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Implementation of Double Track System in Conviction Towards Special Expertise Crime

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Abstract

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Sentencing must be guided by the principle of *quae sunt minoris culpa sunt majoris infamiae* (cruel crimes will be punished with cruel punishment). However, there must be a limit to the punishment (*poenae sunt restringende*). In its implementation, the imposition of crimes against convicted people often creates ongoing problems in people's lives. Instead of aiming to popularize the convicts, in fact the imposition of crimes often causes suffering to the perpetrator and even his family. This study aims to determine the basis for justifying the imposition of sanctions in the punishment of criminals with special skills and to formulate the ideal concept of punishment for convicts with special skills in the future. This research is a normative legal research; the data source in this study uses secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The approach in this research uses a statutory approach, a comparative approach and a conceptual approach. Based on the results of the study, it shows that the basis for justifying the imposition of sanctions for criminal acts



with special expertise is the Mark system of penalties. The use of the Double Track System in the punishment of convicts who have special expertise in the field of science so that it is in line with the criminal purpose of providing education, in addition to being convicted with the main crime, the convict is also subject to acts in the form of social work by teaching/transforming the knowledge/expertise possessed to people, many through certain educational/research institution/institutions online (on line).

A. Introduction

Starting this paper the author would like to quote an *adage facinus Quos Inquinat Aequat* which means that mistakes will be attached to those who have done mistakes.¹ Thus, the criminal law in its responsibility does not only impose a legal punishment against the person concerned but also should be fully believed that this person is indeed someone who can be held accountable for a criminal act he has committed in the context of a conviction.² Discussion about punishment, of course, cannot be separated from the purpose of the crime. The purpose of the crime itself is different from the objectives of criminal law. However, these two issues are still interrelated and mutually sustainable. In fact, crime is relatively ineffective in educating the public. Instead, it becomes a frightening factor where there are still many gaps in violations. One example of loopholes that can be exploited by irresponsible individuals such as happened in the handling of the PT Brantas Abipraya case which is one of the State Owned Enterprises in the irrigation construction sector. In this case, PT Brantas Adipraya made an attempt to bribe the prosecutor by mutually closing or stopping the investigation case.³

Criminalization can be very useful if it is able to provide self-improvement and improvement to the perpetrators of crime.⁴ Of course this is in line with the educational theory which is the focus of the author's research, it is hoped that the convictions of criminal offenders can be used as lessons for the perpetrators themselves in particular and lessons for the wider community in general.⁵ Referring to Article 1 paragraph (7) of Law Number 12 of 1995 concerning Corrections (Correctional Law), "The convict is a convict who has undergone a criminal loss of independence in a correctional institution", the person is deprived of liberty as a result of punishment and is currently serving his sentence in a Penitentiary.⁶

¹ Sudarto, *Hukum dan Hukum Pidana*, (Bandung: Alumni, 2008), 88.

² Septa Candra, "Pembaharuan Hukum Pidana; Konsep Pertanggungjawaban Pidana Dalam Hukum Pidana Nasional Yang Akan Datang," *JURNAL CITA HUKUM* 1, no. 1 (June 4, 2013): 95895, <https://doi.org/10.15408/jch.v1i1.2979>.

³ Abba Gabrillin, "KPK Tak Temukan Bukti Penerima Di Kasus Suap PT Brantas Abipraya," n.d., accessed April 20, 2020, <https://nasional.kompas.com/read/2016/10/27/17315241/kpk.tak.temukan.bukti.penerima.di.kasus.suap.pt.brantas.abipraya>.

⁴ Hiariej, *Prinsip-Prinsip Hukum Pidana*, 30.

⁵ Putri Conitatillah Jasmi, "ANALISIS IMPLEMENTASI ASAS KEPASTIAN HUKUM DALAM PROSES PUTUSAN HAKIM TERKAIT PENGHINAAN MELALUI DUNIA MAYA," *Jurnal Analisis Hukum* 3, no. 1 (September 27, 2020): 82, <https://doi.org/10.38043/jah.v3i1.2684>.

⁶ Article 7 (1) of Law No. 12 of 1995 concerning Correctional.

As reported on the website of the Institute For Criminal Justice Reform (ICJR), it is suspected that there were inhuman acts committed by prison officers while carrying out activities of transferring prisoners, against 26 (twenty six) convicted persons, namely dragging and beatings. The convict is a convict of Narcotics Crime who comes from the Narcotics Prison in Bali.⁷ In this context, it does not rule out that the convict with special expertise can still contribute to the advancement of Science and Technology in accordance with their respective fields of expertise even though the person concerned is currently serving a sentence in a correctional facility. In relation to the convict with special expertise, the author takes the example of Siti. Fadilah Supari Convicted of suspected corruption of medical devices convicted based on a court decision with case number: 219/PK/Pid.Sus/2018⁸ has a Doctoral degree in medical science from the Universitas Indonesia (UI).

The Academic Paper on the Draft Criminal Code (*Naskah Akademik RKUHP*) reveals the existence of a new type of crime known in the world that is in line with educational theory, namely supervision and social work crimes. Referring to the Academic Paper, these two types of punishment will be developed as alternative types of punishment for the short-term deprivation of liberty.⁹ This special skill can be utilized through the social work criminal application system. Social work referred to in this research is social work as teaching staff or researchers in certain disciplines. In a punishment, it is possible for judges to be obliged to pay attention to several factors in their decisions, including motives, mental attitudes, and the perpetrators' mistakes, methods. The perpetrator commits a criminal act, his life history and socio-economic condition as well as how the crime affects the future of the criminal offender, the effect of the crime on the victim and his family, forgiveness by the victim and / or his family, and the public's view of the criminal act he has committed.¹⁰ The purpose and guidelines for sentencing are intended so that there is no parity of sentencing but rational sentencing.¹¹

Based on the results of the author's search, there are several studies that have similarities with the research conducted by the author, namely the first research by Marcus Priyo Gunarto in 2009 entitled Criminal Attitudes Oriented to the Purpose of Criminality, Gunarto's research focus is on the attitude of punishing through criminal deprivation of liberty by law enforcement officials whether they have considered the period front of the convicted person and what is the purpose of punishment.¹² Secondly, researches of A.A. Ngurah Oka Yudistira, Darmadi in 2013 entitled the Concept of Criminal Reform in the Draft Criminal Code Darmadi's research focus is on the underlying understanding in designing criminal law reform in Indonesia as well as solutions for imposing criminal sanctions on the accused that will be included in the draft for criminal law reform.¹³

Thirdly, research of Cipi Perdana 2016 is entitled Reconstruction of Criminal Acts of Terrorism in Indonesia. The focus of the criminal's research is on the basis of justifying policies on the existence of sanctions in the punishment of perpetrators of Criminal Acts of

⁷ICJR, "Perlakuan Tidak Manusiawi Petugas Lapas Harus Jadi Momentum Reformasi Kebijakan Pidana Lapas Termasuk Soal Reformasi Kebijakan Narkotika," n.d., accessed April 20, 2020, <https://icjr.or.id/perlakuan-tidak-manusiawi-petugas-lapas-harus-jadi-momentum-reformasi-kebijakan-pidana-lapas-termasuk-soal-reformasi-kebijakan-narkotika/>.

