International Journal of Multicultural and Multireligious Understanding

http://ijmmu.com
editor@ijmmu.com
ISSN 2364-5369
Volume 10, Issue 1
January, 2023
Pages: 458-468

Indonesian Judicial System on Probation

Adji Abdillah; Mohd. Din; Muhammad Ya'kub Aiyub Kadir

Faculty of Law, Syiah Kuala University, Aceh, Indonesia

http://dx.doi.org/10.18415/ijmmu.v10i1.4361

Abstract

This study investigates the application of probations in Indonesian court decisions in relation to the sentencing objective. Using a normative legal method that is then studied qualitatively, this study also investigates the optimum probation structure inside the Indonesian legal system. This study shows that, relative to incarceration, the use of probation in court rulings in Indonesia remains minimal. This is due to the fact that the existing regulations do not precisely govern the implementation of probationary punishment, and there are still differences of opinion among law enforcement officials regarding the method of imposing this sentence. Also, people continue to believe that incarceration is the sole possible punishment for criminals. Second, an ideal probationary sentence arrangement is attained if the current legal system functions optimally in terms of legal substance, legal structure, and legal culture, such that the goal of an integrative sentence is ultimately attained.

K*eywords:* *Probation; Court Decision; Legal System*

Introduction

Articles 14a through 14f of the Criminal Code, referred to hereafter as the Criminal Code, control probation. These are annexes or supplementary articles to the Indonesian Criminal Code. This section was inserted to the Criminal Code based on the *Staatsblad* number 487 of 1926, which went into effect on January 1, 1927.[1] Probationary punishment *(Voorwardelijke Veroordeling)* is a synonym of conditional punishment. In conformity with the ideas of legal experts, including those utilized by judges to impose criminal sentences, the term probationary punishment will be used throughout this work. Probationary punishment is a postponement of a sentence's execution.[2] People who receive probationary sentences are the same as those who are convicted of criminal offenses in general, but the sentence will not be carried out unless it is later proven that the convict committed a criminal offense or violated the judge's agreement or conditions before the end of his probationary period. Thus, the decision to impose a punishment still stands, but the penalty is not immediately carried out.[3]

[1] Dodoh, ETP. Kajian Terhadap Penjatuhan Pidana Bersyarat dan Pengawasan Menurut Kitab Undang-Undang Hukum Pidana, *Jurnal Lex et Societatis*, Volume I, Issue 2, 2013, pages 98."
[2] Muladi. Lembaga Pidana Bersyarat, Bandung, Alumni, 2016, pages 196.
[3] Thani, S. Penjatuhan Pidana Percobaan Dalam Tindak Pidana Korupsi, *Jurnal Ilmu Hukum*, Volume 3, Issue 1, 2015, pages 13.

The reasoning behind the imposition of probation is actually rather straightforward: to prevent the offender from committing other crimes by teaching him how to live constructively in a society he has harmed. The most effective method for achieving this objective is to direct the application of social criminal punishments as opposed to sending offenders to an artificial and abnormal environment in the form of incarceration.[4] The purpose of imposing probation on a defendant is to allow him to avoid serving a prison sentence in exchange for his compliance with specific restrictions outlined in the judge's court order. If actually implemented in Indonesia, the application of probationary sentences can produce benefits for both the offender and the community. By imposing probation, the problem of the prison's overcapacity can be naturally mitigated.

In the most recent Indonesian Criminal Code, which was just enacted, the terminology probation does not appear. The notion of probation in the former Criminal Code has been superseded by Supervision Crimes, which are governed by Articles 75 through 77 of the new Criminal Code. Article 75 of the new Criminal Code provides that a new monitoring sentence may be imposed on a defendant who commits a felony punishable by a maximum of five years in prison. The subsequent article specifies the general and unique conditions for the imposition of this supervision sentence decision. However, corresponding study revealed no explicit provisions addressing the imposition of probations, neither in the article's text nor in the section of the new Criminal Code devoted to clarification. In the clarification part of Article 75 of the new Criminal Code, coaching outside of the institution or outside of prison is defined as supervision punishment. This is comparable to the probation provisions of the old Criminal Code. If the new Penal Code has begun to be implemented in Indonesia, this will undoubtedly become a problem in the future, as the method for enforcing this offense is troublesome and must be refined.

