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## CONDITIONAL PUNISHMENT AS AN ALTERNATIVE PUNISHMENT OF PREVENTION CRIMES IN INDONESIA

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# CONDITIONAL PUNISHMENT AS AN ALTERNATIVE PUNISHMENT OF PREVENTION CRIMES IN INDONESIA

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## Abstrak

Criminal is a tool used in tackling criminal acts. The judge as the part who passes the sentence has a very important role in determining the effectiveness of the punishment that will be imposed on the perpetrator of the criminal act. So in this case the judge should be precise in determining which type of crime is appropriate for the perpetrator, considering that the imposition of a sentence against someone who has committed a criminal act is a very important part of realizing the expected criminal justice system. The application of imprisonment for the short term has many weaknesses. The process of prisonisation becomes a means of crime school for prisoners who have the opportunity to increase the number of existing receivers. Thus an alternative punishment is needed that can be a solution to the weaknesses of imprisonment. Conditional punishment is an alternative punishment that can be imposed by a judge against the perpetrator of a criminal act. The limitation in this research is focused on the use of conditional punishment which is expected to be able to fulfill the desired sentencing objectives and become an effort in criminal policy to tackle crime. This study uses a normative juridical research method that will examine conditional criminality in relation to the theory of the purpose of punishment as well as examine crime as an effort to tackle crime based on the theory of criminal policy.

**Keywords:** Conditional Punishment, Purpose of Punishment, Criminal Policy

## A. INTRODUCTION

The issue of imposing crimes against perpetrators of criminal acts is a subject that is always interesting to discuss, considering that various efforts have been made to overcome crimes, one of which is through the choice of punishment imposed by the judge. The role of the judge basically determines the effectiveness of the punishment that will be handed down to the perpetrator of a criminal act so that in this case the judge should be precise in determining which type of crime is rightfully imposed on the perpetrator, considering that imposing a sentence on someone who has

committed a criminal act is a very important part of realizing the expected criminal justice system.

Sanctions are a means of forcing someone to obey the prevailing norms. Legal norms or rules aim at achieving peace in life together, where peace means harmony between order and tranquility or harmony between attachment to freedom. That is the purpose of the law, so that the task of the law is none other

than achieving kepastian and proportionality law.<sup>1</sup>

With regard to the granting of crimes, careful judges are needed as executors from the end of law enforcement as a way of overcoming crimes that exist in society. Judges have guidelines in imposing criminal decisions on the public. It is clear that the Court has an important position in our legal system, because it performs a function that essentially complements the provisions of written law through Legal Formation (Rechtvorming) and legal discovery (Rechtvinding).<sup>2</sup> In imposing a criminal decision in a criminal act, the judge must also consider the punishment to be given to the defendant in accordance with the future of the defendant and also the community. The main function of a judge is to give a decision on the case submitted to him, where in a criminal case this cannot be separated from a negative system of proof, which in principle determines that a right to an event or mistake is deemed to have been proven, in addition to the existence of evidence tools according to law as well. the judge's conviction is determined based on good moral integrity. So the judge's decision was not based solely on juridical provisions but was also based on conscience.

In imposing a criminal verdict, the preferred punishment is imprisonment. However, over time, the choice of imprisonment in imposing crimes against criminals, especially minor crimes, needs to be reviewed. There are many critics who argue that it is time for imprisonment to be eliminated, many writings have mandated countries in the world to include in their Criminal Code alternatives to imprisonment, so that the negative impact of imprisonment can be reduced. Joe Sim at the 12th ICOPA Congress stated as follows: "There must be end to the building of new prisons", which is the free translation, must end the construction of new prisons. Likewise, Herman Bianchi wanted to abolish imprisonment with his statement: "The institution of prison and imprisonment are to before ever abolished entirely and totally. No trace should be left of this dark side and human history".<sup>3</sup>

The problem that arises related to imprisonment for criminals is the function of imprisonment which often results in dehumanization of the perpetrator of the crime, which makes him unable to continue his life when the criminal returns to society. In addition, as we know that in this State of Indonesia, prisoners living in this prison

<sup>1</sup> Anita Indah Cahyani, Yulia Monita, Pidana Denda Sebagai Alternatif Pemidanaan Pada Tindak Pidana Kekerasan Dalam Rumah Tangga, PAMPAS, Journal of Criminal, Volume 1 Nomor 2, 2020, <https://online-journal.unja.ac.id/Pampas/article/view/9560/640> diakses pada 3 September 2020

<sup>2 2</sup> Ratri Novita Erdianti, Alternatif Pemidanaan Terhadap Pelaku Penyalahgunaan Narkotika Dalam Kebijakan Kriminal Di Indonesia,

LegaliY Vol 25 Nomor 2, 2017, <http://202.52.52.22/index.php/legality/article/view/6006/5515> diakses pada 3 September 2020