⁸Court Judgment No. 219/PK/Pid.Sus/2018," 2018.

⁹BPHN, "Naskah Akademik RUU KUHP" (Jakarta, 2015), 176.

¹⁰BPHN, "Naskah Akademik RUU KUHP," 37.

¹¹BPHN, "Naskah Akademik RUU KUHP," 57.

¹² Marcus Priyo Gunarto, "Sikap Memidana Yang Berorientasi Pada Tujuan Pemidanaan," *Jurnal Mimbar Hukum* 21, no. 1 (2012): 93–108, <https://doi.org/10.22146/jmh.16248>.

¹³ AA Ngurah Oka Yudistira Darmadi, "Konsep Pembaharuan Pemidanaan Dalam Rancangan KUHP," *Ocs.Unud.Ac.Id* 02, no. 02 (2013), <https://ocs.unud.ac.id/index.php/jmhu/article/download/5935/4423>.

Terrorism, formulation of appropriate action sanctions for perpetrators of Criminal Acts of Terrorism in Indonesia's positive legal draft and forms of sanctions can be offered as a form of conviction reconstruction as a form of reform of criminal law related to convictions for perpetrators of Criminal Acts of Terrorism.¹⁴ Haryono's fourth research in 2017 was entitled Policy of Special Treatment of High Risk Convicts in Prisons which became the focus of Haryono's research was on the special treatment of high risk convicts in prisons and the implementation of special treatment policies for high risk convicts in prisons.¹⁵

Based on the four previous studies that have been described above, there is no research that has a focus on what the author did. Therefore, the formulation of the problem in this research is what is the basis for justifying the imposition of sanctions in the criminalization against the perpetrators of special expertise? and What is the ideal punishment for convicts with special skills in the future? The type of research used in this paper is normative research. The approach used is the statutory approach and conceptual approach. The analysis used is descriptive qualitative analysis.

B. Discussion

Sudarto is of the opinion that the word punishment is a synonym for the word punishment.¹⁶ Starting from Suharto's opinion above, it can be interpreted that punishment is used within the scope of the imposition of criminal law. Because the word punishment is still universal and is still known in other legal spheres, a more appropriate term in the context of criminal law is punishment.¹⁷

According to Barda Nawawi Arief, the criminal system can be seen from 2 (two) angles, namely, in a broad sense and in a narrow sense. In a broad sense, the criminal system can be interpreted as an entire system for the function/operation/concretization of crime, the whole system that regulates how criminal law is enforced or operated in a concrete manner so that a person is subject to criminal sanctions. In a narrow sense it can be interpreted as the whole system for punishment, the whole system for giving / imposing and executing crimes.¹⁸ Within the scope of criminal law there has been a paradigm shift, the shift started from the classical, modern and neo-classical trends. This has led to a shift towards the concept of punishment, it can be said that the concept of punishment has evolved from a "punishing" and backward orientation, towards a "fostering" and forward-looking punishment.¹⁹ In the classical genre, the criminal system recognizes the term definite sentence, meaning that the legislators determine the criminal threat with certainty and do not allow the freedom of the judge in imposing the sentence.²⁰

Meanwhile, in the modern school, the punishment system is the intermediate sentence, which means that the legislators include the minimum and maximum punishment for a crime,

¹⁴ Cipi Perdana, "Rekonstruksi Pemidanaan Pelaku Tindak Pidana Terorisme Di Indonesia," *Jurnal Hukum IUS QUIA IUSTUM* 23, no. 4 (2016): 672–700, <https://doi.org/10.20885/iustum.vol23.iss4.art8>.

¹⁵ Haryono Haryono, "KEBIJAKAN PERLAKUAN KHUSUS TERHADAP NARAPIDANA RISIKO TINGGI DI LEMBAGA PEMASYARAKATAN (STUDI KASUS DI LEMBAGA PEMASYARAKATAN KLS III GN. SINDUR) ," *Ilmiah Kebijakan Hukum* 11, no. 03 (November 22, 2017): 231–47, <https://doi.org/10.30641/KEBIJAKAN.2017.V11.231-247>.

¹⁶ P.A.F Lamintang and Theo Lamintang, *Hukum Penitensier Indonesia* (Jakarta: Sinar Grafika, 2012), 35.

¹⁷ Ahmad Faizal Azhar and Eko Soponyono, "Kebijakan Hukum Pidana Dalam Pengaturan Dan Penanggulangan Ujaran Kebencian (Hate Speech) Di Media Sosial," *Jurnal Pembangunan Hukum Indonesia* 2, no. 2 (May 10, 2020): 275–90, <https://doi.org/10.14710/jphi.v2i2.275-290>.

¹⁸ Barda Nawawi Arief, *Perkembangan Sistem Pemidanaan Di Indonesia*, Cet. 3. (Semarang: Program Magister Ilmu Hukum, Pascasarjana Undip, 2011), 2–3.

¹⁹ Taufan Purwadiyanto, "ANALISIS PIDANA KERJA SOSIAL DALAM HUKUM POSITIF DI INDONESIA," *LEX ADMINISTRATUM*, vol. 3, November 11, 2015, <http://repository.usu.ac.id/bitstream/123456789/18372>.

²⁰ Hiarij, *Prinsip-Prinsip Hukum Pidana*, 33.

in order to give freedom to judges in imposing crimes.²¹ Then, in the neo-classical school, there is the term *daad-dader-strafrecht*, which in this flow recognizes that there are mitigating factors in the accountability of the criminal.²²

Roeslan Saleh argues that the shift in the orientation of punishment is due to the fact that criminal law functions in society.²³ Starting from Roeslan Saleh's opinion, it can be said that shifts towards punishment have occurred due to the development of the times, human civilization, and the development of science and technology. Currently, criminalization in Indonesia has the aim of protecting the interests of individuals and human rights and to prevent the authorities from acting arbitrarily against the community. This characteristic of punishment is often referred to as the law of sanctions. That is, if the sentence has been passed on to the convicted person then a criminal case is deemed to have been completed.²⁴