In practice, the judgements held out by judges are still retaliatory in nature and continue to consist of incarceration for the culprits. According to the Directory of Decisions of the Supreme Court of the Republic of Indonesia, in 2020, 2021, and 2022, against the jurisdiction of Aceh Province, only 25 criminal decisions imposing probationary sentences were decided out of the thousands of criminal decisions rendered that year.[5] This fact demonstrates the rarity of courts imposing probation terms, despite the fact that the former Criminal Code allowed judges to impose probations if they intended to impose a one-year prison term or less. This occurs because probationary punishment is still considered a form of criminal application and a prison term. In addition, if the new Penal Code is enacted later, new problems will arise because supervision punishment, one of the new types of punishment, can only be applied to defendants who have committed criminal acts punishable by imprisonment for a maximum of five years, so judges are limited in their ability to impose probations for offenses punishable by imprisonment for more than five years. Multiple interpretations or uncertainties about its implementation have resulted from the vagueness of the Indonesian legal system's procedure for imposing probation, which has caused uncertainty among law enforcement personnel. Eventually, such flaws will create legal uncertainty for both the offender and society.

In relation to the aforementioned problems, the author plans to investigate various legal issues. First, how does the imposition of probation in the decision of the district court relate to the aim of sentencing? What is the appropriate arrangement for probationary punishment in the Indonesian legal system?

Research Method

This is normative legal study employing the statutory approach, the case approach, the historical approach, the comparative approach, and the conceptual approach. This research will utilize primary legal

[4] Handoyo, S. Pelaksanaan Pidana Bersyarat Dalam Sistem Pemidanaan Di Indonesia, *Jurnal Pakuan Law Review*, Volume 4, Issue 1, 2018, pages 44.

[5] *https://putusan3.mahkamahagung.go.id/*, accessed on December 26, 2022.

resources, secondary legal resources, and tertiary legal resources. The data generated from the collected legal materials will subsequently be qualitatively examined.

Research and Discussion

I. Implementation of Probation in Court Decisions Associated with the Purpose of Punishment

Punishment has multiple purposes, including deterrence, restitution, deprivation of liberty, and modification of conduct.[6] This objective pertains to the philosophy of punishment, specifically the absolute theory, which believes that the administration of a sentence is exclusively retaliation for a criminal offense. In addition, there is a relative theory that claims that punishment is utilized to maintain public order and criminal objectives, particularly crime prevention, so that no one commits a crime. The combined approach explains that in addition to deterrence, the purpose of punishment is to give protection and education to perpetrators and society.[7] It is essential to recognize that the purpose of punishment is to meet the interests of multiple parties, including those of the perpetrators, the victims, and the larger community.

The advancement of research demonstrates that while jail sentences were initially designed to safeguard society from criminal disturbances, they have a detrimental effect on prisoners. There is a propensity for formerly incarcerated individuals to find it more challenging to readjust to society and to be susceptible to committing more offenses.[8] Prison has harmful effects on both prisoners and society. Not only do convicted individuals endure agony, but so do their families and others whose lives depend on them. The prevalent frequency of recidivism as a result of incarceration results in a loss for society.[9] Recidivism is diametrically opposed to the philosophy of punishment, according to which one of the purposes of punishment should be to deter the repetition of criminal crimes.

