanction (choice between imprisonment or fine);
- c) Cumulative sanction (imprisonment and fine);
- d) Combined/mixed sanction (imprisonment and/or fine).

The lightest sanction for narcotics abusers is a four-year prison sentence and the heaviest sanction is death sentence. The severity of criminal sanctions for narcotics abusers strongly depends on the type of act carried out and how large the amount of narcotics used. In Islamic Criminal Law, consuming narcotics is included in *jarimah khamr*. According to Al-Mawardi, in the terminology of Islamic law or *fiqh*, the term *jarimah* is defined as follows:

¹⁸ Anwar, Y., 2009. In: Saat Menuai Kejahatan : Sebuah Pendekatan Sosiokultural, Kriminologi, Hukum dan HAM. Bandung: PT Refika Aditama, p. 292.

Jaraim (criminal acts) are all actions that are forbidden by Shari'a. Allah Ta'ala prevents criminal acts by dropping *hudud* or *ta'zir* to the offender.¹⁹

Jarimah is carrying out a forbidden act. If someone does a criminal act, it will result in a threat of certain legal sanctions.²⁰

All types of intoxicants are included in *Khamr* category. Narcotics and drugs are things that can give a negative effect on brain. Narcotics make a person weak in mind, weak in his desires, and prevent him from remembering Allah²¹. Abu Musa al-Ash'ari said; "O Rasulullah, give us a fatwa about two types of drinks made by people in Yemen, namely *bit* made from honey which is given yeast and *mizn* made from seeds which are also given yeast so that they become liquor". According to Abu Musa, Rasulullah had given his voice that:

Every intoxicant is haram or forbidden (Narrated by Al-Bukhari No. 4087, 4088 chapter Ba'ts Mu'adz ilal yama qobla hajjatil wada', No. 5773, Muslim No. 1733)

The hadith describes substances damaging mind and intoxicating without distinguishing its types and without being bound to what is eaten or drunk. Those substances are sometimes dissolved with water and sometimes they are eaten. Yet, all kinds of these substances are forbidden.

2. Prison Sentences as Suffering for Prisoners

In a community where its thinking level has not yet developed, in general, punishment is seen as a revenge as expressed by a proverb: "*oog om oog en tand om tand or eye for eye, a tooth for a tooth or a life for a life*". Punishment is a logical consequence that must be accepted by someone for committing a criminal act. Thus, punishment is a suffering for the offender of the criminal act itself. According to Philip Bean, suffering is the essence of punishment. This perception can be found in his writing:²² "The essence of punishment is that involves suffering or in Grotius term, the infliction of an ill suffered for ill done"²³ (Bean, 1981). It is undeniable that the punishment will make the offender and his family suffer. Suffering experienced by an offender of criminal act is not only in the community, but also in prison. As stated by Gresham M. Sykes, punishment can cause: the deprivation of liberty; the deprivation of goods and services; the deprivation of heterosexual relations; the deprivation of autonomy; and the deprivation of security²⁴.

One of the consequences faced by offenders of criminal acts, in addition to deprivation of liberty, is social punishment that comes from the community. It can be in the form of exile from social intercourse, such as "stamp/label" as "ex-prisoner". The label is closely related to label theory. Becker, one of the leaders of label theory, states that crime is formed because of environmental rules, individual nature, and people's reaction to crime²⁵, Becker further states:

Social group create deviance by making the rules whose infraction constitutes deviance and by applying those rules to particular people and labelling them as outsiders. From this point of view, deviance is not consequence of the application by others of rules and sanctions to an "offender".

¹⁹ Al-Mawardi, A. H., 1986. In: *al-Ahkamus Sultaniyah*. Beirut: Dar Al-Tsiqafah Al-Islamiyah, p. 257.

²⁰ Audah, A. A.-Q., 1987. In: *Al-Tasyri' Al-Jinai Al-Islami : Muqaranan bi Al-Qanun Al-Wad'i*. Beirut: Muassasah Al-Risalah, p. 66.

²¹ Sabiq, S., 1984. In: *Fiqh al-Sunnah*. Bandung: PT. Al-Ma'arif, p. 63.

²² Samosir, C. D., 2016. In: *Penologi dan Pemasyarakatan*. Bandung: Nuansa Aulia, pp. 239-244

²³ Bean, P., 1981. In: *Punishment*. Oxford: Martin Robertson, p. 2.

²⁴ Sykes, G. M., 1971. In: *The Society of Captives A Study of Maximum Security Prison*. New Jersey: Princeton University Press, pp. 65-76

²⁵ McShane, F. P. W. I. d. M. D., 1988. In: *Criminological Theory*. New Jersey: Prentice Hall, Englewood Cliffs, p. 87.

The deviance is one to whom that label has successfully been applied: deviant behavior is behavior that people so label²⁶.