According to the author, these issues do not reflect the educational goals based on Muladi and Barda Nawawi Arief's statement that crime is not just for retaliating or rewarding (sanctions) to a criminal but also must have certain useful goals.²⁵ The author assumes that a suffering is relative and there is no definite standard to measure suffering. Therefore, if the punishment is only imposed as a sanction, the punishment will only have a deterrent effect within a certain period of time, and along with the times, renewal of the existing sanctions is needed.²⁶

Basically, punishment aims to prevent criminal acts by enforcing legal norms for the protection and protection of the community to promote the convicted person by providing guidance and guidance to become a good and useful person. Resolving conflicts caused by crime, restoring balance, and bringing a sense of security and peace in the community and Fostering a sense of regret and relieving guilt to the convicted person. The aims are that punishment is not intended to undermine human dignity.²⁷

1. Basic Justifiers Imposition of Sanctions Measures in Punishment of the Crime Actors Special expertise

Currently, Indonesia has several types of crimes in the criminal system. According to Article 10 of the Criminal Code, the criminal code consists of the main and additional crimes. The main punishment consists of capital punishment, imprisonment, imprisonment, fines and imprisonment.²⁸ Meanwhile, additional penalties consist of revocation of certain rights, confiscation of certain items and announcement of a judge's decision. However, the Criminal Code does not recognize the purpose of punishment.

The goal of crime is very important and fundamental in a system of crime. The goal of crime is also mentioned as a soul of the crime system itself, since all base of all system has a goal. Starting from the idea that crime is essentially a tool to achieve a goal. The purpose of the punishment can be identified starting from the balance of two variables which are used as

²¹ I Wayan Putu Sucana Aryana, "EFEKTIVITAS PIDANA PENJARA DALAM MEMBINA NARAPIDANA," *DiH: Jurnal Ilmu Hukum* 11, no. 21 (October 1, 2015), <https://doi.org/10.30996/dih.v11i21.446>.

²² *Ibid.*, 34.

²³ Purwadiyanto, "Analisis Pidana Kerja Sosial Dalam Hukum Positif Di Indonesia," 164.

²⁴ Muhammad Fajar Septiano, "Pidana Kerja Sosial Sebagai Alternatif Pidana Penjara Jangka Pendek" (Universitas Brawijaya, 2014), 5, <http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/737/724>.

²⁵ Prof. Dr. I Ketut Mertha, SH, M.Hum *Efek Jera Pemiskinan Koruptor Dan Sanksi Pidana* (Bali: Udayana University Press, 2014), 27.

²⁶ Ade Mahmud, "Problematika Asset Recovery Dalam Pengembalian Kerugian Negara (Ade Mahmud)," *Jurnal Yudisial* 11, no. 3 (December 26, 2018): 347–66, <https://doi.org/10.29123/jy.v11i3.262>.

²⁷ Muladi, "Jenis-jenis Pidana Pokok Dalam KUHP", Dalam *Kodifikasi Hukum Pidana tentang Sanksi Pidana*, BPHN-Departemen Kehakiman, (Jakarta: 5-7 February 1986. 3-4.

²⁸ Article 10 of the Criminal Code

a main target, namely community protection which includes crime victims and protection/fostering of individual perpetrators of criminal acts.²⁹

In connection with this, Sudarto stated that in the purpose of protecting the community (social defence) and having a general prevention nature (general prevention), while in the purpose of protecting/fostering individuals, criminal acts intend to rehabilitate and re-socialize the convict (special prevention). Then the next goal is in accordance with the perspective of customary law regarding reactive customs to restore the balance of the cosmos because evil is considered to have shaken the balance (evenwichtverstoring). Then, the next goal is spiritual in line with Principle 1 Pancasila.³⁰

According to the author's analysis, if it is based on the premise which states that the variable "community protection" is still prioritized, it is quite logical that in the future several types of serious crimes will be retained, for example, death penalty and life imprisonment. Then, for the sake of balancing on the variable "protection/fostering individual perpetrators of criminal acts", it is wise enough if there are several alternative crimes that can be imposed in its application.

In contrast to the current Criminal Code, according to Muladi, in the framework of legal reform, it is stated that the rationale for the purpose and guidelines of punishment is:³¹ The criminal law system is a unitary system that has a purpose (purposive system), and criminal is a tool/means to achieve the goal. The purpose of the criminal law is a sub-system of the entire criminal system (criminal law system) in addition to other sub-systems, namely the sub-system, criminal act, criminal liability (mistake), and criminal. The formulation of the objectives and guidelines for punishment is intended as a controlling/directing function as well as providing a philosophical basis/foundation, rationality, motivation, and justification for punishment.

With regard to functionally/operationally, the criminal system is a series of processes through the formulation stage (legislative policy), the application stage (judicial policy), and the execution stage (administrative/executive policy); Therefore, in order to achieve coherence and integration between the three stages as a unitary system of punishment, it is necessary to formulate the objectives and guidelines for punishment.

According to Barda Nawawi Arief, there are several basic ideas in the criminal system including monodualistic balance between public and individual interests, a balance between "social warfare" and "social defence", a balance between criminal oriented towards "offenders" and victims, "Double track system", making effective "non custodial measures" (alternatives to imprisonment), flexibility of punishment, adjustment of punishment, subsidiary in choosing the type of crime, forgiveness of judges, and prioritizing justice from legal certainty.³²

Starting from this idea, Barda Nawawi also stated that in the concept of punishment which is currently not in the Criminal Code or WvS, namely, it is possible to combine types of sanctions (criminal and action), allowing the judge to impose other types of crimes that are not included in the formulation of offenses which are only threatened single punishment, and it is possible for the Judge to pass the sentence cumulatively even though the threat is formulated in an alternative was.³³ In addition, Barda Nawawi Arief together with Abdul Kholiq and Eko Soponyono also revealed that in imposing a sentence, a criminal guideline is

²⁹ Muladi, "Jenis-enis Pidana Pokok Dalam KUHP", 35

³⁰ Sudarto, "Pemidanaan, Pidana, dan Tindakan", (Jakarta: BPHN, 1982), 4.

³¹ BPHN, "Naskah Akademik RUU KUHP," 18.

³² Ira Alia Maerani, "Implementasi Ide Keseimbangan Dalam Pembangunan Hukum Pidana Indonesia Berbasis Nilai-Nilai Pancasila," *Jurnal Pembaharuan Hukum*, vol. 3 (Mei-Agustus, 2015), <https://doi.org/10.26532/JPH.V3I3.1364>.

