

The Effectiveness of Imprisonment to Recidivists in Relation to the Role of Correctional Institutions in Prisoner Guidance System in the Perspective of Corrections Law

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Abstract : The number of recidivist cases found in the society shows that the prisoner guidance system in correctional institutions is still not meeting its goals, especially as mandated in Article 2 of Law No. 12 of 1995 concerning Corrections. The problem discussed in this study was: how effective imprisonment is if it is related to the prisoner guidance system in correctional institutions, especially towards recidivists, so as to reduce the number of recidivists in Class II A of Correctional Institution, Kuningan District, West Java. This study applied a descriptive analytical method and a normative juridical approach. As results, it was found that the prisoner guidance system, especially for recidivists, was not yet fully implemented so that the goals of the Penal System, held in the context of establishing correctional prisoners to become fully human, be aware of their mistakes, improve themselves, and not repeat the crimes so that they can return to the society, can actively play a role in development, and can live reasonably as good and responsible citizens, have not been fulfilled. The goals of the penal system cannot be achieved yet especially because there is no separation of blocks between recidivist and non-recidivist prisoners, lack of correctional officers who have special skills needed in the field, negative views from the society, and limited facilities and infrastructure.

Keywords: Effectiveness, Prisoners, Imprisonment, Recidivists.

Efektifitas Pidana Penjara terhadap Residivis dihubungkan dengan Peranan Lembaga Pemasyarakatan dalam Sistem Pembinaan Narapidana Perspektif Undang Undang Pemasyarakatan

Abstrak : Banyaknya kasus residivis yang terdapat dalam masyarakat, menunjukkan bahwa pembinaan terhadap Warga Binaan Pemasyarakatan masih belum memenuhi harapan kita semua. Khususnya sebagaimana yang diamanatkan dalam Pasal 2 Undang-Undang Nomor 12 Tahun 1995 tentang Pemasyarakatan. permasalahan adalah: seberapa efektifnya penjatuh pidana penjara jika dikaitkan dengan sistem pembinaan terpidana di lembaga pemasyarakatan khususnya terhadap residivis sehingga dapat mengurangi jumlah residivis di Lembaga Pemasyarakatan Kelas II A Kuningan Jawa Barat. Metode penelitian ini menggunakan metode Deskriptif Analitis dan pendekatan yang dilakukan adalah Yuridis Normatif, dengan teknik pengumpulan data dilakukan dengan studi dokumen. Berdasarkan penelitian diperoleh hasil bahwa ternyata pembinaan terhadap narapidana khususnya residivis belum sepenuhnya dapat dilaksanakan sehingga tujuan dari Sistem Pemasyarakatan yang diselenggarakan dalam rangka membentuk warga binaan pemasyarakatan agar menjadi manusia seutuhnya, menyadari kesalahan, memperbaiki diri dan tidak mengulangi tindak pidana sehingga dapat diterima kembali dalam lingkungan masyarakat, dapat aktif berperan dalam pembangunan dan dapat hidup secara wajar sebagai warga yang baik

dan bertanggung jawab belum terpenuhi. Khususnya yang menyangkut tentang pemisahan blok antara napi residivis dan non residivis, kurangnya petugas lembaga pemasyarakatan yang memiliki keterampilan khusus yang sesuai dengan kebutuhan lapangan kerja, pandangan negatif dari masyarakat serta keterbatasan sarana dan prasarana.

Kata Kunci: Efektifitas, Narapidana, Pidana Penjara, Residivis.

INTRODUCTION

Law develops along with the development of the society. Law is always associated with the society where the law works. In general, the area of law focuses on rules deemed legal by the government and the public and, therefore, it must be obeyed. Basically, law has a reciprocal relationship with the society in which law is a means/tool to regulate the society and work within the society itself, but the society can be an obstacle or social means/tool in the application of the law. It means that law is strongly influenced by non-legal factors, such as: values, attitudes and views of society which are generally referred to as legal culture. The existence of this legal culture causes differences in law enforcement between one society and another¹.