<sup>3</sup> Iskandar Wibawa, Pidana Kerja Sosial dan Restitusi Sebagai Alternatif Pidana Penjara Dalam Pembaharuan Hukum Pidana Di Indonesia, Media Hukum, Vol, 24 Nomor 2, <https://journal.umy.ac.id/index.php/jmh/article/view/3077/3383> di akses pada 3 September 2020

are not differentiated according to the severity of the crimes committed, only differentiated according to gender, are also children or adults, so the prisoners are both convicts. Minor crimes with serious criminal convicts who are in prison are gathered together, there is even no differentiation between one type of criminal act and another. If examined further, imprisonment has many weaknesses if it is applied to perpetrators of criminal acts, especially in minor crimes. In addition, the imposition of imprisonment with a short term provides more weakness than benefits to the perpetrator of the crime. The weaknesses that emerged were the emergence of *prisonisation*, namely the socialization that occurred among prisoners in prisons. This socialization made it possible to exchange knowledge about crimes among prisoners. With the condition of the prison in which there are various kinds of prisoners, socialization among the prisoners cannot be avoided. In the prison process known as *prisonisasi*. Clemmer describes the state of prison as an informal social system known as sub kultur inmates. Memepunyai inmate sub-culture is a big influence on individual kehidupan of each narapidana, especially the socialization process of prisoners into society of prisoners called *prisonisasi*.<sup>4</sup> From the term above, it can be understood that *prisonisation* is meant as the process of absorbing the ways of life in prison. The absorption process is carried out by a learning process in

interacting with fellow prisoners. Thus, to determine the level of influence of the ordinances of life in prison is determined by whether or not the interpersonal contact between inmates is close. The life culture of prisoners has a great influence on the individual life of the prisoner, so that each prisoner (prisoner) will undergo a process of adjustment to the life in it. Although absorption is not always perfect, it can be assumed that absorption by an inmate leads to bad ways of life. It is in these circumstances that the prison institution can be described as a "crime school" or a "crime factory".<sup>5</sup> With the inherent characteristics of the prison system above, it will affect the prisoners' correctional processes. What needs to be worried about from the socialization process between prisoners is that there is a learning process in the interaction between prisoners. Thus, to determine the level of influence of the procedures of life in prison is determined by whether or not the interpersonal contacts are closely related to the prisoners. The life culture of the prisoner has a great influence on the individual life of the prisoner, so that each prisoner (prisoner) will undergo a process of adjustment to the life in it.<sup>6</sup> Correctional institutions remain the *school of crime* for the assisted citizens. Prisoning the inmates is difficult to avoid, especially if supervision by officers is not carried out optimally. Inmates who were previously convicted of minor theft, after serving a sentence in a correctional facility and

<sup>4</sup> Muladi, Lembaga Pidana Bersyarat, Bandung, PT. Alumni, 2004. Hal. 141

<sup>5</sup> Ibid

<sup>6</sup> ibid

returning to the community can commit a larger crime such as the sale of narcotics. This is because inmates have learned to commit crimes while in the correctional facility. Crimes such as the sale of narcotics, torture and gambling are also committed in prisons.<sup>7</sup>

One alternative punishment that is expected to be a solution to imprisonment is conditional punishment. Conditional punishment is a system for imposing penalties by judges whose implementation depends on certain conditions. This means that the punishment imposed by the judge is determined that it does not need to be carried out on the convicted person as long as the stipulated conditions are not violated, and the punishment can be carried out if the stipulated conditions are not obeyed or violated.<sup>8</sup>

Conditional punishment is part of criminal policy, namely a rational effort in tackling crime by using the politics of criminal law (penal policy) and criminal policy by using penal means (criminal law) as well as determining the problem of what actions should be criminal acts, and what sanctions should be used. or imposed on the offender. Likewise with existing criminal policies, as we know that criminal policy here is an effort or policy in terms of overcoming crime which also includes preventing the emergence of criminal acts again in

society or reducing the number of crimes in society so that criminal policies are difficult to realize

## B. RESULT AND DISCUSSION

The choice of imprisonment as the favorite choice of punishment for judges needs to be considered again, especially in minor crimes. The weakness of imprisonment in criminal law in Indonesia is the reason for the judge to choose another form of punishment for the accused who has committed minor acts. Some of the weaknesses of imprisonment include the capacity of the prisoners, which exceeds that which should make the development process for inmates not optimal. In addition, when a prisoner leaves the correctional facility, he will have the label of a former prisoner which has a negative impact on social status in society. Another thing that is also a weakness of imprisonment is that there is a socialization process between prison inmates which provides an opportunity for inmates to learn from each other about crimes, so that LP will be a school to study crime for its residents.

The development of crime that is increasingly sweeping the State of Indonesia makes the government try hard to tackle these crimes. Various efforts, both through criminal law and

<sup>7</sup> I Wayan Putu Sucana Aryana, Efektifitas Pidana Penjara Dalam Membina Narapidana., DIH, Jurnal Ilmu Hukum Pebruari 2015, Vol. 11, No. 21, Hal.41, <https://media.neliti.com/media/publications/240022-efektivitas-pidana-penjara-dalam-membina-7c6b9faa.pdf> diakses pada 12 Desember 2020

<sup>8</sup> Sapto Handoyo, Pelaksanaan Pidana Bersyarat Dalam Sistem Pemidanaan Di Indonesia , Pakuan Law Review, Volume IV, Nomor 1, Januari-Juni 2018. <https://journal.unpak.ac.id/index.php/palar> > diakses pada 12 Desember 2020

outside criminal law, have been carried out by the government in the context of overcoming and preventing crimes from being perpetrated. One form of effort made in criminal law is through criminal "tools" imposed on the perpetrators of criminal acts. In essence, the crime is a sorrow, but the punishment is not intended to distress and it is not allowed to demean human dignity.<sup>9</sup>

