

**SISTEM PEMASYARAKATAN
(PERGESERAN PARADIGMA PEMBINAAN NARAPIDANA
DALAM SISTEM PERADILAN PIDANA DI INDONESIA)**

DISERTASI



diajukan untuk memenuhi syarat memperoleh
gelar doktor dalam Ilmu Hukum

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**PROGRAM DOKTOR ILMU HUKUM
UNIVERSITAS DIPONEGORO
SEMARANG
2007**

ABSTRAK

Pentingnya peran lembaga pemasyarakatan dalam sistem peradilan pidana yang menyeluruh, disebabkan lembaga pemasyarakatan merupakan salah satu sub sistem dari sub sistem-sub sistem lainnya seperti kepolisian, kejaksaan, dan pengadilan. Namun dalam perkembangan selanjutnya masih terdapat fakta kesenjangan antara harapan dan kenyataan, seperti masih tingginya angka residivis dan reconviction serta banyaknya kekerasan yang menyebabkan victimisasi terhadap narapidana/pelaku kejahatan dalam lingkaran sistem peradilan pidana.

Permasalahan di dalam penulisan disertasi ini diawali dengan mengkaji dan menganalisis implikasi teoretik pergeseran paradigma perlakuan terhadap narapidana dalam sistem peradilan pidana. Kemudian apakah implementasi pola pembinaan terhadap narapidana mempunyai kontribusi keberhasilan, serta bagaimanakah pencapaian tujuan pelaksanaan sistem pemasyarakatan di masa datang.

Paradigma penelitian yang dipergunakan dalam alur kerja penelitian disertasi ini adalah paradigma struktural fungsional dan teori bekerjanya hukum dalam masyarakat. Adapun metode penelitian yang dipergunakan adalah pendekatan secara doktrinal dan nondoktrinal. Untuk data sekunder yang mengarah pada kajian-kajian teoretik dalam bentuk konsepsi-konsepsi, pandangan-pandangan dan dokumen-dokumen hukum, dianalisis secara kualitatif, sedangkan data primer yang bersifat kuantitatif dianalisis secara kuantitatif.

Studi ini secara khusus membahas serta bermaksud mengungkapkan proses pengambilan kebijakan terhadap narapidana setelah adanya pergeseran paradigma dalam sistem peradilan pidana di Indonesia, khususnya proses pembinaan terhadap narapidana di lembaga pemasyarakatan serta prospek sistem pemasyarakatan di masa datang.

Temuan studi menunjukkan bahwa implikasi teoretik dari adanya pergeseran paradigma tersebut dalam sistem peradilan pidana dari sistem kepenjaraan (*Retributive Justice*) ke sistem pemasyarakatan (*Restorative Justice*) adalah perubahan pada aspek keadilan (filosofis) yang mendasari konsep-konsep lainnya yang tampak pada proses pemidanaan dan perlakuan terhadap narapidana.

Fakta empirik terungkap, bahwa implementasi pola pembinaan terhadap narapidana tidak mempunyai kontribusi keberhasilan, dikarenakan apa yang diamanatkan oleh Surat Keputusan Menteri Kehakiman Nomor : M.02-PK.04.10 Tahun 1990 Tentang Pola Pembinaan Narapidana/Tahanan, tidak semuanya dipenuhi.

Di masa depan, berkait dengan restorative justice, maka terdapat banyak sekali hal yang terdapat dalam ketentuan internasional ataupun nasional yang terkait dengan penahanan/pemenjaraan sebagai kegiatan terminal yang harus memiliki kontribusi pada kehidupan yang lebih baik, minimal sama, pada diri pelanggar hukum pasca penghukuman. Dengan kata lain, penghukuman tidak lagi merupakan instrumen retributif ataupun rehabilitatif tetapi juga restoratif.

Kata Kunci : Sistem Pemasyarakatan, Pergeseran Paradigma, Keadilan Restoratif, Keadilan Retributif, Sistem peradilan Pidana, Narapidana.

ABSTRACT

The importance of the roles of the correctional institution in the comprehensive criminal justice system is because the correctional institution is one of the sub system of other sub system like : police department, judiciary and law court. However in the further development there is still a gap between the hope and reality, such reality can be seen at the large number of recidivists and reconviction and large number of violations which cause victimization on prisoners or criminal in criminal justice system.

The problem in writing this dissertation started with the study and analysis of theoretical implication of treatment paradigm shift towards the prisoners on the integrated criminal justice system. Then, the problem whether the implementation training process towards the prisoners has successful contribution to prisoners training, and the goal achievement of the implementation of correctional system in the future.

