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LEGAL POLITICS OF CONDITIONAL EXEMPTION IN THE SOCIETY SYSTEM IN INDONESIA

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Abstract: Efforts are made for convicts not to be "punished" but rather to be protected and developed so that later they can be accepted back into society. In other words, efforts to implement human rights for prisoners have been clearly accommodated normatively through Law no. 12 of 1995 concerning Corrections. The provisions in Article 14 paragraph (1) of Law no. 12 of 1995 concerning Corrections has accommodated absolute rights and conditional rights for prisoners. Efforts to restore correctional inmates are a process in the correctional client coaching and mentoring program, in accordance with the technical instructions for implementing the revitalization of correctional administration. The program is implemented based on data on the stages carried out by Correctional Advisors, Community Advisors (PK) and Guardians of Prisoners/Correctional Protégés. The data referred to in the stages is the result of observations, assessments and reports on the implementation of coaching. The coaching program can actually run in accordance with the stages regulated in Government Regulation Number 31 of 1999 concerning the Development and Guidance of Correctional Inmates. Based on the background to the problem above, the problem can be formulated as follows: How are parole arrangements for prisoners in the correctional system in Indonesia. What are the weaknesses and deficiencies in the regulation of parole for prisoners in the Indonesian correctional system?

Keywords: Parole, Inmates, Correctional Institutions

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Introduction

Law cannot be separated from human life, so when discussing law it cannot be separated from discussing human life. Law is essentially power. The law regulates, maintains order and can limit individual movement. It is impossible for law to carry out its function if it does not constitute power. Laws are powers that strive for order. Even though the law is power, has the right to coerce and acts as a sanction, it should be avoided so that it becomes the law of power, the law of those in power. Because there were rulers who misused the law, the term "Rule of law" emerged. Rule of Law means regulation by law. So what regulates is the law, the law is the one who rules or has power. This implies that the rule of law should not be interpreted simply as "Government not by man but by law". The thing that needs to be remembered is that the law is the protection of human interests, so that "governance not by man but by law" should not be interpreted as meaning that humans are completely passive and become slaves to the law.

Indonesian law which is tasked with describing and explaining legal life in Indonesia cannot be separated from the 1945 Constitution. Referring to this thought, the paradigms that can be captured from the 1945 Constitution include: (a) Belief in One Almighty God; (b) Humanity; (c) Unity ; (d) people; (e) social justice; (f) kinship; (g) harmony; (h) deliberation. The paradigm above can guide the implementation of a legal state, namely a state that stands on law that guarantees justice to its citizens. Justice is a condition for achieving a happy life for its citizens, and as a basis for justice it is necessary to teach a sense of morality to every human being so that he or she becomes a good citizen. Likewise, real legal regulations only exist if the legal regulations reflect justice for social interactions between citizens. This is applied in Indonesia by making laws, law enforcement and the judiciary. Legal order is basically the embodiment of legal ideals adopted in the society concerned into various sets of positive rules, legal institutions and processes (behavior of government bureaucracy and society).

The development and development of law in Indonesia is based on Pancasila and the 1945 Constitution. This implicitly shows that the formulation of laws in force in Indonesia cannot be separated from the nation's view of life, Pancasila. Pancasila is a way of life, so the understanding of the rule of law is not as adhered to in western legal culture. Likewise, criminal sentences must be adjusted to local wisdom, namely based on laws that have grown and developed in Indonesian society.

As is known, based on the Republic of Indonesia Government Regulation no. 31 of 1999 concerning the Development of Correctional Inmates. Article 1 paragraph (1) states that coaching is an activity to improve the quality of devotion to God Almighty, intellectual, attitude and

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behavior, professional, physical and spiritual health of prisoners and correctional students, namely returning prisoners to become useful members of society again and is expected not to repeat the crimes he has committed, while the guidance in Article 1 paragraph (2) is providing guidance to improve the quality of devotion to God Almighty, intellectual, attitude and behavior, professional, physical and spiritual health of correctional clients

In the past, places of punishment (correctional institutions) were a place to provide deterrence for criminals, with the provision of punishments involving torturing/torture of the body, iron and stone buildings, with sleeping rooms arranged in such a way as to facilitate supervision and inspection. A rigid way of life that is guided by internal maintenance and mandatory work. The rights of humans (convicts) are often sacrificed in order to better maintain security in correctional institutions or to create a "deterrent" goal of a crime.