The use of punishment as a means of influencing a person's behavior will not be successful if there is absolutely no known about the person who is the object. The most desirable thing from the punishment is to prevent the maker from repeating his actions.<sup>10</sup> Roeslan Saleh argues, that in essence there are two axes that determine the lines of criminal law, namely:<sup>11</sup>

1. the aspect of prevention, namely that criminal law is a law of sanctions, an effort to be able to maintain the preservation of life together by preventing crime;
2. the aspect of retaliation, namely that even criminal law is also a legal determination, is a correction of reactions to those that are not legal in nature

Thus, according to Roeslan Saleh, in essence, criminal is containing aspects of protection of society and retribution for acts of violating the law. Apart from that, crime also contains

other things, namely that punishment is expected to be something that will bring harmony and punishment is an educational process to make people acceptable again in society.

With regard to the administration of crimes, careful judges are required as executors of law enforcement as a way of overcoming crimes in society. Judges have guidelines in imposing criminal decisions on the public. It is clear that the Court has an important position in our legal system, because it performs a function that essentially complements the provisions of written law through Legal Formation (*Rechtvorming*) and legal discovery (*Rechtvinding*).<sup>12</sup>

In imposing a criminal decision in a minor criminal act, the judge must also consider the punishment to be given to the defendant in accordance with the minor criminal act committed. And the provision of the punishment must also lead to the future of the defendant and also the community. The main function of a judge is to give a decision on the case submitted to him, where in a criminal case this cannot be separated from a negative system of proof, which in principle determines that a right to an event or mistake is deemed to have been proven, in addition to the existence of evidence tools according to law also the judge's conviction is determined based on good moral integrity. So the judge's decision was not based solely on

<sup>9</sup> Niniek Suparni, *Eksistensi Pidana Denda Dalam Sistem Pidana Dan Pemidanaan*, Jakarta: Sinar Grafika, 1996, hlm.3

<sup>10</sup> Sudar to, *Kapita Selekta Hukum Pidana*, Bandung: Alumni, 2006, hlm. 86

<sup>11</sup> Roeslan Saleh, *Perbuatan Pidana dan Pertanggungjawaban Pidana*, Jakarta, Aksara Baru, 198. Hlm 22

<sup>12</sup> Pontang, *Pembentukan Hukum melalui Putusan Pengadilan Dalam Perkara Pidana*, Bandung,, Alumni, 2005. Hal.15

juridical provisions but was also based on conscience.<sup>13</sup>

Regarding the provision of a sentence, the choice of imprisonment is an option that is often given to the defendant. It turns out that it has created new problems in the criminal process in prisons, as the author has stated above. According to Barda Nawawi Arief, regarding the implementation of imprisonment, there are many criticisms aimed at imprisonment. Broadly speaking, this criticism consists of moderate criticism and extreme criticism. In essence, moderate criticism maintains imprisonment but its use is limited, while extreme criticism demands the abolition of imprisonment.<sup>14</sup>

In line with these criticisms, Tongat stated that "the crime of deprivation of liberty is increasingly disliked, both on the basis of humanitarian considerations, philosophical considerations of punishment and economic considerations".<sup>15</sup>

Regarding the criticism regarding the shortage of imprisonment, C.I. Harsono stated several negative impacts of the deprivation of liberty, including:<sup>16</sup>

1. A prisoner can lose his personality or identity, due to the

rules and procedures for living in a prison (*Loos of Personality*).

2. During serving a sentence, prisoners are always under the supervision of officers, so that they feel uncomfortable, always feel suspicious of their actions (*Loos of Security*).
3. By recognizing that the criminal is clearly deprived of individual liberty, this can lead to feelings of depression, gloominess, irritability, so that it can hinder the process of development (*Loss of Liberty*).
4. By serving a sentence in a correctional facility, inmates can feel the loss of good service, because everything must be done by themselves (*Loos of Personal Communication*).
5. While in the correctional facility, prisoners can feel that they are missing good services, because everything must be done by themselves (*Loos of Good and Service*).
6. With restrictions on movement and placement of prisoners according to sex, it is clear that prisoners will feel deprived of sexual analgesia, affection and longing for the family (*Loos of heterosexual*).

<sup>13</sup> Ahmad Rifai, *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*, Sinar Grafika, Jakarta, 2010. Hal 103.

<sup>14</sup> Barda Nawawi Arief, *Kapita Selekta Hukum Pidana*, Bandung, Citra Aditya Bakti, 2010, hlm. 33

<sup>15</sup> Tongat, *Pidana Kerja Sosial dalam Hukum Pidana Di Indonesia*, Jakarta, Djambatan, 2002, hlm.4

<sup>16</sup> C.I. Harsono, *Sistem baru Pembinaan narapidana*, Jakarta, Djambatan, 1995, hal. 60.

7. During his time in the Correctional Institution and the emergence of a variety of treatments both from the job and other prisoners, can lose his pride (*Los of Prestige*).
8. As a result of various deprivation of liberty in the correctional institutions, inmates can lose their self-confidence (*Loosof Belief*).
9. Prisoners while serving their sentences in the Correctional Institution, due to feelings of pressure, can lose their creativity, ideas and imagination (*Loos of Creativity*).

