

REVIEW ARTICLE

LIFETIME IMPRISONMENT IN THE PERSPECTIVE OF HUMAN RIGHTS

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ABSTRACT

Criminal law reform is essentially an effort to review and reform (reorientation and reform) criminal law in accordance with the development of the socio-political and socio-cultural values of Indonesian society that underlie social policies, criminal policies and law enforcement policies in Indonesia. Criminal law reforms in the context of improving the penal system are still being carried out. The reform of Indonesian law is currently directed at efforts to reorient the substance of criminal law rules which are considered no longer relevant to the life of the Indonesian people because many evil acts in the optics of society are not considered evil and are prohibited in the optics of positive law. All happened because Indonesian criminal law in general is a legacy from the Dutch, which is culturally different from the culture of Indonesian society which is Eastern style. If you place the law as a reflection of society, then the current Indonesian criminal law does not reflect this, then the reform of Indonesian criminal law currently leads to a reorientation of the substance of Indonesian criminal law according to the will of the community.

Keywords: *Lifetime Imprisonment; Punishment; Human Rights; Criminal Justice*

INTRODUCTION

The 1945 Constitution means that the State of Indonesia symbolizes a state of law, in which in a state of law there must be recognition and protection of human rights for every human being. Human beings will receive equal treatment and protection in the eyes of the law, including in the social, cultural, and economic spheres. Included as a basic principle contained in article 2 which explains that "The Republic of Indonesia recognizes and upholds human rights and fundamental human freedoms as rights inherently inherent in and inseparable from human beings, which must be protected, respected, upheld in remembrance of human dignity, well-being, happiness, intelligence, and justice." Therefore, the State of the Republic of Indonesia has guaranteed the protection of human rights, based on the provisions of the law and not including the will of a person or a group that can be the basis of power.

The fundamental right that a person has from birth is the definition of Human Rights, this right is thought to be a gift given by God Almighty. All human beings should uphold human rights because they belong to all human beings. In addition to human beings, the state must also protect human rights, because as said before, the state also highly upholds and views one's human rights through the distribution of regulations that are real and coercive for its citizens, so as not to look down on the human rights of others. The purpose of enforcing the law that has been established while safeguarding every human right of every citizen himself.

There are many criminal offenses that often occur in Indonesia, for example in cases of narcotics and terrorism crimes and are tried with the threat of a very serious crime and can even be subject to the threat of the death penalty. So it is clear that it is against human rights, especially the right to life. But it is in reality in the field is still used because it still imposes the Book of Criminal Law (KUHP) which is working until now.

Prison sentences represent the usual punishments in the criminal penalty system. This sanction is decided by a panel of judges to decide a criminal case. The implementation of criminalization in Indonesia is carried out through the correctional system which is based on Law No. 15 of 1995 concerning Corrections, in which the Law changes the basic idea of a juridical philosophical system from a prison system to a penitentiary system. The imprisonment system which strongly refers to the element of revenge through the institutional umbrella of the prison house is gradually seen as a system and means that are contrary to the concept of social rehabilitation and reintegration, so that the perpetrator of the crime knows and is aware of his actions, and no longer intends to commit an act. imprisonment, and can return to society and become a good citizen who can be accounted for in the community. The implementation of imprisonment using the correctional system is a series of law enforcement which has the aim so that the people who are nurtured or guided can understand their

mistakes, want to improve themselves, and do not intend or interfere with their actions so that later it is hoped that when they leave the guidance they can actively participate again in the environment. Public.

Article 12 of the Criminal Code explains the general rules for life imprisonment, in which the article states that paragraph (1) imprisonment is life imprisonment or a sentence for a certain period of time, paragraph (2) The punishment for imprisonment for a certain period of time is one day at the minimum and the maximum is one day. fifteen years imprisonment, paragraph (3) imprisonment for a specified period of time is allowed to be imposed for twenty consecutive years in the case of crimes for which the criminal sentence of the panel of judges is allowed to choose between the death penalty, life imprisonment and imprisonment for a certain period of time, and paragraph (4) imprisonment for a certain period of time may be > 20 years.

In article 12 above, the general provisions of life imprisonment are only regulated in one paragraph, namely paragraph (1). This article emphasizes that imprisonment can be in the form of life imprisonment or temporary imprisonment. It can be interpreted that this general provision does not pertain to the application of provisions for life sentences as in the regulations regarding imprisonment for a certain period of time. In addition, Article 15 of the Criminal Code also does not regulate and explain the possibility of parole for life inmates.

