



THE THEORY OF RETALIATION (STRAF RECHT THEORIEEN): CRIMINALIZATION IN ORDER TO CREATE A SENSE OF SECURITY IN SOCIETY

Henry Aspan^{1*}, Dina Andiza², ETTY Sri Wahyuni³

^{1,2}Universitas Pembangunan Panca Budi, Medan, Indonesia

³Universitas Batam, Indonesia

*¹Corresponding Author: Henry Aspan

ABSTRACT

This article aims to determine if theories of the purpose of punishment successfully alter the conduct of criminals or inmates so that they do not commit crimes against the law again and can be welcomed back into society once their sentences are completed. As part of the Verenigings Theorien system, perpetrators of criminal acts are subjected to punishments such as imprisonment or confinement where the crime represents absolute theory, as well as spiritual guidance and the provision of other sciences, which represent the relative theory, so that later on, the prisoners can have beneficial provisions to return to their previous social lives. There are many goals that must be met throughout the sentencing process in order for the penalty to be effective and serve its intended purpose. These are the goals of the punishment in question: preventing the commission of criminal acts by enforcing legal norms for the protection of the community; socializing convicts through coaching so that they become good and valuable people; resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of peace to society; releasing the convict from his or her responsibility for the crime. The four components of criminal goals are carried out via collaboration between the government and the community, ensuring that convicts do not become totally cut off from human nature during their imprisonment. As a result of this, a correctional system has been established to facilitate the implementation of crime. If someone performs a criminal act or breaches existing laws, they will be informed of the penalties they will face, and by carrying out their penalty, the violation of the law will be brought to attention via the direction and protection that he or she will get. As long as they carry out their sentence, he/she will be able to think about his acts and will be less likely to repeat them when he is freed later in life.

KEYWORDS: Criminal Law, Criminal Offense, Absolute Theory, Relative Theory, Combined Theory.

INTRODUCTION

Law is a governmental social control, as social rules and processes attempt to encourage good behavior (functional) or prohibit bad behavior (Black, 1976). On the other hand, social control is a comprehensive network, rules, and processes that bring legal consequences to certain behaviors, for example, general rules for unlawful acts. There is no other way to understand the legal system than to look at legal behavior influenced by government decisions or laws issued by competent authorities. If a person behaves in a particular manner, it is since he/she is ordered by law, or sense of the actions of a government or other official or in the legal system.

The law was created basically to maintain security and create harmony in people's lives. Although each community, with its characteristics, presents its own set of difficulties within the law

enforcement framework, each community has a common objective to establish peace in society due to formal law enforcement.

This peace can be interpreted that on the one hand, there is an external interpersonal order, and on the other hand, there is internal personal peace. For the sake of achieving order and peace, the law serves to provide guarantees for someone so that their interests are considered by everyone else. If that interest is disturbed or there is a violation of the law, then it must protect it. Therefore, the law must be implemented and enforced without discriminating against or not applying the law in a discriminatory manner.

The characteristics of law, as a rule, are always stated to be generally applicable to anyone and anywhere within the territory of the country, without discriminating. However, there are



exceptions stated explicitly and based on specific reasons that can be accepted and justified. Basically, the law does not apply in a discriminatory manner unless the law enforcement officers or organizations in the social reality have applied the law in a discriminatory manner. Finally, law enforcement does not reflect the existence of legal certainty and a sense of justice in society.

In reality, society does not demand much in the implementation of the law. They want their right to be protected is, and they can carry out their obligations without any fear of becoming a victim of a criminal act, but this is not easy to realize because the diversity of human characteristics such as ethnicity, religion, and race makes interpretations of the law sometimes misunderstood mean. Not a few small people feel that the law is only for upper-class people or people who have power, but not for poor people, so that sometimes, as a result of such an interpretation, many people take shortcuts to take anarchic actions in protecting what they do which they consider being their right.

The fatal consequences of the community's assumptions include the occurrence of vigilante acts or street justice, which is not uncommon for criminals to become victims of criminal acts, even sometimes the perpetrators of these crimes lose their lives due to their actions. Those who commit or are perpetrators of criminal acts are generally not the first to commit a criminal offense, but most of them are recidivists who repeatedly commit criminal acts so that society always acts anarchy in the face of crime events.