Alternative prison terms are one of the measures that can be taken to minimize overcrowding in Indonesia's detention facilities and correctional institutions. The definition of alternatives to incarceration is that all forms of criminal justice penalties, including punishment and therapy, will require the offender to carry out these consequences without incarceration. The forms include probation, community service, electronic monitoring, penalties, prohibitions from particular locations, and delays in enforcing court decisions. The experience of numerous nations indicates that alternatives to incarceration are effective in reducing incarceration rates.[10] Alternatives to incarceration should be the first option for law enforcement personnel due to the numerous benefits that are felt from the convict's, social, community, and financial standpoints. Coaching outside the institution will be less expensive than coaching within it.[11]

The reasoning behind the imposition of probation is actually rather straightforward. The purpose of probationary punishment as a whole is to deter future criminal behavior by teaching the offender how to live productively in a society he has harmed. The greatest method to achieve this objective is by implementing social criminal punishments rather than confining offenders to an unnatural, abnormal, and liberty-restricting setting.[12] If genuinely implemented in Indonesia, the enforcement of probationary

[6] Holmes, OW. Theories of Punishment and the External Standard, Crime, Law and Society, Collier Macmillan Publisher, London, 1971, pages 27-28.
[7] Hiariej, E.O.S. Prinsip-Prinsip Hukum Pidana, Cahaya Atma Pusaka, Yogyakarta, 2019, pages 31-33.
[8] Napitupulu, E.A.T. et.al., Hukuman Tanpa Penjara, Istitute for Criminal Justice Reform (ICJR), Jakarta Selatan, 2019, pages 2.
[9] Hikmawati, P. Pidana Pengawasan Sebagai Pengganti Pidana Bersyarat Menuju Keadilan Restoratif, *Jurnal Negara Hukum*, Volume 7, Issue 1, 2016, pages 86.
[10] Napitupulu, E.A.T. et.al., *Op.Cit.*, pages 97.
[11] Hakim, Z. 2017. Penjatuhan Pidana Bersyarat Dan Pengawasannya Sebagai Alternatif Pemidanaan. Thesis. Universitas Sumatera Utara. pages 150.
[12] Handoyo, S. Pelaksanaan Pidana Bersyarat Dalam Sistem Pemidanaan Di Indonesia, *Jurnal Pakuan Law Review*, Volume 4, Issue 1, 2018, pages 44."

sentences can benefit both the offender and the community. The imposition of this sentence is especially crucial since it assists the offender in leading a productive life and serves as a helpful form of correction.[13]

In Indonesia, the application of probation can be found in rulings from courts of first instance, appellate, and supreme courts. The panel of judges must give adequate consideration to the case at hand before rendering a verdict. The panel of judges must, within the time allotted by law, establish the proper sentence for the case they are presiding over and then administer that punishment for the crime that has been legally and clearly proven to have been committed by the defendant.

Sentences should promote prevention aims and be capable of seeing far into the future, as opposed to focusing solely on punishment. Muladi explains that the purposes of sentencing must be integrative, namely prevention, protection of the community, maintenance of community solidarity, and reparation. The court's judgment that includes an order for the imposition of probation must be consistent with these objectives. In a court decision, the imposition of probation should be consistent with the sentencing purpose. Probation orders are a type of assistance for the judiciary in the construction of an Indonesian criminal code based on Pancasila and the 1945 Constitution.[14]

In current practice, court rulings imposing probation on defendants are based on trial-related legal facts and specific considerations, some of which can be seen in the following court decisions:

1. Bireuen District Court Decision No. 177/Pid.B/2022/PN Bir for Defendant S who violated Article 480 paragraph (1) first of the Criminal Code (Retention). In account of the fact that the defendant was also the victim of witness CA's (the perpetrator) embezzlement, the defendant was placed on probation. In addition, the judge believed that the defendant had openly recognized his activities so as not to complicate the trial, and that the defendant had committed not to repeat his actions in the future. The public prosecutor challenged this verdict, and the appellate judge disagreed with the decision of the court of first instance; therefore, the defendant was sentenced to imprisonment in accordance with the prosecutor's demands. The imposition of separate criminal penalties by the panel of judges at the first level and the panel of judges at the appeal level is frequently the result of differing convictions regarding the imposition of probation. The diverse sentencing philosophies of one judge against another can be attributed to variances in education, thought, and viewpoint in handling cases, particularly with regard to whether or not to apply probation in certain circumstances with varying factors. This results in legal uncertainty for the accused because the conviction of the accused can vary if tried by a different panel of judges. Therefore, now there is a huge need for uniform rules in evaluating under what circumstances a person can be sentenced to probation.
2. Decision 7/Pid.B/2021 PN Sgi of the Sigli District Court on favor of Defendant H, who violated Article 359 of the Criminal Code (Because of his negligence which caused another person to die). The defendant was sentenced to probation based on the panel of judges' considerations, which included the fact that the death of the victim was not the result of the defendant's active actions; consequently, imprisonment is not the best option for the accused and will have negative effects on society's sense of justice. Additionally, the Defendant lacked malevolent intent (mens rea). The provision of corrective and educational consequences for the defendant and the community and lastly, philosophical arguments concerning the significance of legal justice are also taken into account. The public prosecutor filed an appeal against this ruling, and the panel of appellate judges upheld the decision of the court of first instance. The panel of judges' decision to sentence the Defendant to probation was based on grounds linked to the degree of crime committed by the defendant. In determining the defendant's sentence, the panel of judges also examined philosophical factors, as well as the defendant's lack of purpose in the

[13] Dwiatmojo, H. Penjatuhan Pidana Bersyarat Dalam Kasus Pencurian Kakao, *Jurnal Yudisial*,Volume 5, Issue 2,2012,pages 99.
[14] Muladi, *Op.Cit.*, pages 88.

event of a crime. The mindset of the perpetrator, who did not plan to murder the victim, became one of the mitigating factors in determining the defendant's sentence, where negligence ranks below intent in a crime. Due to this, the panel of judges agreed to place the aforementioned defendant on probation.

3. Sigli District Court Decision No. 208/Pid.B/2021/PN Sgi, on behalf of Defendant NF, who violated Article 480(1) of the Criminal Code (Abuse). The panel of judges sentenced NF to probation due to the fact that she was pregnant throughout the trial and had just given birth at the time the charges were to be read. Article 1 PERMA Number 3 of 2017 about Guidelines for Trying Cases Against Women Against the Law and the fact that the defendant has a child who requires affection and attention from his mother were also factors in the decision. In addition, the crime is not judged to be severe, and the defendant merely gained Rp. 25,000. (twenty-five thousand rupiah). Blood ties between the Defendant and his younger sibling made it impossible for the Defendant to refuse an offer from his younger sibling or report his own younger sibling to the authorities. In reading the statute, the judicial panel also took philosophical concerns into account. In this instance, the public prosecutor did not submit an appeal, despite the fact that the verdict was not in accordance with his demands. This was contrary to the legal actions taken by the public prosecutor in other situations.
4. Decision 234/Pid.B/2021/PN Sgi of the Sigli District Court on behalf of Defendant EZ, who violated Article 365 paragraph (2) first of the Criminal Code (Theft with violence). The Panel of Judges decided to impose probation on the grounds that the defendant is a woman who still has a young kid (a newborn), since the punishment imposed must give advantages and justice for the parties, but also must not cause harm to non-parties, namely the defendant's child. Also, the defendant attempted to apologize and make peace, but his efforts were unsuccessful. The public prosecutor contested this ruling, and the panel of appellate judges opted to uphold the decision of the court of first instance. In addition, the public prosecutor filed an appeal for cassation, but the panel of judges at the cassation level rejected the public prosecutor's cassation motion, so the district court's ruling was correct and binding.
5. Sigli District Court Decision No. 9/Pid.B/2022/PN Sgi, on behalf of Defendant ASR, who violated Article 310(1) of the Criminal Code (Defamation). The panel of judges imposed a sentence on this defendant based on the fact that she had never been convicted and is a mother and family head who provides support and affection for her 2-year-old child. The defendant challenged the conviction at the first level, and the panel of judges at the appeal level placed the defendant on probation. For this verdict, the public prosecutor filed a cassation appeal, but the cassation case did not meet the procedural standards, so the defendant was ultimately sentenced to probation in accordance with the appeal decision.
6. Sigli District Court Decision No. 69/Pid.B/2021/PN Sgi, on behalf of the defendant CH who violated Criminal Code Article 310 paragraph (1) (defamation). The panel of judges imposed probation with the understanding that the purpose of punishment is not solely as a form of retribution, but rather as a learning process to educate, foster, and create a deterrent effect for the defendant, so that he can better himself and others around him so that they will not commit or repeat similar crimes or other crimes. The public prosecutor filed an appeal against this ruling, and the panel of appellate judges upheld the decision of the court of first instance because the district court's conclusion was correct.

