Family Visiting Service System for Prisoners in Class II B Tanjung Pura Detention Centre

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Family Visiting Service System for Prisoners in Class II B Tanjung Pura Detention Centre

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Abstract: *In order to prevent the distribution and use of narcotics in detention centers, narcotics dealers are subject to a specific minimum penalty for the type of punishment that can be imposed on criminals. The social issue in giving to prisoners who have committed criminal acts of narcotics abuse is the prisoner right to receive a reduced sentence if they have good behavior while undergoing training. The nature of the research used is normative legal research and the data collection method used in this research is secondary data obtained through library research, namely by conducting research on various literature such as books, laws, with the aim of to look for concepts or understandings related to the problem of the Family Visiting Service System for Inmates in the Class II B Tanjung Pura Detention Center. Legal Arrangements for the Family Visiting Service System for Inmates in the Class II B Tanjung Pura Detention Center can be interpreted as a place where people are gathered who violate the rules and norms that exist in society. Meanwhile, the principle adopted by correctional institutions is to position prisoners as subjects who are seen as individuals, ordinary citizens, and as creatures of God. Based on this, in prison prisoners receive guidance and guidance with the hope that after completing their sentence, prisoners can socialize with the community and improve their skills so they can live independently in society. Factors Inhibiting the Family Visiting Service System for Inmates in the Class II B Detention Center in Tanjung Pura, from children to adults, are not free from narcotics, in Indonesian law enforcement the morning criminal sanctions for narcotics dealers do not seem to be feared by the dealers because it is proven by Year after year the problem of narcotics always increases.*

Keywords: *Service System, Visiting, Class II B Prison, Tanjung Pura*

INTRODUCTION

An act cannot be said to be a criminal offence if there is no prior statutory provision. This principle in criminal law is known as the principle of legality, which is the main principle of criminal law. The principle of legality is derived from Latin, namely: 'nullum delictum, nulla poena sinepraevia lege poenali', which literally means: 'No act can be punished, unless it has been determined in advance in the law".[1] That in the principle of legality stipulated in Article 1 paragraph (1) can be punished except on the strength of criminal rules in legislation that has existed, before the act was committed '.The definition of punishment has been explained by several criminal law experts. According to Roeslan Saleh, punishment is a reaction to the offence and this is in the form of a punishment deliberately inflicted by the state on the perpetrator of the offence.[2]

[1] Lihat Pasal 1 ayat (1) KUHP
[2]Roeslan Saleh, *Stelsel Pidana Indonesia*, Aksara Baru, Jakarta, 2003, hlm. 8

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According to Barda Nawawi Arief, 'punishment' is actually only a 'tool', namely a tool to achieve the purpose of punishment. According to Subekti and Tjitrosoedibio in their legal dictionary, 'punishment' is 'punishment.' In essence, the history of criminal law is the history of punishment and punishment which always has a close relationship with the problem of criminal offences.[3] The problem of criminal offences is a humanitarian and social problem that is always faced by every form of society. According to Sudarto, 'criminal offence is a juridical notion, unlike the term criminal act or crime (crime or vertrechten or misdaad) which can be interpreted juridically (law) or criminologically'. The term criminal offence is often used to replace strafbaar feit.' The word feit itself in Dutch means part of a reality or een gedelte van de werkelijkheid, while strafbaar means punishable so that literally the word strafbaar feit can be translated as part of a punishable reality, which is of course not correct, because later we will find out that what can be punished is actually a human being as a person and not the reality of actions or actions".[4]

As part of the definition of a criminal offence. This is also what Simon and Van Hamel defined. These two Dutch criminal law experts have coloured the opinions of Dutch and Indonesian criminal law experts to date. Simon said that a strafbaarfeit is a criminal offence, which is against the law, and is related to fault committed by a person who is capable of being held responsible.[5]

Simon's formulation shows the following elements of a criminal offence or criminal event:

1) Handeling, human action, with handeling is meant not only 'een doen' (action) and but 'een nalaten' or 'niet doen' (but or not do), the problem is whether neglecting or not doing it can be called doing. A person who does not act or neglect can be said to be responsible for a criminal event, if he does not act or neglect something, even though he is burdened with a legal obligation or obligation to act.
2) The human action must be against the law (Wedeerechtelijk).
3) The act is threatened with punishment (Strafbaar Gesteld) by the Law.
4) It must be committed by someone who is capable of responsibility (Toerekeningsvatbaar).
5) The act must be committed through the fault (Schuld) of the perpetrator.