However, in practice Indonesia still uses the Criminal Code, which regulates the threat of life imprisonment, for example Treason to kill the head of state, article 104; Inviting foreign countries to attack Indonesia, article 111 paragraph (2); Giving help to the enemy when Indonesia was in war, article 124 paragraph (3); Killing the head of a friendly state, article 140 paragraph (1); Pre-planned killings in articles 140 paragraph (3) and 340; Violent theft by two or more people, at night or by means of dismantling and so on, which causes people to mourn or die, article 365 paragraph (4); Piracy at sea, on the coast, on the coast, and at times so that people die, article 444; In times of war, it encourages riots, rebellion, etc. between workers in state defense companies, article 124 paragraph (3); In war, he deceived when he conveyed the needs of the army, article 127 and article 129; Extortion by weighting article 368 paragraph (2) (Waluyo, 2000: 13).

And outside of the Criminal Code, the death penalty also regulates narcotics offenses, subversion laws, corruption charges, terrorism offenses and so on. In line with the development of criminal law, which currently has the aim of being able to protect the interests of the public and the interests of individuals who can become victims of crime and criminals. Life punishment is one of the means aimed at protecting the public interest from things that could be dangerous by an irreparable crime. However, the current life sentence has triggered various quarrels from several parties, and human rights activists or activists from various groups actually protested against the implementation of the life sentence.

In this case the 1945 Constitution regulates human rights which have been outlined in article 28 letter A to article 28 point J. Therefore, the certainty in that article can be linked using Law No. 39 of 1999 concerning Human Rights which explains that "*Every person has the right to live in a peaceful, secure and peaceful society and state order that respects, protects, and fully implements human rights and basic human obligations as regulated in this law*" ([Article 35 of Law Number 39 of 1999](#)).

Therefore, this paper is intended to analyze on: (1) How is life sentence in the perspective of the Indonesian criminal system? (2) What is the view of human rights in the life sentence? The purpose of this research is to find out the related matters (1) life sentence in the perspective of the Indonesian criminal system; (2) Human Rights Views in life imprisonment.

METHOD

The research method is the method used by the author in obtaining information or data. In this case the research process used is juridical normative, namely by using a statutory approach with an assessment of the Human Rights View of Lifetime Criminal Sentences. By using a qualitative writing method, the writer explains the data in the form of a sentence and then becomes a systematic and effective paragraph. Then the authors draw conclusions in an inductive way as a result or answer regarding Human Rights Views Regarding Lifetime Criminal Sentences.

LIFETIME IMPRISONMENT IN THE INDONESIAN CRIMINAL JUSTICE SYSTEM

The Criminal Code considers that a class of malicious behavior against the security system of a country can be said to be the type of crime most likely to be at risk of getting the threat of life imprisonment. These provisions can be seen in articles 104,106,107,111 paragraph (2), 124 paragraph (2), and paragraph (3), and 140 paragraph (3) of the Criminal Code. For example, Article 140 paragraph (3) contains treason which was carried out in a planned manner, against the life or independence of the head of a friendly state which resulted in death.

The crimes regulated in this article include crimes against friendly countries. Another type of group crime that can be referred to as a life sentence is a crime that is dangerous to the general public. The criminal agreement is contained in 5 articles, namely about deliberately causing a fire, explosion, flood which causes the death of a person, about deliberately drowning, stranding, or damaging a boat that causes the death of people as stated in article 192 (2), about deliberately destroying or, damaging a building which causes the death of a person as stated in article 200 (3), concerning crimes, entering, something into

public drinking water which can cause the death of people as stated in article 202 (2), and selling, bidding, delivering and / or distributing dangerous goods. which is dangerous to life and may cause the death of the person as stated in paragraph 204 (2).

Criminal Code with the threat of life imprisonment or a maximum sentence of twenty years. Mistakes in flight that can be subject to a life threat are contained in article 479 letter f sub b which describes actions that are deliberate and are included in actions against the law that are injurious to destroy and render the aircraft unusable which can result in the death of people. Article 479k which threatens to imprisonment for life or imprisonment of up to twenty years for the acts stipulated in Articles 479 i and 479 if they are carried out by two or more persons collectively, as a continuation of an evil conspiracy, with a plan of more than two years, 1 serious injury, to cause damage to the aircraft, to deprive someone of liberty, paragraph (1) or to the death penalty or life imprisonment or a sentence of twenty years (2) if that act results in the death of a person or the destruction of the aircraft.