Agree with CI Harsono thinking, the author argues that in the convictions of minor criminal offenders, it is necessary to pay more attention to the objectives of the punishment to be achieved. Whether the punishment imposed has more of an impact on benefits or leads to more losses. This is very necessary to pay attention to, given the shortcomings of the emergence of the crime of deprivation of freedom in the short term in particular.

Besides the shortcomings according to CI. Harsono, another problem that arises related to the granting of imprisonment to perpetrators of imprisonment is that it occurs when the prisoner is in a Penitentiary (LP). As we know that in this State of Indonesia, prisoners living in this prison are not differentiated according to the severity of the crime committed, only

differentiated according to gender, are also still children or adults, so the prisoners are both convicts of minor crimes. with serious criminal convicts who are in prison are gathered together, there is even no distinction between one type of criminal act and another.

With the condition of the prison in which there are various kinds of prisoners, socialization among the prisoners cannot be avoided. In the prison process known as *prisonisasi*. Clemmer describes the state of prison as an informal social system known as sub kultur inmates. This prisoner sub-culture has a great influence on the individual life of each prisoner, especially the process of socializing the prisoner into the prisoner society which is called prisonisation.<sup>17</sup> From the term above, it can be understood that prisonisation is meant as the process of absorbing the ways of life in prison. The absorption process is carried out by a learning process in interacting with fellow prisoners. Thus, to determine the level of influence of the ordinances of life in prison is determined by whether or not the interpersonal contact between inmates is close. The life culture of prisoners has a great influence on the individual life of the prisoner, so that each prisoner (prisoner) will undergo a process of adjustment to the life in it. What needs to be worried about from the socialization process between prisoners is that there is a learning process in interacting with fellow prisoners. Thus, to determine the level of

<sup>17</sup> Muladi, Lembaga Pidana Bersyarat, Bandung, PT. Alumni, 2004. Hal. 141

influence of the ordinances of life in prison is determined by whether or not the interpersonal contact between inmates is close.

The life culture of prisoners has a great influence on the individual life of the prisoner, so that each prisoner (prisoner) will undergo a process of adjustment to the life in it. Prison sentences also carry "criminal education by criminals". Correctional Institutions often function as "criminals' college" which will give birth to more professional criminals. With the birth of this professional criminal, in turn, it will also add to the burden on society because of the emergence of a greater threat.<sup>18</sup>

By remaining inherent in the characteristics of the prison system above, it will affect the prisoners' correctional process. It is said that it will affect the prison process, because it is not impossible, the result of prisonization will give a strong impetus to a prisoner to repeat a criminal offense after he leaves the institution, because he has received knowledge and a number of information about various things about crime. Implicitly prisonization is one of the factors in the failure of the coaching process which is the goal of punishment through a correctional institution. Many recidivists have returned because they have learned from the prison culture about higher crime.<sup>19</sup>

In addition, the stigmatization of prisoners provided by the community can also have an effect in overcoming

crime, because it will affect the prisoner's confidence to return to society. From the many weaknesses that arise from the granting of imprisonment to the perpetrators of this minor criminal act, it is necessary to provide other alternatives for crimes that can be given to perpetrators of minor crimes. Because the granting of punishment basically must be adjusted to the theory of punishment and the objectives of the existing punishment.<sup>20</sup>

With regard to the weaknesses of imprisonment, the draft Criminal Code also discusses the renewal of criminal sanctions which are also looking for a breakthrough in the imposition of crimes which will seek criminal forms that can cover the weaknesses of imprisonment. In discussing the concept, Sudarto argued that "it is clear that the concept is adopted in the guiding philosophy of criminalizing perpetrators. One of the consequences is that there is no desire for a short sentence of deprivation of independence because it is impossible for coaching with good results if the period of training is too short".<sup>21</sup>

Therefore, along with the times, imprisonment is not the only form of punishment to tackle criminal acts, especially minor crimes, so that alternative crimes are needed that can be given to minor criminal offenders that can avoid the impact of prisonization which can lead to an increase. criminal act.

<sup>18</sup> Tongat, Op cit, hlm. 49

<sup>19</sup> Ibid hl. 141

<sup>20</sup> Ibid. hlm. 144

<sup>21</sup> Sudarto, Suatu Dilema Dalam Pembaharuan Sistem Pidana Indonesia, FH-Undip, 1979 hal. 10

In Indonesia, there are universal problems, namely public dissatisfaction with the deprivation of freedom which in various studies has proven to be very detrimental to both individuals who are subject to criminals and to society. One of the ways to overcome this is in the form of increasing non-institutional punishment such as conditional use of penalties as regulated in Article 14a-14f of the Criminal Code (KUHP) and its implementing regulations Staatblad 1926 No. 251 jo 486, in January 1927 which was later amended by Staatblad No. 172.<sup>22</sup>

Article 14 of the Criminal Code regulates the implementation of imprisonment. After this article, Article 14a through Article 14f is placed which regulates conditional punishment. The conditional criminal, namely not carrying out imprisonment because only conditions are stated, namely within the stipulated time that the convict is not allowed to commit a criminal act. A conditional punishment is decided by a court judge on the condition that its implementation is supervised by an authorized officer intended to correct the convict so that he is not affected by the prison subculture, conditional punishment is also intended to prevent the occurrence of a crime.<sup>23</sup>

