

The Relationship Between Criminal Policy And Social Policy

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The Relationship Between Criminal Policy And Social Policy

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ABSTRACT. Crime or criminal acts, apart from being a humanitarian problem, are also social problems, they are even stated to be the oldest social problem. When carrying out crime prevention efforts, it must be seen in the context of overall social policy, the aim of which is to provide community protection and achieve community welfare. The aim of this research is to find out and analyze the relationship between criminal policy and social policy. This research was conducted descriptively analytically. Criminal policy is one of the fields of modern criminal law (modern criminal sciences) which consists of several components, namely criminology, criminal law, science and at the same time art. Criminal policy as an effort to overcome crime has the main objective of protecting and creating community welfare. Achieving a level of social welfare and social protection is a national goal in implementing social policy.

Keywords : Theory, Policy, Crime

INTRODUCTION

Crime or criminal acts, apart from being a humanitarian problem, are also a social problem, and have even been declared the oldest social problem. Rational efforts by a State to tackle crime are an integral part of efforts to protect society (*social defense planning or protection of society*) whose aim is none other than to achieve social welfare.

When carrying out crime prevention efforts, it must be seen in the context of overall social policy, the aim of which is to provide community protection and achieve community welfare. Determining the direction of criminal policy must go through a study that the study is a *science of responses, a science of preventing criminalization* and all of this must be carried out in rational planning. To implement criminal policy, one must first pay attention that the policy is an integrated part of national development.

The term criminal policy is a translation of *penal policy*. According to Muladi, criminal policy is a rational and organized effort by society to overcome crime. The main aim of criminal policy is crime prevention. According to Soedarto, criminal policy in the narrow sense is the totality of principles and methods that form the basis of and reactions to legal violations in the form of criminal law. Meanwhile, in a broad sense, criminal policy is the entire function of the law enforcement apparatus, including the workings of the courts and police.

In order to combat crime, it is necessary to pay attention to trends in certain forms of crime (*crime trends*). Criminal policy using penal means (criminal law) means trying to

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overcome crime by using criminal law carried out through the criminal justice system. Crime prevention policies are not just a matter of criminal law, so the criminal approach (penal) must be carried out carefully. In crime prevention policies, it is important to pay attention to the principle of *ultimum remedium*. This principle is a characteristic that criminal law is applied as a last resort after considering that the sanctions provided through other areas of law are not sufficient to overcome it.

To achieve a good crime prevention effort, apart from the considerations above, it also requires an analysis of the effectiveness of these sanctions. Based on this description, it can be concluded that criminal policy has a close relationship or connection with community (social) life because crime prevention efforts are aimed at realizing protection for the welfare of society. Therefore, we are interested in discussing the relationship between criminal policy and social policy. The aim of this research is to find out and analyze the relationship between criminal policy and social policy.

13 FORMULATION OF THE PROBLEM

Based on the background description above, the formulation of this research problem is as follows:

1. criminal policy theory in criminal law?
2. What is the relationship between criminal policy and social policy ?

RESEARCH METHODS

This research was carried out descriptively analytically, namely providing as accurate a picture as possible of the existing facts in the form of expert opinions, research results, work from legal circles as well as tertiary legal materials in the form of data obtained from magazines and the internet relating to criminal policy. and social policy. It is hoped that this research can provide a clear and comprehensive picture of matters relating to criminal policy and social policy. This research uses a normative juridical approach, namely a method where law is conceptualized as norms, rules, principles or dogma.

DISCUSSION

1. Criminal Policy (*Criminal Policy*) in Criminal Law

Providing a satisfactory or even uniform definition is difficult to obtain in the social sciences, because every scientist has a different opinion. However, according to the Editorial Staff of *Encyclopaedie ENSIE* (*Eerste Nederlandsche Systematisch Ingerichte Encyclopaedie*) this is a necessity if you want to discuss a problem, because

by providing a definition you will get an overview of the problem. Peter Hoefnagels stated that "*criminal policy is the rational organization of the social reactions to crime*". Furthermore, G. Peter Hoefnagels also put forward several definitions regarding criminal policy, including :

- a. *Criminal Policy is the science of response* (criminal policy is the science of reactions in the face of crime).
- b. *Criminal policy is the science of prevention* (criminal policy is the science of overcoming crime).
- c. *Criminal policy is a science of designing human behavior as crime*.
- d. *Criminal policy is a rational total of response to crime* (criminal policy is a rational total reaction to crime)

Efforts to tackle crime, criminal policies can be described in various forms, including :

- a. Application of criminal law (*criminal law application*).
- b. Prevention without punishment (*prevention without punishment*),
- c. Influencing society's views on crime and punishment through mass media (*influencing society's views on crime and punishment*).

According to Robert R. Mayer and Ernest Greenwood, policy can be formulated as a decision method that outlines the most effective and most efficient way to achieve a goal determined collectively. Criminalization is part of criminal policy using penal means. According to Soedarto, criminalization is the process of determining a person's actions as punishable. This process ended with the formation of a law where the act was threatened with a sanction in the form of a crime.

Two central problems in criminal policy using penal means (criminal law) are the problem of determining:

- a. What actions should be considered a criminal offense?
- b. What sanctions should be used or imposed on the violators?