The probationary sentences imposed by the above-mentioned judges continue to produce additional issues, as evidenced by the fact that the public prosecutor has appealed and cassated a number of decisions because they do not concur with the panel of judges' reasoning. The public prosecutor's action is not an error because it is within his or her legal right, as outlined in the Criminal Code and the Attorney General's Guidelines Number 3 of 2019 for Criminal Prosecution of Criminal Cases. Point 7 paragraph (6) of the Attorney General's Guidelines stipulates that the public prosecutor must initiate legal action against a probationer if he requests imprisonment or a fine. This should not occur because

the public prosecutor, as a subsystem of the criminal justice system in Indonesia, should carry out prosecution tasks in harmony with other subsystems.

Inconsistency in the interpretation of law enforcers will result in the loss of legal certainty, one of the aims of the law itself. It will take longer for decisions that continue to be presented for legal action to acquire permanent legal standing. In addition, the judgment of the court of first instance to impose probation is likely to be overturned by the court of appeals and the court of cassation. One of the variables influencing the content of the decision and the direction of the penalty will be differences in the knowledge, education, and background of judges who preside at each court level. This causes legal ambiguity for the defendant. In the criminal justice system of Indonesia, these activities must cease, and it must be kept in mind that any internal regulations set by law enforcement agencies are not for the profit of the agencies, but must allow easy legal access for the people of Indonesia.

The court's decision is legally binding, and its order must be carried out by the decision's executor. The judge's ruling must be accepted as correct unless overturned by a higher court. In determining a case's disposition, the judge will consider the defendant's criminal conduct and apply the most pertinent punishment. From the decisions described above, it can be concluded that the application of probations by judges is generally based on non-legal considerations, such as the defendant being a mother whose presence in the family is very much needed by her children, the defendant having just given birth, the defendant having never committed a crime in the past, the defendant having tried to apologize, the defendant not having committed the crime intentionally, the defendant not having complicated the trier of fact, and the defendant not having been a flight risk. Apart from that, there are also philosophical considerations taken by the panel of judges in trying the case before the defendant.

The replacement of probationary punishment in the new Criminal Code with supervision punishment is anticipated to generate a number of new issues. According to Article 75 of the Criminal Code, a defendant who commits a felony punishable by a maximum of five years in jail may be subject to criminal supervision. Therefore, it can be established that any crime with a sentence of less than five years may be subject to monitoring. This is a setback for criminal law in Indonesia, as every offense carrying a penalty of more than five years will no longer be eligible for monitoring punishment. For instance, the offense of treason against the Unitary State of the Republic of Indonesia, as outlined in Article 192 of the new Criminal Code, cannot be sentenced to criminal supervision because the penalty exceeds five years. The most recent regulation outlined above imposes a limit on judges, preventing them from imposing supervision sentences in cases where it was determined at trial that the act was carried out on a relatively small scale, did not pose a significant threat to the state, and was committed by former combatants in a post-conflict recovery zone. This case may be found in Sigli District Court Decision No. 14/Pid.B/2021/PN Sgi, dated 21 May 2021, in which Defendant Z was found guilty of participating in treason and sentenced to eight months in jail. According to the verdict, Defendant Z was initially contacted by witness N to help him hoist a banner with a crescent moon emblem and the inscription "*kamoe simpatisan ASNLF, menuntut Atjeh pisah deungoen Indonesia*" which means "we ASNLF sympathizers, demanding Aceh separate from Indonesia." Witness N only gave Defendant Z a reward in the form of a cigarette and a treat for drinking coffee at a coffee shop, and after further investigation into the defendant's motivations for helping witness N, it was determined that the defendant wanted to demand welfare from the Indonesian government in accordance with the points agreed upon in the Helsinki Memorandum.