<sup>22</sup> Haryanto dwi Atmojo, Penjatuhan Pidana Bersyarat Dalam Kasus Pencurian Kakao, Jurnal Komisi Yudisial.go.id, <https://jurnal.komisiyudisial.go.id/index.php/jy/article/viewFile/178/144> diakses 7 November 2020

<sup>23</sup> Eyreine Tirza Priska Doodoh, Kajian Terhadap Pidana Bersyarat dan Pengawasan Terhadap Kitab Undang-Undang Hukum Pidana, Lex et Societatis, Vol. 1 No. 2 Tahun 2013, <https://ejournal.unsrat.ac.id/index.php/lexetsocie>

Judging from the name, namely conditional punishment, there are conditions stipulated in the Judge's decision, which must be obeyed by the convicted person in order to be released from the execution of his sentence. The conditions are distinguished, namely general terms and special conditions. The general condition is that if the judge imposes a conditional sentence in his decision, the general conditions must be stipulated. The general condition must be determined by the judge that within a certain time (probation period) the convict is not allowed to commit a criminal act. b. Special conditions Special requirements are optional (not mandatory to set). In special conditions, the judge may determine things such as compensation for the consequences arising from the commission of a criminal act, either in whole or in part.<sup>24</sup>

Criminalization is a negative reward for deviant behavior by members of the community so that this view sees punishment as only retaliation for mistakes committed on the basis of their moral responsibility. On the one hand, punishment is intended to improve the attitude or behavior of the convicted person and on the other hand, punishment is also intended to prevent

[tatis/article/viewFile/1753/1394](https://journal.unpak.ac.id/index.php/palar/issue/view/156/showToc) diakses pada 7 November 2020

<sup>24</sup> Sapto Handoyo, Pelaksanaan Pidana Bersyarat Dalam Sistem Pemidanaan di Indonesia, Pakuan Law review, Vol IV Nomer 1 Tahun 2018, <https://journal.unpak.ac.id/index.php/palar/issue/view/156/showToc> diakses pada 7 November 2020

19 other people from the possibility of committing similar acts. The purpose of punishment contains elements of public protection, and is not intended to cause distress and degrading. This view converges on two interests, namely protection of the community and fostering of perpetrators of criminal acts. With regard to the imposition of a conditional sentence, the thing that is considered is that the conditional sentence will give the convict the opportunity to improve himself in society, as long as the convict's welfare in this case is considered more important than the risks that might be suffered by the community, if the convict is released in the community. Convicted in a conditional sentence can carry out his daily habits as a human with values that exist in society and will prevent the occurrence of stigma caused by the crime of deprivation of liberty.<sup>25</sup>

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From these weaknesses, it appears that conditional punishment for minor criminal offenders has many advantages when examined from several aspects, namely: *first*, that conditional punishment will give the convict the opportunity to return to society and improve himself, as long as the convict's welfare in this case is considered to be more important than the risk that the community might suffer if the convict returns to society.<sup>26</sup> *Second*, that conditional punishment allows the convicted person to continue his daily

habits of life as a human being in accordance with the values that exist in society, this habit can be related to work duties or other activities that become routine routines of the convicted person.<sup>27</sup> *third*, that conditional punishment protects the convicted person from the stigma caused by the provision of imprisonment, which of these impacts needs to be taken into account.<sup>28</sup>

Muladi further stated, that the application of conditional punishment should be directed at the following benefits:<sup>29</sup>

- a. On the one hand, this conditional sentence must be able to increase individual freedom and on the other hand maintain legal order and provide protection to the community effectively against further violations of the law.
- b. Conditional punishment must be able to increase public perceptions into the philosophy of rehabilitation by maintaining the continuity of the relationship between prisoners and society normally.
- c. Conditional punishment tries to avoid and weaken the negative consequences of the deprivation of liberty which often hinders efforts to

<sup>25</sup> Adia Nugraha, Penjatuhan Pidana Bersyarat Terhadap Pelaku Tindak Pidana Penganiayaan, *Fiat Justicia*, Vol 10, Issues 1, 2016, <https://jurnal.fh.unila.ac.id/index.php/fiat/article/view/743> diakses pada 7 November 2020

<sup>26</sup> Muladi, op cit, hlm. 152

<sup>27</sup> ibid

<sup>28</sup> Ibid, hlm.153

<sup>29</sup> Marlina, *Hukum Penitensier*, op cit. Hlm.144

- correct prisoners to return to society.
- d. Conditional punishment reduces the costs that must be incurred by the community to finance an efficient correction system.
  - e. It is hoped that conditional punishment can limit the losses from the application of the criminal act of depriving independence, especially for those whose lives depend on the perpetrator of the crime.
  - f. It is hoped that conditional punishment can fulfill the purpose of punishment which is integrated in its function as a means of prevention (general and special), protection of the community, maintaining community solidarity and reward.