RQ: Is the implementation of the theories of the purpose of punishment able to resocialize the perpetrators of criminal acts?

Accordingly, the purpose of this paper is to see whether the theories of the purpose of punishment are effective in changing the behavior of criminals or prisoners so that they do not repeat acts against the law and can be accepted back into social life.

LITERATURE REVIEW

Since ancient times, people have always sought and debated the purpose of punishment. This can be seen from the thoughts of legal philosophers such as Plato, who talk about crime as special prevention and general prevention. Likewise, Sneca, a philosopher from Rome, formulated punishment with his expression, which reads "nemo prudens punit quia peccatum est, sed ne peccetur," which means "it is not appropriate for people to punish because a wrongdoing has occurred, but intending to prevent another wrongdoing."

Immanuel Kant has a way of thinking that evil causes injustice, so he must be repaid with injustice as well. Because punishment is an absolute

requirement of law and morality, this way of thinking gave birth to an absolute theory, and the basis of morality that is firmly held can be called "de Ethische Vergeldingstheorie." While Hegel had the idea that law or justice is a reality, if a person commits a crime, it means he denies the existence of law or justice, and it is considered unreasonable.

From this description, it appears that the conflict regarding the purpose of sentencing has occurred since time immemorial, namely between those who view crime as a retributive means, and they state that punishment has a positive purpose.

Purpose of Criminal Law

Determining the purpose of sentencing is a problem that is quite a dilemma, especially in determining whether the punishment is aimed at retaliating for the crime that occurred or the moral purpose of the criminal process is the prevention of anti-social behavior.

In general, it can be concluded that the purpose of criminal law is to protect the public. If someone is afraid to do not good deeds for fear of being punished, everyone in society will be safe and peaceful. On the other hand, if a person has committed a criminal act and therefore he is punished, if that person then realizes that after repenting, he will not commit such an act again, in the end, the community will be safe and peaceful. Therefore, it can also be said that the purpose of criminal law is the same as the purpose of punishment, namely, protecting the community.

The purpose of criminal law recognizes two streams for the purposes and objectives of establishing criminal law regulations, namely the classical flow and the current flow. According to the classical flow, the purpose of the criminal law arrangement is to protect individuals from the ruler's power or the state. The foundation stone was Markies van Beccaria who in his writings "Dei Delitte Edelle Pene" demanded that criminal law be regulated by written law. The writing was so influential that there was a flow in society that demanded that the criminal law be held in writing (Poernomo, 1992).

On the other hand, modern schools teach that criminal law aims to protect society against crime. In line with the above objectives, the development of criminal law must pay attention to the crime and the condition of the criminal. So this modern school can be influenced by the development of criminology, which has received less attention from the classical flow of criminal law. In addition, what is meant by protecting individuals from state power ultimately relates to the form of government of popular sovereignty with powers regulated in the law or constitution and the criminal law, which is also written in the law. So that gradually, the goal of



protecting individuals from state power shifted to protecting society from crime.

According to Van Bemmelen, the ultimate goal of criminal law is to mention and describe matters in which the government, on behalf of the authority granted by the community, relates to an order, tranquility, security, protection of specific interests, and to prevent vigilante action on the part of the population individually or as a body administration in the form of "on rechtmatige daden," and must always uphold the truth. Meanwhile, the purpose of criminal law for Indonesia is that with the blessing of God Almighty, the ideals of the Indonesian nation to realize the Pancasila society should not be hindered and hindered by criminal acts so that both the Indonesian state, society, institutions, and citizens of the Republic of Indonesia and other residents receive shelter. From these descriptions, it can be seen that sentencing has several purposes that can be classified into several theories about sentencing.

CRIMINAL OFFENSE PURPOSE

The purpose of a criminal offense needs to be known because the public must know the nature of the crime (straffen). The objectives of the crime can be seen from several theories about punishment, including the theory of retaliation (the absolute theory), the theory of objectives (relative theory), and the combined theory (verenigings theory).

THE THEORY OF ABSOLUTE (ABSOLUTE THEORIEEN)

The theory of absolute was known at the end of the 18th century, which had followers with their respective ways of thinking, such as Immanuel Kant, Hegel, Hebert, and Stahl. Basically, the flow of vengeance is distinguished by a subjective style or a subjective verification; namely, retaliation is aimed at the fault of the perpetrator because it is despicable, and an objective style (objective vergelding), namely revenge is aimed only at what actions have been done by the perpetrator concerned.