In line with the development of the prisoner development system, in correctional institutions, prisoner training still uses a top down approach, where the implementation of guidance is fully in accordance with the policies determined by policy makers without paying attention to the content requirements of Law no. 12 of 1995 concerning Correctional Institutions, that in essence, correctional inmates as human beings and human resources must be treated well and humanely in an integrated development system.

As is known, coaching aims to increase prisoners' awareness of their existence as human beings. Achieving awareness is carried out through the stages of introspection, motivation and self-development. Awareness is intended so that prisoners are aware of their existence as humans, as humans who have reason, who have culture and potential as specific creatures. The introspection stage is intended for prisoners to know themselves. Only by knowing yourself can someone change themselves. Plato said that no one can change a person's fate except himself. Change is possible if humans know themselves. The motivation stage is a continuation stage of introspection. In this case, prisoners are given self-motivation techniques. Techniques for motivating yourself are much more important than techniques for motivating other people, because if someone can motivate themselves, they will always be positive in looking at all aspects of life. If someone is able to motivate themselves, then they need to know about self-development. Self-development is carried out in the self-development stage.

While in a correctional institution, every prisoner has certain legal rights according to applicable regulations, and these rights are upheld by

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every correctional officer. One of the rights of prisoners is the right to visit family as contained in Article 14 of Law No. 12 of 1995 concerning Correctional Institutions regarding the rights of prisoners. Based on the provisions of Article 14 of Law No. 12 of 1995 concerning Corrections, the rights of convicts include:

1) Carry out worship according to your religion or beliefs.
2) Get spiritual and physical care
3) Get education and teaching
4) Get proper food health services
5) Submit a complaint
6) Obtain reading and following mass media broadcasts that are not prohibited
7) Receive wages or premiums for the work done
8) Receive visits from family, legal advisors, or certain other people
9) Receive a reduction in the criminal period (remission)
10) Get the opportunity to assimilate including Family Visiting Leave (CMK) (this is also contained in Article 10 of the Corrections Bill)
11) Received Parole
12) Get Free Leave (CMB), and get other things according to applicable laws and regulations.
13) Obtain other things in accordance with applicable laws and regulations.

Based on the background of the problem above, the problem can be formulated as follows:

1) How are parole arrangements for prisoners in the penitentiary system in Indonesia.
2) Have the parole regulations in Indonesian correctional law achieved justice?
3) How is the legal politics of parole for prisoners in realizing justice in the correctional system in Indonesia

Methods

The research in the form of a dissertation carried out by this researcher consists of several research components as follows: The type of research in the research that the researcher applied in this research is normative juridical. This research focuses on examining the application of rules or norms in terms of theoretical matters, principles, conceptions, legal doctrine and the content of positive legal rules. Bahder Johan Nasution

stated that "This research was also carried out through the study of legal principles, legal systematics, legal synchronization, legal comparison, legal history." This research is aimed at obtaining legal substance related to the scope of this research which consists of the application of legal politics to the penitentiary system, policy settings in the formation of prisoners which are then reviewed from a justice perspective. Therefore, the researcher chose a type of normative juridical research on the legal politics of the existing correctional system through regulations that apply to correctional system administrators in all Correctional Technical Implementation Units (UPT) in Indonesia, viewed from a justice perspective.

Approach used The approach used in this research and dissertation research is to answer the problem formulation of this research which serves as the research object discussed. The following are several approaches that researchers will apply in this dissertation research and research: The conceptual approach in this research was carried out by collecting various opinions of legal experts, both in the form of legal theory, understanding various legal terminology, and legal principles related to formulation of the problem of this research. The statutory approach is carried out by searching the laws relating to the legal issues that have been formulated. Apart from that, this approach is also carried out by reviewing all statutory regulations under the law relating to the legal issues that have been formulated.

The legal history approach is an approach carried out by conducting an investigation into the history or things that are behind the formation and application of legal rules related to the legal issues discussed in this research. A comparative approach is an approach taken by looking for differences and similarities in a legal rule that applies in another country vis-à-vis the legal rules that apply in a country. The results of this approach will be internalized into the legal system which will reflect the results of the comparison.