³³ *Ibid.*, 43.

needed which has a special nature in order to provide direction to judges in selecting and or imposing certain types of crimes.³⁴ From these things, as the authors have stated, the author feels it is quite reasonable for the author to consider it as a justification for the imposition of sanctions against special skills.

a. Prison Cells in Several Countries of the World

In this section, to strengthen the idea of implementing a double track system as a basis for justification, the author wants to examine more deeply the criminal system for convicts with special skills. In general, there are several prison systems in the world as well as the authors of this study describe the Pennsylvanian system, the Auburn system, the Marksystem, the Irish system and the Reformatory system. For more details, it will be described below:

1) Pennsylvanian System

This system was first implemented in the city of Philadelphia, Pennsylvania, United States. In the Pennsylvanian system, convicts will be put into special cells separately; the convict cannot receive guests from outside or fellow convicts. The convicts also cannot work outside the cell, the only work these convicts can do is reading the holy book given to them.³⁵ It can be said that in fact this system is a method of punishment in accordance with the thoughts of people regarding crimes at that time, namely those who see punishment as merely a punishment without any goals to be achieved from the punishment itself.

Van Hammel argues that this sentencing system has a very detrimental nature to the convict, because such a system can cause the convict to weaken physically, limit the possibility of the convicted person doing daily work, and make it more difficult for the convict to socialize and adjust to society in the future if the convict concerned has finished serving his sentence.³⁶ The author agrees with Eddy O. S. Hiarij who stated that the Pennsylvanian system is very closely related to the aim of encouraging the repentance of convicts.³⁷ However, based on the author's analysis, such a system is very rigid and does not provide an educational effect on society. The potential for similar crimes in the future is still quite large considering that in this system it is only intended to punish the convict in question without giving more legal contributions. Pennsylvanian system is very closely related to the *adage carcer ad homines custodiendos, non ad puniendos* from debits, which means imprisonment, is aimed at confining the convict, not punishing him.³⁸

2) Auburn System

This system was first applied in Auburn, New York, United States. In this system, giving jobs is considered as one of the efforts made to improve the character of the convicted person, therefore, during the day the convicts are given time to work together and at night the convicts are returned to their detention cell.³⁹ This cell is also known as the "silent system"

³⁴ Abdul Kholiq, Barda Nawawi Arief, and Eko Soponyono, "PIDANA PENJARA TERBATAS : SEBUAH GAGASAN DAN REORIENTASI TERHADAP KEBIJAKAN FORMULASI JENIS SANKSI HUKUM PIDANA DI INDONESIA," *LAW REFORM* 11, no. 1 (March 31, 2015): 100, <https://doi.org/10.14710/lr.v11i1.15759>.

³⁵ Br. Simatupang and Livia Handayani, "Analisis Penjatuhan Pidana Penjara Pengganti Denda Kepada Pelaku Yang Melakukan Permufakatan Jahat Untuk Melakukan Tindak Pidana Perdagangan Orang" (Universitas HKBP Nommensen, 2019), 14, <http://repository.uhn.ac.id/handle/123456789/2707>.

³⁶ P.A.F Lamintang dan Lamintang, *Hukum Penitensier Indonesia*, 23–24.

³⁷ Hiarij, *Prinsip-Prinsip Hukum Pidana*, 466.

³⁸ *Ibid.*

³⁹ Heri Hermawan, "Penerapan Pidana Penjara Seumur Hidup Berhubungan Dengan Tujuan Pemidanaan Berdasarkan Undang-Undang Nomor 12 Tahun 1995 Tentang Pemasarakatan" (Universitas Pasundan, 2015), 24, <http://repository.unpas.ac.id/id/eprint/3650>.

because the prisoners are not allowed to talk to one another during the day while they are doing their job.⁴⁰ This situation seems to complicate the implementation of this system, because in fact the Auburn system is deemed no longer in accordance with the idea that punishment should no longer be seen as merely a punishment, but must also have a goal to be achieved. In addition, it also turns out that this system has also caused hostility between officers and convicts.⁴¹ Based on the author's analysis, the authors assume that this type of prison system is better than the Pennsylvania system. However, by limiting or prohibiting communication with fellow convicts during the day, has neglected the social purpose of the imposition of the criminal itself.

3) Mark System

This system was developed in England in the mid-19th century. Basically, this system has some similarities with the Auburn system; however, this system was born due to dissatisfaction arising from the evaluation results of the implementation of the Pennsylvanian system and the Auburn system. This prison sentence system begins with a period of confinement in a cell of several months (generally six to nine months), then is followed by a period of joint work during the day. During this period of work the convict can go through several levels and gradually get better.⁴²

4) Ireland System

This system is an adaptation of the progressive system (Mark system) which developed in Ireland in the 19th century and in this system it also introduces the “intermediate stage” that is, the Intermediate system.⁴³ The explanation of this intermediate system is that convicts work together with the community during the day and return to detention at night. Basically, this system is progressive in nature, which means that initially the period of imprisonment was carried out harshly. Gradually, the time for parole was approached and the implementation of the sentence was carried out or carried out in a lighter way. The purpose of this system is to train the convicted person to become good citizens of society. This Irish system together with the Mark system is considered to have given birth to “the rise of the reformatory”. According to this system, imprisonment is served through three levels, namely:⁴⁴

- a) The first stage (probation), the convict is held in a cell for several months or several years, depending on the good behaviour of the convict concerned.
- b) The second level (public work prison), at this level the convicted person is usually transferred to another prison and in that other prison the convict is required to work together with other convicts. In this system, the convict is divided into four classes and the class is gradually increased based on better treatment, and usually in this stage also uses a system according to the Mark system.
- c) The third level (ticket of leave), the convicted person is released by agreement to fulfil his obligations from the remaining duration of the sentence. The convict is given a ticket of leave or parole, but remains under supervision for the remainder of his sentence.

⁴⁰Donny Yeremia Putra Nababan, “Pemidanaan Pelaku Tindak Pidana Perdagangan Orang Berupa Jual Beli Organ Tubuh (Ginjal) Yang Dilakukan Secara Bersama-Sama” (Universitas HKBP Nommensen, 2019), 13.

⁴¹P.A.F Lamintang dan Theo Lamintang, *Hukum Penitensier Indonesia*, 25.

⁴²Hermawan, “Penerapan Pidana Penjara Seumur Hidup Berhubungan Dengan Tujuan Pemidanaan Berdasarkan Undang-Undang Nomor 12 Tahun 1995 Tentang Pemasarakatan,” 24.

⁴³Hiariej, *Prinsip-Prinsip Hukum Pidana*, 467.

⁴⁴Bambang Sumardiono, “Rekonstruksi Membangun Pola Conjugal Visit Sebagai Program Pembinaan Terpidana Di lembaga Pemasarakatan Yang Berbasis Keadilan” (Semarang, Fakultas Hukum UNISSULA, 2018), 4–5, <http://repository.unissula.ac.id/id/eprint/12162>.