Kant thought that evil causes injustice, so it must be repaid with injustice as well. Hegel had the idea that law or justice is a reality, so if a person commits a crime, it means he denies the existence of law or justice; this is considered unreasonable. Thus the situation of denying justice must be eliminated with injustice, namely by imposing a sentence because the crime is also an injustice.

This way of thinking is dialectical, so the theory is called "de Dialectische Vergeldingstheorie." Herbert thinks that if a person commits a crime, it means that he or she creates a sense of dissatisfaction with the community. The community must be given satisfaction by imposing a sentence so that that

satisfaction can be returned. This way of thinking uses the basic principle of Aesthetica, so the theory is called "de Aesthetica Vergeldingstheorie." Stahl believes that God created the state as His representative in maintaining law and order in this world. The criminal must be punished so that legal order is restored. According to Vos, the criminal theory described by Stahl and Kant is a subjective theory of retaliation, and Herbert's opinion is included in the objective theory of retaliation. In contrast, Hegel's opinion is included in the objective, subjective theory of retaliation.

The theory of retaliation that attracts attention is the theory proposed by Leo Polak, namely that the criminal must have three conditions. First, the disgraceful act must be contrary to ethics. Secondly, the criminal must not pay attention to what might happen, but only pay attention to what has already happened occurs, and thirdly that criminals must not be punished unfairly, which means that the severity of the crime must be balanced / not less but also not more than the severity of the "verdiend leed" offense. Leo Polak's theory is known as "het leer der objectieve betreurents-swaardigheid" or "objectieveringst theory."

The theory of relative (Relative Theorieen)

The theory of relative or "relative theorieen" views punishment as not retaliation for the wrongdoing of the perpetrator but as a means of achieving a worthwhile goal to protect society towards the welfare of society. Sanctions are emphasized on their purpose: to prevent people from committing crimes, so they are not aimed at absolute satisfaction of justice (Poernomo, 1985).

There are several schools of thought that are the schools of goal theory.

(1) General Prevention/Generale Preventie

The primary purpose of the crime to be achieved is prevention aimed at the general public/everyone to violate public order. According to Vos, the most extended form of general prevention theory is in the form of a criminal, which contains a deterrent/frightening nature with its implementation in public which expects suggestions from other community members so that they do not dare to commit another crime. So that other community members can be frightened, it is necessary to carry out a deterrent criminal implementation that is carried out in public. According to this theory, such implementation views the criminal as forced to need "noodzakelijk" to maintain public order.

(2) Special Prevention/Special Preventie

The flow of special prevention has the aim of preventing the criminal from repeating the crime. Adherents of the particular prevention school include



Van Hamel from the Netherlands and Von Liszt from Germany.

According to Van Hamel, that the purpose of criminal law, in addition to maintaining public order (objective theory), also has a combined purpose of frightening (afschrikking), repair (verbetering), and for certain crimes to destroy (onschadelijkmaking).

Combined theory (Verenigings Theorien)

Hugo De Groot (Grotius) views this combined theory as a punishment based on absolute justice "de absolute gerechtigheid" in the form of limited retaliation for what is beneficial to society. It is known by the Latin name, "Punius nemoest untra meritum, intra meriti vero modus magis aut minus peccata puniuntur pro utilitate," which means that no one is punished as a reward beyond what he meant (no less or no more than his benefit).

Although criminal objectives have progressed, mainly due to the influence of the science of penology, which studies the growth, meaning, and benefits of punishment, this penology cannot eliminate the existing "Strafrechtstheorien" schools. So, since the verdict of the criminal judge was handed down, the nature of the vengeance and sorrow of the criminal was finished, and then it was only the task of guiding and fostering prisoners under the basis of punishment for "treatment."

Indonesia developed the correction effect, which began in 1964-1966, commonly known as "correctional." Correctional is a method or way of carrying out a crime with a guidance and guidance system used to deal with prisoners. In this relationship, it can be said that the idea is still based on the flow of combined criminal theory, while the implementation of the work guidelines for correctional officers, guidance, and coaching is used by the correctional system.

