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Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions

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Abstract *The judicial power in criminal law enforcement within the Criminal Justice System, including the execution of criminal sanctions sub-system, should be independent and self-supporting. In Indonesia, the execution of criminal sanctions sub-system is currently under the executive power that enables the practice of execution of sanctions being obstructed by many factors. In relation to that, this study explains the urgency of revision for legal structure of criminal sanctions execution and legal structure reformation for criminal enforcement in Indonesia. It employs a qualitative approach using doctrinal research within the post-positivism paradigm. This study found that it is considered urgent or essential to reform the criminal legal structure of the national law based on philosophical, sociological, and juridical aspects abiding to Pancasila. The criminal law system covers the criminal law enforcement system which includes material criminal law*

sub-system, formal criminal law sub-system, and execution of criminal sanctions sub-system. Essentially, the execution of criminal sanctions sub-system acts as a sub-system of punishment. The structural reform of the systemic law in execution of criminal sanctions sub-system should be under the auspices of judicial authority, which is the Supreme Court. Therefore, this study concludes that the system should become linear, independent, synergized, and integrated with the investigative agents, prosecutors, and courts in a single criminal law system. In this way, there will be supervision and coordination in the context of the integrality of punishment, which falls under the protection of an integrated criminal law enforcement system.

Keywords Reform, Stucture, Law in Execution, Criminal Sanction

1. Introduction

In correctional institutions, everything is tradable; not only leave permit but also remission, which should be prisoners' rights, become a commodity. One of the problems in correctional institutions in this country is the weak check and balance mechanism for officials and staff in the Technical Implementation Unit of Detention/Correctional Institution for prisoners' remission. Remission, thus far, is regarded as a reward for prisoners' behavior giving them more privileges, even though the Correctional Law clearly defines that remission is the right of every detainee. As the procedure takes too long, it tends to become exclusive.¹

The operation of the Criminal Justice System related to coordination and interconnection between law enforcement agencies in carrying out the stages of criminal proceedings indicates the different functions of each institution that potentially results in the emergence of sectoral egos of each institution. Practically,

¹ Corruption Eradication Commission (KPK), "Remisi Bukan Hadiah," *Integrito*, (2019): 20-21.

the criminal sanctions executor has no strong bargaining power against the other three institutions: the Police, the Attorney General's Office, and the Court. Based on these conditions, it is necessary to carry out legal structure reformation for criminal law enforcement to develop a national law/national legal system.² Legal system development must provide a platform for achieving the goal of Indonesia. The goals are present in the 4th paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. Therefore, the legal system to build must ensure the achievement of the national goals of the Republic of Indonesia. The national legal system includes three components, which are substance, structure, and legal culture. Thus, if we conduct legal politics to form a national legal system, then reformation must be made in the three fields that make up the legal system.³

The renewal of the substance in the law in criminal sanctions execution for future regulation is ideally in a codification, the Book of Law in Execution of Criminal Sanctions Code.⁴ It should also be an integral legislative policy in terms of the laws and regulations on law enforcement agencies, but that does not mean that it must be in one code. It could be regulated separately, for example, "law on criminal prosecution/executing agency".⁵ In law, the implementation of criminal reformation is currently carried out by compiling a Correctional System Bill prepared to reform the Correctional Law No. 12 of 1995. In this paper, the focus of

² Murshal Senjaya, "Updating Criminal Law in Civilized Law Enforcement and Social Justice," *International Journal of Science and Society* 3, No. 2 (2021): 45.

³ Nyoman Sertikat Putra Jaya, *Politik Hukum* (Semarang: Badan Penerbit Universitas Diponegoro, 2016).

⁴ Ade Adhari, *Pembaharuan Sistem Hukum Pelaksanaan Pidana* (Yogyakarta: Deepublish, 2020).

⁵ Barda Nawawi Arief, *Reformasi Sistem Peradilan (Sistem Penegakan Hukum) di Indonesia* (Semarang: Badan Penerbit Universitas Diponegoro, 2017).

the study is on the discussions related to the reform of legal structure for criminal sanctions execution based on the values of Pancasila.⁶

Therefore, it is necessary to explore society's values to reform the legal structure in execution of criminal sanctions considering the current socio-political and socio-cultural conditions in Indonesian society. Indonesia has Pancasila as its basic ideology, which indicates that in living life, one must follow the guidelines and values contained in Pancasila, as those values will teach how to think and act following the ideology.⁷

The components for criminal sanctions execution are the prosecutor, correctional institution, mobile brigade corps, and related agencies. There is no institution independent from sub-systems in the judiciary structure as it requires a complete (indivisible) system in a new construction order based on the definition of judicial power in a broad sense. The execution of criminal sanctions system is part of the law enforcement system and must be understood as an integral arrangement, hence various sub-systems (components) are undivided. In the current execution of criminal sanctions system, those who own the power of carrying out the criminal sanctions execution are law enforcement officials/officers who are fragmented, not integrated into one office/institution, formulating tricky coordination among each component. There are no institutions for execution of criminal sanctions that are integrated in the national legal system.⁸ As a

⁶ Appludnopsanji, et.al., "Reformasi Sistem Peradilan Pidana Indonesia Berwawasan Pancasila," *Kertha Wicaksana* 15, No. 1 (2021).