Van Hamel's formulation is actually the same as Simon's, only Van Hamel adds one more condition, namely that the act must also be punishable (Welk Handeling een

[3]Subekti dan Tjitrosoedibio, Kamus Hukum, Pradnya Paramita, Jakarta, 1980, hlm 83.
[4]P.A.F.Lamintang, *Dasar-dasar Hukum Pidana Indonesia*, Citra Aditya Bakti, Bandung, 1997, hlm 181
[5]Chairul Huda, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*, Fajar Interpratama Offset, Jakarta, 2006, hlm. 25.

Strafwaarding character heft). Van Hamel explicitly said that Strafbaarfeit is the behaviour of the person formulated in the Act that is against the law, deserves to be punished and is committed with fault. Both Simon and Van Hamel include fault in the definition of a criminal offence. 'Connected with fault, or committed with fault' is a phrase that indicates that for him an act is a criminal offence if it is also formulated in terms of fault.

Schaffmeister said that a criminal offence is a human action that falls within the scope of the formulation of the offence, is against the law, and is reprehensible. According to Vos, a criminal event is an event that is declared punishable by law (Een Strafbaar feit is een door de wet strafbaar gesteld feit).[6]

Narcotics crime can be formulated as a crime without victim, where the perpetrators also act as victims. According to Tutty Alawiyah A.S in Moh. Taufik Makarao et al, narcotics crime is one form of crime known as victimless crime. In addition to narcotics, victimless crimes include gambling, alcohol, pornography, and prostitution.[7]

According to expert Gatot Supramono, narcotics offences are special criminal offences. As a special criminal offence, the judge is allowed to impose two main punishments at the same time, generally corporal punishment and a fine. Corporal punishment is in the form of death penalty, life imprisonment, or imprisonment. The aim is that the punishment is burdensome for the perpetrators so that the crime can be overcome in society, because narcotics offences are very dangerous for the interests of the nation and state.[8]

Indonesian National Law has regulated everything related to narcotics in Law No. 35 of 2009 concerning Narcotics. Law No. 35 of 2009 concerning Narcotics has regulated the criminal provisions for anyone who can be subject to punishment along with fines that must be borne by people who abuse narcotics or can be referred to as perpetrators of narcotics criminal acts. Many people think that the penalties imposed on the perpetrators of narcotics criminal acts are the same, even though the narcotics law itself does not distinguish the perpetrators of narcotics criminal acts along with different sanctions.

Soerdjono Dirjosisworo said that the definition of narcotics is a substance that can cause certain effects for those who use it by entering the body. The influence can be in the form of anaesthesia, loss of pain, stimulation of spirit and hallucinations or the emergence of delusions. These properties, which are known and discovered in the medical world, are intended to be

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[6]C.S.T Kansil dan Christine S.T. Kansil, *Pokok-pokok Hukum Pidana Untuk Tiap Orang*, Pradnya Paramita, Jakarta, 2004, hlm. 2

[7]Moh. Taufik Makarao, Suhasril, H. Moh Zakky A.S, *Tindak Pidana Narkotika,* Ghalia Indonesia, Jakarta, 2003, hlm, viii.

