Reconstructed of Treatment System Against Corruption Inmates in Indonesia

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Abstract. Corruption is an extraordinary crime that needs another treatment system against inmates. The existing regulation did not implement directly what concept is compatible with the Indonesian imprisonment methods, and it requires different designs to treat the universal or specific convicted according to their requisite. Because of that, to make an integral criminal justice system, the government should reconstruct the structural, substantial, and cultural aspects.

1. Introduction

Corruption has become a severe issue in many Asian countries.[1] Romli Atmasasmita mentions that the development of corruption has threatened the stability and security of the national and international community, undermined the institutions and values of democracy and justice, and endangered sustainable development and law enforcement processes. In line with Kaufmann & Vicente opinion that corruption has been at the center of policy and research debates on the quality of state institutions. This has been particularly the case in the context of developing countries, where corruption frequently takes crude and illegal forms [2].

Omar Azfar et al., mention that corruption is not just an aberration or a nuisance; it is a systemic feature of many economies, which constitutes a significant impediment to economic development [3]. How serious is the threat of corruption to the future of humanity? On September 7th to 11th, 1997, the international community of 93 countries, including Indonesia signed a declaration on the eradication of corruption in Lima, Peru which is known as the Declaration of 8th International Conference Against Corruption. The Forum agrees that corruption undermines the moral fabric of the community, denies social and economic rights especially to the underprivileged and vulnerable, gnaws democracy, undermines the rule of law that underlies every community, impedes development, and alienates community from healthy and opened competition situations. Therefore, according to Green and Ward paper, corruption is a form of so-called 'white-collar' (and state) crime, 'which victimizes people indirectly and without their knowledge'[4].

Sanjeev Gusta et al. in his paper stated that the impact of corruption on income inequality and poverty is considerable. [5] Therefore, corruption is also a violation of the social and economic rights of the community. Hence it can no longer be classified as an ordinary crime but has become the extraordinary crime which makes the eradication strategy must also use

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extraordinary enforcement. The extraordinary crime is committed by the use of a particular skill, organized or systematic, and it has a full impact. Therefore, the extraordinary crime must combat with extraordinary policy. This is in line with Kugler opinion, i.e., in jurisdictions with weak governance, the policy implications of the standard crime model may not hold, and instead, as our model suggests, crime deterrence policy can only be effective ensuing a substantial cut down in corruption[6].

According to the data released by Indonesian Corruption Watch (ICW) that resulted from monitoring during the first semester of 2014 toward 210 corruption cases with 261 defendants shows there are four categories of verdicts: free verdicts, light verdicts for sentences of one to four years, moderate verdict for sentences of four to ten years, and severe verdict for sentences of more than ten years. Based on these data, as much as 73.94 percent of corruptors get the light verdict, as much as 16.86 percent get the moderate verdict, as much as 1.53 percent get the severe verdict, and as much as 7.67 percent is acquitted. [7]

Heinrich stated that punishment and corruption are pervasive in human societies. Humans show a tendency to punish individuals who do not cooperate; this is true even when social partners interact only once, and no room for reciprocity exists. The dissatisfaction of the community with injustice due to the criminal punishment that is imposed by the judge to the corruptors comes from leniency. On the other hand, the short duration of corruptors' incarceration also leads to dissatisfaction towards the performance of administrative institutions. It is in line with Polinsky and Shavell state that corruption always dictates higher sanctions to counter the deterrence-diluting effects . [5]

When corruption has been defined as an extraordinary crime, every party involved in the criminal justice system (investigators, prosecutors, judges, and Department of Corrections) should unite their perspectives to find the right handling system for corruption inmates. [8]

Corruption inmates are treated equally with other criminal inmates at the Department of Corrections. Kaufmann suggested that when bribery is rampant, regulations are put in place in order to create opportunities for rent-seeking. [7] The commonly applied approach uses a security approach as the first approach, which is classified into three types: maximum security, medium security, and minimum security, and a rehabilitative approach complements them.

However, in practice, this approach brings benefits to corruption inmates that lead to social discrimination. To overcome this problem, the government issued GR No. 99 of 2012, but it is still based on the punishment logic, and it does not discuss treatments. Starting from this issue, it is necessary to take proper and integrated steps in treating the corruption inmates by reconstructing the treatment system at the Department of Corrections. Therefore, the issues will be discussed in this research are (1) how the treatment system against inmates in various countries, and (2) how to reconstruct treatment system against corruption inmates which is compatible with Indonesia

2. Findings

2.1. Treatment System against Inmates in Various Countries

The criminal justice system is a common term used in criminal justice, which is generally understood as the working mechanism in dealing with criminal cases using the system approach. As the last sub-system of SPP, the Department of Corrections is the support of all other sub-systems in realizing the goals of SPP in inmates. At the Department of Corrections, inmates will be treated to realize their mistakes, improve themselves, and promise not to repeat offenses. Hence they can be welcomed and reintegrated into the community environment and can live as ethical and responsible citizens. [9]

Jollies Willemsens states that "Restorative justice should function as part of (or alternative to) the criminal justice system". In this view restorative justice should be able to fill the void in the current approach model is how to provide direct responses to the victim in various forms such as compensation, social work, mediation or work directly done by the perpetrator for the benefit of the victim. This statement is a lie with Van Camp and Wemmers opinion that the focus on the procedure in the restorative approach by victims of violence has implications for its relations with the criminal justice system [10].