One of the efforts made by the state in terms of law enforcement efforts is the establishment of Correctional Institutions appointed to provide guidance to prisoners. The Legal Basis of Correctional Institutions is Law No. 12 of 1995 concerning Corrections. This Law adopts the values contained in the Pancasila and the 1945 Constitution and prioritizes respect for Human Rights. As stated in the general provisions that Penal System is implemented in an integrated manner between the coaches, the prisoners, and the society with the aim to improve the quality of the prisoners in order to be aware of their mistakes, improve themselves, and not repeat the crimes so that they can return to the society, can actively play a role in development, and can be good and responsible citizens. Basically, the term used to refer to imprisonment or *gevangenis* intends to give a deterrent effect. It is based on a classic doctrine that emerged a century and a half ago and was strongly supported by an Italian scholar Beccaria, as stated in Bambang Poernomo, that:² “the purpose of imprisonment is to give a deterrent effect (deterrence doctrine)”. In a dictionary compiled by S. Wojowasito,³ “the word *deterrent* implies ‘do not want to do anymore’ (due to fear, etc): give up.” Thus, the word *deterrent* means that someone will not repeat his actions, gives up, or does not want to do his actions anymore. Based on the data obtained from Sub-section Registration in Class II A of Kuningan Correctional Institution, there are 43 recidivists registered at the end of April 2018 based on the judge’s decision. This data raises a question concerning the existence of imprisonment, especially in its application to recidivists, because imprisonment is still considered to not have deterrent effect.

Besides, based on the data obtained from Class II District Court of Kuningan, there are data on the cases of the verdict where the defendant committed a similar crime. Thus, it raises a question of what causes a person to repeat a crime, whether the sentence given by the Court is less severe so that the prisoner guidance system at the correctional institutions is less successful or there are other factors that cause a person to repeat the crime. The purpose of imprisonment imposed by the judge and continued with the implementation of the imprisonment in correctional institutions through a

¹ Dian Alan Setiawan.” *The Implication of Pancasila Values on the Renewal of Criminal Law in Indonesia* “Jurnal UNIFIKASI, Vol. 05. No. 02, July 2018, p.59.

² Bambang Poernomo, *Pelaksanaan Pidana Penjara Dengan Sistem Pemasyarakatan*, Yogyakarta : Liberty, Tahun1986, p. 42

³ S.Wojowasito, *Kamus Bahasa Indonesia*, Bandung : Sinta Darma, Tahun1972, p. 115

system known as penal system, according to Satjipto,⁴ “is to guide a prisoner to repent, educate him to become a useful member of Indonesian society”.

It implies that the society is not the only one that is protected from the repetition of crimes done by the convicts, but the convicts are also protected through a guidance to live as useful citizens in the society. Hence, the final result (out put) of prisoner guidance based on a penal system at Correctional Institutions is a measure of the success of the application of imprisonment. Based on the description, the problem discussed in this study is: how effective imprisonment is if it is related to the prisoner guidance system in correctional institutions, especially towards recidivists, so as to reduce the number of recidivists in Class II A of Correctional Institution, Kuningan District, West Java.

RESEARCH METHODS

This study applied a descriptive analytical method and a normative juridical approach. A normative juridical is a legal research employing library materials or secondary data as the basic materials to be investigated by looking at regulation and literature relating to the problem under study.⁵ Hence, the data collection was done by applying document study.

RESULTS AND DISCUSSION

1. The Role of Class II A of Kuningan Correctional Institution Against Recidivists Based on Law No. 12 of 1995 Concerning Corrections

Corrections mean re-socialize the convicts so that they become good and useful citizens.⁶ Thus, the principles of corrections are not only as the goals of imprisonment, but are also as a “Prisoner Guidance System”. The principles of corrections do not merely formulate the goals of imprisonment, but are a system of guidance; a methodology in the field of “Treatment of Offenders” which is multi-lateral oriented with an approach emphasized on the existing potentials both in individual and society as a whole.⁷ According to Esperian,⁸ although correctional institutions are often seen as places of punishment, correctional institutions should not only give punishment, but also provide rehabilitation for prisoners. The rehabilitation can be in the form of an educational program that aims to reform prisoners into law-abiding citizens and be able to contribute to social welfare.

Law No. 12 of 1995 concerning Corrections emphasizes that prisoners should obtain individual rights, such as to develop their personality, to have a relation with the society and relatives who want to visit them, and other rights in accordance with the regulations applied in the correctional institutions. Guidance in Correctional Institutions is carried out gradually and continuously, namely from one stage to another as determined by correctional observers. The guidance program consists of four stages, namely: 1) the maximum security stage where prisoners need close supervision to approximately one third of the criminal period; 2) the medium security stage where the level of security and supervision has been relaxed compared to the first stage; 3) the minimum security stage where prisoners needs very little supervision and security; prisoners can already be assimilated to the lives of the wider society outside the Correctional Institutions; and 4) the stage of guidance outside the Correctional Institution which is carried out if prisoners have undergone two-thirds of the criminal period. Guidance for prisoners is regulated in a number of legislations, namely Law No. 12 of 1995 concerning

⁴ Satjipto Sahardjo, *Pohon Beringin Pengayoman Rumah Penjara Sukamiskin*, Bandung: Tahun 1963, p. 30.