Collection of Legal Materials In this research, the collection of legal materials, both primary legal materials and secondary legal materials, was carried out through a literature study of legal materials using a card system or document study. This system is used to make it easier to analyze legal materials applied in research. The legal materials in question are: Primary legal materials, namely binding legal materials or positive legal rules. The primary legal material used in this research is statutory regulations related to the problem formulation of this research. The legal rules that the researcher means are as follows:

1) The 1945 Constitution of the Republic of Indonesia;
2) Law of the Republic of Indonesia Number 22 of 2022 concerning Corrections;

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3) Law of the Republic of Indonesia Number 12 of 1995 concerning Corrections;
4) Law Number 39 of 1999 concerning Human Rights;
5) Republic of Indonesia Government Regulation Number 31 of 1999 concerning Development and Guidance of Correctional Inmates;
6) Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 35 of 2018 concerning Revitalization of Correctional Services;
7) Other laws and regulations related to the formulation of problems analyzed and answered through this legal research.
8) Secondary legal materials are legal materials that provide explanations of primary legal materials. The form of this legal material is scientific work from previous researchers which is directly related to the title of this research, books, journals and documents which review the problems formulated in this research.
9) Tertiary legal materials, namely materials in the form of explanations that provide instructions and explanations for primary legal materials and secondary legal materials. Examples of legal materials are dictionaries and encyclopedias.

Analysis of Legal Materials. Analysis of the legal materials used in this research was carried out by researchers by: interpreting or interpreting provisions in statutory regulations relating to the legal issues discussed; Systematization of laws and regulations related to the problems studied; Interpretation of legal materials related to legal political research problems of the penitentiary system from the perspective of justice in Indonesia.

The emergence of the term "penitentiary" itself officially replaced the term "prison" on April 27 1964, through a written message from the President of the Republic of Indonesia given at the Service Conference of prison officials in Lembang (Bandung). This conference also held "retooling" and "reshaping" regarding the prison system which has nothing at all to do with protection and correction as a national legal conception based on Pancasila. The concept of correctional services had been outlined one year earlier, namely in 1963 by Baharoedin Soerdjobroto before being coined by Dr Sahardjo, Minister of Justice of the Republic of Indonesia at that time. "Kumendong explained that in Baharoedin's concept it was explained that correctional institutions looked at both crimes and lawbreakers problems involving oneself due to mistakes that arise in society itself. That was the concept of society at that time which held that what had to be done towards the perpetrator was to restore the relationship between the perpetrator and the victim and the community.

The stages in the Correctional System that relate to current problems in law enforcement become a separate assessment for each

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member of society. However, each society, with its own characteristics, may present its own set of problems within the framework of law enforcement. However, every society has the same goal so that peace can be achieved in society as a result of formal law enforcement. The development of life and development in society brings social change, including changes in values, attitudes and behavior patterns. This has caused a shift in views regarding the actions of community members. This shift in norms in society can trigger the emergence of various conflicts in society, both those that occur between individuals and individuals, individuals and groups, or conflicts that occur between community groups. This, directly or indirectly, will result in damage to the order of social phenomena that can cause rifts in relations between citizens which are always faced by today's society, always having implications for violations of the law, giving rise to crime. The crime that is felt to be very disturbing, not only disturbs order and peace in society, but efforts continue to be made as much as possible to overcome it.

Results / Discussion

1. arrangements for prisoners in the penitentiary system in Indonesia.

Recent developments have made changes in the function of Correctional Institutions (LAPAS), which previously directed the function of Correctional Institutions to make prisoners feel restless by implementing the function of retaliation against prisoners. This was done with the aim of ensuring that the actions he had committed would not happen again in society. As time goes by, the function of retribution is thought to be no longer in harmony and has turned into a place of training for prisoners to become better. The meaning of correctional services itself is stated in Law Number 12 of 1995 concerning corrections, namely all activities to carry out the development of correctional inmates based on the system, institutions and guidance procedures which are the final part of the punishment system in the criminal justice system. Furthermore, it is made clear in Law Number 12 of 1995 concerning corrections that the correctional system is about the direction and boundaries as well as methods for coaching inmates based on Pancasila and carried out in an integrated manner between the coach, those being coached, and the community in order to improve the quality of the inmates so that they are aware of their mistakes. and improve oneself, and not repeat criminal acts again. So that it can be accepted again by the community.

However, with every change, there will definitely still be negative things that happen in prisons because the legal arrangements are not yet

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perfect to ensure that a system for training inmates runs well. There are many deviations that have occurred currently behind prison bars, these deviations have various kinds, and one of them which should now be considered important for the government is sexual deviation which arises from the non-fulfillment of the biological needs of inmates . Sexual deviation in prison occurs because the external physical environment of the prison triggers abnormal sexual development as follows: Many of the external physical environments in prisons provide the development of sexual disorders in cell rooms that are always crowded, four or more people may be in one cell room (Bejamin 1948). The function of the correctional system itself is written in Article 3 of Law Number 12 of 1995 concerning Corrections, the function of the correctional system is to prepare correctional inmates so that they can integrate healthily with society, so that they can play their role again as free and responsible members of society, which is what is meant Healthy integration is the restoration of unity between correctional inmates and society.