5) Reformatory system

This reformatory system is also known as the Elmira system because it was born in 1876 in Elmira City, New York State, United States. This system was born closely related to the Ireland system prevailing in Ireland and England. The principle of this system is imprisonment which is carried out through three levels, but with an emphasis on improving the convict in question.⁴⁵ The distinctive feature of this system is that there is an obligation to do work and get education. Usually this Reformatory system is intended for young convicts. This system began to be implemented in Borstal prison, England in 1902.⁴⁶

The reason why the authors prefer to choose the Mark system as a system for the punishment of convicts with special expertise compared to other systems, both those that are not and those that are progressive, including the Ireland system and the Reformatory system is because the Ireland system applies a social work system just before parole. In this case, it means that if the author uses this system as well as the assimilation system currently known in Indonesia and this is of course also a right that is owned by a convict with special expertise and has been regulated in the criminal system in Indonesia and will be obtained if the convict is concerned has met the assimilation requirements stipulated in the prevailing laws and regulations.

Whereas the Reformatory system has historically been applied to young convicts because in this reformatory system disciplined education is given to the convict, while for convicts with special expertise, it is the convicts who will provide education in accordance with the disciplines of their expertise.

In addition, through the system mark system, convicts can be stimulated to actively cooperate in efforts to improve themselves. Henceforth after serving a sentence, the possibility of parole or pure release is open. The basis for this system is because psychologically there is a very significant change from living freely to living in isolation in a very torturous cell, and then it is necessary to return the stages to promote or return the convict to society so that it can be accepted properly.⁴⁷

If a convict is deemed to have succeeded in erasing the negative values that exist in him so that he becomes a convict, the convict concerned has the right to be released.⁴⁸ Of course, the assessment is carried out by the competent authority based on the evaluation of the convict's attitude during his sentence. Based on the above, the writer considers that this system is very relevant to be applied in the punishment of convicted convicts with special skills. The author starts from the basic idea of this system, namely where there is a very deep psychological torture as a result of the imposition of a criminal on someone so that efforts are needed so that the convict can be accepted again in society.

Then the assessment or evaluation is measured from the good behaviour and achievements shown by each individual convict so that later it can be used as a consideration for granting parole and also as a measure of whether the convict in question is ready to be returned to the community.

Perhaps in terms of the concept that the author offers, the impression is quite impressive that the author compartments or gives privileges to convicts who have special expertise and seems to be contrary to the principle of equality before the law. Basically, in this concept, convicts with special skills are not differentiated and are not given any privileges from the stage of investigation to the stage of imposing sanctions and execution. One of the principles of equality before the law in the criminal or correctional system is the provision of remissions

⁴⁵Ibid., 5–6.

⁴⁶Hiariej, *Prinsip-Prinsip Hukum Pidana*, 468.

⁴⁷Hiariej, *Prinsip-Prinsip Hukum Pidana*, 467.

⁴⁸P.A.F Lamintang and Lamintang, *Hukum Penitensier Indonesia*, 26.

or a reduction in the period of serving a sentence given to inmates who meet the requirements stipulated in the statutory regulations.⁴⁹

In this case, both convicts with special skills and other convicts still get the same thing and are treated the same in the eyes of the law, but in this case the author argues based on Aristotle's theory of distributive justice. Aristotle stated that distributive justice is justice which demands that everyone gets what is rightfully theirs. So the nature of distributive justice is very proportional. In this context, what is considered fair is if someone gets what is their right proportionally.⁵⁰ Aristotle's opinion was also reinforced by Roeslan Saleh who quoted Alf Ross's opinion that "justice" is the same as "equality". The condition of equality can only be meaningful if there is no one who can be treated arbitrarily without a different basis from other people. Roeslan Saleh also added, that the meaning of equality must be determined based on the benchmarks used to make a decision whether in a certain situation there is similarity or there is no similarity.⁵¹

As for the purpose of combining the main criminal sanctions in the form of imprisonment and sanctions for action, it is in line with the reform of criminal law as said Muladi as previously mentioned, in order to create a rational punishment in accordance with the objectives and guidelines of the punishment.

2. The Ideal Concept of Criminalization against Convicts with Special Skills in the Future

The author tries to conceptualize an ideal punishment for convicts with special expertise starting from the objectives of punishment as social defense and protection/fostering of individual criminal offenders by prioritizing educational goals in accordance with the mandate of the Constitution as stated in paragraph IV of the preamble of the Basic State Constitution. The Republic of Indonesia Year 1945 (UDN NRI 1945) which reads: "Then from that to form an Indonesian State Government that protects the entire Indonesian nation and all the blood of Indonesia and to promote public welfare, educate the nation's life, and participate in implementing world order independence, eternal peace and social justice...., "and provide benefits for the development of science and society."

In some specific laws outside the Criminal Code, several types of criminal sanctions apply, including one that adheres to a single track system (i.e. uses only one type of criminal sanction) and a double track system (uses two types of criminal sanctions. However, it is unfortunate. From the use of the double track system at this time there is no uniform pattern in determining which types of sanctions are applied as "additional criminal" and "action" sanctions. In addition, the division into types of crimes is still oriented towards the Criminal Code (Basic and Additional Criminal).⁵²

As the author has previously stated, the purpose of protecting or fostering individual perpetrators of a criminal offense is for rehabilitation and re-socialization so that the person concerned can be accepted again by the community after completing a sentence Therefore, of course, the alternatives in the imposition of punishment are considered quite logical in the application of the concept that the author examines in this paper. However, in this concept the

⁴⁹ Julita Melissa Walukow, "PERWUJUDAN PRINSIP EQUALITY BEFORE THE LAW BAGI NARAPIDANA DI DALAM LEMBAGA PEMASYARAKATAN DI INDONESIA 1," *LEX ET SOCIETATIS*, vol. 1, March 31, 2013, <https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/1320>.

⁵⁰ The Liang Gie, *Teori-Teori Keadilan*, (Yogyakarta: Sumber Sukses, 2002), 22.

⁵¹ Lidya Suryani Widyati, "TINDAK PIDANA PENGHINAAN TERHADAP PRESIDEN ATAU WAKIL PRESIDEN: PERLUKAH DIATUR KEMBALI DALAM KUHP? (DEFAMATION AGAINST THE PRESIDENT OR VICE PRESIDENT: SHOULD IT BE REGULATED IN THE CRIMINAL CODE?)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 8, no. 2 (November 1, 2017): 215–34, <https://doi.org/10.22212/jnh.v8i2.1067>.

⁵² Arief, *Perkembangan Sistem Pemidanaan Di Indonesia*, 17.

author also focuses on fair and civilized human values and aims to educate convicts with special skills.