Meanwhile, The research paradigm used in the work flow of this dissertation research is the structural functional by which the theory is the implementation of law in society. Whereas, the research method used is the doctrinal and non-doctrinal approach. Through secondary data wich based on theoritical studies form in copception, scholar doctrin, legal document, qualitative analisys will be made, and the primary data was obtained through the quantitative analisys.

This Study Mainly discusses on and intend to reveal the process of policy making toward the criminal (prisoners) after the existence of the paradigm shift in the criminal justice system in Indonesia, especially the process of training to the criminals in a prison and the prospect of the prison system in the future.

The research finding show that the theoretical implication of the paradigm shift existence in the criminal court the Retributive Justice system to the Restorative Justice sistym in that there is a change in justice aspect (philosophical) underlying the other

The empirical fact exposes that the implementation of the training pattern on the prisoners has no contribution on its success because what has been instucted by the Decree of Minister of Justice No. M.02-PK.04.10/1990 concerning the Training Paterns towards the Prisoners, is not all fulfilled.

In the future, relation to the restorative justice, there are a lot of things in either the international or the national stipulation connected with the arresting the terminal activity that must contribute to a better living, at least the same, to the law breaker after the punishment yet it also the restorative instrument.

Key words : Correctional System, Paradigm Shift, Restorative Justice, Retributive Justice, Criminal Justice System, Prisoner.

EXECUTIVE SUMMARY

Nowadays, many efforts have been actually conducted to carry out the reformation and renovation towards the implementation of imprisonment as one of the repressive main suggestions of the criminal law. There are at least two main reasons why the reformation and renovation are needed in the implementation of the imprisonment, those are : First, in regard to the tradition reason which states that a country must have a prison pattern and form connected to the situation of a community social and culture. Whereas the second reason is the trend of today's condemnation which tends to be more humanistic. The position of the imprisonment as the repressive means at present tends to degrading since there are lots of pressure and challenge coming from any movements especially in Europe and United States.

The imprisonment which used to be very accurate in preventing the criminalities, now has lost its popularity just because of the excess made, such as the emergence of the more dangerous new criminals. Finally, it arises the criticisms towards the use of imprisonment, mainly on its effectiveness and negative impacts.

The awareness of the importance of the law protection and the attention towards the prisoners in the criminal justice system arouse when the law breakers did not get humane position caused by the unfair treatment from the law officers in the circle of criminal justice system.

Law is required to protect everybody. The protection towards the prisoners is basically aimed to protect the people needs realizing that each nations is potential to be a victim of a criminality and is also potential to break the law. Based upon that reason and the awareness of the importance of the recognition for the prisoners in which today it can be honestly said that the practice of the criminal law and the criminal justice system have neglected the importance of prisoners as a whole.

The implementation of Act No. 12/1995 as the reformation of the criminal law has brought the new nuance in the criminal law reinforcement. The law protection towards the prisoners is required in order that the prisoners get their basic rights that is the fair treatment. In the history of the execution of criminal justice system, the prisoners are positioned as the object and they got the unfair treatment from the officers in the circle of criminal justice system.

The importance of correctional institution role in the integrated criminal justice system is because the institution is one of sub systems from other sub systems such as : Police Department, Counsel for Prosecution, and the Court. The Police Department is the first institution from the authority if the criminal justice system which firstly gets contact with the criminals. In such a circumstance the police officers are not only facing the criminal law case, but they are also facing the criminals as human beings with their characteristics. In this stage, the criminals have rights to well treated, appreciated and recognized. The police and attorney actions to proceed the case are not allowed to humiliate the criminals. The Court as the institution to execute the criminal condemnation for the criminals must be well aware if the criminal condemnation executed will give positive effect for the criminals. The problem is that the criminal condemnation given is not merely a matter of the heavy or the light of the condemnation, yet the condemnation must be in accordance with social values, culture and the life structure in a society, which in turn the imprisonment process will give positive impact towards the training process fro the criminals in order that the law ideality in constitution and the reality of law practice will run harmoniously.

The concept of “pengayoman” which becomes the symbol of court has deeper meaning, that is the existence of paradigm shift from the old court concept to the new one. The paradigm shift is the change in the justice aspect (philosophy) that bases the other concepts emerging in the imprisoning process and the treatment towards the prisoners, which was previously “retributive justice” where the implementation of criminal justice placed the state function as

the dominant role in the form of the rationalization of revenge towards the law breakers, then the implementation of “pengayoman” to the imprisonment and the treatment towards the prisoners has the “restorative justice” characteristic where the implementation of the criminal justice places some values higher than the direct involvement of other parties.