The correctional system is a series of criminal law enforcement, therefore the implementation process cannot be separated from the general conception of punishment, the emergence of new ideas about the function of punishment so that it is no longer just a deterrent but also an effort to rehabilitate and social reintegrate residents of correctional facilities. . The problem from the past until now is that the correctional system has become a place or place for the transmission and development of venereal disease in correctional institutions, which is caused by the government's lack of understanding how important it is for prisoners to fulfill their biology. In the end, what was produced by a correctional system whose hope was that prisoners could return to being citizens of society who were responsible for themselves, their families and the environment, now cannot run according to what was expected, which in fact is that up to now, correctional institutions have become a place for the development and spread of venereal diseases. Prisoners are no longer objects, but also subjects who are no different from other humans, who at any time make mistakes and mistakes that can be imposed so that they do not have to be eradicated, but what must be eradicated are the factors that can cause prisoners to do things that are wrong. contrary to law.

There are facts about sexual deviations of prisoners in Indonesia which illustrate how important it is to fulfill the biological needs of prisoners. From research conducted by Sony Sofyan, there are several ways that prisoners at the Sukabumi Class II B Prison fulfill their biological needs, namely by secretly and collaborating with unscrupulous officers so that can have biological relations with their partner in prison or outside prison, by carrying out other activities to reduce masturbation

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(done alone, through reading and images that provide stimulation), through the help of other people, namely the wife or girlfriend during visits, and also having sexual relations sexual relations with members of the same sex in a violent manner . In Sri Pamudji's research, several facts were found in Bekasi Prison, namely that there were services to fulfill sexual needs through the anus and orally

2. Have the parole regulations in Indonesian correctional law achieved justice?

In the past, the aim of imprisonment was to carry out revenge against prisoners. Criminal imposition is carried out because someone has committed a crime so that person must receive punishment as a reaction to retaliation for their evil actions. The suffering imposed on prisoners is justified as a reason because that person has caused suffering to other people. Meanwhile, in the view of punishment, there are several theories of retribution, namely vindicative, fairness, proportionality, but the aim of punishment is retaliation and causing suffering (Andi Hamzah 1993). Treatment that only focuses on causing suffering in retaliation often results in prisoners being treated inhumanely and even ignoring their basic rights as prisoners. Realizing that punishment for the purpose of suffering does not improve the prisoner, this theory of revenge was eventually abandoned by almost all countries in the world. The aim of punishment has also changed from retribution to crime prevention. The purpose of this deterrence theory is to scare someone from committing crimes that harm other people .

The theory of prevention is considered unable to adapt to the objectives of punishment, therefore it combines theories that adopt the objectives of punishment, namely revenge and prevention. Retaliation makes sense as punishment and can deter crimes to create order in society. A new theory has emerged, the purpose of punishment is maintenance and improvement. This theory contradicts the notion that criminals are sick and therefore in need of care and improvement. Apart from that, the reason a person commits a criminal act is because it is influenced by his own internal factors and environmental factors that support the crime so that he cannot be accused and punished, therefore the treatment of prisoners needs to be improved.

Meanwhile in Indonesia, prison sentences are a product inherited from the Dutch East Indies government, with a system of retribution. This system was considered irrelevant to current developments, and it was only thirty years after it came into effect in Indonesia that the correctional system was born to replace the prison system which was born on April 27 1964 (Andi Hamzah 1993). This idea then gave birth to social principles, namely, providing protection to inmates so that they return to society,

becoming good and useful citizens. Providing guidance and not torture to make them repent, Crimes are not the State's revenge, The State must not make them worse or worse off than before they were punished, As long as they lose their freedom they will not be excluded from interacting with social activities., The work given They should not just fill their time. Their care, guidance, education and development must be based on Pancasila. As lost humans, they must be treated as humans. The only pain is being sentenced to lose their freedom, which means that the prisoner concerned will not can be subjected to physical torture and provide facilities to support the functions of prevention, treatment, rehabilitation and education.