Crime groups have also been regulated in Pasa1 479 letter o which threatens life imprisonment or twenty years of imprisonment for the acts in Pasa1 479 number 1, Pasa1 479 letter m, and Pasa1 479 letter n if treated by two or more people collectively. similarly, as a continuation of an evil consensus, with a more than twofold plan, resulting in serious injury to paragraph (1) or by death or life imprisonment or a maximum sentence of twenty years paragraph (2) if the act resulted in the death of a person or the destruction of the aircraft.

Based on the explanation contained in it, it can be seen that the most factors for the class of crimes that are sentenced to life imprisonment are crimes that cause death or take victims. In the formulation of the Criminal Code, we generally know that it is a single system and an alternative. Where most of its use in the Criminal Code in the criminal system is a single system. In fact, almost all offenses which are crimes listed in the second volume of the Criminal Code include the specter of imprisonment by establishing a single system¹. Regarding life criminal cases, not a single Pasa1 has the punishment of being punished by a single system¹. All life imprisonment sentences in the Criminal Code have been formulated using an alternative system.

Judging from the preparation of life imprisonment in the KUHP using an alternative system as a whole, which shows that life imprisonment in the Criminal Code is a kind of punishment that can be chosen for its imposition, not imperative. This is different from the formulation of imprisonment for a certain period of time, which uses the formulation of criminal threats with a single imperative system.

In the "correctional" setting the policy on life imprisonment is paradoxical¹. The accumulation of life-long prisoners in prisons clearly disturbs the viewpoint of prisoners, especially life-long prisoners whose garage applications have been denied. At the same time, according to the current

Criminal Code, prisoners who are sentenced to life have relatively little chance of reintegrating into society. The lack of hope for the return of life-long prisoners to the community is due to the emergence of a juridical case against the possibility that society will return to life-long prisoners. The main juridical obstacle that causes life-long convicts to return to society is the provisions of the Criminal Code. As the parent of the Indonesian criminal law system, many provisions in the Criminal Code are not in accordance with the concept of "*correctionalization*". At the mass, it can be seen that there are no provisions in the Criminal Code that allow life-long prisoners to re-adapt to society.

Although parole can be carried out as "guidance in society" according to Article 15 paragraph 1 of the Criminal Code, this provision is very difficult to apply to prisoners for life. The provisions of Article 15 paragraph 1 of the Criminal Code states "*if the convicted person has served two thirds of the length of the imprisonment imposed on him, which must be at least nine months, then he can be granted conditional release. If the convicted person has to serve several sentences in a row, that punishment is considered as one punishment*".

According to the provisions of Article 15 paragraph 1 of the Criminal Code above, it appears that conditional exemption will be granted to the prisoner after he has served two thirds (2/3) of the sentence imposed. In other words, parole is only granted if the time limit for the sentence is known and therefore can be calculated or measured. As previously mentioned, the law / KUHP does not explicitly and clearly provide a duration regarding life imprisonment, so it is not known the length of life imprisonment. This means that prisoners cannot be released on condition. Because, because it is not known the length of life imprisonment, 2/3 (two thirds) of the life sentence cannot be determined.

According to Article 1 paragraph 1 of KEPPRES No. 5 of 1987, there are two conditions for parole, namely: (1) the punishment must be in the form of a criminal, temporary imprisonment; and (2) when serving a sentence, the prisoner concerned has good behavior. According to the provisions stipulated in Article 1 paragraph 1 point 1 (a) above, KEPPRES No. 5 of 1987 clearly does not give life-long prisoners the possibility of obtaining remissions. Article 7 Presidential Decree No. 5/1987 regulates the possibility of obtaining remission and exemption from the death penalty. According to what is written in Article 7, it opens an opening for life-long prisoners to receive remissions, with the provision that the sentence has been changed from life imprisonment to temporary imprisonment. Article 7 (2) KEPPRES No. 5 of 1987 states "The change from life imprisonment to temporary imprisonment is carried out by the president". Thus, based on the content of Article 7 (2) KEPPRES No. 5 of 1987, a life sentence can only be changed to a sentence for a certain period of time under a guarantee.