⁵ Dian Alan Setiawan.” *The Implication of Pancasila Values on the Renewal of Criminal Law in Indonesia* “Jurnal UNIFIKASI, Vol. 05. No. 02, July 2018, p. 60-61.

⁶ Widiada Gunakaya. *Sejarah Dan Konsepsi Pemasyarakatan*, Bandung: Armico, p. 94.

⁷ *Ibid.* p. 96.

Corrections, Government Regulation No. 31 of 1999 concerning Guidance for Prisoners, and Government Regulation No. 32 of 1999 concerning Requirements and Procedures for the Implementation of the Prisoners' Rights. These legislations formulate the guidance for prisoners which consists of:

- 1) Physical guidance which consists of:
 1. Volleyball match between blocks
 2. Table tennis match between blocks
 3. Footballs match between blocks
 4. Chess match between blocks
- 2) Spiritual guidance which consists of:
 1. Islam
 - a) Carrying out Friday prayers in Class II A of Kuningan Correctional Institution.
 - b) Holding Commemoration of Islamic days.
 - c) In the month of *Ramadhan*, a religious service is held by bringing in *imam* from outside the Class II A of Kuningan Correctional Institution.
 2. Christian
 - a) Providing Christian spiritual counseling by collaborating with the Church outside Class II A of Kuningan Correctional Institution.
 - b) Conducting devotional activity every Sunday.
 - c) Holding devotional activities in Christmas' and New Year's Eve by collaborating with the Church outside Class II A of Kuningan Correctional Institution.
 3. Work skills
 - a) The types of work skills guidance carried out at Class II A of Kuningan Correctional Institution include: Sewing and Carpentry.
 - Meanwhile, the types of work skills guidance carried out by collaborating with parties outside the Correctional Institution include: Making oil stoves with private sector; Making doormats with private sector; Manufacturing table, cupboard, chairs, etc.; Cattle farms in Cisantana Village, Kuningan District.

Further, prisoners' rights, according to Article 14 of Law No. 12 of 1995 concerning Corrections, are:

- a. doing worship based on his religion or beliefs;
- b. receiving care, both spiritual and physical care;
- c. getting education;
- d. getting proper health services and food;
- e. making a complaint;
- f. getting reading materials and following other mass media broadcasts that are not prohibited;
- g. getting a wage for the work done;
- h. receiving visits from family, legal counsel, or certain other people;
- i. getting a reduced sentence (remission);
- j. getting assimilation opportunities, including family visit;
- k. getting parole;
- l. getting leave;
- m. getting other rights in accordance with the applicable legislations.

Meanwhile, the obligations of prisoners, according to Article 15 of Law No. 12 of 1995 concerning Corrections, are:

- a. Prisoners are required to follow guidance programs and certain activities in an orderly manner.

- b. The guidance program as referred to in paragraph (1) shall be regulated by a Government Regulation.

In its practice at Class II A of Kuningan Correctional Institution, the guidance program has not yet achieved its goals as stated in the legislation. In other words, the implementation of prisoner guidance is not yet fully successful. This can be seen from prisoners who are caught as they repeat their crimes after following the guidance program. Based on this fact, the authors argue that the prisoner guidance program must be oriented to the future which can be realized by providing a deep understanding of the goals of the guidance done so that they are aware that the sentence they received is not intended to retaliate the crimes done, but to guide them to the right path in order to become good and responsible citizens. The prisoner guidance system applied in Indonesia adheres to the principle of resocialization which is a way of guidance aiming at making prisoners to not feel excluded from social environment and can mingle with the society.

As stated by Aristotle, humans as social beings can not be separated from society. A Greek philosopher, Aristotle (384-322 BC), said that human beings are:⁸ “zoon politicon meaning that humans are creatures who always want to get along and get together with other humans. In other words, humans are creatures who like to socialize so that, due to their natures which like to get along with each other, humans are called social beings”. Further, the findings of field studies done by the authors relating to the prisoner guidance system at the site of study are as follows: job training is not done in accordance with prisoners’ characteristics, interests and desires or is no longer compatible with the needs and conditions outside the institution. Technological lag and less-varied skills provided cause the guidance activities to be ineffective.

