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IDEAL IDEAS FOR PENAL EXECUTION REFORM

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ABSTRACT- *In criminal law policy, the stage of the execution of penalties. Problems in the execution of criminal law can be examined using a comparison of criminal law. Codification of the execution of criminal law is a form of the idea in the reform execution of criminal law, and this is interesting to do because the existing conditions of legislative policy in Indonesia currently do not have a codification of the law on criminal conduct. The codification model chosen is the open codification model. The execution of criminal law code contains the implementation of criminal sanctions for all types of sanctions provided in the draft Penal code but still opens the possibility for the address of criminal law outside the execution of criminal law code. This idea is logical because the draft Penal code opens the opportunity for the address of law outside the draft Penal code, which of course, can contain a type of criminal sanctions beyond those stipulated in the general part of the draft Penal code. In this legal research, the author uses a variety of normative juridical research that is legal research that examines law from an internal perspective, with the object of its study being the legal norm. Normative legal analysis is legal research that uses secondary data sources in the form of legislation, legal theory, opinions of individual scholars.*

Keywords- *ideas, execution, criminal, law, reform*

I INTRODUCTION

Many countries have codified(Cao & Hebenton, 2018) criminal(Marenin, 2019) law(Perales, 2014). Meaning that many countries not only have a penal(Necula, 2014) code and code penal procedure but also have penal code execution. The practice of legislation in various countries, not only has the Penal Code (KUHP) and the Penal Procedure Code (KUHAP) but also has a Penal Code Execution (KUHPP), and this is where criminal(Goldman, 2018) law plays its role(Herber, 2015). In the stage of criminal(Varner, 2018) law policy, the code of criminal conduct works at the scene of criminal execution. (Salmon & Shniderman, 2019) Criminal law enforcement has currently spread in various rules and regulations, including:

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1. The Penal Code (KUHP);
2. The Penal Procedure Code (KUHAP);
3. Law Number 20 of 1946 concerning the Closing Penalty;
4. Perppu No. 18 of 1960 concerning Amendments to the Amount of Fines in the Criminal Code and in Other Criminal Provisions Issued Prior to August 17, 1945, as determined by law under Law No. 1 of 1961 concerning the Stipulation of All Emergency Laws and All Government Regulations in Lieu of Existing Laws Before 1 January 1961 Becoming Laws;
5. Law Number 2 PNPS of 1964 concerning Procedures for the Implementation of Death Penalty handed down by Courts in the General Courts and Military Courts;
6. Law Number 12 of 1995 concerning Corrections;
7. Law Number 22 the Year 2002 concerning Clemency jo. Law Number 5 of 2010 concerning Amendment to Law Number 22 of 2002 concerning Clemency;
8. Law Number 11 of 2012 concerning the Juvenile Criminal System;
9. Government Regulation Number 8 of 1948 concerning Closing Houses;
10. and others.

The various rules of criminal execution(Li, 2017), as stated above, show that the legislative policy in execution of criminal law is not currently formulated in a codification as in the material criminal law and formal criminal law in the form of the Penal Code and the Penal Procedure Code. (Hernández, 2019)

II FORMULATION OF THE PROBLEM

One of the problems in the execution of criminal law that can be assessed using a comparison of criminal law is the "codification" of criminal law as a form of the idea in the reform (Varner, 2018)execution of criminal law(Zhang, 2017), interesting to do because the conditions of existing legislative(Necula, 2014) policies in Indonesia currently do not have a codification execution of penal code. (Widyawati, 2019)

III METHODS

In this legal research, the author uses normative juridical analysis that is legal research that examines law from an internal perspective with the object of its study being the legal norm(Bhattacherjee & Shrivastava, 2018). Normative legal analysis is legal research that uses secondary data sources in the form of legislation, legal theory(Wenzel, Koch, Cornelissen, Rothmann, & Senf, 2019), opinions of individual scholars. In other words, normative legal research is legal research conducted by researching library material. In the normative juridical legal analysis, library material is the necessary data in a study classified as secondary data, which views the law as positive norms in the national legal system(Gřivna & Drápal, 2019) of legislation. Normative legal research