According to Barda Nawawi Arief, criminal law reform contains meaning, as an effort to reorient and reform criminal law in accordance with the central values of socio-political, socio-philosophical, and socio-cultural of Indonesian society which underlie social policies, criminal policies, and law enforcement policies in Indonesia.⁵³

As the author has previously stated that in general there are 3 (three) theories of criminal objectives and one additional theory of the purpose of punishment along with the times, namely:

First, Absolute Theory is a concept that was born in the classical flow of criminal law. In this theory, it is argued that the legitimacy of the existence of punishment is retaliation, in which the punishment is imposed on the perpetrator based on the concept of just deserts, which means that they are worthy of being punished for the despicable act.⁵⁴

Second, the Relative Theory considers punishment as a tool to maintain public order and aims to prevent crime. This theory is also often referred to as the theory of relations or the theory of goals. This is because the relationship between injustice and crime is not an a priori relationship. The relationship between the two is related to the goals the criminal wants to achieve, namely the protection of legal materials and the antidote to injustice.⁵⁵

The three combined theories in this theory are basically a combination of goal (community order) and retaliation. According to VOS, this theory focuses more on retaliation. But on the other hand, VOS gives equal weight to retaliation and community protection because the purpose of the nature of retaliation is that of law order. In contrast to VOS, Simmons places more emphasis on protecting the community than on retaliation. According to Simmons, general prevention lies in the crime being threatened.⁵⁶

The four contemporary theories, in fact, this theory comes from the three theories above which have been modified. This theory was born because of the times, and this theory was put forward by Eddy O.S Hiariej. This theory consists of several sub-theories, including the deterrent effect theory. This theory is a theory which suggests that one of the goals of crime is to provide a deterrent effect. This theory is strengthened by the opinion of Wayne R. Lafave who states that one of the objectives of criminal law is to provide a deterrence effect so that the perpetrator of the crime no longer repeats his actions.⁵⁷

The theory of education, basically, this theory states that crime has the aim of educating the public about good and bad deeds. This theory is strengthened by Plato's opinion which says "nemo prudens punit, quia peccatum, sed ne peccetur" which means that a wise person does not punish for committing sins, but so that sins do not occur.⁵⁸ **Rehabilitation theory** according to this theory is that the perpetrators of crime must be corrected for a better direction so that in the future when they return to society, the perpetrators of crimes can return to their original communities and not repeat their evil actions. **The Social Control Theory** argues that the purpose of crime is as social control which means, the perpetrators of crimes will be isolated so that their dangerous actions do not cause harm to society. This is reinforced by the opinion of Marc Ancel who states that the purpose of the crime is to protect the social order with an emphasis on re-socialization or correction which does not emphasize only formal juridical but also social nuances.⁵⁹ **Restorative Justice Theory one of the objectives**

⁵³Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru*, Ed. 1., cet. 1. (Rawamangun, Jakarta: Kencana, 2008), 29.

⁵⁴Hiariej, *Prinsip-Prinsip Hukum Pidana*, 37.

⁵⁵*Ibid.*, 39.

⁵⁶*Ibid.*, 41.

⁵⁷*Ibid.*, 42.

⁵⁸*Ibid.*, 43.

⁵⁹*Ibid.*, 44.

of the crime is also to restore restorative justice.⁶⁰ In essence, restorative justice has the meaning of an attempt to settle a criminal case by involving related parties in a case by focusing on restoring the situation to its original state, not on retaliation.

Basically there are 3 (three) main goals to be achieved with a punishment, first to improve the person of the criminal himself, second to make a deterrent and third to make certain criminals unable to commit other crimes.⁶¹ The formulation of the objectives and guidelines for punishment is also considered important so that it can function as a control/guide, as well as provide a philosophical basis, rationality, motivation, and justification for punishment.⁶² That is, in an ideal criminal system, guidelines in criminalization are needed to supervise and evaluate the criminal system being applied and also as a basis for its implementation.

In the Indonesian Criminal Code as one of the criminal guidelines currently in Indonesia, when it was formed it was not determined in which case the Judge was given the opportunity to consider whether to impose an additional sentence in addition to the basic sentence imposed on a defendant.⁶³ Therefore, the author agrees with Barda Nawawi Arief's opinion that criminal law reform is carried out as a reorientation and reform of criminal law. Because, the judge should be given an opportunity to be able to consider the sentence imposed on the criminal offender. In addition, from the three purposes of punishment above, the writer considers that the improvement of individual perpetrators of crime is the most important thing in imposing criminal.

By improving the personality of the perpetrator of the crime, of course, the optimization of preventive repetition of a crime can be carried out as early as possible, and make it easier to detect potential future crimes. The author's opinion above is based on the educational theory as previously mentioned, there is Plato's opinion which states "nemo prudens punit, quia peccatum, sed ne peccetur" which means that a wise person does not punish for committing sins, but so that sins do not occur. Then there is the adage "let some people be punished so they can set an example for others".⁶⁴

As the author has stated above, in general there are five types of prison systems known in the world, namely, the Pennsylvanian system, the Auburn system, the Mark system, the Irish system and the Reformatory system. Of the five prison systems, the authors are interested in studying and developing the Mark system prison system to be used as a basis for justifying the imposition of sanctions in this study in order to find out the ideal concept in the conviction of convicted specialists in the future.

Based on Van Bemmelen's thoughts, which in essence stated that crime is not only seen as a punishment but also that there must be a goal that is achieved?⁶⁵ Therefore, as the author has previously stated, the purpose of punishment is to provide protection for the community and protection or fostering of individual perpetrators of criminal acts. Then, in principle, the purpose of punishment is also to improve the criminals themselves, deter the criminals, and make criminals unable to commit crimes anymore, and is stimulated by educational theory which is a contemporary sub theory put forward by Eddy O.S. Hiariej, underlies the author to formulate a criminal system for convicts with special expertise in Indonesia.

In addition, reflecting on the fact that a number of convicts who are too long in prisons, their behaviour will be more damaged when compared to the condition of their behaviour

⁶⁰*Ibid.*

⁶¹P.A.F Lamintang dan Lamintang, *Hukum Penitensier Indonesia*, 11.

⁶²Barda Nawawi Arief, *Tujuan Dan Pedoman Pemidanaan: Perspektif Pembaharuan Hukum Pidana Dan Perbandingan Beberapa Negara*, Cet. 3. (Semarang: Pustaka Magister, 2011), 3.

⁶³P.A.F Lamintang and Lamintang, *Hukum Penitensier Indonesia*, 88.

⁶⁴Hiariej, *Prinsip-Prinsip Hukum Pidana*, 451.