This ineffective guidance activity has caused most ex-convicts to find it difficult to reintegrate into society. Besides, the negative stigma attached to the ‘label’ of ex-convicts causes many companies or employers to not accept ‘ex-convicts’ as employees. Further, the lack of job training that can make prisoners live reasonably after being released from Correctional Institutions makes the situation even worse. Meanwhile, according to Burt,⁹ in terms of prisoners’ right to get a second chance, the government is obliged to provide various programs and services that allow for an easier and smooth transition from prison to society. These transition services include job training, educational assistance, counseling and treatment of drug abuse, and mentoring. These facts have caused ex-convicts, who came out from Class II A of Kuningan Correctional Institution, do not want to return to their original place. Their reasons to not want to return to their original places imply that there is no reintegration effort, both between the ex-convicts and the victim, and between the ex-convicts and the society, which should be carried out by the justice system. The reality of prisoner guidance program inside and outside the institution is not separated from the condition of officers who are generally incompetent. In addition to external problems faced by the prisoners, there are also internal problems that originate from within the prisoners themselves, such as the lack of willingness to be separated from the old environment and the lack of willingness to do the guidance program well. The absence of the prisoners’ willingness to change can be seen as there are some prisoners who are not enthusiastic in carrying out the guidance programs provided by Class II A of Kuningan Correctional Institution. From field data in Class II A of Kuningan Correctional Institution, it was found that in terms of prisoners’ self-improvement, the Correctional Officers cannot determine sanctions explicitly, but they try to make prisoners understand the meaning of the guidance conducted.

⁸ Moeljatno, *Azas-Azas Hukum Pidana*, Jakarta: PT. Bina Aksara, Tahun 1983, p. 16.

⁹ Burt, Rose M. "More Than a Second Chance: An Alternative Employment Approach to Reduce Recidivism Among Criminal ExOffenders." *Tennessee Journal of Law & Policy* 6.1 (2014): 3.

2. The Countermeasures of Recidivists in Class II A of Kuningan Correctional Institution

Recidivist, according to Esperian, is the return of a person to criminal act. Hence, the effectiveness of imprisonment and corrections is often measured by calculating the level of recidivism. According to James, in 2015, in three years, there were 50%-70% of prisoners who had released and were then re-imprisoned.¹⁰

Some of the factors influencing the level of recidivism are socio-economic status, effectiveness of supervision after being released, length of detention, severity and seriousness of crime, and educational attainment of individuals. Statistics claims that educating prisoners contribute to reducing recidivism. In various studies conducting in prison by involving two groups (one group experienced intervention and the other became a control group), group members, who participated in several types of vocational or academic programs, experienced lower levels of recidivism than members of the control group.¹¹ According to Roeslan Saleh, criminal is:¹² “reaction which is in the form of a misery that is deliberately inflicted by the state on the offender”. The term ‘law enforcement’ in relation to criminal law in Indonesia has a vague meaning. Law enforcement is a process that consists of several phases, starting from investigation, arrest, detention, preliminary examination, prosecution and trial to implementation of sentence in Correctional Institution. However, in practice, there is mutual accusation among law enforcement officers which clearly shows the lack of understanding and awareness of the duties and authorities as well as the roles that each officer brings within the framework of a ‘Criminal Justice System’.

There are often conflicts of duties and authorities between the Police and the Prosecutor’s Office, especially in terms of investigation, arrest and detention. With regard to judicial authority, there is often an opinion that the implementation of justice is always ultimately based on the judge’s belief; does not reflect public justice. Although these criticisms and opinions were not stated openly by the police and prosecutor’s office; however, it has been a public secret, especially with the presence of a number of senior judges who were tried in Jakarta for abusing their authority and position. Hence, the image of the court as an impartial party has been extinct. Similarly, public criticism and opinion targeted to Correctional Institutions often arise. Severe criticism is often targeted at Correctional Institutions as law enforcement officers due to the number of prisoners who escape from Correctional Institutions, the death of prisoners in Correctional Institutions, and the disputes that occur within Correctional Institutions. The existence of negative accusations against Correctional Institutions, due to the presence of prisoners who live freely outside Correctional Institutions, are often also stated both by the society and by other law enforcement officers. In fact, in some cases, the prisoner is on leave or parole as regulated in the applicable legislations (Article 15 of the Criminal Code). In reality, those conditions are not announced openly in order to maintain the image of law enforcement officers. However, this is not the best way to improve the effectiveness and efficiency of the implementation of law enforcement as a unit of ‘Criminal Justice Process’.