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uses library materials(Wenzel et al., 2019) or secondary data consisting of primary legal documents and is assisted using observation and interviews to strengthen secondary data. (Latifiani, 2019)

IV DISCUSSION

Execution Of Criminal Law in Comparative Perspective Law of Execution Of Criminal Law

The use of comparative(Zhang, 2017) criminal law(Perales, 2014) to understand a particular problem in criminal law is essential to do considering "crime" as a universal phenomenon, as Seiichiro Ono said, "a universal phenomenon." Various conferences and international conventions relating to the issue of crime become the basis of comparison of criminal law has an important role (Persak, 2019). Various countries that have the Criminal Code as a codification of criminal law include Tajikistan, Norway, Kosovo, Federation of Bosnia and Herzegovina, Croatia, Iceland, Estonia, Serbia, Republic of Macedonia, Georgia, Turkey, Sarajevo, and others. This paper tries to present some of the code execution (Morita, 2018)penalties(Mungan, 2017) above in the description below:

1. Republic of Tajikistan

The Constitution Republic of Tajikistan stipulates "The Fundamentals of The Constitution System," which places Tajikistan as a democracy as well as a nomocracy, clearly stated in Article 1 of the Constitution of the Republic of Tajikistan. Tajikistan, as a law-based country, implies that everything must have based on law. In the prevention of crime created several regulations on offense as a guideline for law enforcement officials including the Criminal Code of the Republic of Tajikistan," Code of Penal Procedure of the Republic of Tajikistan (KUHAP Tajikistan)," and the "Penal Executive Code of the Republic of Tajikistan (KUHPP Tajikistan)"

In general, the Penal Code of Tajikistan consists of 2 (two) parts/books. Book I contains knowing "General Part" and Book II about "Special Part." In Part, I can be said to contain general provisions and principles(Szczucki, 2018) in criminal law. In this section, there are general provisions, the legal(Goldman, 2018) status of the person convicted, as well as the institutions and agencies responsible for carrying out the criminal offenses and overseeing the activities they (the agency) carry out.

In Chapter I, there are 14 general provisions, namely Article 1-14. The Penal Code of Tajikistan has based on the Constitution of the Republic of Tajikistan. The source of criminal law in the Republic of Tajikistan consists of the Criminal Executive Code of the Republic of Tajikistan (KUHPP) and statutory regulations outside the Criminal Code, has expressly stated in Article 1 paragraph (1) of the Penal Code of Tajikistan, "The criminal executive legislation Republic of Tajikistan has based on the Constitution Republic of Tajikistan and consists of the present Code and other laws." In this chapter, the results of the criminal law have formulated, have formulated in the "goals of the criminal executive legislation of the Republic of Tajikistan," which is to improve the convicted person and prevent the crime committed both by the convicted person and others.

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Other exciting things contained the Penal Code of Tajikistan in Part I are some general principles of strict criminal law formulated, including:

a. Principle of Legality

This principle has contained in Article 8 of the Penal Code of Tajikistan. Paragraph (1) of the Article emphasized that the implementation(Plettinckx, Antoine, Gremeaux, & Van Oyen, 2018) of sentence execution should have based in obligatory observance of laws, as well as, the Officials of the executors have the responsibility to ensure their activities is legally by such laws and regulations. Furthermore, Paragraph (2) and Paragraph (3), in the same context, also highlighted that the rights of a convicted person, which is all requirements to execute someone, should be fulfilled and clearly stated in the laws and regulations.