Regarding the regulation of criminal supervision in the new Criminal Code, which replaces probation in the old Criminal Code, the aforementioned examples will increase the complexity of the problems that will be encountered when the regulation is enacted in the future. The reason for this is that, in making a judgment, the judge must consider the existing regulations and apply them to the legal facts shown at trial in order to impose the punishment that is most pertinent to the Defendant. Changes that take place in the context of criminal supervision punishment in the new Penal Code, which is

distinct from probation in the old Penal Code, will eliminate the option for judges to apply supervision punishment to offenses with a sentence of more than 5 (five) years, even if other trial facts could reduce the accused's degree of guilt.

II. Ideal Probationary Criminal Arrangements in the Indonesian Legal System

In the previous subchapter, implementation of probation in district court rulings was the subject of debate and analysis. The findings of this study indicate that the current arrangements cannot accommodate the challenges that occur in the real world. These issues can be grouped into three groups, each of which is an interdependent unit requiring extensive development to reach a more optimal state.

Ideally, a country's legal norms will have far-reaching effects on its development, particularly in the realm of law enforcement. This advancement will also influence advancements in other domains. The success of law enforcement will be determined by whether or not all legal instruments of a unit can properly coordinate their respective functions.

According to legal system theory, the legal system comprises three components: legal structure, legal substance, and legal culture. The legal system also has fundamental rules in the form of customary norms and secondary regulations in the form of norms that establish if customary norms are valid and can be applied.[15]

When all aspects of a country's legal system function well, the law's principles and goals are accomplished. To get the optimal probation arrangement, it is necessary to improve a number of the most crucial factors, namely:

1. Substantial Aspect (Content)

Substance is a crucial aspect that must be addressed for optimum probation to be realized. In this context, "substance" refers to all written legal regulations, from statutes to court judgements. The process for imposing probationary sentences under Indonesian criminal law must be explicitly outlined in written regulations drafted by the authorities. This regulation is the primary vehicle for ensuring legal certainty for all parties engaged in the handling of cases, including the accused and the general public. Clear probationary criminal law arrangements can only be implemented if the authorities create rules based on the criminal law policy of a country.

Existing concerns with probation provisions in the Criminal Code include the determination of exceptional criteria that are not obligatory. In practice, panels of judges rarely contain explicit conditions that prisoners must fulfill, therefore the identification of these conditions might lead to legal confusion. In accordance with the notion of sentencing objectives, these particular circumstances play a significant role in the rehabilitation of criminals and can provide protection and care for community cohesion.

Also problematic is the official who has the authority to supervise the offender. Currently, the supervisory work should be regularly watched, however it is not being carried out correctly. Due to the restricted number of public prosecutors available at a prosecutor's office, the public prosecutor as the party with authority as the executor of court decisions in accordance with Article 270 of the Criminal Code faces the challenge of a significant number of cases that must be addressed. This results in a suboptimal implementation of supervision, which leads to the offender repeating illegal activity during probation.

Institutions/agencies allowed to provide help and assistance to convicts in meeting particular requirements are not exempt from difficulties, since there are still relatively few institutions operating in

[15] Friedman, L.M. The Legal System: A Social Science Perspective, New York, Russel Sage Foundation, 1975, pages 6.

this field. In general, institutions in the social sector are capable of assisting convicted individuals, but the prevalence of social issues in the society prevents them from doing so effectively. In this situation, the government can collaborate with private social organisations to carry out this oversight duty. In addition, this progress is also achievable with the participation of both state and private firms in resolving state issues, particularly in attempts to improve the conduct of inmates in Indonesia. This is a typical practice in several nations in an effort to reform those who have broken the law.