With regard to the weaknesses of the imprisonment, which gives rise to the provision of conditional punishment as an alternative to the punishment of punishment, this will be related to the purpose of the punishment that was carried out against the convicted person. As the authors discussed above with regard to the purpose of punishment, there are various views or theories about the purpose of punishment that have changed. Before discussing the relevance of conditional punishment to the purpose of punishment, the writer

will first discuss the Relevance of Conditional Crime to the Purpose of Criminalization.

As the author has discussed above regarding the purpose of punishment, there are various kinds of views or theories about the purpose of punishment that have changed. Before discussing further the relevance of conditional punishment to the purpose of punishment, the author will first reiterate the purpose of punishment which is intended to provide an earlier understanding of the purpose of punishment which has undergone a shift in orientation.

Initially, according to the absolute theory, punishment is given to the perpetrator of a criminal act with the sole purpose of being a retaliation for the criminal act committed, without containing aspects of self-improvement to the perpetrator of the criminal act. The criminal basis for this theory is retaliation. This is the justification for the imposition of suffering in the form of a crime on criminals. The state has the right to impose a sentence because the criminal has committed assault and rape on the protected rights and private interests of the community.<sup>30</sup> According to Utrecht, the crimes themselves contained the factors that demanded punishment. So Punishment does not aim to achieve a practical purpose, for example to correct a criminal. Achieving certain practical purposes is something that can be considered

<sup>30</sup> Adami Chazawi, *Pelajaran Hukum Pidana I*, Jakarta, Raja Grafindo Persada, 2011 Hlm. 157

irrelevant.<sup>31</sup> Imposing the law is an absolute condition which automatically exists as a consequence of committing a criminal act .

After the existence of absolute theory, then it shifted to a relative theory. The emergence of this objective theory as a reason for objections to the theory of retaliation. Although it cannot be denied that the (criminal) punishment is for the purpose of retaliation, it must be admitted that in the punishment (criminal) there are still defending factors. Punishment is also imposed with the intention of maintaining a certain order.<sup>32</sup> In theory this also emphasizes the side of prevention of crime, where in this theory it still contains values of self-improvement for criminals in the end it has given birth to a combined theory that comes from relative and absolute theories which contain elements of prevention and self-improvement. perpetrator of a criminal act. Penalty is retaliation, but it must not be subject to more punishment than what it should be, in proportion to the seriousness of the crime committed .

In the latest development, the criminal theory that is currently being developed is a criminal theory that is oriented towards development. According to this school, the purpose of punishment is plural because it connects the principles of retaliation theory and goal theory. This view suggests that it is possible to articulate a criminal theory that

integrates several retribution functions and some utilitarian characteristics, such as prevention and rehabilitation, which are all seen as goals to be achieved by a criminal plan.<sup>33</sup>

The purpose of this flow of punishment is *treatment* , this is because this flow argues that punishment is very appropriate to be directed at the perpetrator of the crime, not on his actions. However, the intended punishment is to provide *treatment* and *rehabilitation* .

The argument based on this flow is that the perpetrator of a crime is a person who is sick and thus requires treatment.<sup>34</sup> In this theory, punishment is not based on the severity of the crime committed, but is based on the aspect of self-improvement of the criminal so that he leaves his bad habits and obeys the existing regulations in society, especially legal norms.

Apart from the four theories mentioned above, Muladi put forward a criminal theory that is in accordance with the character of the Indonesian State, namely the Integrative theory. This theory is motivated by factors that pay attention to human rights and make crime operational and functional. So that a multi-dimensional approach that is fundamental to the impact of punishment is needed, both concerning the impact that is individual and that of a social nature. The choice of this integrative theory is based on

<sup>31</sup> Utrecht, *Hukum Pidana I*, Bandung, Universitas Padjajaran, 1958.Hlm. 159

<sup>32</sup> Ibid, hlm. 178

<sup>33</sup> Utrecht, op cit. hlm.52

<sup>34</sup> Marlina, Op cit, hlm. 59

sociological, juridical and ideological goals.<sup>35</sup>

According to Muladi, because the objective is integrative, the objectives of punishment are: (a) general and special prevention, (b) protection of the community, (c) maintaining community solidarity, and (d) compensation. In more detail Muladi explained, that the study of the three theories of the purpose of punishment, finally Muladi gave rise to the purpose of punishment which he called an integrated purpose of punishment (humanity in the Pancasila system). This theory departs from the basic assumption that a criminal act is a disturbance of balance, harmony and harmony in the life of society that causes damage to individuals and society, the purpose of punishment is to repair the damage caused by a criminal act.<sup>36</sup>

In connection with the integrative theory put forward by Muladi, the integrative theory is basically in line with the purpose of punishment formulated in the Draft Criminal Code which the author has put forward in the previous chapter regarding the purpose of punishment in which the formulation of the article contains meaning, namely in paragraph one concludes the view of public protection. Meanwhile, the second verse concludes that every human being should not be degrading his dignity as a human being so that the implementation of the crime will have an effect.

In relation to the imposition of a conditional sentence, according to the

author, conditional punishment is closely related to the integrated purpose of punishment, because conditional punishment contains properties that are in line with this theory, namely having a more humane punishment and not degrading human dignity, apart from it also contains aspects of protection of the perpetrator and protection of society.