⁷ Damanhuri, et.al., "Implementasi Nilai -Nilai Pancasila sebagai Upaya Pembangunan Karakter Bangsa," *Untirta Civic Education Journal* 1, No. 2 (2016).

⁸ J. Pajar Widodo, "Reformasi Sistem Peradilan Pidana dalam Rangka Penanggulangan Mafia Peradilan," *Jurnal Dinamika Hukum* 12, No. 1 (2012). See also Satria Unggul Wicaksana Prakasa, Asis Asis, and Mualimin Mochammad Sahid. "Reduce Corruption in Public Procurement: The

component of the criminal law structure, the prosecutor is not only an executor of decisions but also the executor of punishment. However, based on the SE of the Deputy Attorney General for General Crimes Number: B-46/E/ES.1/01/2012, the execution of the convicts is not immediately performed even though there are no statutory provisions that hinder its implementation and 853 general criminal cases have yet to be prosecuted despite having been ruled by the court and have permanent legal force. The process of a criminal case settling is considered successful in law enforcement if the implementation of the decision against the judge's ruling, which has enduring power, is executed by the convicts according to the applicable laws and regulations. However, until now, there is still a weakness in the prosecutor side (officer/officials) as the executors of several court rulings, both general criminal and special criminal cases, face failures in carrying out the verdict. This failure also adds to worsening the image of LEOs in the public eye.⁹

Another common problem is that the storehouse of confiscated objects and goods related to criminal cases is not submitted (at least reported) to Confiscated Storage Houses. This condition confirms that the coordination among LEOs is still weak, especially at the level of investigation and prosecution, and the understanding of the legislation is still deficient. In principle, the task of Confiscated Storage House is to emphasize the application of supervision/control

Effort Towards Good Governance". *Bestuur* 10, No. 1 (2022): 33-42. <https://doi.org/10.20961/bestuur.v10i1.51339>

⁹ Development Team for the Indonesian Attorney's Training and Education Agency Module, *Modul Eksekusi* (Jakarta: Badan Pendidikan dan Pelatihan Kejaksaan Republik Indonesia, 2019).

systems toward cross-LEOs as an effort to prevent abuse of power in the administrative system of criminal justice.¹⁰

The role of the Correctional Center is also vital in criminal law enforcement, as it relates to the presence of social work sentences and the community supervision system that will be carried out, which obviously involves this institution. Social work sentences or supervision are included as the principal crime in the Draft Criminal Code. However, in practice, the core problem of the correctional center is its position as the Community Advisor in the trial examination process. Therefore, as Community Advisor, the Correctional Center is considered a non-essential factor in court trial examination, leading to a lack of attention by the public prosecutors when formulating the indictment and by the judge when preparing the verdict.

Based on this description, the implementation of additional crimes is also experiencing obstacles because the officials/executors of the criminal sanctions are fragmented so that coordination with related agencies does not go well. The punishment for revocation of certain rights is carried out in accordance with the form of revocation imposed, in relation to the agency authorized to issue rights, then the revocation of rights is carried out through coordination of notification by the Prosecutor of the court's decision to the competent agency to be carried out according to the decision. In the case of traffic violations in the form of revocation of the driving license, coordination is carried out with the police that issued the driving license.

An additional criminal sentence is in the form of revocation of license/closure of the company, then coordination is carried out with relevant agencies, such as

¹⁰ Umbu Lily Pekuwalu, "Potret Reformasi Hukum di Indonesia Pasca Reformasi Tahun 1998," *Masalah-Masalah Hukum* 41, No. 1 (2012).

submitting notification of the decision to the Director General of Legal Administration and Human Rights for the execution of the decision, the revocation is related to privacy rights such as parenting/guardianship.¹¹ The revocation of a permit related to privacy rights such as parenting/guardianship, the coordination follows through from the notification to the implicated in the presence of family members and the one responsible for the custody/guardian transfer.

The implementation of additional criminal cases for seizure and confiscation of goods and objects operates following the decision. For example, suppose the ruling declares it to be destroyed, the execution should be by damaging the goods, ensuring the loss of function and the economic values, either being burned or in other ways. On the other hand, if the judge's ruling states that goods should return to the nation, the settlement is coordinated with the auction office. The results are deposited into the State Treasury in the name of the Prosecutor's account as the Prosecutor's Office revenue. Based on the description above, two problems will be investigated is what is the urgency of legal structure reformation for law in execution of criminal sanctions in the perspective of the *ius consitutum*? and how is the legal structure reformation of law in execution of criminal sanctions in the perspective of the *ius consituendum*?