Provisions Pasa1 7 paragraph 2 KEPPRES No. 5/1987 besides providing a gap in the possibility for convicts who are sentenced for life to receive remission, it is also a penalty, it can even be called a regression, because, there is no guarantee that if a life sentence gets pardon, it will definitely be changed to a

temporary sentence. In addition, it is not an easy legal remedy to change life imprisonment into a sentence for a certain period of time through clemency, especially for prisoners who are legally "ordinary people". Apart from the two provisions above, the juridical conditions for life-long prisoners to return to society are also due to the various regulations under them, namely the provisions for the implementation of the two provisions. The implementation of the two regulations above can be referred to, for example, the Minister of Justice Decree No.M.03.HM.02.02 year 1988 and the Decree of the Minister of Justice No M.01.PR.04.10 thn1989 which states that the substantive requirements for a prisoner to obtain an assessment permit, are: The other person has served half (1/2) of his prison term. According to this provision, assimilation is also not possible for a prisoner for life.

We can see from these various regulations that there are obstacles in returning life-long prisoners in the community, which clearly contradicts the concept of "*correctionalization*" which is held in the Indonesian prisoner enforcement system.

PERSPECTIVES ON HUMAN RIGHTS IN LIFETIME IMPRISONMENT

In the law on penalties, the definition of convicted person has been explained and disclosed, that is, a person who is convicted based on a court decision that has obtained permanent legal force. Meanwhile, the law of Law No. 12 of 1995 concerning Corrections contained in article 1 point 7 explains what is meant by convicts, namely convicted convicts who have served a criminal violation of independence in a correctional facility (prison).

With the verdict of life imprisonment, the prisoner is a convict who must carry out the sentence and lose his independence to be fostered in the prison who is subject to life imprisonment. In essence, prisoners for life also have the same rights in carrying out their sentence in the correctional institution (prison). Likewise, we know that human rights also govern a person's independence, so it can also be said that life imprisonment also violates human rights. However, basically, the imposition of a life sentence is an attempt to reduce a criminal act that occurs in social life. So, we can conclude that in upholding the criminal law, it must not be separated from the loss of one's freedom.

As for the rules regarding the rights of detainees, namely PP No.32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Correctional Assistants and has been updated in government regulation No. PP No.32 of 1999 concerning Requirements and Procedures for the Implementation of the Rights of Correctional Assistants.

Based on Article 1 point 5 of Law No.12 of 1995 concerning Corrections, a person who is serving a life sentence is also classified as a convicted citizen in a

correctional facility. Therefore, in this paper discusses the form or process of guidance in correctional institutions that are given to convicts while serving a sentence in accordance with the Correctional Law.

Based on Article 5 of the Correctional Law No.5 of 1995, the socialization civilization system can be implemented based on the principles of:

1. Protection.
2. Equality of treatment and service.
3. Education.
4. Guidance.
5. Respect for human dignity.
6. Loss of freedom is the only suffering.
7. Guaranteed the right to stay in touch with certain families and people.

Thus, the convicts have the same rights in undergoing a civilization period that is in line with the above principles. This also applies to convicts who are sentenced to death, while those convicted of life imprisonment do not get the right to leave to visit family. This is in accordance with article 36 paragraph (1) letter c of the Minister of Law and Human Rights of the Republic of Indonesia No.21 of 2013 concerning the Requirements and Procedures for Granting Remissions, Assimilation, Leave, Visiting Family, Parole, Free Leave, and Conditional Leave which regulates that leave from visiting family cannot be granted to a convict who receives a life sentence.

Likewise with assimilation, it cannot be imposed on convicts for life. Assimilation is the implementation of the civilization of convicts and citizens of the penitentiary institution which is carried out by bringing together inmates in the community in accordance with Article 1 (2) of the Law and Human Rights Act No. 21 of 2013 on the requirements and procedures for granting Remission, Assimilation, Family Visiting Leave, Exemption Conditional, Leave Ahead of Free, and Conditional Leave.

CONCLUSION

The implementation of life sentence decisions in the Indonesian legal system contradicts human rights, namely the right to live independently in accordance with the values of Pancasila and the 1945 constitution. In the criminal system in Indonesia, life imprisonment is one of the alternatives to the death penalty. Life sentence is related to the subsidiary function which is a substitute for a criminal who is punishable by a maximum death penalty. Life imprisonment is the classification of criminal sanctions that can be selected in its implementation.

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