The explanation above describes those things as the logical consequences of the treatment regulation change towards the prisoners from the prison system to the correctional system. However, until now the criminal justice system is still faced to the dilemmatic problem which has not been solved. There some facts showing the gap between the expectation and reality that can be used as the parameter of the unsuccessful correctional system, which among others are:

1. The high rate of criminals and reconviction
2. A lot of violence and misuse of power have been found that led to the victimization of the prisoners.
3. The increase number of fugitives and chaos
4. Unrealized training environment describing the projection of society values into the correctional institution.
5. The higher percentage of forbidden drugs transaction in the correctional institution.
6. The over capacity of the panel institution
7. The training for personality and self confidence are merely conducted as the ritual process neglecting the training quality (only to spend the spare time; nonfunctional)
8. Unavailability of ideal model for prisoner placement.
9. Both the prisoners and the arrested criminals are put together in the same place.
10. The Incompetent officers of correctional institution in improving knowledge, skill and attitude which in turn will be able to revitalize,

harmonize and adopt both the existing and new values into the environment of correction institution.

The problem in writing this dissertation started with the study and analysis of theoretical implication of treatment paradigm shift towards the prisoners on the integrated criminal justice system. Then, the problem whether the implementation training process towards the prisoners has successful contribution to prisoners training, and the goal achievement of the implementation of correctional system in the future.

As for the goals to be achieved in this dissertation is to know the linkage and connection between spirit beyond the treatment reformation towards the prisoners and its implementation in legislation policy, and to find out and describe the alternative solution theoretically and practically in the treatment problem to the prisoners in the future.

There are two functions able to be conducted by the law in the society. The first, is as the social control and the second as the media for social engineering. The law function in this case is expected to be able and in line with the growth in the society. The social engineering concept is actually aimed at using the law rationally to meet the conducive situation as expected by the society or to make some changes as wished. The central theme from the social engineering through the law is how to move the attitude of the society members to meet the situation expected through the law. The social engineering will run well if the role the law requires can be well conducted by the role executor.

Due to those explanations above, the research method used in this dissertation is the structural functional, as for the theory used is how law works in society. And the method used is through the doctrinal and non-doctrinal approach. The method for primary data collecting is the free- directed interview guided by the questionnaires. The study of literatures are also deeply conducted towards some international and national instruments either in constitution level, government regulation until the ministry regulation and the implementation

guidance. Through the analysis of literary study, correction, and evaluation towards the government policies about the prisoner training. It can be done by the relevance indicators of the paradigm shift. Through secondary data which based on theoretical studies form in conception, scholar doctrine, legal document, qualitative analysis will be made, and the primary data was obtained through the quantitative analysis. The results will be presented in descriptive qualitative.

Based on the theoretical analysis, the paradigm shift in the criminal justice system from the Retributive justice into restorative justice is the change on the justice aspect (philosophy) that base the other concepts exposed in the imprisoning process and the treatment towards the prisoners.

The shift of the justice concept is basic and it should have influenced a management system, namely changing the old concept to the new one which is different and diametrically contradictive between one system and another. The value part of philosophical aspect of law underlines the criminal law system, likewise the criminal justice system is a justice. Therefore, if the choice of the justice concept changes from one concept to another, the changes will influence the element of law system below those, namely : the law principle, the basic concept of criminal law and the substance of criminal law and daily law practice in society. The criminal law reformation that changes the justice values and the basic concept as the starting point of the criminal law system will influence the other concepts that base a law system as the so called paradigm shift, since the shift of the justice concept is essential and should have influenced a management system, that is changing the old system to the new one which is different and diametric contradictive between one system to another one.

Therefore, the existence of the shift paradigm will give the influence on two basic concepts of the criminal justice implementation having the relevance to the prisoners, that is the criminality concept (criminal law breaking) and the imprisoning concept. Thus, the elements of the restorative justice in imprisoning are compensation, mediation, reconciliation, recovery and forgiveness. These

elements are different from the elements of retributive justice, those are : revenge, imprisoning, isolation, stigmatization, and intimidation. The restorative justice has some principles in criminal justice which is different from the retributive justice.