2. Method

This study employed library research (normative or doctrinal), specifically legal research that employed secondary data sources (from library materials). The normative approach is a norm-building system. The norm system is about the

¹¹ United Nations Office on Drugs and Crime, *Criminal Justice Reform in Post-Conflict States—a Guide for Practitioners* (English: Publishing and Library Section, United Nations Office at Vienna, 2011).

principles, norms, laws and regulations, agreements and doctrines (teachings)¹² that apply to the reconstruction of an integral criminal implementation system from the perspective of the national legal system. This research utilized a philosophical approach, a concept approach, and a comparative law approach. The philosophical approach was implemented to understand the social implications and apply laws and regulations in the community (community groups). This philosophy is also carried out to explore legal issues in legal teachings and philosophical matters. A *conceptual approach* is an approach that departs from the beliefs and doctrines developing in the science of law. At the same time, the comparative law approach was adopted for investigations to gain more profound knowledge about specific legal materials. Comparative law is not a science of law but merely a method for research that works in comparison.¹³

Sources of research data were obtained through secondary legal sources with primary legal materials covering the 1945 Constitution of the Republic of Indonesia, the Criminal Code, the Criminal Procedure Code, and other regulations. Secondary legal materials are all legal materials or publications about law, such as legal journals, papers, or other writings following the research being studied; they can also be opinions by legal experts.¹⁴ Tertiary legal materials provide instructions or explanations for primary and secondary legal materials, including the Big Indonesian Dictionary, English dictionary, and legal dictionary.

¹² Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif* (Yogyakarta: Pustaka Pelajar, 2010).

¹³ Barda Nawawi Arief, *Perbandingan Hukum Pidana Edisi Revisi* (Jakarta: Rajawali Press, 2013).

¹⁴ Amiruddin and Zainal Asikin, *Metodologi Penelitian Kualitatif* (Depok: PT. Grafindo Persada, 2014).

3. Result & Discussion

A. Urgency of The Legal Structure Reformation for Law in Execution of Criminal Sanctions in The Perspective of The Ius Constitutum

Law must carry values, which are justice (philosophical aspects), certainty (juridical aspects), and expediency (sociological aspects) so that the formulation of legal rules must abide by these three fundamental values. Gustav Radbruch also connects the elements of fact (*das sein*) and elements of ought (*das sollen*).¹⁵ Both can only be combined through culture as an embodiment of values (containing the elements of ought) in the elements of facts, which are reflected in human behavior and regulations. Therefore, the law could reflect a culture that is a bridge between values and reality to ensure the justice values, legal certainty values, and expediency values.¹⁶ Therefore, based on Gustav Radbruch's teachings, in principle, the reformation of legal structure for law in execution of criminal sanctions in Indonesia must have a foundation described as follows:

a. *Philosophical Basis*

A philosophical basis is a foundation that considers aspects of values and legal principles. It can be said to be the ideal basis. Satjipto Rahardjo stated that, by considering this basis, the law would obtain "valid philosophical validity".¹⁷

Pancasila is the main foundation in state administration and Indonesian law as a national product inseparable from the state philosophy. The philosophy of law is inseparable from state philosophical thinking. Pancasila's position towards

¹⁵ Lutfil Ansori, "Reformasi Penegakan Hukum Perspektif Hukum Progresif," *Jurnal Yuridis* 4, No. 2 (2018).

¹⁶ FX Adji Samekto, *Justice Not for All: Kritik Terhadap Hukum Modern dalam Perspektif Studi Hukum Kritis* (Yogyakarta: Genta Press, 2008).

¹⁷ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2006).

the national legal system is to place the basic ideas that exist in Pancasila in its legal philosophy so that the values of Pancasila juridically inspire the 1945 Constitution, which is implemented in existing laws and regulations.¹⁸ Based on the Stufen theory from Hans Kelsen, Pancasila as a *Grundnorm* functions solely to provide a basis for the objectivity of a good legal system. Hans Kelsen in his book "Reine Rechtlehre" stated that *Grundnorm* reads: "man soll sich so Ver-halten, wie die verfassung vorschreibt", meaning that people should behave as the constitution commands it.¹⁹ Thus, Hans Kelsen's teachings about *Grundnorm* become the driving force for all legal systems. Therefore, it becomes the reason why the law must be obeyed and as responsibility for law enforcement in terms of a national legal system based on Pancasila.²⁰

Based on this, Pancasila is the source of all sources in Indonesian law; the ambiance of philosophical basis provides the grounds for a philosophical justification so that the reform of legal structure for law in execution of criminal sanctions based on Pancasila should be carried out accordingly. A philosophical basis is a justification that bases its legitimacy upon considering value aspects and legal principles. Indonesia has a value system based on the state philosophical foundation called Pancasila as the philosophical values. Philosophical foundation as a consideration or reason illustrates that the legal structure for criminal enforcement is formed by considering the view of life, awareness, and ideals of the

¹⁸ Azmi Fendri, "Perbaikan Sistem Hukum dalam Pembangunan Hukum di Indonesia," *Jurnal Ilmu Hukum Riau* 1, No. 2 (2011).