This principle can have said as a fundamental essence or basic idea of the birth Criminal Executive Code of the Republic of Tajikistan. This principle guides all actions of state institutions, agencies, and authorities that have authority in the commission of a crime must be based on established legal rules. In other words, the rule of law becomes a source of validity (lawfulness) of all actions taken by the authorities in the stage of criminal conduct.

b. The Principle of Equality before the Law. In Article 9 of the KUHPP Tajikistan this principle is formulated as follows: "The order and conditions of execution of a sentence shall be determined irrespective of social, official and property status, political convictions, type and character of convicted person's occupation before committing a crime, race, nationality, citizenship, education, language, religious affiliation and other circumstances ".

This principle provides a guideline that everyone must be treated equally before the law, including when undergoing a crime. Officials at the level of criminal conduct must be fair, with no discrimination based on social status, position, wealth, occupation, race, nationality, education, language, religion, and other circumstances.

c. The Principle of Humanity

This principle has contained in Article 10 of the Penal Code of Tajikistan. This principle guides so that criminal conduct must pay attention to the human aspect. Violent, cruel, inhumane, and degrading acts of dignity and dignity have prohibited criminal offenses in Tajikistan. The article states, "It shall be strictly prohibited to subject convicted persons to tortures or cruel, inhumane and degrading his dignity treatment, medical or any other scientific experiments, regardless of his consent, which may endanger his life and health."

d. The Principle of Democracy

The Republic of Tajikistan is a democratic country that has expressly stated in Article 1 of the Constitution of the Republic of Tajikistan, the basis for the birth of the Principle of Democracy in Article 11 of the KUHPP Tajikistan. This principle accommodates public initiative and participation in efforts to improve the convicted person. The publicization of the public and the mass media is a partner for government institutions and agencies that are authorized to carry out criminal offenses.

e. Principle of Justice (Shahbazov, 2019)and Stimulation of Law-Abiding Conduct

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In Article 12 of the Tajikistan Criminal Code, this principle has contained. For more details, the redactional article cited paragraph (1) Conduct of convicted persons while serving their sentence, observance of the established rules, attitude to labor, and study shall be taken into account while changing conditions of detention, extending or reducing limitations of rights within limits specified by law. Paragraph (2) While making decisions on the application of stimulation and punishment(Mungan, 2017) measures on convicted persons, officials shall be impartial and governed only by the law.

f. Principle of Differentiation and Individualization of Execution of a Sentence

This principle can have found in Article 13 of the Tajikistan Criminal Code. This principle emphasizes that the implementation of criminal offenses is carried out in accordance with the requirements of differentiation and individualization, taking into account the "character and degree of public danger" of the crime committed, the personality of the convicted person, behavior while undergoing the crime, the attitude of the convicted at work, and other circumstances that must be considered.

2. Norway

Norwegian material criminal law contained in the "The Norwegian Penal Code," which was last amended by "Act of 21 December 2005 No. 131 ". Norway's formal criminal law has regulated in "The Norwegian Criminal Procedure Code," while the criminal law contained in "Act of 18 May 2001 No. 21 relating to the Execution of Sentences Act (Norwegian KUHPP).

The Anatomy of the Norwegian Criminal Code consists of Chapter 1. The scope of the Act and general principles for the execution of sentences (Sections 1 - 4), Chapter 1 A. The Norwegian Correctional Service's processing of personal data (Section 4a-4e), Chapter 1B. Processing of personal data in the Infoflyt system (Section 4f-4k), Chapter 2. Administrative provisions, etc. (Sections 5-9), Chapter 3. Sentences of imprisonment, preventive detention, and specialized criminal sanctions(Zhang, 2017) (Section 10-45), Chapter 4. Remand in custody and other sanctions when specifically so provided by the statute (Sections 46-52), and Chapter 5. Community sentences (Sections 53-60).

The Norwegian KUHPP, as the parent of criminal law, regulates a variety of criminal offenses, including imprisonment, special criminal sanctions, community sentences, remand in custody, and other sanctions when specifically so provided by statute.