3. The legal politics of parole for prisoners in realizing justice in the penal system in Indonesia

The Correctional System, especially the training provided to law violators. This process is related to the entire system, mechanisms and procedures carried out in order to foster law violators. Third, axiologically, the existence of a Correctional System with a model of guidance for law violators in Correctional Institutions cannot be separated from a dynamic, the main aim of which is to achieve social reintegration or the restoration of the unity of relations between law violators and society as well as providing provisions for both personality and independence for law violators in life. facing life after completing his criminal term and returning to society. Justice comes from the word fair, according to the Indonesian Dictionary, fair is not arbitrary, impartial, impartial. Fairness primarily means that decisions and actions are based on objective norms. Justice is basically a relative concept, everyone is not the same, fair for one person is not necessarily fair for another, when someone confirms that he is doing justice, this must of course be relevant to public order where a scale of justice is recognized. The scales of justice vary greatly from one place to another, each scale is defined and completely determined by society according to the public order of that society.

In Indonesia, justice is described in Pancasila as the basis of the state, namely social justice for all Indonesian people. These five principles contain values which are the goals of living together. This justice is based on and inspired by the essence of human justice, namely justice in the relationship between humans and themselves, humans with other humans, humans with society, nation and state, as well as the relationship between humans and their God. These values of justice must be a basis that must be realized in living together as a state to realize the goals of the state, namely realizing the welfare of all its citizens and all its

regions, and educating all its citizens. Likewise, the values of justice are the basis for relations between nations of the world and the principles of wanting to create an orderly life together in relations between nations in the world based on a principle of independence for every nation, eternal peace and justice in living together (justice). social).

In explaining the definition of justice in legal conceptions, researchers quote the opinions of several experts, because the landscape of theories of justice associated with legal conceptions is not unique. The trio of Athenian philosophers (Socrates, Plato and Aristotle) emphasized aspects of justice. The essence of law is justice. Law functions to serve the needs of justice in society. Law refers to a rule of life that is in accordance with the ideals of living together, namely justice. The content of legal rules must be fair. Without justice, law is just formalized violence. The law is felt to be important when faced with injustice. For Socrates, justice is the essence of law. Plato also said that the basic essence of law is dikaiosune (justice: the primacy of a sense of what is "right", "good", and "proper"). Aristotle connected justice (as the essence of law) with human happiness (eudaimonia). The quality of law is determined by its capacity to bring happiness to humans.

When related to Gustav Radbruch's theory of justice, law is the bearer of the value of justice, and is a measure of the fairness and unfairness of the legal system. Not only that, the value of justice is also the basis of law as law. Justice has both normative and constitutive characteristics for law. Normative justice because it functions as a transcendental prerequisite that underlies every dignified positive law. Then it becomes the moral basis of law and at the same time the benchmark for the positive legal system. It is from justice that positive law originates. Meanwhile, it is constitutive, because justice must be an absolute element for law as law. Without justice, a rule does not deserve to become law.

As is the truth in a system of thought. Likewise, regarding justice, it is possible that when a law is made and ratified at that time it is considered correct, after time there is a change in thinking because there are several articles that are not in accordance with economic, social and juridical developments as well as the development of people's thinking. Therefore it should be reformed or abolished if it is unfair. Based on natural law theory, the essence of law is fair, so the law must be fair. Justice is a condition that reflects the existence of harmony between the desired law and the applicable law. Justice itself is one of the main legal objectives in addition to legal certainty and also expediency. The author uses the theory of justice as a grand theory in this dissertation research as a basis for providing an understanding of the concept of justice related

to the legal politics of the penitentiary system in Indonesia, especially the series of policies and regulations related to prisoner development.

The term authority or authority is equated with "authority" in English and "bevoegdheid" in Dutch. Authority in Black's Law Dictionary is defined as Legal Power; a right to command or to act; the right and power of public officers to require obedience to their orders legally issued within the scope of their public duties (authority or authority is legal power, the right to command or act; the right or power of public officials to comply with legal rules within the scope of carrying out public obligations) . In the literature of political science, governmental science, and legal science, the terms power, authority, and authority are often found. Power is often equated with authority, and power is often interchanged with the term authority, and vice versa. In fact, authority is often equated with authority. Power usually takes the form of a relationship in the sense that "there is one party who rules and another party who is ruled" (the rule and the ruled). Authority is often equated with the term authority. The term authority is used in the form of a noun and is often equated with the term "bevoegheid" in Dutch legal terms. According to Phillipus M. Hadjon, if you look closely there is a slight difference between the term authority and the term "bevoegheid". The difference lies in the legal character. The term "bevoegheid" is used in the concept of public law as well as in private law. In our legal concept, the term authority or authority should be used in the concept of public law. However, power has two aspects, namely the political aspect and the legal aspect, while authority only has a legal aspect, which means that power can come from the constitution, or can come from outside the constitution (unconstitutional), for example through war or coup, while the authority itself is clear. originates from the constitution.