¹⁹ Suko Wiyono, *Reaktualisasi Pancasila dalam Kehidupan Berbangsa dan Bernegara* (Malang: Universitas Wisnuwardhana Press, 2012).

²⁰ Mokhammad Najih, "Indonesian Penal Policy: Toward Indonesian Criminal Law Reform Based on Pancasila," *JILS (Journal of Indonesian Legal Studies)* 3, No. 2 (2018).

Indonesian law, originating from Pancasila and the 4th paragraph Preamble of the 1945 Constitution.

It is expected that the future legal structure of execution of criminal sanctions will be built based on Pancasila as its meta-juridical foundation. The construction of a legal structure for execution of criminal sanctions based on the value of Pancasila is an application of the judicial power stages (in the field of criminal law including the stages of power (investigation, prosecution, court, and execution of decisions/crimes)). Therefore, it is an integrated criminal law enforcement system, which is commonly known as the "Integrated Criminal Justice System (ICJS)".²¹

Understanding ICJS is not only conjecturing the concept of integration itself, but ICJS also includes the symbolic urgency of integrated procedures that encounters the philosophical aspect of the meaning of justice in an integrated practice. Thus, the enforcement of material in criminal law is guarded and framed by legal norms and procedural criminal law regulations. Accordingly, the law in execution of criminal sanctions can be brought closer to the principles and substance of law enforcement and uphold justice.²² The legal norms in the Criminal Justice System study serve as general guidelines, so the law must be maintained so that it will not be misled and misled; that is legal moralism.²³ The correctional system (criminal sanctions executor officers) within the CJS framework, both individually and as a unit, can be regarded as a physical system and an abstract system, full of values (values-loaded).²⁴

²¹ Elisabeth Kramer and Claudia Stoicescu, "An uphill battle: A case example of government policy and activist dissent on the death penalty for drug-related offences in Indonesia," *International Journal of Drug Policy* 92, No. 1 (2021).

²² Mongan L. Panggabean, *Pokok-Pokok Hukum Penitensier di Indonesia* (Jakarta: UKI Press, 2005).

²³ Rocky Marbun, *Sistem Peradilan Pidana Indonesia Suatu Pengantar* (Malang: Setara Press, 2015).

²⁴ Muladi, *Kapita Selekta Sistem Peradilan Pidana* (Semarang: Badan Penerbit Universitas Diponegoro, 1995).

b. Sociological Basis

The real sociological foundation involves empirical facts regarding the development of problems and the needs of the community and the state. In principle, it emphasizes the benefits that will be achieved from the reform of legal structure for execution of criminal sanctions that is independent and free from intervention.²⁵ In the light of a sociological point of view, reform of legal structure for execution of criminal sanctions is required to answer the needs and aspirations of the Indonesian people towards an integrated and consolidated criminal legal structure under the authority of the judiciary. In terms of the doctrine of separation of power, independent judicial power is part of the effort to ensure authority. That is, independent judicial power does not depend on the influence of government power as an effort to ensure and protect the people's freedom from the government's possible arbitrariness. Thus, the existence of an independent judicial power is no longer determined by the separation of powers or distribution of power but as "*condition sine quanon*" for the realization of the rule of law, ensuring freedom and control over the operation of state government.²⁶ However, if judicial power is combined with legislative power, a person's life and freedom will be under arbitrary control. Conversely, if judicial power is combined with executive power, the judge can always act inconsistent and oppressively. Thus, in teaching separation of powers, an independent judiciary is part of the effort to ensure freedom and prevent arbitrariness.

²⁵ Scott E. Wolfe, et. al., "Why does organizational justice matter? Uncertainty management among law enforcement officers," *Journal of Criminal Justice* 54 (C), (2018).