In terms of correctional strategies, the discussion will be done from the point of view of law enforcement both as a system and as a process. This is due to the fact that with both point of

¹⁰ James, N. "Offender reentry: Correctional statistics, reintegration into the community, and recidivism. Congressional Research Service." Library of Congress. 2015.

¹¹ Esperian, John H. "The Effect of Prison Education Programs on Recidivism." *The Journal of Correctional Education* 61.4 (2010): 31634. JSTOR. Correctional Education Association, Dec. 2010. Web. 20 Feb. 2016

¹² Muladi dan Barda Nawawi, *Teori-teori dan Kebijakan Pidana*, Bandung : Alumni, Tahun 1984, p. 2

views, the correctional strategies can be seen within the framework of a 'Criminal Justice'. Correctional strategy as a process does not stand alone as it is the result of a long series of law enforcement processes, starting from investigation, arrest, detention, and trial. Hence, it can be said that the Correction is a 'sub-system' of a 'Criminal Justice system'.

Prisoner guidance program in Correctional Institutions is expected to be able to achieve the goals of the criminal law itself. Therefore, the prisoner guidance program needs to be improved and the apparatus at Correctional Institutions must be able to overcome the problems occurred during the prisoner guidance program. The Head of Correctional Institution is responsible for security and order in the Correctional Institution he leads. If there is a problem caused by a prisoner, the Head of Correctional Institution has the authority to impose a disciplinary action. The disciplinary action can be in the form of the delay or negate of certain rights for a certain period of time in accordance with the applicable legislations. In imposing disciplinary actions, correctional officers should treat the prisoners fairly by basing their actions on the regulations applied in the Correctional Institutions. In general, a disciplinary action is not imposed separately, but it is a punishment that intends to revoke the prisoner's rights based on the regulations applied in the Correctional Institutions.

From the results of field study conducted in Class II A of Kuningan Correctional Institution, it was found that the lack of willingness and seriousness of the prisoners is one of the obstacles in achieving the goals of guidance program. For example, there are many prisoners who are less motivated to follow job training implemented in Class II A of Kuningan Correctional Institution. The efforts to improve prisoner guidance program can be divided into two, namely the improvement from outside and from inside the prisoners themselves. The expected improvements are:

1. Improvement of prisoner guidance program, especially for recidivists.

- a) There needs to be a special prisoner guidance program for recidivists. A recidivist who has undergone guidance in Class II A of Kuningan Correctional Institution should have a different treatment from other prisoners because a recidivist has a different level of problems. As a recidivist tends to be easy to commit a crime after being released from Correctional Institution, a special guidance program is needed to deal with this problem.
- b) There needs to be a work skills guidance that is supported by adequate facilities and infrastructures so that work skills can be felt equally by prisoners in Class II A of Kuningan Correctional Institution.
- c) The society must play a role in the recovery of ex-convicts who return to the society so that ex-convicts do not feel rejected by the society. Basically, ex-convicts are not only the responsibility of the government, but also the responsibility of the society as a whole.

Educational programs for prisoners should emphasize academic, vocational and social education. Thus, prisoners participating in this educational program can improve their abilities at work and can undergo a smoother transition from prison to society. An effective education program is a program that is able to equip prisoners with social skills, arts development, as well as techniques and strategies to manage their emotions. The emphasis in this context can reduce recidivism.¹³ In addition to the aforementioned skills, it is important to note the importance of incorporating moral guidance, critical thinking skills, problem solving and reasoning for prisoners to be able to return to the society. Prisoners are more likely to participate in programs in which they see the

¹³ Vacca, James S. "Educated prisoners are less likely to return to prison." *Journal of Correctional Education* (2004): 297305.

opportunities to improve their skills and abilities. Vocational program is successful as it is different from traditional prison routines, provides follow-up services for prisoners after being released, and provides marketable training skills. The factors that determine the success of a prison program are influenced by the values and attitudes of the responsible people.¹⁴ Meanwhile, work program can include various services, such as work readiness, vocational education, certification, job training, and work placement. The design of this program is important as it makes the program works. For example, there are differences in the needs of prisoners who have previous work experience and those who do not. For prisoners with no work experience, community work program will be more effective when their needs are already identified and linked to certain services. In 1990s, in the US, a new generation of community employment program for ex-convicts, which was run by a non-profit organization in collaboration with criminal justice system, emerged. Employment programs targeting at a reduction in recidivism must help prisoners with basic life skills, such as work readiness, social support, job placement, and continued support after employment is secured.¹⁵