Existing flaws in the current provisions of the Indonesian Criminal Code have ramifications for the new Criminal Code concept. Article 75 of the new Criminal Code emphasizes in its elucidation section, when viewed from the perspective of the draft, that supervision punishment, which has become a type of principal crime, is a means of implementing imprisonment, but is not specifically threatened in the formulation of a crime. In addition, the Criminal Code states that supervision punishment is comparable to conditional incarceration in that it involves counseling outside of prison. This demonstrates legislators' reluctance to implement supervision as a form of punishment, despite its widespread use in other nations.

In addition, there are issues with the application of a supervisory crime, which can only be used if the defendant commits a crime punishable by a maximum of five years imprisonment. This is a setback in the field of Indonesian criminal law, as the prior Criminal Code did not prohibit this. As an illustration, consider the criminal danger of possession of sharp weapons, which has a potential penalty of ten years in jail. The defendant cannot be placed on probation due to the severity of the sentence, despite the fact that possession of sharp weapons is common in certain neighborhoods, as evidenced by the trial facts. Moreover, in the circumstances of regions in Indonesia that have recently resolved conflicts, such as Aceh Province, many former GAM combatants continue to engage in small-scale activities because the Helsinki Memorandum of Understanding has not been fully implemented. This can be seen in modest actions, such as the hoisting of flags as a form of protest against the government, for which the government will charge the culprits with crimes against state security and the punishment threat is extremely high or, at the very least, exceeds five years. In the concept of the new Criminal Code, the existence of an article regulating maximum criminal threats that are not subject to supervision punishment will prevent law enforcement officials, particularly judges, from imposing supervision punishment based on various legal, sociological, and philosophical considerations. In addition, the judge cannot assess the defendant's degree of guilt, and in the end, the purpose of sentence cannot be adequately attained because the existing legal framework cannot accommodate cases that occur in society.

Therefore, in terms of legal content, a clear formulation is required for probationary punishment arrangements, so that all law enforcement officers have practical guidance regarding the types of instances to which probation can be applied. The availability of precise regulations will also give the accused with legal clarity. The state, through its legislators, plays a crucial role in producing clear, specific laws and joint decisions of each law enforcement agency regarding the regulation of probations and sanctions that can be enforced if the guidelines are not followed effectively and appropriately. Thus, the legal product can serve as a reference for all law enforcement authorities in Indonesia as they carry out their tasks.

2. Structural Aspect (Law Enforcement)

The legal structure is one of the subsystems of the legal system that supports its maintenance. The legal structure must be able to move the legal unit, because if it cannot, it will result in noncompliance with the law, which would negatively impact the legal culture of society.[16] (Ansori, 2017).

[16]Ansori, L. Reformasi Penegakan Hukum Perspektif Hukum Prpgresif, *Jurnal Yuridis* Volume 4, Issue 2, 2017, pages 148.

Police, prosecutors, judges, and correctional personnel are the legal institutions responsible for enforcing probationary sentences on criminals. Each of the aforementioned law enforcement entities must have a thorough understanding of their separate tasks. The released implementation guidelines will eventually serve as standards for law enforcement authorities, allowing them to function as a unit within the criminal justice system.

The community will be exposed to legal ambiguity as a result of varying case-handling procedures among agencies. Internal agency regulations, such as the Regulation of the Chief of Police of the Republic of Indonesia, the Regulation of the Attorney General of the Republic of Indonesia, the Regulation of the Supreme Court, and the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia, will only compartmentalize agencies based on their respective interests. In practice, a significant number of the regulations made by the leaders of each of these agencies contradict with more stringent restrictions. For instance, the practice of the public prosecutor's obligation to apply legal remedies against a judgment imposing probation on the defendant because it conflicts with the prosecutor's desire for incarceration. This practice must be discontinued since it causes cases to be processed at a higher level for longer durations. Then, cases will be decided based on the composition and orientation of the brains of the panel of judges, which will likely create radically different outcomes. This will have a negative impact on the community and on the accused in particular, so that the goal of the law, which is to offer legal clarity, will not be achieved. This should not be permitted since it will have far-reaching effects on the Indonesian criminal justice system, in which each subsystem should be interdependent and collaborate. The purpose of punishment can only be realized if all law enforcement agencies work in unison and have a thorough understanding of probationary punishment, which is an alternative kind of punishment, and the fact that punishment is not just focused on vengeance against criminals.