Law No. 12 of 1995 changed the term prison to the term penitentiary, it states that correctionalization is an activity of guidance or an awareness process for criminals. In the correctional law, a member of the community must be treated according to his dignity as a human being, hereby a former convict after serving a sentence in a correctional facility can re-interact with the community. Thus, the purpose of the correctional facility is to have the idea that the convict can return to society by being a good person and can be accepted by the community. The purpose of this correctional facility provides a direction in the thought that the current criminal process emphasizes the side of the development of the convicted rather than the side of retaliation for the crime committed. Thus, one of the reasons for the emergence of conditional punishment, is due to humanitarian considerations which treat bad people because they have committed a crime so that they can come back alive and be better.

Based on the aforementioned theories and concepts, according to the author that the theory of punishment which is suitable to be applied and has

<sup>35</sup> Muladi, Op cit, hlm. 53

<sup>36</sup> Ibid, hlm.70

relevance to conditional punishment is an integrated purpose of punishment. Furthermore, the author will present how the relevance of conditional punishment is to aspects of the purpose of an Integrative punishment which contains The objectives of the punishment are: (a) general and special prevention, (b) protection of the community, (c) maintaining community solidarity, and (d) compensation.

Dwija argues, regarding the purpose of punishment which is integrative, that it contains several characteristics, including: *first*, the purpose of punishment is general and special prevention. Special prevention here means that the perpetrator of a criminal act can be prevented from committing a criminal act in the future if he already believes that the crime has brought suffering to him, so that the criminal here is deemed to have the power to educate and improve, while general prevention means that the imposition of the crime is meant for other people. prevented from committing a criminal act.<sup>37</sup> *Second*, the purpose of punishment is the protection of the community, which can be interpreted that the punishment is carried out so that the community is protected from the danger of a criminal act or a repeat offense.<sup>38</sup> *Third*, the purpose of punishment is to maintain community solidarity, the meaning is that punishment is to uphold community customs and prevent individual

revenge. This definition of solidarity can also be linked to the issue of compensation for victims of criminal acts.<sup>39</sup> *Fourthly*, the purpose of punishment is to reward balance, namely the comparison between the crime and the criminal responsibility of the perpetrator of the crime by taking into account the factors related to the granting of the crime, for example, the severity of the sentence imposed cannot exceed the weight of the error.<sup>40</sup>

As previously stated, conditional punishment is a type of crime that is used as an alternative to criminal offenses for perpetrators of criminal acts that are widely used by judges, especially for short-term deprivation of liberty. The alternative to giving conditional punishment is intended to avoid the negative impact of the application of the short-term deprivation of liberty punishment so that with this consideration, judges often use conditional punishment as an alternative to punishment and can also be used as one of the criminal policy efforts in overcoming crimes.

In relation to the relevance of the purpose of punishment, conditional punishment must be able to contain the characteristics of the purpose of punishment which the author has mentioned above. Broadly speaking, the two aspects of the purpose of the punishment are the aspect of self-protection of the perpetrator of the crime

<sup>37</sup> Dwija Priyatna, *Kebijakan Legislasi Tentang system Pertanggungjawaban Pidana Korporasi*, Bandung, CV. 2009. Utomo. hlm.121

<sup>38</sup> Ibid, Hlm. 122

<sup>39</sup> ibid

<sup>40</sup> Ibid, hlm. 123

and the aspect of protection from the community.

Regarding the aspect of public protection, that conditional punishment can save the convicted person from the criminal suffering of deprivation of liberty, especially the short term with all its consequences. By preventing the convicted person from the bad influence of the deprivation of liberty, the community will be protected from the possibility of heavier criminals that do not really need to occur.<sup>41</sup> These bad influences include, that we know that correctional institutions are places where criminals from various types of crime gather because there is no correctional facility (LP) according to the type of crime committed, thus in the correctional facility there is very little possibility for convicts not to be involved in the association between criminals in the LP. By using conditional punishment, this will prevent the convicted person from prisonerization, namely the process of association of the convicted person with the convicted community which provides opportunities for learning crimes among criminals. Thus, it can be avoided the exchange of knowledge between criminals, which in turn will also reduce the level of criminal recidivists in the community.

Conditional punishment can be used as an effort to reduce the stigmatization process which is always the effect of the deprivation of liberty, especially the effect of short-term deprivation of liberty. The

stigmatization process has many negative effects on the perpetrator. Stigma as a result of convictions for crimes So that the stigma will provide a place for a convicted person to be labeled as a criminal even though he no longer commits a crime. This stigma can also be felt by the families of the convicted person. So that this can cause a convict to commit a crime again or even more than the previous one so that we can see that the crime rate will increase. Thus, conditional punishment protects the convicted person from the stigma caused by the provision of imprisonment, which of these impacts needs to be taken into account.<sup>42</sup> In addition, the provision of a conditional sentence will provide an opportunity for the convicted person to return to society and improve himself, as long as the convict's welfare in this case is considered to be more important than the risk that might be suffered by the community if the convicted person returns to society.<sup>43</sup>

Meanwhile, seen from the protection of individuals, conditional punishment gives a lot of hope, especially with regard to the aspect of guidance that is oriented towards the individual perpetrator of the crime. So that the conditional sentence allows the convict to continue the habits of everyday life as a human being in accordance with the values that exist in society, this habit can be related to work

<sup>41</sup> Muladi, op cit, hlm. 89

<sup>42</sup> Ibid, hlm. 152

<sup>43</sup> ibid

duties or other activities that become routine routines of the convict.<sup>44</sup>

Thus, punishment essentially aims to prepare the convicted person to return to society as a useful person and prepare the convict to re-adapt to society normally. In addition, so that the convicted person can socialize again with the community and will become a law-abiding and obedient society. Avoiding the convicted person from the process of exile from society (dehumanization), as a negative characteristic of the deprivation of freedom, the convict will automatically be able to socialize the community. Therefore the convict does not need a complicated social adaptation process to return to society. Thus, conditional punishment can prevent the perpetrator of a criminal act or convicted from various sufferings due to the deprivation of freedom, including stigmatization, loss of self-confidence can be avoided because confidence for the convict is very important to return to society.