2. Improvements of the prisoners themselves

The improvement of prisoner guidance program, as mentioned previously, brings its own consequences, namely facilities and infrastructures in Class II A of Kuningan Correctional Institution must be adequate in all areas of work skills in order to facilitate the talents and desires of prisoners. It is because one of the factors causing the lack of willingness of prisoners to take guidance program is the factor of pleasure of the program offered. Besides, the motivation to follow a guidance program can grow from the correctional officers in Class II A of Kuningan Correctional Institution. Based on the observations, there is only a few of correctional officers who have special knowledge in guiding prisoners because most of correctional officers have a high school education background. Therefore, the existing correctional officers should be given the opportunity to take education dealing with prisoner guidance. This kind of education can be obtained at the Academy of Correctional Studies.

3. The Effectiveness of Imprisonment in relation to Law No. 12 of 1995 Concerning Corrections

As it is well known that imprisonment is one of the main punishment types that still occupies the most important place in the criminal justice system in Indonesia. According to Barda Nawawi Arief as cited in Dwidja Priyatno's book entitled "Implementation System of Imprisonment in Indonesia",¹⁶ "The effectiveness of imprisonment can be viewed from two main aspects, namely aspect of community protection and aspect of improvement of the offender. Aspect of community protection includes the aim of preventing, reducing or controlling criminal acts and restoring community balance (between resolving conflicts, bringing a sense of security, removing taints, and strengthening the values that live in society). Meanwhile, aspect of improvement of the offender includes the aim of carrying out rehabilitation and re-socializing the offender and protecting him from arbitrary treatment".

¹⁴ Vacca, James S. "Educated prisoners are less likely to return to prison." *Journal of Correctional Education* (2004): 297305.

¹⁵ Cullen, Francis T., Cheryl Lero Jonson, and Daniel S. Nagin. "Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science." *The Prison Journal* 91.3 (2011): 48S65S. Sage Publications. Web. 2 Mar. 2016.

¹⁶ Dwidja Priyatno, *Sistem Pelaksanaan Pidana Penjara Di Indonesia*, Bandung : PT. Refika Aditama, Tahun 2006, p. 82

Law No. 12 of 1995 is the Law governing Correctional Institutions in Indonesia. This Law adopts the values contained in the Pancasila and the 1945 Constitution and prioritizes respect for Human Rights. This can be seen from the general provisions stating that the Penal System is implemented in an integrated manner between the coaches, the prisoners, and the society with the aim to improve the quality of the prisoners in order to be aware of their mistakes, improve themselves, and not repeat the crimes so that they can return to the society, can actively play a role in development, and can be good and responsible citizens. The prisoner guidance system is always based on the Pancasila, the 1945 Constitution, the Unity in Diversity, and the Unitary State of the Republic of Indonesia. Meanwhile, the effectiveness of imprisonment, as stated by Baharuddin Suryobroto in D'anjou, is that:¹⁷

- a. Loss of independence is no more effective than criminal fines.
- b. The possibility of the number of recidivists increases along with the increase in the length of imprisonment (detention). Imprisonment of the offender is no more effective than the placement of the offender in supervision.
- c. Individual approach to the offender has a better effect, than the overall approach.

The idea was further developed into a penal system which is a prisoner guidance system in Indonesia in the Penitentiary Office Conference in Lembang, Bandung on April 27 - May 9, 1964. Correctional Institution is one of the places used to improve the convict's behavior so that he becomes a good citizen who can participate in development process. Every person has the right to be free from the evil nature that dominates himself with the support of the Correctional Institutions that prioritizes respect for Human Rights. As stated in Article 27 of the 1945 Constitution that:¹⁸ Paragraph (1) "All citizens shall be equal before the law and the government and shall be required to respect to the law and the government, with no exceptions".

Paragraph (2) "Every citizen shall have the right to work and to earn a humane livelihood."

The application of imprisonment, as one of the most important forms of punishment, must be able to guide the inner attitude or to establish the legal awareness of the prisoners to not to repeat the crime. Accordingly, it can be said that the imprisonment applied has a deterrent effect and has an effective function. Based on the observations conducted at Class II A of Kuningan Correctional Institution, it can be stated that the number of recidivists within four years can be used as an indicator showing that the application of imprisonment against recidivists is less effective. One of the goals of prisoner guidance system in Correctional Institutions is to educate prisoners not to commit a criminal act again after carrying out guidance in a Correctional Institution. This is in accordance with the goals of imprisonment, as stated by P.A.F. Lamintang, namely:¹⁹ "To improve the offender behavior, to give a deterrent effect to the people, to make the offender unable to commit other crimes."