3. Aspects of Legal Culture

Legal culture relates to human views, values, thoughts, and expectations towards the law and the legal system. Legal culture is the environment of social thought and social factors that determines how the law is applied, avoided, or abused. The purpose of law enforcement is to create peace in society, and law enforcement is subject to community control and influence. The relationship between legal culture and societal legal knowledge is close. A high level of public legal awareness will foster a positive legal culture and can alter people's attitudes about the law. The level of public compliance with the legislation is a basic indicator of the law's effectiveness. In this context, the community includes both criminals and their victims.

According to Fithriatus salihah, there is a gap between the growth of law and the development of society in Indonesia. Fithri noted that the disparity is between the government's principles, which are founded on a contemporary legal system, and the people's values, which are still traditional. As a result, individuals are unable to accept the modern legal system, which has resulted to a lack of legal awareness. Since legal culture, as embodied by the values, perspectives, and attitudes of the affected parties, influences the application of the law, if the legal culture is disregarded, the modern legal system will be more susceptible to failure. This is evidenced by a number of symptoms, including: (1) There is confusion about the contents of the legal regulations that are to be communicated to the public as law users; (2) there is a gap between legal ideals and community practice; and (3) the community prefers to act in accordance with the values that are used as a way of life. [17]

The contemporary perspective of the Indonesian people on punishment tends to be focused on retribution, which is a retributive view of the idea. According to the retributive idea, a convict must be isolated from society, and only after serving his sentence, he is permitted to rejoin society. This viewpoint

[17] Shalihah, F. Sosiologi Hukum, Depok, Raja Grafindo Persada, 2017, pages 62-64.

is, of course, extremely conservative in comparison to the criminal models applied by other nations, which have begun abandoning the crime of deprivation of liberty since they are deemed ineffective and have failed to lower crime rates.

Although it is feasible to use alternative sanctions against the offender, employing the retributive principle will harm him because he will be required to serve a jail sentence. In the end, the defendant must be held accountable for his actions by adhering to the views of society as a whole and cannot have the opportunity to make amends to the victim, although this can be recovered if the defendant is given the chance to do so and is given a non-prison sentence in the form of probation.

Compared to incarceration, probation is still a taboo subject and is rarely discussed in public. This punishment must be effectively socialized by the state through its tools in order to be effectively implemented, as the implementation of this punishment has proven effective in a number of other nations for reducing the overcapacity of incarcerated individuals and reducing the burden of state spending to rehabilitate incarcerated individuals.

Probationary punishment will play a part in healing and addressing the repercussions of a crime for both the victim and the larger community. This is inversely proportionate to the use of incarceration when the state accommodates the victim's interests in retaliation against the defendant. The rights of victims and society can be restored more effectively if the defendant is able to actively participate and is in good psychological health; however, this will be difficult to achieve if the defendant, while attempting to restore the rights of the victim, is in an institution that restricts its ability to actively provide restoration of such rights.

Conclusion

Compared to decisions imposing prison sentences, the current number of court decisions imposing probation on defendants is still quite low. Then, numerous impositions were founded on non-legal considerations. This occurs because the current provisions for accommodating issues that may develop in the practice of implementing probations are not obvious and ideal. In addition, this is exacerbated by the differing opinions of each current legal framework in Indonesian criminal law regarding the aim of punishment and the benefits of probation. As a manifestation of the absence of legal certainty in the Unitary State of the Republic of Indonesia, the complication of the presented challenges will ultimately have an effect on the defendant and the community.

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