Authority is what is called formal power, power that comes from the power granted by law, while authority only concerns an "onderdeel" or certain part of the authority. Within the authority there are rechtsbe voegdheden authorities. Authority is the scope of public legal action, the scope of government authority, not only includes the authority to make government decisions (bestuur), but also includes authority in the context of carrying out tasks, and granting authority and the distribution of authority is primarily stipulated in statutory regulations. Juridically, the definition of authority is the ability granted by statutory regulations to give rise to legal consequences. From the various definitions of authority as mentioned above, it can be concluded that authority has a different meaning from authority or competence. Authority is formal power that comes from law, while authority itself is a specification of authority which means whoever here is a legal subject who is given authority by law, then

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the legal subject has the authority to do something within the authority because of the order of the law. invite.

Conclusion

Law Number 22 of 2022 concerning Corrections provides a direction to confirm regulations regarding the rights and obligations of prisoners, children and inmates; Arrangements regarding the implementation and delivery of Community Service, Development, Guidance programs, as well as the implementation of Nursing, Security and Observation; Regulations regarding support for intelligence activities in the implementation of security and observation functions, regulation; regarding the code of ethics and code of behavior for Correctional Officers to obtain security protection and legal assistance in carrying out their duties and functions. Regulations regarding the obligation to provide facilities and infrastructure in the implementation of the Correctional System including the Correctional Information Technology system; regulations regarding supervision of the implementation of correctional functions; and arrangements regarding cooperation and community participation carried out in the context of administering the Correctional System.

Based on the explanation of the concept above, the purpose of this research is to find out, analyze and study how the arrangements are, what the weaknesses and deficiencies are, and how ideally parole for prisoners is based on the value of justice in the correctional system in Indonesia. In accordance with the legal issues that have been raised in the background, the theoretical basis that the author will use as an analytical tool in this dissertation research is John Rawls trying to take some philosophical concepts from his three teachers: John Locke, JJ Rousseau, and Immanuel Kant. He quoted the moral theory of rights and natural laws from John Locke, the social contract theory he quoted from JJ Rousseau, while from Immanuel Kant, John Rawls took something that produces moral transformation for participants who enter into a contract as well as the category imperatives that Kant developed. . John Rawls put forward his ideas with the aim of putting forward a conception of justice that generalizes and brings to a higher level of abstraction the social contract theory that had been initiated by his predecessor.

Rawls tries to formulate two principles of distributive justice, as follows: first, the greatest equal principle, that everyone must have the same rights to the broadest basic freedoms, as broad as the same freedoms for everyone. This is the most basic thing (human right) that everyone must have. In other words, only by guaranteeing equal freedom for everyone will

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justice be realized (the principle of equal rights). The principle of the greatest equal principle, is none other than the principle of equal rights, a principle that provides equality of rights and of course is inversely proportional to the burden of obligations that each person has. This principle is the spirit of the principle of freedom of contract. Second, social and economic inequality must be regulated in such a way that it is necessary to pay attention to the following principle or two principles, namely the different principle and the principle of fair equality of opportunity. Both are expected to provide the greatest benefits for people who are less fortunate, as well as providing confirmation that with equal conditions and opportunities, all positions and positions must be open to everyone (Principle of Objective Differences). The different principle and the principle of fair and equality of opportunity are objective differences principles, meaning that the second principle guarantees the realization of proportionality in the exchange of rights and obligations of the parties, so that differences in exchange are naturally (objectively) accepted as long as they meet the requirements of good faith and fairness. Thus, the first principle and the second principle cannot be separated from each other. In accordance with the principle of proportionality, Rawls' justice will be realized if these two conditions are implemented comprehensively. With his strong emphasis on the importance of providing equal opportunities for all parties, Rawls tries to ensure that justice is not trapped in the extremes of capitalism on the one hand and socialism on the other. Rawls said that, in a conflict situation, the principle of the greatest equal principle must be prioritized over the principle of the different principle and the principle of fair equality of opportunity. Meanwhile, the principle of (fair) equality of opportunity must be prioritized over the different principle.