[8]Gatot Supramono, *Hukum Narkotika Indonesia*, Djambatan, Jakarta, 2004, hlm. 93

used for treatment and human interests in the fields of surgery, relieving pain, shivering and others.[9]

RESEARCH METHODS

Methods are ways of working or work techniques to be able to understand the object that is the target of the science concerned. Meanwhile, research is a scientific work that aims to reveal the truth systematically, methodologically and consistently. Legal research is a scientific activity based on certain methods, systematics and thoughts that aim to study something or several legal symptoms of course by analysing them. Thus the research method is a scientific effort to understand and solve a problem based on certain methods.

The specification of this research is normative legal research, namely research that refers to legal norms contained in legislation, literature, legal norms that exist in society and the data obtained is then analysed to answer the problems in this study. The research is straightforward to analyse the application of the law, the type of research used is qualitative research, which is carried out by examining library materials in the field of law and legislation relating to the Family Visiting Service System for Prisoners in Class II B Tanjung Pura Detention Centre.

Theoretical Review

According to Mitha Thoha, coaching is an action, process, result, or better statement. In this case it shows progress, increased growth, evolution of possibilities, development or improvement of something. There are two elements of the definition of coaching, namely that coaching can be an action, process, or statement of purpose and coaching can show the improvement of something. According to Poerwadarmita, coaching is an effort, action and activity that is carried out in an efficient and effective manner to obtain better results.

In general, coaching is referred to as an improvement to the planned pattern of life. Every human being has certain life goals and he has the desire to realise these goals. If these life goals are not achieved, humans will try to reorganise their life patterns. The definition of coaching according to psychology can be interpreted as an effort to maintain and bring a situation that should occur or maintain the situation as it should be. In out-of-school education management, coaching is carried out with the intention that the activities or programmes that are being implemented are always in accordance with the plan or do not deviate from what has been planned.

[9]Soedjono Dirjosisworo, *Hukum Narkotika Indonesia*, Citra Aditya Bhakti, 1990, Bandung, hlm. 3

RESULTS AND DISCUSSION

1. Legal Arrangements for Family Visiting Service System for Prisoners in Class II B Tanjung Pura Detention Centre.

Formulating the sound of a law is a heavy and difficult job. E.Y. Kanter and S.R Sianturi argued that what must be formulated is not a concrete event, but as far as possible the formulation must be such that it covers everything and in all circumstances, so that no action or opportunity is left to escape, no matter how carefully looking for weaknesses in the formulation of the regulation. The formulation of the sound of the law must be simple but clear and clear. Furthermore, in the end, it is not only law enforcers and justice who are concerned about the formulation of legislation, but every citizen who seeks justice. Apart from that, it is very important for legal certainty.[10]

Furthermore, E.Y. Kanter and S.R Sianturi argued, 'the language of the law is often not the same as everyday language. There are times when the language of the law has a broader or narrower meaning, it may even be perceived as somewhat deviant".[11]

Marjanne Termorshuizen-Arts in her paper argues that a formulation of the law must fulfil several principles, namely:

1. Lex Scripta principle, which means that the criminal provisions must have been formulated first. Besides being able to provide legal certainty to citizens, it will also provide similar certainty for government officials who must enforce criminal law, such as police and prosecutors.
2. Lex Certa principle, i.e. the formulation of the statutory provisions must be clear and clear.
3. Lex Stricta principle, which means that the formulation must be quite strict and limited in scope.

Marjanne Termorshuizen-Arts argues that criminal legislation should provide legal certainty to citizens. Theoretically, by reading the provisions of legislation or even the Book of Law, a citizen can trace whether an act or action (which he might want to do) is threatened with criminal sanctions or not. In this way, citizens can know and make choices including considering the consequences of the actions they will take, of course, provided that the formulation or wording of the statutory provisions is clear enough.[12]

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[10] E.Y. Kanter & S.R. Sianturi, *Op.Cit.*, hlm. 63.
[11] *Ibid*, hlm 56
[12] *Ibid*, hlm.4.

The formulation of articles in an Indonesian law that regulates or contains provisions on criminal punishment or criminal sanctions (strafmaat), including special minimum punishment, is clearly intended to provide legal certainty for Indonesian citizens.