Analysis of these two central problems cannot be separated from the integral conception between criminal policy and social policy or national development policy. This means that solving these problems must also be directed at achieving certain goals of socio-political policies that have been determined using a policy-oriented approach.

This integral policy approach is not only in the field of criminal law, but also in legal development in general.

To determine an act as a criminal act, ² it is necessary to pay attention to the following general criteria:

- a. Is the act disliked or hated by society because it is detrimental, or could be detrimental, cause victims or could result in victims?
- b. Are the costs of criminalization balanced with the results to be achieved, meaning that the costs of making laws, monitoring and enforcing the law, as well as the burden borne by victims and criminals themselves must be balanced with the legal order situation to be achieved.
- c. Will it further increase the unbalanced burden on law enforcement officials or in fact cannot be carried by the capabilities they have?
- d. Does this act hamper or obstruct the nation's ideals, so that it constitutes a danger to the whole of society?

The use of rational methods in the context of crime prevention cannot be separated from the lack of policy. This means that crime control efforts must not be met with crime, which is the characteristic of crime control rationality. Marc Ancel views criminal policy as one of the fields of modern criminal law (*modern criminal sciences*), which according to him consists of several components, namely criminology as a crime phenomenon viewed from various aspects, criminal law as an explanation and application of positive law by which society acts on phenomena. crime and *penal policy* , a science and at the same time an art with the practical aim of enabling positive legal rules to be formulated better and as a guide for legislative bodies that draft criminal law laws, as well as for the courts that apply them and correctional institutions that give effect practical to court decisions.

Based on this definition, it can be stated that criminal policy is both a science and an art. These two characteristics are reflected in the preparation of the draft criminal law law (hereinafter referred to as the Bill) both regarding principles, establishing norms and institutions. Thus, one of the criminal policies is related to the process of forming laws so that relatively good legal regulations can be obtained. Apart from that, criminal policy is also related to practical purposes, namely as a guideline for the court in imposing a crime (regarding the selection of the type and severity of the crime) as well as a guideline for the execution apparatus (in Indonesia, this is the Prosecutor's Office), whether it must be

carried out in whole or in part or postponed (*suspended sentence*).). As a science, criminal policy must use certain scientific methods so that it can be intellectually accountable. Criminal policy discusses repressive measures while not ignoring preventive measures to prevent the spread of crime. Both approaches are one of the scientific methods in dealing with crime.

2. The Relationship Between Criminal Policy and Social Policy

Policy, which in English is called *policy*, etymologically comes from Greek and Sanskrit, namely *polis* which means city-state and *pur* which means city. Then the word was developed in Latin to become *politia*, which means state. Arriving in the Middle Ages, the development of the term referred to in English which is translated as *policie*, which can be defined as dealing with public issues or government administration. In living life, humans will not be separated from problems. Likewise, in a country there are certainly problems related to statehood, including the problem of overcoming criminal acts.

Based on these problems, a way out or solution must be immediately sought, including through a political policy approach. Problem solving must be carried out immediately with the hope that it will not become an inhibiting factor in achieving national goals, especially in providing social protection and welfare. The protection and welfare of society is also the national goal of the Indonesian nation as stated in the fourth paragraph of the 1945 Constitution of the Republic of Indonesia, so that it can be used as a guide and direction for Indonesian legal politics.

Several main things can be identified in the relationship between criminal policy and social policy, including the following:

- a. Crime Prevention and Control (PPK) must focus on the goals contained in social policy, namely community protection and community welfare, especially those of an immaterial nature such as the values of trust, truth, honesty and justice.
- b. Crime Prevention and Control (PPK) must be carried out with an "integral approach", which means there is a balance between penal and non-penal policies.
- c. Crime Prevention and Control (PPK) which uses penal means is a penal policy or penal law enforcement policy as its functionalization and operationalization is carried out through several stages, namely as follows:

- i. The formulation stage (legislative policy or legislative policy), namely the stage of law enforcement *in abstracto* by the law-making body which contains a plan or program from the law-maker regarding what will be done in dealing with certain problems and ways on how to do or implement something that has been planned or programmed.
- ii. The application stage (judicial policy or judicial policy), namely the stage of implementing statutory regulations in the criminal justice system (criminal law) by law enforcement officials from the police to the courts.
- iii. The execution stage (executive policy or administrative policy) is the final stage of Crime Prevention and Control (PPK) efforts in the use of penal means, namely the stage of concrete implementation of criminal law by criminal implementing officials.

CONCLUSION

1. The term criminal policy is a translation of *penal policy*. According to Muladi, criminal policy is a rational and organized effort by society to overcome crime. Crime is both a science and an art. These two characteristics are reflected in the preparation of the draft criminal law law (hereinafter referred to as the Bill) both regarding principles, establishing norms and institutions. The implementation of criminal policies using criminal law means (penal means) must be an effort made deliberately and consciously, in the sense that every choice and determination of criminal law as a suggestion for overcoming crime must really pay attention to the factors that support the function or working of criminal law that's in reality.
2. Criminal policy, social policy and criminal law policy are also related to each other. Criminal policy as an effort to overcome crime has the main objective of protecting and creating community welfare. Achieving a level of social welfare and social protection is a national goal in implementing social policy. Efforts to achieve these national goals can, among other things, be carried out through the implementation of democratic and popular sovereignty based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

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