So that the implementation of conditional punishment from the above explanation has basically been directed at the objectives as stated by Muladi, namely, that conditional punishment on the one hand can increase individual freedom and on the other hand maintains legal order and provides protection to the community effectively against more legal violations. continue. Apart from that, conditional punishment tries to avoid and weaken the negative consequences of the deprivation of

liberty which often hinders efforts to correct prisoners back to society. As well as conditional punishment is expected to limit the losses from the deprivation of liberty, especially for those whose lives depend on the perpetrator of the criminal act.

The explanations mentioned above, will provide an understanding that conditional punishment can fulfill aspects of the purpose of punishment which are integrative in nature which include general and special prevention, protection of the community, maintaining community solidarity, and compensation. With the success of the development of the convicted individual where on the one hand it will provide protection for individuals not to commit criminal acts and on the other hand this success also has a positive impact on society, namely protection for the community against the dangers of crime, namely preventing the community from becoming victims of crime.

Thus, it can be seen from the explanation given by the writer above relating to this aspect of protection, both individual protection and community protection and its relevance to conditional punishment, it can be concluded that conditional punishment has a very close relevance to the purpose of punishment, and it can also be concluded that criminal conditional can be used as one effort criminal policy in tackling crime by looking at the advantages of criminal parole and compare it with the weaknesses of pidana deprivation in the form of negative

<sup>44</sup> ibid

effects of criminal deprivation of liberty, as I've had to tell him the bag .

### C. CONCLUSION

From the discussion above, the conclusion that can be drawn is that the imposition of the deprivation of liberty which is the most frequent choice for judges in imposing criminal decisions in criminal cases, especially minor crimes, still has weaknesses that deserve a resolution. Related to this, there are other alternatives that can be used in deciding criminal cases in court, especially minor crimes, namely in the form of conditional punishment. The provision of a conditional sentence to a convicted convict has relevance to the objective of an integrated punishment, which includes aspects of individual protection of the perpetrator and aspects of community protection, which in essence includes the objectives of preventing, reducing or controlling criminal acts and restoring the balance of society.

Meanwhile, the aspect of protection for individuals, which in essence includes the objective of rehabilitating and re-popularizing the perpetrators of criminal acts. In other words, this aspect of individual protection improves the perpetrator of a criminal act so that it can influence the behavior of the perpetrator in order to obey and order the law.

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JUSTITIA JURNAL HUKUM  
FAKULTAS HUKUM UNIVERSITAS MUHAMMADIYAH SURABAYA

**CONDITIONAL PUNISHMENT AS AN ALTERNATIVE  
PUNISHMENT OF PREVENTION CRIMES IN INDONESIA**

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**Abstrak**  
Criminal is a tool used in tackling criminal acts. The judge as the part who passes the sentence has a very important role in determining the effectiveness of the punishment that will be imposed on the perpetrator of the criminal act. So in this case the judge should be precise in determining which type of crime is appropriate for the perpetrator, considering that the imposition of a sentence against someone who has committed a criminal act is a very important part of realizing the expected criminal justice system. The application of imprisonment for the short term has many weaknesses. The process of prisonisation becomes a means of crime school for prisoners who have the opportunity to increase the number of existing receivers. Thus an alternative punishment is needed that can be a solution to the weaknesses of imprisonment. Conditional punishment is an alternative punishment that can be imposed by a judge against the perpetrator of a criminal act. The limitation in this research is focused on the use of conditional punishment which is expected to be able to fulfill the desired sentencing objectives and become an effort in criminal policy to tackle crime. This study uses a normative juridical research method that will examine conditional criminality in relation to the theory of the purpose of punishment as well as examine crime as an effort to tackle crime based on the theory of criminal policy.

**Keywords:** Conditional Punishment, Purpose of Punishment, Criminal Policy

**A. INTRODUCTION**  
The issue of imposing crimes against perpetrators of criminal acts is a subject that is always interesting to discuss, considering that various efforts have been made to overcome crimes, one of which is through the choice of punishment imposed by the judge. The role of the judge basically determines the effectiveness of the punishment that will be handed down to the perpetrator of a criminal act so that in this case the judge should be precise in determining which type of crime is rightfully imposed on the perpetrator, considering that imposing a sentence on someone who has committed a criminal act is a very important part of realizing the expected criminal justice system.

Sanctions are a means of forcing someone to obey the prevailing norms. Legal norms or rules aim at achieving peace in life together, where peace means harmony between order and tranquility or harmony between attachment to freedom. That is the purpose of the law, so that the task of the law is none other

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