⁶⁵P.A.F Lamintang and Lamintang, *Hukum Penitensier Indonesia*, 10.

when they were first admitted to a correctional facility,⁶⁶ The author agrees with Barda Nawawi Arief, who states that the current criminal system can be said to be incompatible with the politics of criminal law which aims to provide protection for society from crime as well as balance and harmony in people's lives while still paying attention to the interests of the society, victims and perpetrators.⁶⁷

According to the author's analysis, by applying the Mark system of punishment to the criminalization of convicts with special expertise, they can restructure and reform the criminal system in Indonesia slowly and gradually. As the author wrote earlier, Barda Nawawi put forward at least 10 basic ideas in the criminal system.

Therefore, the writer based on these matters, the writer views it would be wise if convicts with special expertise are not only sentenced to imprisonment as the main criminal but also sentenced to social work as an action imposed by the judge so that the sentence becomes more rational (rational sentencing). In this paper, the author calls social work punishment as an act because in this case social work is not intended to provide any kind of suffering at all. Hazewinkel-Suringa stated that what distinguishes punishment from action is whether there is an element of deliberation in giving some kind of suffering to the perpetrator of the criminal act. In punishment the element of deliberation can be found and it is formulated to give a feeling of suffering, but in the act of suffering the element of suffering there is no intention to give suffering or the like.⁶⁸

The reason why social work in the context of convicts with special expertise can be categorized as an action is because the social work imposed on convicts with special expertise is in accordance with the field of knowledge mastered by each convict. In addition, the authors believe that the convicts will not feel the suffering as a result of this act because the convict is doing social work based on their respective fields of expertise. This social work action can be implemented based on the opinion of Barda Nawawi Arief regarding the possibility to combine basic crime and action (double track system).

Therefore, the prison system that is possible to use is the Mark system, because this system is progressive. In this case, the convict continues to undergo a correctional orientation period based on the punishment period which is formulated in the criminal system mark system as mentioned above, and is continued with a social work system during the day and separate confinement at night.

However, of course the social work adapts to the field where the convict concerned has special expertise. Of course this is not entirely the same as the ward system found in the Mark system which is known in the world so far, because social work in the concept that the author offers does not always involve physical social work and is identical to menial work. In this case, social work can be in the form of teaching activities in accordance with the scientific discipline of the convict concerned or research carried out either individually by the convict or jointly with the research team in a network (on-line) that has been determined by the government through a decree issued by the Minister of Law and Human Rights or based on a judge's decision.

Since the mark system implements a ward system during the day, social work as intended by the author is still carried out in the area provided by the officer. In the sense that if the convict with special expertise concerned gets a sanction for action in the form of social work as a teaching staff, the teaching and learning activities are carried out in a network as well as if the convict with special expertise concerned is given a sanction of action in the form of research then the research is still carried out inside wards that have been provided by officers or remain in the correctional institution.

⁶⁶Ibid., 177.

⁶⁷Arief, *Tujuan Dan Pedoman Pemidanaan*, 33.

⁶⁸P.A.F Lamintang and Lamintang, *Hukum Penitensier Indonesia*, 194.

The reason for the authors doing this research is because, at some time ago, to be precise, in March 2020 before the author started this research, as the author mentioned a little in the introduction, a number of parties are making a petition to release the former Minister of Health who was also convicted of Medical Device Corruption, namely, Siti Fadilah Supari. This is because he is considered capable of contributing his thoughts to be able to help the government in overcoming the COVID-19 Pandemic which is currently rife in almost all over the world including Indonesia. Of course, if the concept that the author formulates in this paper can be applied and positive in the criminal law system in force in Indonesia, then a convict with special expertise like Siti Fadilah Supari can still help the government in contributing his thoughts for mutual benefit and the development of science without disturb the criminal that is currently in its path.

Basically, the concept that the writer offers in the research is similar to the concept of closure in Article 10 of the Criminal Code and as further stipulated in Law Number 20 of 1946 concerning imprisonment punishment and Government Regulation No. 8 of 1948 regarding the house closure. As regulated in Article 3 paragraphs (1) of Law no. 20 of 1946 Jo. Article 14 paragraph (1) Government Regulation No. 8 of 1948 that "The occupants of the closed house are obliged to carry out the work that is ordered to him with the type of work that is regulated by the minister of defence with the approval of the minister of justice". However, although convictions are not intended to reduce human dignity, imprisonment has the potential to cause discrimination if there is no measure for the judge to impose it.⁶⁹

The similarity between the concepts that the authors offer in this study is the imposition of punishment on a more specific legal subject which is strengthened by Andi Hamzah's opinion that the punishment of cover is provided for politicians who commit crimes and it is due to the ideology they adhere to.⁷⁰ Meanwhile, this research focuses more on the application of a double track system in the punishment of convicts with special skills in order to create rational sentencing. This is reinforced by the opinion of Barda Nawawi along with Abdul Kholiq and Eko soponyono as previously stated that a special criminal guideline is needed. Then, what distinguishes the concept that the authors offer in this study so as not to cause discrimination and still uphold the principle of equality in the eyes of the law (equality before the law), then the imposition of sanctions in the form of social work is imposed with the intent and purpose so that the convict with special expertise is motivated to behave well and work seriously while undergoing sanctions on social work actions in order to obtain a parole and / or pure exemption as the author has previously stated.

Meanwhile, convicts with special skills still get the same rights and treatment as other convicts as regulated in Law Number 12 of 1995 such as the opportunity of assimilation, for example. According to Article 1 point 4 Regulation of the Minister of Law and Human Rights Number 3 of 2018 (Ministry Regulation of Law and Human Rights No. 3/2018) what is meant by assimilation is the process of fostering Prisoners and Children carried out by integrating Prisoners and Children in Community Life.⁷¹ Based on Article 44 paragraph (1) Ministry Regulation of Law and Human Rights No. 3/2018 In general, there are three conditions so that assimilation can be given, including good behaviour, proven by not serving a disciplinary sentence within the last six months, actively participating in the fostered program well, and having served ½ (one half) the length of detention.⁷²

⁶⁹ Mosgan Situmorang, "HARMONISASI HUKUM NASIONAL DI BIDANG KORUPSI DENGAN UNITED NATIONS CONVENTION AGAINST CORRUPTION," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 3, no. 3 (December 31, 2014): 329, <https://doi.org/10.33331/rechtsvinding.v3i3.29>.

⁷⁰ Andi Hamzah, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2008), 191.

⁷¹ "Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 3 Tahun 2018" tentang Syarat dan Tata Cara Pemberian Remisi, Asimilasi, Cuti Mengunjungi Keluarga, Pembebasan Bersyarat, Cuti Menjelang Bebas, Dan Cuti Bersyarat. Pasal 1 angka 4.

⁷² Ibid, Pasal 44 ayat (1).