²⁶ Bagir Manan, *Kekuasaan Kehakiman Republik Indonesia* (Bandung: LP2M Universitas Islam Bandung, 1995).

c. *Juridical Basis*

Juridical basis as a foundation considers multiple laws and regulations. For example, article 24, paragraph (1) of the 1945 Constitution states that Indonesia is a constitutional state. Therefore, there is an assurance for implementing an independent judicial authority, free from the control of other powers to administer the judiciary to uphold law justice. The independence of universal justice is also ensured in various international legal instruments, including (Amran, 2014) Article 10 UDHR, Article 14 ICCPR; Paragraph 27 Vienna Declaration and Programme for Action in 1993; International Bar Association Code of Minimum Standards of Judicial Independent in 1982; Universal Declaration on the Independent in 1983; Beijing Statement of Principles of the Independent of Judiciary in the Law Asia Region, 1995.²⁷

B. Legal Structure Reformation for Law in Execution of Criminal Sanctions in The Perspective of the *Ius Constituendum*

Law enforcement is the system value enforcement that must be adapted to the movement and rate of development of values both locally, nationally, and globally with tangible manifestations responding to the development of these values so that all groups, including the international community, can accept the enforcement of the law.²⁸ Development of legal culture through approaches such as legal ethics and education reform must be carried out simultaneously and entirely by the law enforcement officials, from the sub-systems of investigation,

²⁷ United Nations Office on Drugs and Crime, *Criminal Justice Reform in Post-Conflict States—a Guide for Practitioners* (English: Publishing and Library Section, United Nations Office at Vienna, 2011).

²⁸ Pujiyono, "Rekonstruksi Sistem Peradilan Pidana Indonesia dalam Perspektif Kemandirian Kekuasaan Kehakiman," *Masalah-Masalah Hukum* 41, No. 1 (2012).

prosecution, courts, criminal executors, and community as the objects and end-users of law enforcement. In this regard, Satjipto Raharjo often states that the law does not work "in a vacuum," meaning that the operation of law for law enforcement facilities happens under pressure, the influence of outside forces toward the system also determines the operation of the criminal justice system.²⁹ Lawrence Friedman, in his book *American Law*, mentions the interplaying elements contained in the legal system. These elements consist of legal structure created by a legal system that enables services and law enforcement, legal substance, a norm (rule) produced from legal products, and legal culture as a behavioral opinion and law-related values.³⁰ The legal structure is defined as:

"To begin with, the legal system has the structure of a legal system, consisting of elements of this kind, the number and size of courts, their jurisdiction structure also means how the legislature is organized. what procedures the police department follows, and so on. Structure, in a way, is a kind of cross of the legal system. A kind of still photograph, which freezes the action."³¹

Based on the understanding of an integral system, the understanding of the justice system (law enforcement system) can be reviewed based on various aspects:³²

²⁹ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2006).

³⁰ Lawrence M. Friedman, *American Law: An Introduction* (New York: W.W. Norton and Co., 1984).

³¹ Friedman

³² Barda Nawawi Arief, *Reformasi Sistem Peradilan (Sistem Penegakan Hukum) di Indonesia* (Semarang: Badan Penerbit Universitas Diponegoro, 2017).

- a) The aspects/components of legal substance. The judicial system principally enforces legal substance (in criminal law, including material criminal law, formal criminal law, and law in execution of criminal sanctions). So, based on legal substance, the judicial system/is, in principle, an integrated legal system (integrated legal substance).
- b) The structural aspects/components (legal structure). The judicial system, in principle, is a system for the operation/functioning of law enforcement agencies/institutions/apparatus in carrying out their respective functions/authorities in the field of law enforcement. Thus, from a structural point of view, the judicial system/is also an administrative/administrative system (functional/operational system) of various structures/professions of law enforcement. Based on the structural/administrative/functional angle, so that in the Criminal Justice System field, the term integrated criminal justice system (the administration of criminal justice) appears.
- c) The aspects/components of legal culture (legal culture). The judicial system, in principle, is a manifestation of the system of legal cultural values (can include legal philosophy, legal principles, legal theory, legal science, and awareness/attitude of legal behavior). Accordingly, from a legal culture perspective, the judicial system belongs to an integrated legal culture (integrated cultural, legal system) since legal values cannot be separated from social/societal values. Therefore, Criminal Justice System can also be seen as a social system (social systems).

It can be concluded that the legal structure includes legal institutions (judiciary) that can carry out the legal instruments produced by legislative institutions. Barda Nawawi Arief states that if the Criminal Justice System is regarded as a “system,” it is only natural that each sub-system has clear

duties/functions/authorities. In addition, it should be within a single system of power, the law enforcement powers (constitutionally called judicial power).³³

Prosecutors carry out the execution of court rulings in criminal cases. Meanwhile, the criminal executing agency (executor) is different. It does not situate in an integrated Criminal Justice System under the judiciary power, depending on the type of punishment imposed and the substance of the law for criminal sanction execution distributed in various laws.³⁴ Article 38 of Law no. 48 of 2009 on Judicial Power, the function of judicial power including inquiry and investigation; prosecution; implementation of decision; provision of legal services; and settlement of disputes outside the court. The law does not regulate the criminal executing agency, even though, in practice, both the verdict executor and the punishment executor should be different.³⁵

The institutions for criminal law execution are detention centers, confiscated storage houses, correctional institutions, and correctional centers.³⁶ In addition, the criminal sanction executing institution is the administrative unit under the Correctional Division and part of the Ministry of Law and Human Rights as a government institution. This executive institution carries out law executing functions as a criminal sanction's executor.