One of the specificities of criminal formulation in Law Number 35 Year 2009 on Narcotics is the formulation of special minimum punishment in addition to general maximum punishment and special maximum punishment, this is certainly different from the formulation of the Criminal Code (KUHP) (WvS) which is the parent of criminal legislation in Indonesia, where the criminal formulation used is a general minimum for both imprisonment and confinement for 1 (one) day (Article 12 paragraph (2) of the Criminal Code and Article 18 paragraph (1) of the Criminal Code), as well as general maximum and special maximum punishment.[13]

The existence of a special minimum criminal punishment contained in a law, including the Narcotics Law, basically has a close correlation with the purpose of punishment or imposition of punishment. Where punishment itself is the most important part of criminal law, because it is the culmination of the entire process of holding someone accountable who has been guilty of committing a criminal offence.[14]

As quoted by Chairul Huda, Andrew Ashworth said: 'A criminal law without sentencing would merely be a declaratory system pronouncing people guilty without any formal consequences following farm that guilt'. Based on the above opinion, it can be said that in criminal law there must be punishment, so that there are definite consequences for the mistakes that have been committed by the perpetrator of the crime. Related to the definition of the punishment system, this includes a very broad understanding. According to the opinion of L.H.C. Hulsman, as quoted by Lilik Mulyadi, said that the sentencing system is: 'The statutory rules relating to penal sanctions and punishments)."[15]

If the definition of punishment is broadly interpreted as a process of giving or imposing punishment by a judge, then it can be said that the punishment system includes all statutory provisions that regulate how the criminal law is enforced or operationalised concretely so that someone is sentenced to criminal sanctions (law). This means that all legislations regarding substantive criminal law, formal criminal law and criminal

[13]AR. Sul[illegible] dan Bony Daniel, *Op.Cit*., hlm. 215.
[14]Chariul Huda, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan; Tinjauan Kritis Terhadap Teori PemisahanTindak Pidana dan Penanggungjawaban Pidana*, cet. 2, Jakarta : Kencana Prenada Media, 2006, hlm. 125.
[15]Lilik Mulyadi, *Hukum Acara Pidana : Normatif, Teoritis, Praktik dan Permasalahannya*, Cet. 1, Bandung : Alumni, 2007, hlm. 90.

implementation law can be seen as one unit of the criminalisation system.[16] This theory states that the essence of punishment is retaliation. Criminal punishment does not aim for practical purposes, such as improving criminals. It is the crime itself that contains the elements for the imposition of punishment. Criminal punishment absolutely exists because a crime is committed. It is not necessary to consider the benefits of imposing the punishment. Every crime must result in the imposition of punishment on the offender. Criminal punishment is an absolute requirement, not only something that needs to be imposed but becomes a necessity.[17]

According to Leo Polak's opinion quoted by Andi Hamzah, it is suggested that the variations of the theory of retaliation are detailed into the theory of defence of legal power or defence of state government power (rehtsmacht of gezagshandhaving). This theory describes punishment as mere coercion. Those who voluntarily accept the verdict of the criminal judge automatically do not feel that the verdict is not as suffering. The theory of compensation (voordeelscompensatie). This theory says that if the crime is not rewarded with punishment, then there is a bad feeling. Punishing criminals is an aesthetic necessity. The theory of obliterating everything that is the result of an unlawful act and humiliation (onrechtsfustrering en blaam). This theory says that ethics cannot permit the exercise of a subjective will contrary to the law. The greater the will against the law, the greater the contempt.

That in organising legal equality (talioniserende handhaving van rechtsgelijkheid). According to this theory, the principle of legal equality that applies to all members of society demands an equal legal treatment of every member of society. The theory of countering the tendency to satisfy the desire to act contrary to decency (dry van onzedelijke neigingsbevredining). This theory says that the need to retaliate is not addressed to the question of whether others are happy or suffer, but the need to retaliate is addressed to the intentions of each person. Intentions that are not contrary to decency can be satisfied, whereas intentions that are contrary to decency cannot be satisfied.