However, this indicator is not an absolute indicator showing that the application of imprisonment against recidivists does not cause a deterrent effect or is ineffective. This is based on a belief that the crime committed by someone is influenced by many factors. Basically, guidance in Correctional Institutions is carried out gradually and continuously, namely from one stage to another as determined through the Corrections Observation Team session. The guidance program consists of four stages, namely: 1) the initial stage which is the orientation program for new prisoners; 2) the next stage which is the assimilation program for prisoners; 3) the third stage which is the integration program with the society environment; and 4) the final stage

¹⁷ Baharuddin Suyobroto, *Pembinaan Pelanggar Hukum Dalam Konteks Reaksi Terhadap Kejahatan*, Jakarta : Lembaga Kriminologi – Universitas Indonesia, p. 4

¹⁸ the 1945 Constitution

¹⁹ P.A.F. Lamintang, *Hukum Penitensier Indonesia*, Jakarta : Sinar Grafika, Tahun 2010, p. 11

which is the stage of guidance outside the Correctional Institution. From the number of recidivists and criminal acts committed, the majority of crimes committed are crimes against property and narcotics, especially related to Articles 362, 363, 365 and 368 of the Criminal Code. The data shows a close relationship between the types of criminal acts committed and the low levels of economic life as a result of the low level of education. Thus, it can be concluded that most of recidivists in Class II A of Kuningan Correctional Institution commit criminal acts due to the demands for economic needs and the low level of reasoning of the recidivist himself. Thus, it is considered to be the factor causing disobedient to the law.

Based on its nature as a social creature, humans as members of the society have the need to socialize with other societies. Similarly, the community in Class II A of Kuningan Correctional Institution has the need to socialize with other prisoners. The limited number of prisoners and the limited scope of community makes it easier for prisoners to get along and get to know with one another. Hence, the interaction patterns occurred between one prisoner and another will be more intensive. In relation to the guidance program held in Class II A of Kuningan Correctional Institution, by observing the schedule of activities in which its implementation is often missed, prisoners have a lot of free time. A lot of free time and the absence of segregation in the placement of recidivists and non-recidivists are used by prisoners to gather both inside and outside the block and carry out useless activities.

In general, prisoners gather from the start until the end of an activity which is at 10:00 until 16:30 WIB when they must enter their blocks. After entering the block, the prisoners do not go straight to sleep so that it is often used for chatting, telling stories or just expressing their feelings to their friends. A lot of free time in daily life of the prisoners in Class II A of Kuningan Correctional Institution causes the occurrence of mutual relations or interactions between prisoners as an effort in anticipating the high levels of boredom that arise. The interaction occurred for months or even years will lead to an effective pattern of interaction as it is done intensively. Hence, this can affect or change a person's behavior. In these circumstances, the exchange experiences about crime and ways of committing crime is very possible to occur. Thus, it can be concluded that the life patterns of prisoners and the placement of recidivists and non-recidivists can lead to the transmission of crime which in turn will lead to new recidivists.

CONCLUSION

One of the problems faced in holding guidance for recidivists in Class II A of Kuningan Correctional Institution is the lack of correctional officers who have special skills that are in line with current employment needs. As result, job training for prisoners is not done in accordance with prisoners' characteristics, interests and desires or is no longer compatible with the needs and conditions outside the institution. Technological lag and less-varied skills provided cause the guidance activities to be ineffective. Besides, cooperation has not been established either with the society or Non-Governmental Organizations. In other words, there has been no participation from the society in the context of providing guidance to recidivists, especially to the belief in giving work to ex-convicts so that ex-convicts can work after completing his sentence. The efforts made in overcoming the aforementioned problems. In overcoming the problems occurred in Class II A of Kuningan Correctional Institution, the following steps have been taken: Increasing psychological knowledge through technical training held by correctional officers; Increasing the number of correctional officers, especially the Bachelor of Correctional Studies; Increasing the number of facilities and infrastructures for guidance; Adjusting program or activity materials based the length of imprisonment; Increasing the frequency of religious activities so as to increase piety to God Almighty.