Justice must be understood as fairness, in the sense that not only those who have better talents and abilities have the right to enjoy various social benefits more, but these benefits must also open up opportunities for those who are less fortunate to improve their life prospects. In this regard, responsibility for the morality of the advantages of those who are fortunate must be placed within the framework of the interests of those who are less fortunate. The different principle does not demand the same benefits (equal benefits) for everyone, but rather reciprocal benefits, for example, a skilled worker will certainly be more appreciated than an unskilled worker. Here, justice as fairness really emphasizes the principle of reciprocity, but this does not mean simply reciprocity, the distribution of wealth is carried out without looking at objective differences between members of society. Therefore, in order to guarantee objective rules of the game, justice that can be accepted as fairness is pure procedural justice, meaning that justice as fairness must be processed and reflected through a fair procedure to guarantee fair results.

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Regarding the complexity of contractual relationships in the business world, especially related to fairness in contracts, based on the thoughts mentioned above we should not be fixated on classic distinctions of justice. This means that the analysis of justice in contracts must combine the concept of equal rights in exchange (performance versus performance) as understood in the context of commutative justice and the concept of distributive justice as the basis of contractual relationships. Understanding fairness in contracts must not lead us to a monistic attitude (single understanding), but more than that it must be comprehensive. Commutative justice, which is the basis of relationships between persons, including contracts, should not be understood as mere equality because this view will bring injustice when faced with an imbalance between the contracting parties. Commutative justice also contains the meaning of proportional distribution. Likewise, in distributive justice which is patterned in the relationship between the state and its citizens, the concept of proportional distribution contained therein can be drawn from the perspective of the contractual relationship between the parties.

Acknowledgments

To realize his ideas, John Rawls suggests that we can think of original position, as a contract to enter a particular society or build a particular form of government. The main idea is that the principles of justice for the basic structure of society are the object of the first agreement (original agreement). It is those principles which free and rational people take into account in their interests, which will then be accepted in the initial position as determining the basic terms for their assumptions. These principles are to regulate further agreements, these principles determine what types of social cooperation can be entered into and the forms of government that can be established. The method related to this by John Rawls is called Justice as fairness.

In Justice of Fairness, the initial position on equality is related to the state of nature in traditional theories of the social contract. This initial position is not considered to be the actual historical conditions regarding various issues. It must be understood as something highly hypothetical that is characterized in such a way as to lead to a conception of justice. The term Justice of Fairness is thinking that the parties (people involved) in the initial situation are rational and mutually disinterested. With the potential they have such as wealth, prestige and social status, they can actually oppress, but they are considered not to take each other's interests into account with the potential they have. .

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References

A. Hamid S. Attamimi, "The Role of Decrees of the President of the Republic of Indonesia in the Implementation of State Government: An Analytical Study of Presidential Decrees Which Have a Regulatory Function in the Period of Pelita I-Pelita IV", Doctoral Dissertation, University of Indonesia, 2003.

Achmad Ali, Legal Deterioration in Indonesia, Jakarta: Ghalia Indonesia, 2002.

Andi Hamzah, 2009, Criminal Law Terminology, Sinar Graphics, Jakarta.

Artha Febriansyah, et al, 2014, Reality of Indonesian Prisons, Community Service Quality Survey (Jakarta, Banten, Pelembang, Yogyakarta and Surabaya Regions), Center For Detention Studies, Jakarta.

Aruan Sakidjo and Bambang Poernomo, 1990, Basic Criminal Law General Rules of Codified Criminal Law, Ghalia Indonesia, Jakarta.

Bahder Johan Nasution, Legal Research Methods, Mandar Maju, Bandung, 2016.

Fazel S dan Wolf A, June 18, 2015, "A Systematic Review of Criminal Recidivism Rates Worldwide: Current Difficulties and Recommendations for Best Practice", PLoS ONE 10 (6): 0130390. doi:10.1371/journal.pone.0130390.

Frank N Mc Gill (ed.), Masterpiece of World Philosophy (New York: Harper CP, 1990).

Hadi M. and Wan Azlinda Wan Mohamed, Maret 2017, "Reformation of Offenders in Nigerian Correctional Institutions", Pertanika Journal Soc. Sci. & Hum. 25 (S): Universiti Putra Malaysia Press.

Hafrida, Metode Penelitian Hukum, Fakultas Hukum Universitas Jambi, 2016.

Iqrak Sulhin, Mei 2010, Filsatat (Sistem) Pemasyarakatan, Jurnal Kriminologi Indonesia Vol. 7 No.I.

J.H. Merryman, The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America, 2 Ed., Stanford California: Stanford University Press, 1985, page 1.

Jimly Asshiddiqie, "Legal Development in Indonesia" in Jimly Asshiddiqie, Towards a Democratic Legal State, Jakarta: Secretariat General and Registrar of the Constitutional Court, 2008.