2. Barriers to the Family Visiting Service System for Prisoners in Class II B Tanjung Pura Detention Centre.

The prevention of a crime by imposing a severe criminal punishment to frighten potential criminals. It is hoped that a potential criminal, knowing the existence of a

[16]Barda Nawawi Arief, *Sistem Pemidanaan Menurut Konsep KUHP Baru dan Latar Belakang Pemikirannya*, Kupang , Universitas Cendana Kupang, 1989, hlm.1.
[17] *Ibid*, hlm 63

sufficiently severe criminal threat, will discourage his intention. Correction or 'education' for criminals (Verbeterings theorie). Criminals are given 'education' in the form of punishment, so that they can return to society in a better and more useful mental state. Removing criminals from the environment/society (Onschadelijk maken). The method is for criminals who have become immune to criminal threats in the form of efforts to frighten (afschrikking) to be sentenced to deprivation of liberty for a long time, even if necessary with the death penalty.

Ensuring public order (rechtsorde). The method is to establish norms that guarantee legal order. To violators of these norms, the state imposes punishment. The threat of punishment will work as a warning (waarschuwing) and frightening. In relation to the existence of theories that justify the imposition of punishment, then in the opinion of Oemar Seno Adji, the legislation gives freedom to the judge which theory will be used in determining the punishment.[18]

With regard to the purpose of punishment itself, it is generally associated with 2 (two) major views, namely retributivism and utilitarianism, which can be described as follows [19]. This understanding is very influential in criminal law, especially in determining the purpose of punishment. In essence, this understanding determines that the purpose of imposing punishment is to retaliate against the perpetrator. This is as explained in the absolute theory or theory of retaliation). According to Van Bemmelen, he said, 'basically every punishment is retaliation. Meanwhile, according to Knigge, 'Punishment is basically retaliation and it is not a bad thing in itself, retaliation as a reaction to behaviour that violates norms is a very natural human action.' (Knigge, 2011)".[20]

This view mainly determines that punishment has a purpose based on certain benefits (benefit theory or purpose theory) and not just simply to retaliate against the offender. Jeremy Bentham as a pioneer of thinking about the purpose of punishment who put forward utilitarian theory, which resulted in utilitarianism. According to this theory, a crime does not have to be punished with a punishment but there must be benefits both for the criminal and for society. Punishment is given not only because of what the offender has caused in the past, but there is a primary goal for the future. So that punishment serves to prevent crimes from being repeated, and to scare members of society so that they become afraid of committing crimes.[21]

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[18]Oemar Seno Adji, *Loc. Cit*, hlm 89.
[19]*Ibid*, hlm.128.
[20]*Ibid*, hlm. 619.
[21]A. Mangunhardjana, *lsme-isme dalam Erika dari A sampai* Z, Yogyakarta : Kanisius, 1997, hlm. 228.

Muladi and Barda Nawawi Arief argued, 'punishment is not just to carry out retaliation or compensation to people who have committed a criminal offence, but has certain useful purposes. Meanwhile, according to Antony Duff and David Garland, as quoted by Harkristuti Harkrisnowo, the purpose of punishment is grouped into 2 (two) major groups, namely consequentialists and non-consequentialists, which are described as follows: [22]

For consequentialists, whether something is right or wrong depends solely on the overall consequences. In short, if the consequences are good, then the action is right, but if the consequences are bad, then the action is wrong. Therefore, to seek justification for punishment, it must be proven that, among others:

a) The punishment brings good

b) The punishment prevents a worse event

c) There is no other alternative that can provide equally good results.