It has been an agreement among label theory adherents that the process of labeling is a cause for someone to be evil. There are two things that need to be considered, namely: 1) the existence of a label will cause public attention to the person who is labeled. This will cause the surrounding community to pay close attention to the person labeled; or (2) the label may be accepted by the person and he tries to live as the label attached to him. The second form of the labeling effect is called by Lemert as Secondary Deviance²⁷. According to Lemert, Secondary Deviance is a person's reaction to the label given by the community to him. Everyone has different reaction to the label given. If someone is not resistant to the label he receives, there is a tendency that he will realize the label attached to him²⁸. For example, if a former narcotics prisoner feels alienated by his surrounding community which will lead him to feel depressed, there is a tendency that he will be addicted to narcotics again or even he will be a narcotics dealer.

The second situation that will be faced by prisoners in addition to labeling is Prisonization. Prisonization or criminal contamination is a situation where prisoners are influenced by the values that live in prison, such as the customs and culture in prisons²⁹.

This prisonization does not seem very conducive to the purpose of prisoners' guidance. John Irwin, for example, argues that prison can have negative implications as expressed as follows: "This unique culture produced a social order peculiar to the prison and that prisoner become "prisonized" into this culture, which disrupted their reentry into the outside society and sometimes deepened their criminality and anti-society"³⁰.

In the same vein, Romli Atmasasmita state "...it is clear that the attitudes and values adopted by a prisoner in the context of prisoners' society will seriously hamper the prisoners' resocialization efforts³¹. Further, Clemmer states "...and that men who became completely prisoners were much more likely to commit further offences after release from prison than men who did not"³².

Basically, prisonization also has a negative impact, especially for accidental offenders who are newcomers to the world of crime because, in these places, accidental offenders are damaged by professional offenders³³.

3. The Effectiveness of Prison Sentences

According to Barda Namawi Arief, the effectiveness of prison sentences can be seen in terms of two main aspects of the purpose of punishment, namely aspect of community protection and aspect of offender improvement. The aspect of community protection includes the aim of preventing, reducing or controlling criminal acts and restoring the balance of the community (including resolving conflicts, creating a sense of security, reducing losses/damage, and reinforcing values that live in the community). Meanwhile, the aspect of offender improvement includes a variety of

²⁶ Schur, E. M., 1973. In: *Radical Nonintervention Rethinking The Delinquency Problem*. New York: A Spectrum Book, p. 118.

²⁷ McShane, F. P. W. I. d. M. D., 1988. In: *Criminological Theory*. New Jersey: Prentice Hall, Englewood Cliffs, p. 88-89.

²⁸ McShane, F. P. W. I. d. M. D., 1988. In: *Criminological Theory*. New Jersey: Prentice Hall, Englewood Cliffs, p. 89.

²⁹ Samosir, C. D., 2016. In: *Penologi dan Pemasyarakatan*. Bandung: Nuansa Aulia, pp. 239-244

³⁰ Atmasasmita, R., 1983. In: *Kepenjaraan Dalam suatu Bunga Rampai*. Bandung: Armico, pp. 48-43

³¹ Atmasasmita, R., 1983. In: *Kepenjaraan Dalam suatu Bunga Rampai*. Bandung: Armico, pp. 38.

³² Sparks, R. H. a. R., 1978. In: *Key Issues in Criminology*. London: World University Library, p. 227.

³³ Arief, M. & B. N., 1984. In: *Teori-teori dan Kebijakan Pidana*. Bandung: Alumni, p. 79.

objectives, including carrying out rehabilitation and protecting him from arbitrary treatment outside the law³⁴.

First, the effectiveness of prison sentences is seen from the aspect of community protection. Viewed from the aspect of community protection, a prison sentence is said to be effective if the sanction can prevent or reduce crimes. Thus, the effectiveness of prison sentences can be seen from how far the frequency of crime can be suppressed. In other words, the criterion lies in the extent to which the effect of general prevention of prison sentences can prevent citizens from not committing a crime³⁵.

Second, viewed from the aspect of offender improvement, the effectiveness of prison sentences lies in the aspect of special prevention from the crime. Thus, the criterion lies in the extent to which the prison sentence has an influence on the offender/prisoner. There are two aspects of influence of prison sentences on a prisoner, namely deterrent aspect and reformatory aspect³⁶.

The first aspect, which is deterrent aspect, is usually measured by using recidivist indicator. Based on this indicator, R.M. Jackson states that a sentence is effective if the offender is not sentenced again within a certain period of time. The second aspect, which is reformatory aspect, is related to the issue of behavior changes of the prisoner. To what extent a prison sentence can change the prisoner's behavior still becomes an issue that cannot be clearly answered. This scathing criticism of prison sentences can be seen from the prison abolition movement where one of the leaders is Prof. Herman Bianchi who states: The institution of prison and imprisonment are to be forever abolished entirely and totally. No trace should be left of this dark side in human history.³⁷

4. The Principles of Implementing Prison Sentences in Indonesia

Based on the Decision of the Office of Prisoners Conference on April 27, 1964, it was decided that the implementation of prison sentences in Indonesia was carried out by a correctional system so that prison sentence could also be a way to guide prisoners.