In addition, the treatment of convicted persons with special skills is not as special as what the author alluded to before. Meanwhile, in criminal closure in accordance with the provisions of Article 33 paragraph (2) PP. 8 of 1948 which reads “the food of people with cover must be better than the food of people on prison terms”. Article 33 (5) Government Regulations No. 48 of 1948 stated “for people who do not smoke, giving cigarettes is replaced with money for the value of these items”.⁷³

In its application, the Mark system for convicted convicts with special expertise formulates it so that it is possible to carry out several options or classifications of social work actions based on the classification of risks that the convict can pose. The risk classification process is carried out according to the level of risk and need, the characteristics of the prisoner based on recommendations from the Correctional Observer Team or *Tim Pengamat Permasiyarakat* (TPP).⁷⁴ Therefore the author tries to formulate a risk classification so that it can be used as input to the Correctional Observer Team in the application of this concept.

First Low Risk can be carried out by placing convicted convicts who have gone through the orientation period or Environmental Recognition Period or *Masa Pengenalan Lingkungan* (MAPENALING) in prisons, then undergoing sanctions for social work actions as Teaching Personnel or Leaders and or Research Team members related to the scientific field mastered. At this stage the convict in question is given a freedom to think and socialize online in relation to the sanctions imposed by the previous judge and in accordance with the working hours in general. Social Work Action Sanctions in this stage can be carried out individually or collectively which is the same as other experts who are neither convicted nor convicted or who are ex convicted.

The reason the convict is still allowed at this stage to conduct research individually or collectively without any significant restrictions is because the convict is based on the results of the assessment of the guardian, experts, and Correctional Observer Team, Head Assessment Team.⁷⁵ A low level of risk, in other words, does not endanger or create a potential risk that may harm other people or public order.

Second, Medium Risk in this stage. Basically there is not too much difference from Low Risk, it's just that in this category you do not commit social work criminal acts every day or a maximum of 3 times a week. Social work actions at this stage can still be carried out individually or together with other experts, it's just that the expert is not a convict or former convict. The reason the restrictions are made more stringent at this stage compared to the previous stage is because the convict is considered by the Assessment Team to have the potential to cause a higher risk compared to the low risk category but does not exceed the potential risk incurred by the convict with high risk Special Skills.

Third, High Risk, in this stage, the implementation of social work actions against the convict can only be carried out on an urgent basis, relating to emergency matters, and the safety and livelihoods of many people where only the convict has the special expertise concerned. who can help resolve the emergency and force.

However, this classification will still be carried out with extra tight security and supervision even though the implementation is done online or online, such as encrypted networks and technical matters in such a way so as not to pose a risk. Social work actions that are carried out are not allowed to be carried out individually but must be enforced jointly and in groups with other experts who are not convicted or ex-convicted and there must be a

⁷³ “Peraturan Pemerintah Nomor 8 Tahun 1948” Tentang Rumah Tutupan, Pasal 33 ayat (2) dan Pasal 33 ayat (5).

⁷⁴ Haryono, “Kebijakan Perlakuan Khusus terhadap Terpidana Risiko Tinggi di Lembaga Pemasyarakatan (Studi Kasus di Lembaga Pemasyarakatan Kls III Gn. Sindur),” 242.

⁷⁵ *Ibid.*

detailed report in the form of a journal or report which is subject to periodic inspection by the officer.

The reason for the strict restriction at this stage is because the convict in question is considered capable of controlling a certain group even though he is in a detention cell. The Directorate General of Corrections categorizes the perpetrators of criminal acts of terrorist, narcotics and psychotropic crimes, trafficking, illegal logging, illegal fishing or corruption as High Risk Prisoners.⁷⁶

The three classifications above can be reviewed through a risk assessment. Risk assessment is a systematic method to find out whether an activity can pose an acceptable risk or not. If seen in broad outline the risk assessment includes:⁷⁷

- a. Risk identification, identifying risks by mapping the causes, impacts and consequences of these risks. This stage generates, types, descriptions, causes, impacts and controls on risks, as well as areas and sub-areas of risk.
- b. Risk analysis, analyzes the risks that may occur in relation to side effects, losses, mitigation efforts and other things by conducting risk assessments or assessments.
- c. Risk evaluation, namely by periodically evaluating the potential risks that exist.

The assessment of the risk and needs assessment must be carried out by a trained employee or officer who has previously received technical guidance or training and fulfils predetermined requirements.⁷⁸

With the division of classifications or options in the application of the Mark system, the authors argue that this criminal system will be more effective when applied because combining criminal and sanctions in a punishment will certainly show a significant process in the penal system for convicts with special expertise in the system criminalization in Indonesia. The mark system as a prison system in conviction is still possible to be applied in Indonesia because according to the author, this type of system does not conflict with fair and civilized human values, in fact this system can be more socializing and certainly humane for convicted persons with special skills.

In addition, the progressive nature of the Mark system will also stimulate the convicts with special skills to behave well and are serious in carrying out social work actions in order to get the opportunity of parole. However, the author would like to modify a little by adding that the system of “graduating” which has been based on good behaviour in this system can also be achieved based on the successes and processes that have been carried out or passed by the convicts based on the results of the evaluation of social work carried out by the convict both in the form of teaching and learning activities and research.

C. Closing

1. Conclusion

Based on the results of the discussion that has been described above, the conclusions that can be drawn from this research are: The author concludes that the basis for justifying the imposition of sanctions in the punishment of criminal offenders with special expertise is in the Stelsel Mark System, conceptually used as the basis for the punishment of convicts. who have special expertise because they are considered able to restructure and reform the criminal system in Indonesia slowly and gradually with the application which is divided into three risk classifications namely, Low Risk, Medium Risk, and High Risk on target. Specifically, apart from being convicted with a basic crime, the convict is also subject to an act in the form of

⁷⁶*Ibid*, 233.

⁷⁷*Ibid*, 233.

⁷⁸*Ibid.*, hlm. 237-238.

social work by teaching/transforming knowledge/expertise to many people through certain educational institutions through online media.

2. Advice

In connection with the imposition of crimes against convicts who often cause continuous problems in people's lives, therefore, from the policy formulation process to the execution stage, it should really pay attention to the needs of the community so that the criminal system starts from investigation to punishment can be carried out on target. Legislative Formation Institution in this case the House of Representatives of the Republic of Indonesia, the author hopes that the concept that the author has described in this paper can be used as a consideration in the formulation or revision of laws and regulations regarding correctional as the basis for the conviction of convicts with special expertise in realizing a criminal and correctional system based on fair and civilized humanity. For Implementers of Laws and Regulations in this case the Ministry of Law and Human Rights, the author hopes that a in the implementation of correctional facilities in the field still pay attention to humanitarian elements and uphold human rights. Because, actually the convict will not get the essence of a sentence if the convict is not treated fairly and humanely.

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