³³ Carl Heath, "Reform and the Death Penalty," *International Journal of Ethics* 17, No. 3 (1907).

³⁴ Anis Widyawati, "Regulations of Penitentiary Law in Indonesia," *International Journal of Business, Economics and Law* 18, No. 4 (2019).

³⁵ Arianus Harefa, "Criminal Law Policy Through the Application of Capital Punishment on Corruption in Indonesia," *International Journal of Multi Science* 1, No. 5 (2020).

³⁶ Eva Achjani Zulfa, *Perkembangan Sistem Pemidanaan dan Sistem Pemasyarakatan* (Jakarta: Rajawali Press, 2017).

Furthermore, the focus of discussion is on criminal executing institutions, which are Correctional Institutions, Correctional Centers, Detention Centers, and Confiscated Storage Houses.³⁷

1. Correctional Institution

The executor of imprisonment, detention, and confinement is the Correctional Institution. Imprisonment is the criminal sanction formulated most of the time in the laws and the criminal verdict that judges often hand down. Correctional Institution is the final component of the criminal justice system, working like a conveyor belt as part of the criminal justice system. In this case, it must be able to denote the success of the system product. The correctional institution is the final gateway for the criminal justice system. The success of the CJS product is certainly also determined and becomes the responsibility of the Correctional Institution.

The criminal law system is a single-goal practice, and punishment is merely a means to achieve the goal. The purpose of punishment is an integral part (sub-system) of the entire criminal law system adding to the other sub-systems, criminal acts, criminal liability, and punishment.³⁸ As the finish line of the criminal justice system, the Correctional Institution as the executor of the punishment essentially is the sub-system of criminal law under the auspices of the judicial power (Supreme Court). It is part of the judicial power to synergize and be integrated into

³⁷ Shanti Dwi Kartika, "Pembentukan Kebijakan Reformasi Hukum," *Info Singkat: Kajian Singkat terhadap Isu Aktual dan Strategis* 8, No. 19 (2016): 1-4.

³⁸ Barda Nawawi Arief, *Tujuan & Pedoman Pemidanaan (Perspektif Pembaharuan dan Perbandingan Hukum Pidana)* (Semarang: Pustaka Magister, 2017).

one criminal system.³⁹ Therefore, it should be supervised and coordinated in the context of the integrated justice system. Supervisory and Observer Judge has acted as a link between the judging function and criminal sanctions execution. Implementation of the function of supervisory and observer judge should not be solely for punishment. Supervision and on-the-spot observation should not only be used as a way to provide feedback for future court convictions. However, they should also function to support the policy purpose of carrying out punishment for Correctional Institution. The judge should know the considerations best, especially in issuing the verdict to the convict.⁴⁰ Therefore, reduce (remission) or transfer of any punishment should also be included in the punishment system. It has been thus far implied that both remission (means of reducing the punishment) and supervision operate "as soon as there is" reduction (formal administration) in the sense that the correctional mechanism is not integrated into the punishment policy.

2. Correctional Center

In addition to the prison, another criminal executing system is the Correctional Center as its duties as a criminal executor in the Draft Criminal Code. Correctional Center is a correctional sub-system that plays a role in the juvenile crime system and the adult in the Draft Criminal Code. The role of the Correctional Center is also critical in criminal law enforcement, as it is related to the existence of social work punishment and other community supervision implemented, which certainly involves this institution. The type of social work punishment or any

³⁹ Juhari, "Restorative Justice in The Renewal of Criminal Law in Indonesia," *International Journal of Business, Economics and Law* 16, no. 5 (2018).

⁴⁰ Robiatul Adawiyah and Umi Rozah, "Indonesia' s Criminal Justice System with Pancasila Perspective as an Open Justice System," *Law Reform* 16, No. 2 (2020).

conditional supervision is included in the Draft Criminal Code as a form of implementation of the human values and justice values of Pancasila. The primary duties of the Correctional Center include providing guidance and supervision for the clients.⁴¹ Meanwhile, the functions of Correctional Center include conducting society research for juvenile courts and audience with the Assessment Team in Correctional Institution, registering clients, attending hearings at the District Court and Assessment Team in Correctional Institution, providing guidance assistance to ex-convicts, children, and social clients in need, and perform social guidance jobs.⁴²

3. Confiscated Storage House

Confiscated Storage Houses is a Technical Implementing Unit that can manage the state's confiscated and forfeited items. The scope of duties of this Institution is not only in the final process of criminal justice but from the beginning of the process. However, there are no laws, mainly on correctional facilities, which explicitly regulate the work patterns and management that Confiscated Storage Houses must have in managing its work. Unclear regulations, management, and relationships with other law enforcement agencies generate an inverse proportion between the problems to the value of assets that the institution must manage. Detention House A detention house is a sub-system of prisons that functions as a place for receiving, discharging, and releasing prisoners. Meanwhile, the duty is to care, guide, and foster suspects or those determined based on the relevant laws and regulations.