The principles for conducting guidance are:

- a) People who get lost must be protected by providing skills to live as good and useful citizens in the community.
- b) Prison sentences are not an act of revenge from the state.
- c) Repentance cannot be achieved by torture.
- d) The state has no right to make a prisoner worse or more evil than before he entered the correctional institution.
- e) During the deprivation of liberty, prisoners must be introduced to the community and must not be exiled from the community.
- f) The work given to prisoners must not be time-consuming or only for the benefit of the institution or the state, the work given must be shown for the national development.
- g) The guidance or education given must be based on the principles of Pancasila.
- h) Every person is a human being so that a prisoner must be treated as a human being even though he has gotten lost and he shall not be addressed as a criminal.
- i) The prisoner is only sentenced to a deprivation of liberty.

³⁴ Arief, B. N., 1986. In: Kebijakan Legislatif Dengan Pidana Penjara. Semarang: Badan Penerbit UNDIP, pp. 224-225.

³⁵ Arief, B. N., 1986. In: Kebijakan Legislatif Dengan Pidana Penjara. Semarang: Badan Penerbit UNDIP, pp. 224-225.

³⁶ Arief, B. N., 1986. In: Kebijakan Legislatif Dengan Pidana Penjara. Semarang: Badan Penerbit UNDIP, pp. 224-225.

³⁷ Prayitno, D., 2005. In: Sistem Pelaksanaan Pidana Penjara di Indonesia. Bandung: STHBPress, p. 71

j) The physical facilities of institutional building are one of the obstacles in implementing the correctional system³⁸.

The implementation of a prison sentence with a correctional system in Indonesia currently refers to Law No. 12 of 1995 concerning Correctional Facilities. General explanation of this Correctional Facilities Law which is the juridical basis of the implementation of correctional system in Indonesia describes that:

For the Unitary State of the Republic of Indonesia which is based on Pancasila, new thoughts about the functions of prison sentences which are no longer merely entrapment, but also an effort to rehabilitate and reintegrate prisoners has led to the birth of correctional system that has been known for more than thirty years as a correctional system.

Although various improvements have been made regarding criminal arrangements, but the nature of sentences still departs from the principles and the system of imprisonment. The imprisonment system places great emphasis on the elements of detention and revenge so that the institution used as a place of guidance is a correctional institution for prisoners and a state education house for child prisoners.

The imprisonment system which greatly emphasizes on the elements of revenge and detention accompanied by correctional institutions is gradually seen as a system and means that is not in line with the concepts of rehabilitation and social reintegration in order to make prisoners are aware of their mistakes, no longer want to conduct criminal act and return to being citizens who are responsible for themselves, their families and their environment³⁹.

5. Prison Sentences in Islamic Criminal Law

In Arabic, there are two terms for imprisonment, namely *al-habsu* and *as-sijnu*. Both terms have the same meaning which is to detain or to prevent. Besides, the term *al-habsu* is interpreted as a place to imprison people. There are two types of punishment in Islamic law. This division is based on the length of time of the sentence, namely; 1) limited punishment – lowest limit of this sentence is one day, while the highest limit is decided differently by Islamic scholars. Syafi'iyah scholars set a maximum limit of one year because they liken it to exile in *jarimah* adultery.⁴⁰ Meanwhile, other scholars gave it all to the authorities; and 2) unlimited punishment – it has been agreed that this punishment is not determined in advance because this punishment is not limited. The prisoner subject to this punishment is a dangerous criminal or a person who repeatedly commits dangerous criminal acts⁴¹.

Imprisonment (*al-habs*) is a type of punishment on *jarimah ta'zīr*. This is based on the hadith that the Prophet had imprisoned a man who was suspected to have committed a crime. The imprisonment serves as a preventive action. Likewise, the practice of imprisoning someone suspected of carrying *mafsadat* was also carried out by Umar Ibn Al-Khatab and was followed by Usman Ibn Affan. According to Al-Zuhaylī, for Hanafiah group, this imprisonment is not based on the hadith of the Prophet previously mentioned, but based on the word of Allah contained in Q.S. Al-Māidah: 33. According to them, the meaning of *al-nafyu* in the verse is *al-habsu*. Further, according to Al-Qarafi as quoted by Wahbah Al-Zuhaylī (1997: 5592-5594), Maliki noted eight reasons why someone was imprisoned. Some of the reasons are to prevent the escape

³⁸ Prayitno, D., 2005. In: Sistem Pelaksanaan Pidana Penjara di Indonesia. Bandung: STHBPress, p. 71

³⁹ Prayitno, D., 2005. In: Sistem Pelaksanaan Pidana Penjara di Indonesia. Bandung: STHBPress, p. 88

⁴⁰ Muslich, A. W., 2004. In: Hukum Pidana Islam. Jakarta: Sinar Grafika, p. 261

⁴¹ Muslich, A. W., 2004. In: Hukum Pidana Islam. Jakarta: Sinar Grafika, p. 261

of the guilty person, to facilitate the process of returning certain rights, and to serve as a warning due to immoral acts⁴².