As a subset of the criminal justice sub-system, this achievement may be initiated by a form of punishment that is declared in a court decision (whether as a substantive or additional sentence), or as an internal program within the Department of Corrections.

Nowadays, many countries have implemented Restorative Justice System to treat inmates in order to repair "the damage" caused by crime than punishing people. So, it is essential to make a comparison, according to Hiram Chodosh the need to compare and differentiate phenomena seems to pervade all forms of human decision-making and may be indispensable to the development of human intelligence and judgment. [11]

As a comparison, the researcher shows the treatment process of inmates in several countries:

1) Australia

One of the Australian states, Victoria, has a reintegration program for inmates ahead of their freedom, named The Corrections Victoria Reintegration Pathway. The program serves to prepare inmates for reintegration, as well as post-release programs. There are 13 Penitentiaries in Victoria with different levels (Maximum, Medium, and Minimum Level) and 1 (one) transition center serves to prepare inmates for their release.

To reduce risks to the Victorian community, the Victoria Reintegration Program prioritizes seven important goals as critical supporters for achieving productive and successful reintegration. The program targets are programs of housing, work, education and training, independent living skills, mental health, alcohol and drugs treatment, and family/community connections.

2) Norway

In Norway, less than 4,000 of 5 million people are in prison in August 2014. It makes Norway's detention rate only 75 per 100,000 people. This is very low when compared to the condition of the US that reaches 707 people for every 100,000 people in the country.

Norway is one of the lowest countries in terms of recidivism rates in the world at the level of 20%. The majority of crimes committed in Norway are primarily confined to areas with drug and gang trades.

The country relies on the concept of "restorative justice" that delivers Norway as one of the countries with the best criminal justice systems in the world. The approach adopted by Norway does not emphasize punishment and is more focused on ensuring that inmates do not return to prison as recidivism. The prisons in Norway are usually led by a prison governor who has the capability in clinical psychology.

3) New Zealand

New Zealand is one of the countries which carry out "restorative justice." The treatment system applied against inmates in this country prefers a community-based sentence policy than jail imprisonment. This case can be proved from about 26,847 convicts that served a sentence; there are only 7,605 inmates who are placed in the Department of Corrections. Here

are the examples of community-based sentences which are applied by New Zealand: (1) community work, (2) supervision, and (3) house arrest.

New Zealand's Department of Corrections led by the ministry has a vision to enactive punishment fulfillment and decrease recidivist criminals by employing credible staffs and collaborating with various parties.

4) Saudi Arabia

Saudi Arabia is a country that has never been colonized, but some of its territory, such as Mecca, Medina, and Jeddah, were once occupied by Turkish Ottoman. However, ultimately the Turkish Ottoman withdrew in 1871 after the widespread British influence on the Gulf Arab Border. Saudi Arabia was born in 1902 and changed its name into the Kingdom of Saudi Arabia since September 22, 1933.

Saudi Arabia is an Islamic state that is most consistent in applying its Islamic criminal law positively. In addition to guiding the Koran and Hadith, Islamic criminal law of Saudi Arabia is also based on the opinion of Mahzab, especially on four Mahzabs namely, Maliki, Hambali, Shafi'i, and Hanafi.

The conception of restorative justice in Saudi Arabia can be understood through the purpose of punishment in Islamic penal, i.e. (1) prevention and deterrent effect, (2) rehabilitation and reformation, (3) prevention and elimination of revenge and reconciliation of victims or relatives.

Despite different legal systems among those countries, all of them have the same goal, namely to meet the balance in improving the convicted person not to repeat the same criminal acts.

5) Canada

In Canada, a program similar to the Ohio model will be reserved for Aboriginal offenders. The National Parole Board of Canada [12] facilitates the victims and the aboriginal community in settling criminal cases using the fundamental values that exist and thrive in the tribe. Especially in the process of parole, this department becomes a significant role in determining the treatment model in the parole period by involving the related components (perpetrators and the community).

6) United States of America

In the United States of America applies Victim-Offender Dialogue Program [10], which is a part of Correction Based Programs. Institutionally, this program is implemented by the Victim Services Department of the Department of Correction. The forms of activities undertaken are varied by going through several facilitators' involvement in looking into the extent of the possible encounter between the victim and the perpetrator or the perpetrator with the community by considering the situation of the interested parties.

In this regard, a facilitator must make several preparatory meetings of its implementation. In Ohio, it is known as the Opening Doors of Ohio program, which is conducted through peer group mediation for inmates that proceeded by training on conflict resolution for officers. However, this program begins with a conflict management model that takes place within its department of correction.

Based on the description above, one of the purposes of the inmates' placement in a department of correction is basically to provide the inmates having integration with the community after serving their sentence. In order to achieve this goal, one of the prepared things is facilitating the needs of inmates in a department of correction by providing jobs to help them live themselves and their families after being arrested.