The non-consequentialist group looks more at the importance of efforts to justify the imposition of punishment as an appropriate response to crime. They believe that the rightness of an action should be based on its intrinsic character, without considering the consequences. This group considers that punishment is a suffering that must be given to the perpetrator of the crime. So it is not an exaggeration if this school is called more intrinsicalist and backward-looking.[23]

With regard to the latter, Sudarto refers to them as 'special and general preventions'. Both of these terms are related to punishment. Where punishment in relation to 'special prevention' is that the punishment will have an influence on the convicted person, so that the convicted person will not commit a criminal offence again and he will become a better person than before he was convicted. Meanwhile, punishment in relation to 'general prevention', namely by punishment will have an influence on the wider community, so that the community does not commit a criminal offence or crime. This is in line with the opinion of Hulsman, who stated that the essence of punishment is not the provision of pain, but calls for order (tot de orde roepen).[24]

Regarding the purpose of punishment in Indonesia, Muladi tends to combine the purpose of punishment with sociological, ideological and philosophical juridical approaches. The purpose of punishment is to repair individual and social damage caused by criminal offences, the purpose of punishment is general or special prevention. To prevent the

[22]Harkristuti Harkrisnowo, *Rekonstruksi Konsep Pemidanaan : Suatu Gugatan Terhadap Proses Legislasi dan Pemidanaan di Indonesia*, (Orasi pada Upacara Pengukuhan Guru Besar Tetap Dalam Ilmu Hukum Pidana Fakultas Hukum Universitas Indonesia di Balai Sidang Universitas Indonesia, Depok, 8 Maret 2003, hlm.11.
[23]*Ibid*, hlm. 11-12.
[24]*Ibid*, hlm.81.

perpetrator and others from committing the same crime or further crimes. The purpose of punishment is the protection of society. Narrowly described as the court's policy to find ways of punishment so that society is protected from the dangers of criminal recidivism. The purpose of punishment is to maintain community solidarity. Punishment aims to uphold community customs and prevent unauthorised revenge. The purpose of punishment is to maintain or sustain cohesion. Criminal justice is a statement of society, that society reduces aggressive desires in a way that is acceptable to society. So solidarity is associated with compensation for victims of crime.

The purpose of punishment is compensation/offset. This theory assumes that every person in any circumstance is also capable of acting freely according to his will, this provides justification for justification by imposing punishment. Criminals must pay back the consequences of the evil deeds that have been committed. Still related to the purpose of punishment, departing from the idea that the criminal law system is a unitary system that aims ('purposive system') and punishment is only a tool / means to achieve the goal, the concept / draft of the New Criminal Code formulates the purpose of punishment based on the balance of two objectives as a principal, namely 'protection of society' and 'protection / development of individuals".[25]

That this is as contained in Chapter III Book I of the Draft New Criminal Code Concept, specifically Article 54 which regulates the purpose of punishment, which reads as follows paragraph (1) The purpose of punishment is to prevent the commission of criminal offences by enforcing legal norms for the protection of society, to correct the convicted person and thus make him/her a good and useful person, and able to live in society, to resolve conflicts arising from criminal offences, to restore balance and bring a sense of peace in society and to relieve the guilt of the convicted person.

CONCLUSIONS AND SUGGESTIONS

Legal Arrangements for the Family Visiting Service System for Prisoners in Class II B Tanjung Pura Detention Centre can be interpreted as a place where humans who violate the rules and norms that exist in society are gathered. While the principle adopted by correctional institutions is to position prisoners as subjects who are seen as individuals, ordinary citizens, and as creatures of God. Based on this, in the detention centre inmates receive guidance and coaching with the hope that after completing their sentence, inmates can socialise with the community and improve their skills to be able to live independently in the community.

[25]Muladi, et al, *Op.Cit*., hlm. 6.

Inhibiting Factors of the Family Visiting Service System for Prisoners in Class II B Tanjung Pura Detention Centre ranging from children to adults are not spared from narcotics, in Indonesian law enforcement the morning criminal sanctions for narcotics dealers seem not to be feared by dealers because it is proven from year to year that narcotics problems always increase.

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Family Visiting Service System for Prisoners in Class II B Tanjung Pura Detention Centre

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