CONCLUSION

From the discussion above, it can be seen that Indonesia adheres to the Verenigings Theorieen system. The perpetrators of crimes are given punishments such as imprisonment or confinement. The crime represents the fundamental theory and spiritual guidance and provision of other sciences, which embodies the relative theory so that later inmates can have beneficial provisions to return to social life.

Sentencing has several objectives that must be achieved so that the effectiveness and function of the punishment itself can be achieved. The purposes of the punishment in question include: Preventing the commission of criminal acts by enforcing legal norms for the protection of society; Socializing the convicts by conducting coaching so that they become excellent and valuable people; Resolving conflicts caused by criminal acts, restoring balance, and

bringing a sense of peace in society; Release the guilt of the convict.

The four elements of criminal objectives are carried out through cooperation between the government and the community so that prisoners cannot be separated from human nature. The process of implementing such a crime is formulated in the form of a correctional system. It is so that the public is aware of their rights and obligations as citizens, where if they commit a criminal act or violate existing laws, they are aware of the sanctions they will receive. By carrying out the punishment, the violator of the law can be aware through the guidance and protection they receive can as long as he carries out their punishment to reflect on these actions and not repeat them when he is free later.

In addition, the government should also need to give a deep appreciation for this resocialization process so that former prison inmates do not repeat their actions that violate the law, for example, such as creating decent jobs where they can appreciate the skills they got in prison so that people are not restless for their existence. This is because the ex-convicts often repeat their actions because of the difficulty of finding work or gaining the community's trust.

However, there are many obstacles to realizing these goals. One of which is the attitude of the people who tend to be antipathetic towards recidivists. So that many of those who have been in prison feel ostracized and unappreciated (stigmatization), or are even called scum of society. On the one hand, these ex-convicts feel that their actions have been paid for by the loss of their right to freedom for a long time, and in losing their right to freedom, they have also reflected on the mistakes they have made.

SUGGESTIONS

Following the theories that have been put forward above, both in the discussion section and in the conclusion section, that from several theories put forward by legal experts, it is clear to us that what is the purpose of the punishment which is essential to provide a sense of security to the community and the community. The perpetrator is not retaliation for what he/she has done, but there is a deterrent effect for every community not to commit the crime. So that with this, it can minimize criminal acts amid a society which in the end can create harmony in society, where this is always associated with legal developments, both written positive law and unwritten positive law.

REFERENCES

1. Ansharullah Ida. (2020). *Potential Corruption of Criminal Acts in the Procurement of Government Goods or Services and Their Efforts. Internation*



- Journal of Advance Research and Innovative Ideas in Education*, 6(4), 1755-1764.
2. Black, D., (1976), *Behavior of Law*, London, New York, & San Fransisco: Academic Press.
 3. Lindu Deni, Jemmy Rumengan, & Fadlan. (2020). *Juridical Analysis of the Police Role in the Resolution of the Mild Theft Problem Through the Mediation of Penal: a Research Study in the Sagulung Police*. *Internation Journal of Advance Research and Innovative Ideas in Education*, 6(4), 197-207.
 4. Masdin Saragih. (2021). *Juridical Review of the Crime of Rape Against Biological Children*. *Internation Journal Of Advance Research And Innovative Ideas In Education*, 7(4), 1463-1468.
 5. Novelina Mutiara Sariati Hutapea. (2021). *Jurisdictional Review of the Perpetrators of the Dissemination of Customer Data Committed by Online Loans*. *Internation Journal of Advance Research and Innovative Ideas in Education*, 7(2), 1623-1627.
 6. Poernomo, B., (1985), *Asas-asas Hukum Pidana*, Jakarta: Ghalia Indonesia.
 7. Ramlan. (2020). *Calculation of State Financial Losses in Corruption-Criminal Investigation (Study in North Sumatera Regional Police)*. *Internation Journal of Advance Research and Innovative Ideas in Education*, 6(4), 1765-1774.
 8. Ramlan, Ansharullah Ida, Ramon, Ramon Nofrial, Dahlan, Darwis Anatami, & Risna Rahadian. *Criminological Perspectives on Theft at Night as Theft With Weighting*. *International Journal of Research and Review*. 2020; 7(8): 344-351.