The empirical facts show that the implementation of training pattern towards the success of the prisoner training in the correctional institution does not have contribution at all towards the success of the training process. The study findings in the field emphasize that the success of the training process will not be successful due to the following conditions :

The comprehension level of the institution officers towards the Decree of Minister of Defense and Security No. M.02-PK.04.10/1990 concerning the Training Pattern for The Prisoners will give worse implication towards the goal achievement of the treatment process for the prisoners in the administration management of the comprehensive criminal justice. In general, the training pattern for the prisoners does not contribute to the success of prisoner's training. This is strengthened by the fact finding in the field such as : the quality of human resource existing is dominated by the SMU graduates, the unavailability of the supporting facility, insufficient financial support for the training program mandated by the Minister Decree as mentioned. For the self-standing training, the place to carry out the activity is not adequate for the reason of the insufficient financial support to facilitate all the activities. This will certainly give implication to the success of self-standing training. Until now the training method used in correctional system is the gradual training pattern that is the gradual treatment process based upon the termination of the imprisonment period : 0-1/3, 1/2, 1/2-2/3 and 2/3 release as the only method possessed. This method is applied for all kinds of imprisonment in all classes neglecting the age difference, sex/gender, the difference of imprisonment period, and the difference of variety of criminality as well as the background of the criminality. The logical effects going to arise are there will be some more obstacles in the implementation and will be

more groups of prisoners untouchable by the penal process. The organization of correctional institution is conducted through hierarchical way separating the security division and training division. The model of such organizational structure has kept the coordination and the information network system of correctional officers far away for the functional relationship is not synchronous. The correctional bureaucracy has underlined that the task and function between the correctional institution and the jail are different, yet in the practice both institutions are legal to occupy simultaneously two different occupant categories, namely the prisoners and the arrest. The implication is that this will cause the regulation overlap (and its implementation) for it is conducted by one institution at the same time in the type and characteristic of different orientation of task and function. The training program in mainly focused on the religious training in which the panel institution officers consider that what the prisoners did are sins, therefore the concept of repent and forswear is still strong. The higher occupancy in the prison will lead many problems such as: limited rooms, training facility, basic facilities like : beds, clothing etc. The threat of commotion or chaos among the prisoners in the institution, limited control and attention of the officers as the cause of the non-ideal comparison between the officers and the number of the prisoners, the limited access towards the training activities and work skill.

Therefore, to meet the goal achievement to be in line with the spirit of reformation in the implementation of criminal law in the future, it needs to consider some findings based on the theoretical facts, normative facts, and empirical facts. The theoretical facts, the paradigm shift will imply not only to the training process in the penal institution, bur further it will also imply to the process of decision making in the central of integrated criminal justice system. Theoretically, the paradigm shift does not only imply to the process of prisoner training, but it also has deeper meaning that is has farther implication towards the process of decision making in the integrated criminal justice system. This is

based upon the statement stating that every changes will contain transformational values into the criminal law regulation. The paradigm shift in the criminal law from the retributive justice into the restorative justice brings the changes in understanding the basic concept in criminal law and criminal justice system, knowing that the criminal justice system is a system, therefore if the choice of justice concept changes from one concept to another, the changes of the justice concept will influence on the elements of other law system concerning the understanding of the justice concept in the practice of criminal justice system in the society.

That paradigm shift brings the changes in understanding the criminality and imprisonment concept. The concept changes are the basic changes in criminal law and criminal justice system which can be seen from the acceptance of the criminals as the deviated persons that need protecting as well as training according to what has been mandated in the Constitution No. 12/1995 about the correctional system. So, the criminals (prisoners) are not considered as bad people who need to get access to obtain justice in criminal justice system in every stages of decision making in criminal cases. Besides, they get impact caused by the non-synchronous implementation of criminal justice. The high numbers of the case judged by the judges with the imprisonment at least show that the justice system has neglected the crowded population in the correctional institution.

The empirical facts, the training process towards the prisoners based on the spirit in the constitution No.12/1995 about the correctional system still contain some basic weaknesses and implication towards the unsuccessful process of training to the prisoners in management of integrated criminal justice system, those are :

First, the criminal justice system does not have significant influence in conducting the control function or criminal control. The functions of each sub systems from the criminal justice systems have never been tested through a

careful research and they run on their own way, based on the objective criteria or argument accepted by public. The attorney and the judge find difficult to answer what objective criteria they judge a certain period of time to the accused. They only based their judge according to the fiction, intuition of their own as the law officers.