⁴¹ Failin, "Sistem Pidana dan Pemidanaan di dalam Pembaharuan Hukum Pidana Indonesia," *JCH (Jurnal Cendekia Hukum)* 3, No. 1 (2017).

⁴² Dede Kania, "Pidana Penjara dalam Pembaharuan Hukum Pidana Indonesia," *Yustisia Jurnal Hukum* 3, No. 2 (2014).

Criminal Justice System coordination and interconnection between law enforcement agencies in carrying out the stages of criminal proceedings indicates the functional differences among agencies potentially emerge to each institution's sectoral egos. In practice, the correctional facility lacks strong bargaining power (bargaining position) against the other three institutions: the Police, the Attorney General's Office, and the Court.⁴³ This shortcoming is also added because CJS among law enforcement agencies (investigators, prosecutors, court, criminal executors) has not been integrated under individual control, judicial power. The "power" to judge is not the only manifestation of judicial authority in criminal law. However, it is manifested/implemented in four (4) power stages (investigation, prosecution, trial, and execution of verdicts/punishment). An integrated criminal law enforcement system, often known as the "integrated criminal justice system," is made up of the four phases of judicial power (in criminal law). Thus, CJS is essentially a "criminal law enforcement system" or "judicial power system in criminal law." Originating from the definition of judicial power in a broad sense, "an independent and self-supporting judicial power" must also be manifested in the entire process of criminal law enforcement. It means that the overall judicial power in criminal law enforcement (investigative power, prosecution power, judicial power, and criminal execution power) should be independent and self-supporting from government/executive power.⁴⁴ Hence, the definition of "independent and self-supporting " must also be expanded, not only to "judicial power/prosecuting power." Independent and self-supporting judicial power must be manifested in the whole process or CJS. It is meaningless if the independent

⁴³ Pujiyono, "Rekonstruksi Sistem Peradilan Pidana Indonesia dalam Perspektif Kemandirian Kekuasaan Kehakiman," *Masalah-Masalah Hukum* 41, No. 1 (2012).

⁴⁴ Zulkarnain S and Heni Susanti, "Guidance of Prisoners Overcapacity in Lapas class II at Pekanbaru," *International Journal of Innovation, Creativity and Change* 10, No. 4 (2019).

and self-supporting judicial power exists only in one part of the sub-systems (in the sub-system of "prosecuting power").⁴⁵

Based on the importance of the role and authority of the criminal implementation system (correctional system), the entire CJS stage should become a manifestation of independent and self-supporting judicial power (law enforcement power), under the sole organizer of the judicial power in Indonesia, the Supreme Court. It is inapt and undermining if the CJS that is supposed to have independent and self-supporting judicial power/law enforcement is, in fact, still below the auspices of executive power.⁴⁶ This situation allows power interference toward the free judicial system, creating a loophole for the "judicial mafia" to emerge among the executive.⁴⁷ No institutional independence from the sub-system in criminal justice requires a systemic and complete (inseparable) arrangement in a new construction order based on the meaning of judicial power in a broad sense. Therefore, every sub-system in CJS criminal law enforcement administration, supporting institutions needs to be reconstructed/reformed under one roof of judicial power, culminating in the Supreme Court. Consequently, the correctional system as a sub-system for criminal enforcement should be under the judicial authority.⁴⁸

CJS always promotes the interests of law and justice. The fundamental element of criminal law enforcement is a fact-finding process, which is impartial

⁴⁵ Barda Nawawi Arief, *Kapita Selekta Hukum Pidana Tentang Sistem Peradilan Pidana Terpadu (Integrated Criminal Justice System)* (Semarang: Badan Penerbit Universitas Diponegoro, 2011).

⁴⁶ Shanti Dwi Kartika, "Pembentukan Kebijakan Reformasi Hukum," *Info Singkat: Kajian Singkat terhadap Isu Aktual dan Strategis* 8, No. 19 (2016): 1-4.

⁴⁷ Barda Nawawi Arief, *Tujuan & Pedoman Pemidanaan (Perspektif Pembaharuan dan Perbandingan Hukum Pidana)* (Semarang: Pustaka Magister, 2017).