Ksenija Butorac et all, 2017, “The Challenges in Reducing Criminal Recidivism”, Public Security and Public Order, Volume 18, Zagreb Croatia.

Kumendong, WJH (2013). A REVIEW OF THE RENEWAL OF THE PENALTY SYSTEM WHICH IS GOING IN A MORE RATIONAL DIRECTION.

Lawrence W. Friedman, Legal System: A Social Science Perspective (Translated from Lawrence M. Friedman, The Legal System: A Social Science Perspective, New York: Russel Sage Foundation, 1975), Bandung: Nusa Media Publishers, 2009.

Mahrus Ali, 2011, Basics of Criminal Law, Sinar Graphics, Jakarta, p. 139.

Miriam Budiardjo, "Political Concepts" in Miriam Budiardjo, Basics of Political Science, Fourth Edition, Jakarta: PT Gramedia, 1980.

Nico Ngani, Research Methodology and Legal Writing, Pustaka Yustisia, Yogyakarta, 2012.

Article 1 Number 4, PERMENKUMHAM Number 6 of 2013 concerning Rules and Regulations for Correctional Institutions and State Detention Centers.

Article 1 Number 6, Law Number 22 of 2022 concerning Corrections.

Peter Mahmud Marzuki, Legal Research Revised Edition, Kencana, Jakarta, 2017.

Rahayu, S. (2017). Journal of Indonesian History. Racial Conflict Between Ethnic Chinese and Natives in Surakarta.

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

Robert B. Seidman & William J. Chambliss, “Law, Order, and Power”, Addison Wesley Publishing Company, Philippines, 1971. See also Satjipto Rahardjo, “Law and Society”, Bandung, Alumni, 1980.

Robert Paul Wolf, Understanding Rawls: a Reconstruction of a Critique of a Theory of Justice (New Jersey: Princetown University Press, 1977).

Saraswati, Retno. "Design of an Effective Presidential Government System". MMH Journal, Volume 41 No. January 1, 2012.

Satjipto Rahardjo "Teaching Order, Finding Irregularities (Teaching Order, Finding Dis-Order), Thirty Years of Intellectual Journey from Bojong to Pleburan", Emeritus Speech of UNDIP Professor, 15 December 2000.

----------, "Other Sides of Law in Indonesia" Jakarta, Kompas Publishers, 2003.

----------, "Towards Progressive Legal Products" Paper presented in a Limited Discussion organized by FH UNDIP, 24 June 2004.

----------, "Law in the World of Order", Jakarta, UKI Press, 2006.

----------, Progressive Law: Law that Liberates, Journal of Progressive Law, Vol. 1/No. 1/ April 2005, PDIH Legal Sciences UNDIP, p. 5. See also Satjipto Rahardjo, "Law in the World of Order", Jakarta, UKI Press, 2006.

----------, Law Enforcement: A Sociological Review, Yogyakarta: Genta Publishing, 2009.

Sukamto Satoto, Regulation and Function of the State Civil Service Agency, Hangar Kreator, Jogjakarta, 2004.

Suratman and Philips Dillah, Legal Research Methods, Alfabeta, Bandung, 2015.

Law Number 22 of 2022 concerning Corrections.

Unggul Sugi Harto, "The Politics of Violence", "Media Neliti Journal: Jakarta. 2015".

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

Von Jhering as quoted by Moh. Kusnardi and Bintan R. Saragih, "State Power and Law" in Moh. Kusnardi and Bintan R. Saragih, State Science, Second Printing, Jakarta: Gaya Media Pratama, 1988.

"Based" https://kbbi.lektur.id/berbasis, accessed on June 15 2023, 15.00 WIB.

"The Values of Justice" https://kumparan.com/berita-update/pengertian-Values-values-keadilan-dan-empat-sikapnya-dalam-kejiwaan-community-1widKBr5jMp, accessed 15 July 2023. At 16.57 WIB.

"Correctional System" https://www.jogloabang.com/pustaka/uu-22-2022-perpublikan. Accessed July 15 2023. At 17.55 WIB.

"Research Methods", http://digilib.unila.ac.id/9558/4/bab%20III.pdf. Accessed on July 15 2023, 14.42 WIB.

https://tirto.id/apa-itu-justice-collaborator-dalam-bangunan-andi-narogong-cB8r, accessed on June 14 2023 at 19.00 WIB.

https://www.bbc.com/indonesia/indonesia-41001319, accessed on 14 July 2023 at 18.30 WIB.