Guidance for recidivists cannot yet be fully implemented, especially relating to the separation of blocks between recidivist and non-recidivist prisoners. The interaction occurred for months or even years will lead to an effective pattern of interaction as it is done intensively. Hence, this can affect or change a person's behavior. In these circumstances, the exchange experiences about crime and ways of committing crime is very possible to occur. Thus, it can be concluded that the life patterns of prisoners and the placement of recidivists and non-recidivists can lead to the transmission of crime which in turn will lead to new recidivists. This is caused by a classic problem, namely the limited land, the limited human resources as well as the limited facilities and infrastructures. Hence, prisoner guidance program is done for all prisoners; not differentiating between recidivists and non-recidivists. Prisoner guidance program must be oriented to the future which can be realized by providing a deep understanding of the goals of the guidance done so that they are aware that the sentence they received is not intended to retaliate the crimes done, but to guide them to the right path in order to become good and responsible citizens. The prisoner guidance system in Indonesia adheres to the principle of resocialization which is a way of guidance aiming at making prisoners to not feel excluded from social environment and can mingle with the society.

SUGGESTION

Based on the description, in order to increase the effectiveness of imprisonment, the following suggestions are proposed: Provide accurate instruments for prisoners' needs identification (work skills, social skills, emotional support, and educational background) so that correctional officers can set priority program and be able to develop case management plans; Correctional institutions must find partners who are willing to accept ex-convicts to work with a reasonable fee and/or release a work recommendation letter for ex-convicts; A prison-based industry needs to be initiated to accelerate the ex-convict resocialization program.

REFERENCES

Books

- Gunakaya, Widiada. *Sejarah dan Konsepsi Pemasyarakatan*. Bandung : Armico. 1988.
- Lamintang, P.A.F. *Hukum Penitensier Indonesia*. Jakarta : Sinar Grafika. 2014.
- Moeljatno. *Azas-Azas Hukum Pidana*. Jakarta: Bina Aksara. 1983.
- Muladi dan Barda Nawawi. *Teori-teori dan Kebijakan Pidana*. Bandung : Alumni.1984.
- Poernomo, Bambang. *Pelaksanaan Pidana Penjara Dengan Sistem Pemasyarakatan*. Yogyakarta : Liberty, 1986.
- Priyatno, Dwidja. *Sistem Pelaksanaan Pidana Penjara Di Indonesia*. Bandung : Refika Aditama. 2006.
- Sahardjo, Satjipto. *Pohon Beringin*. Bandung : Pengayoman Rumah Penjara Sukamiskin. 1963.
- Suyobroto, Baharuddin. *Pembinaan Pelanggar Hukum Dalam Konteks Reaksi Terhadap Kejahatan*. Jakarta : Lembaga Kriminologi UI. 2012.
- Wojowasito, S. *Kamus Bahasa Indonesia*. Bandung: Sinta Darma. 1972.

Journals

- Alan Setiawan, Dian. "The Implication of Pancasila Values on the Renewal of Criminal Law in Indonesia" *UNIFIKASI : Jurnal Ilmu Hukum*, Vol. 05. No. 02, July. 2018.
- Burt, Rose M. "More Than a Second Chance: An Alternative Employment Approach to Reduce Recidivism Among Criminal ExOffenders." *Tennessee Journal of Law & Policy* 6.1 (2014): 3.

- Cullen, Francis T., Cheryl Lero Jonson, and Daniel S. Nagin. "Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science." *The Prison Journal* 91.3 (2011): 48S65S. Sage Publications. Web. 2 Mar. 2016.
- Esperian, John H. "The Effect of Prison Education Programs on Recidivism." *The Journal of Correctional Education* 61.4 (2010): 31634. JSTOR. Correctional Education Association, Dec. 2010. Web. 20 Feb. 2016
- James, N. "Offender reentry: Correctional statistics, reintegration into the community, and recidivism. Congressional Research Service." Library of Congress. 2015.
- Vacca, James S. "Educated prisoners are less likely to return to prison." *Journal of Correctional Education* (2004): 297305.

Legislations and Decrees

Undang-Undang Dasar NRI Tahun 1945

Kitab Undang-Undang Hukum Pidana

Undang-Undang Nomor 12 Tahun 1995 tentang Pemasarakatan

Putusan No : 93/Pid.B/2000/PN.Kng tanggal 25 Januari 2001

Putusan No : 182/Pid.B/2016/PN.Kng tanggal 18 Januari 2017

Putusan No : 39/Pid.B/2018/PN-Kng tanggal 02 Mei 2018