⁴⁸ Failin, "Sistem Pidana Dan Pemidanaan di dalam Pembaharuan Hukum Pidana Indonesia," *JCH (Jurnal Cendekia Hukum)* 3, No. 1 (2017).

and full of resolution or settlement of problems that must be implemented fairly and adequately. As any theory of justice is applied, the definition of justice must include honesty, impartiality, and the provision of appropriate rewards and punishments.⁴⁹ Justice must be distinguished from wisdom, generosity, gratitude, and compassion. The terms moral and morality refer to what is judged and considered as good behavior. Morals are used to describe one who can judge and perceive (distinguish) right from wrong. Ethics indicates the study and analysis of what constitutes good and bad behavior. Law does not move in a vacuum and deals with abstract matters but works in a specific social order among the people living in each group in a nation and state.

Thailand owns a separate institution working on execution on civil cases and bankruptcy named Legal Execution Department, which is directly under the control of the Ministry of Justice. Thailand's and the Kingdom of Thailand's criminal justice systems are overseen by the Ministry of Justice. The ministry is already in charge of operating the jail, helping Thailand's police, and functioning as the country's drug and narcotics policy authority.

“The Ministry of Justice (abbreviated as MOJ; Thai:, RTGS: krasuang yutti tham) is one of Thailand's cabinet ministries. The ministry is in charge of the criminal justice system in the kingdom. In addition to running prisons and helping the Royal Thai Police, the ministry is in charge of the government's drug and narcotics control operations. Minister of Justice Somsak Thepsuthin is in charge of the ministry. The list includes ministers from the administration, dependent departments, public organizations, and the Department Directly

⁴⁹ Mei Susanto and Ajie Ramdan, “Kebijakan Moderasi Pidana Mati,” *Jurnal Yudisial* 10, No. 2 (2017).

Under the Justice Minister. The Department of Special Investigation, the Central Institute of Forensic Science, the Rights and Liberties Protection Department, the Legal Execution Department, the Department of Juvenile Observation and Protection, and the Department of Corrections are all dependent departments.”⁵⁰

Dependent Departments as one department under the Legal Execution Department is under the control of the Ministry of Justice in Thailand. The department focuses on the execution of civil cases and bankruptcy. The main targets of the Legal Execution Department establishment are:

“Providing services in civil judgment enforcement, bankruptcy cases, business reorganization, liquidation, deposit of property, and post – judgment mediation with cost efficiency, fairness, and swiftness.”

“Learning, analyzing, researching, and developing the practices of services in civil judgment enforcement, bankruptcy cases, business reorganization, liquidation, deposit of property, and post judgment mediation nationwide, including developing the supportive lines to be more modern and effective”.⁵¹

In general, the legal execution department aims to provide services in civil law enforcement, bankruptcy cases, business reorganization, property deposit, and post-judgment mediation. In addition, the department is also in charge of the analysis, research, and development of practices of the aspects mentioned earlier. The historical background of establishing this execution agency was the increase

⁵⁰ Legal Execution Department, “Manual of Legal Execution Procedures,” Legal Execution Department, accessed from <http://www.led.go.th/?lang=en>.

⁵¹ Legal Execution Department

of cases number dealing with civil law enforcement and bankruptcy lawsuit in Thailand. Further, the department broadens its wings to take charge of civil law, bankruptcy management, property deposit, partnership, and company liquidation. The competent authorities accurately process legal institutions under the court order ensuring every case. This method will increase efficiency and minimize cases piling in court. In addition, this can lessen the risk of overlapping authority during the execution process. The more cases the institution responsible for executing will lessen the optimum and qualified values of the execution enforcement.

4. Conclusion

This study concluded and highlighted that it is urgent or essential to reform the legal structure for law in execution of criminal sanctions in national law on a philosophical, sociological, and juridical basis based on Pancasila. The reform of legal structure for law in execution of criminal sanctions employing a juridical-scientific-religious approach oriented (guided) to "science" (criminal enforcement law) and "God's guidance" in upholding criminal enforcement law and per a juridical-contextual approach, which is upholding law in execution of criminal sanctions based on positive law. However, the implementation must be placed in the context of the development of national laws and national legal systems and through a global/comparative (insightful) juridical approach as the vital part of law in execution of criminal sanctions reformation. The criminal enforcement sub-system is currently under executive power, which can obstruct law enforcement related to the practice of criminal enforcement law. The criminal sanctions execution sub-system, which essentially is the punishment sub-system, should be under the auspices of the judicial power (Supreme Court). The organization

should be linear and integrated with investigative institutions, prosecution institutions, and courts, synergizing into one criminal justice system. Therefore, it should be supervised and coordinated in the context of the integrality of punishment.

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The authors state that there is no conflict of interest in the publication of this article.

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*Justice is the great
interest of man on
earth.*

Daniel Webster (American Politicians)

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