Prison sentences are categorized as *Ta'zir*. Islamic criminal law view prison sentences differently from positive legal view. According to Islamic law, prison sentences are not seen as the main punishment, but only as a second punishment or as a choice punishment. The main punishment in the Islamic Shari'a for acts that are not threatened with *had* punishment is a *jilid* punishment. Generally, this punishment is only given for acts that are considered mild or moderate. Although in practice, it can also be imposed on acts which are considered severe and dangerous. This is because the punishment is categorized as a judge's authority in which according to his consideration, the punishment can be imposed for a criminal offense that is considered severe⁴³.

CONCLUSION

If it is related to label theory, it can be concluded that the process of labeling prisoners causes prisoners to become evil once they return to the community. This matter has something to do with the theory proposed by Lemert about Secondary Deviance. According to Lemert, Secondary Deviance is a person's reaction to the label given by the community to him. If someone is not resistant to the label he receives, there is a tendency that he will realize the label attached to him. For example, if a former narcotics prisoner feels alienated by his surrounding community which will lead him to feel depressed, there is a tendency that he will be addicted to narcotics again or even he will be a narcotics dealer. If imprisonment is associated with prison theory, prison sentence has a negative effect on narcotics addicts. Edwin Sutherland in his theory, Differential Association, states that a criminal act is a learned behavior. Thus, if a criminal act is something that is learned, then prison will be a conducive place for teaching and learning activities among prisoners in terms of committing bad deeds, especially narcotics. In the correctional institution, narcotics addicts can learn about how to distribute narcotics to prisoners who used to work as professional narcotics dealers. Hence, it can be concluded that prison sentence is not effective in guiding prisoners to be able to return to the community.

The purpose of Islamic criminal law is a combination of retaliation theory (absolute theory) and preventive theory (relative theory). Prison sentence is a sanction in the form of a deprivation of liberty of a prisoner by closing him in a correctional institution with the obligation to obey all regulations or rules in force. The aims are to provide a deterrent effect, to prevent the prisoner from repeating his actions, and to guide him so that he can return to the community. In the positive law of Indonesia, prison sentence is a basic punishment. Yet, in the view of Islamic criminal law, prison sentence is not seen as the main punishment, but only as a second punishment or as a choice punishment. The main punishment in the Islamic Shari'a for acts that are not threatened with *had* punishment is a *jilid* punishment. Generally, this punishment is only given for acts that are considered mild or moderate and is carried out only to prevent the escape of the guilty person, to facilitate the process of returning certain rights, and to serve as a warning due to immoral acts. In Islamic criminal law, consuming narcotics is included into serious crimes and the offenders are included to those who are wrath by Allah, His Messenger and Muslims. For the offenders, it is considered effective to be sentenced to death. However, *fiqh* scholars agree that *jilid* punishment is considered more effective in creating a deterrent effect than death sentence and prison sentence because the main purpose of punishment is to preserve and create

⁴² Tarigan, A. A., 2017. Ta'zīr dan Kewenangan Pemerintah dalam Penerapannya. Jurnal Ilmu Syariah, AHKAM - Volume 17(jarīmah ta'zīr, crime, ijtihād, flexibility, qānun), p. 153.

⁴³ Tarigan, A. A., 2017. Ta'zīr dan Kewenangan Pemerintah dalam Penerapannya. Jurnal Ilmu Syariah, AHKAM - Volume 17(jarīmah ta'zīr, crime, ijtihād, flexibility, qānun), p. 153.

human benefit and to safeguard against misguided behavior. Like a father who gives lessons to his children, punishment is the last effort to keep someone from committing disobedience.

SUGGESTION

It is suggested that the government build a special correctional institution for narcotics addicts that is filled with skilled and expert personnel to minimize the occurrence of prisonization, to prevent labeling and to realize the goal of imprisonment itself. The government should change the sanctions from prison sentences to special rehabilitation in a special correctional institution for narcotics addicts. Since prison sentences or death sentences are quite expensive in its implementation, the most effective and efficient alternative in giving sanctions to narcotics addicts, based on Islamic Criminal Law (Jinayah), is a *jilid* punishment.

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