Second, the organization of correctional institution is conducted hierarchically separating the security division and the training division. The model of such organizational structure has kept away the coordination and information network system among the penal officers since the functional relationship is not synchronous. Furthermore, the growth of structurally primordial attitude among the correctional officers is not avoidable. As the consequence, the bureaucracy image of the correctional institution is considered unresponsive towards the dynamics.

Third, the correctional bureaucracy has underlined that the task and function between the correctional institution and the jail are different. However, in practice both the institutions are legal to occupy two different categories of the occupants simultaneously, that is the prisoners and the arrest. Its implication is that there will be the regulations overlap (and its implementation) for it is conducted by one institution at the same time in the type and characteristic of different orientation of task and function.

Fourth, the training program is mainly focused in the religious training activity knowing that the correctional officers consider the prisoners doing the criminality as the sinful persons, therefore the concept of repent and forswear are still very strong. The higher occupancy in the prison will lead many problems such as: limited rooms, training facility, basic facilities like : beds, clothing etc. The threat of commotion or chaos among the prisoners in the institution, limited control and attention of the officers as the cause of the non-ideal comparison

between the officers and the number of the prisoners, the limited access towards the training activities and work skill.

The fifth, the success indicators of the training process towards the prisoners in the correctional institution tends visible by the officers through the institutional regulations represented by the presence or the absence of escapee and chaos in the correctional institution.

The empirical facts mentioned above are the facts showing how neglected the fate of the prisoners is by the criminal justice system

The normative facts, *first*, the substance of the correctional institution is closely connected to the laws among others : acts No. 12/1995 emphasizing that the correctional system is order on the direction, limit and ways to train the prisoners. However, this act gets some difficulties in its implementation due to the 14 articles that still require Government Regulation and 8 articles require the Decree of Minister of Justice and Human Rights. This can cause an overlap and inappropriateness with what has been mandated by the Acts No. 12/1995 concerning the correctional system. Viewed from the development history of criminal law in Indonesia, The Acts No. 12/1995 concerning the correctional was made before the National Criminal Law that should become the source of reference.

Second, the criminal justice system gives the fair treatment to the prisoners (criminals). This is not in line with the law principles stating that law must protect every individuals and the justice given to the unlucky person that is the prisoners (criminal) which their rights are guaranteed by law.

Third, the international community involved in The United Nations have realized on how important the concern towards the criminal actors (prisoners) as stated in some international instruments.

For further study and reflection towards the prisoner training in the criminal justice system, some findings in this dissertation as mentioned in the previous chapters will be used as the bases in suggesting some recommendations which hopefully will give significant influences towards the success of prisoner's training, those are :

1. The achievement of goals which is in line with the reformation spirit in the field of criminal law practice in the future should place the rehabilitation and training process early at the time of the criminal actors get connection to the police department as the first authority executor in the criminal justice system in Indonesia.
2. Since the publication of The Act No. 12/1995 concerning the correctional until the present implementation, this act has found some difficulties in its implementation due to the 14 articles that still require Government Regulation and 8 articles require the Decree of Minister of Justice and Human Rights. This can cause an overlap and inappropriateness with what has been mandated by the Acts No. 12/1995 concerning the correctional system. Hence the existence of implementing regulation for the Government Regulation and Minister Decree that has not been arranged in overcoming the prisoner problem becomes the immediate needs mainly for the law officers.
3. To get the success point from the prisoner's training. In the future the government needs to privatize the penal institutions to the private (public) sector. The privatization will bring some basic and balanced changes between the prisoner needs sector, the government and the private sector. The non-divestment privatization to the public sector, the goals to be achieved in the privatization policy of the correctional institution is the service improvement and training towards the prisoners which in turns will get the prisoners accepted in the society after the imprisonment period.
4. The needs of structural aspect and the human resource met the qualification of integrated moral, integrated knowledge, managerial/leadership skill and

advanced experience become the strong consideration in order to optimize the role of correctional institution in the future.

5. The treatment towards the criminal (prisoners) in the future criminal justice system must be in accordance with the reformation spirit both in the national and international society that will be able to establish the integrated criminal justice system maintaining the fulfillment of the rights of the suspected, the arrest and the prisoners as well as the public needs and rights beginning from the Police Department, Justice Institution, The Court and The Correctional Institution.
6. Correctional as the process of the only model of training method applied for all the prisoners based upon the limitation of termination period must be immediately reviewed if it is considered necessary to make the more effective and accountable new method.