2.2. Ineffectiveness Factors on Treatment System against Inmates in Indonesia

The New Order period became a fertile ground for corruptor that left various problems, especially in the current prisons system.

The weak management system of the Department of Corrections in Indonesia brings many obstacles in realizing the treatment concept, especially for corruption inmates. At least there are three main factors which used to categorize various obstacles in the treatment issues, [13] such as (1) structure of law, (2) the substance of law; and (3) legal culture.

The law enforcement process of corruption has started since an alleged corruption was declared, and then the Police and Corruption Eradication Commission conducted investigation efforts. However, the law enforcement process is not accompanied by a thorough effort on how corruption inmates will be treated (guided) during his sentence.

The law enforcement and corruption treatment process must run integrally and influence each other. Honestly, there is no mechanism or system of provisions specially formulated to treat corruption inmates. Government Regulation No. 99 of 2012 has distinguished the treatment between public prisoners with corruption inmates, terrorism, drugs, and other extraordinary crimes. However, the GR does not regulate and illustrate the concept of treatment system against corruption inmates accurately.

Despite the inadequacy of the related legislation substance, the cultural barriers will address the implementation of correction and treatment against inmate's programs, as most corruption inmates have functional economic status, influential political positions, and education high levels relatively being fear of giving an inferior attitude to the officers or officials of the Trustees in the Department of Corrections who get corruption inmates. Hence the treatment material to be given will be useless at all.

2.3. The Reconstructed of Treatment System against Inmates which is compatible with Indonesia

As mentioned earlier, the institutional structures in treatment systems against corruption inmates are not working well in Indonesia. The law enforcement agencies in Indonesia work independently in carrying out their duties and functions. However, all sub-systems of law enforcement (the Police, the Prosecutor's Office, the Judiciary and the Department of Corrections) should be in the same law of judicial power.

In achieving more integrated law enforcement goals from the start of the investigation process to the punishment or treatment process in the Department of Corrections is needed to complete reconstruction (rebuilding) steps such as:

1) Institute Structural Reconstruction
   The institute structural reconstruction aims to synchronize the work of each law enforcement agencies of corruption by presenting assessment agencies that act as a "bridge" between agencies. It also serves to give recommendations related to the model of treatment against corruption inmates. Also, this institution should have legal rights to exercise authority and as an essential step in providing binding recommendations to judges in deciding cases of corruption.

2) Substance Reconstruction
   Substance reconstruction is direction and target to rebuild the provision substance of legislation related to law enforcement of corruption. This case is caused that the law enforcement system of corruption has not been running well due to different orientation and influence, which is not aligned. It is a consequence of the difference between the more individualistic legal ideology of liberal law (KUHP & Corruption

Law) and Pancasila ideology which prioritizes the common interest and makes law as a tool of change and reflection of the culture community (inmates law).

3) Cultural Reconstruction
The Cultural aspect is the most crucial aspect to be rebuilt. The value and norm system are a reference point for every stakeholder of the law enforcement of corruption. A good culture will undoubtedly create a behavior pattern and a non-permissive attitude toward corruptor and build an anti-corruption mindset. Because the cultural aspect is a crucial point that sustains the structural and substantial sides goes well to provide "happiness" to the community.

Reconstruction in all three aspects will contribute to a comprehensive, gradual, and integrated model of treatment against corruption in every stage. Therefore, there will be a community-based sentences model, such as (1) Social Work, (2) Supervision, (3) Household custody, and (4) Mercy clearance (granted under the decision of a clearance agency).

3. Conclusion

Corruption is agreed as an extraordinary crime that will be a problem when in serving the punishment of corruption inmates does not get "extraordinary" treatment. Although various countries have a different legal system, all of them have the same goals to meet the balance in treating inmates in order not to repeat the same criminal. Due to the vagueness of the Indonesia concept related treatment against corruption model causes the convicted corruption is treated as same as the perpetrators of ordinary prisons.

The punishment efforts should be pursued supposedly to meet higher law enforcement goals such as (1) community protection, (2) maintaining community solidarity, and (3) re-balancing the social damage that has resulted from the crime. These objectives will be meaningless without the clear concept of treatment against corruption model.

It has been identified that the obstacles towards treatment against corruption inmates is in systemic matters such as: (1) Individual and unintegrated Department of Corrections structures due to the absence of an assessment institution which acts as an inter-agency bridge, (2) Substance in the Law of RI No.12 of 1995 which does not distinguish the treatment between corruption inmates and ordinary prisoners and PP No. 99 of 2012 which is oriented to punishment only and does not give correct and integrated treatment against corruption solutions, and (3) Cultures of stakeholders who have not been able to optimize the structure and substance aspects because the law enforcement culture which applied is only to follow law enforcement without giving compatible solution for corruption inmates.

In order for the treatment against corruption inmate model becomes adequately modeled, it requires synchronization between the aspects of criminal law enforcement (Structure, Substance, and Culture) through the reconstruction of the existing treatment system.

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