Another necessary thing stipulated in the Norwegian Penal Code is the purpose of criminal law. These objectives have set in "Section 2. Purpose". Criminal offense is carried out by taking into account the purpose of a criminal action, to prevent the commission of further criminal acts. Unlike the Penal Code of Tajikistan, which explicitly establishes various general principles of criminal conduct, in the Norwegian Penal Code, the principles are not stated verb expressively. However, if the formulation of the article in the Norwegian Penal Code has explored in more depth can be found various general principles that underlie it. To mention a few of them:

a. Principle of Legality

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The principle of legitimacy in the execution of criminal sanctions(Kalvodová & Žatecká, 2014) in the Norwegian Penal Code can have found in Section 1. About the Scope of the Act.

"This Act applies to the execution of sentences of imprisonment, special criminal sanctions, preventive detention, community sentences, and remand in custody, and the execution of other sanctions when specifically so provided by statute."

The above provisions stipulate criminal offenses in Norway based on the Norwegian Penal Code. The Norwegian Criminal Code as a source of law provides the basis for the legitimacy of imprisonment, special criminal sanctions, community sentences, remand in custody, and other special sanctions provided by law.

b. Legal Principles of Criminal Implementation are goal-oriented

This principle can have concluded with the provisions of Section 2. About Purpose. Criminal offenses must always keep in mind the objectives to be achieved. Namely, that serves to prevent the commission of further criminal acts, that within this framework provides satisfactory terms for the prisoners(Sousa, Gonçalves, Cruz, & de Castro Rodrigues, 2019).

c. Principle of Reintegration of Actors into the Community

Section 3. of the Norwegian Penal Code, it says, "Sanctions shall have executed in a manner that satisfies the need for security. The substance thereof shall have based on measures available to the Norwegian Correctional Service for assisting a convicted person in adjusting to society ". During the criminal proceedings, steps or actions need to be taken that help the convicted person to improve to the community.

d. and so forth.

3. Republic of Kosovo

The Republic of Kosovo has a codification of material, formal, and formal criminal law. Kosovo's material criminal law has regulated in the Criminal Code of the Republic of Kosovo Code No. 04 / L-082 (Kosovo Criminal Code). The formal criminal law of the Republic of Kosovo has formulated in the Procedure Code of the Republic of Kosovo, Criminal No. 04 / L-123 (Kosovo Criminal Procedure Code). As for the criminal law formulated in the On Execution of Penal Sanction of the Republic of Kosovo, Law No. 04 / L-149 (Kosovo Criminal Code).

Kosovo KUHPP has 254 articles divided into 6 (six) sections, namely Part One - General Part, Part Two - Execution of Principal Punishments(Ambrus & Greiner, 2019), Part Three - Execution of Alternative Punishments, Part Four - Execution of Accessory Punishments, Part Five - Executive Bodies to Execute Penal Sanctions and Part Six - Transitional and Final Provisions.

In general, the Kosovo Criminal Code has provided complete arrangements including:

a. General rules or necessary provisions which include, among other things, the purpose of criminal conduct, guidelines for criminal behavior and so on;

b. Execution of Principal Punishments in the form of rules on the implementation of life imprisonment and life imprisonment, as well as the application of criminal fines;

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c. Execution of Alternative Punishments in the form of suspended sentences, suspended sentences with requests for mandatory rehabilitation treatment, suspended sentences with rules for supervision by the Probation Service, suspended sentences with rules for community service work, and imprisonment in semi-liberty.

d. Execution of Accessory Punishments in the form of deprivation of the right to be elected, a prohibition on carrying out public administration or public service functions, prohibition on carrying out a profession, certain activities or duties / obligations, prohibition on driving a motorized vehicle, confiscation of a driving license, seizure of objects, order announcements of decisions, expulsion of foreign nationals from the Kosovo territorial territory, the implementation of obligations for treatment / treatment, the application of imprisonment for minor violations, the form of fines with fines and protective measures provided for minor offenses, etc.

e. and so forth

Article 4 of the Kosovo Criminal Code sets out the objectives of implementing criminal sanctions namely Resocialization and Reintegration of the convicted person into the community, preparing the perpetrators to be able to carry out their lives in a way that is socially responsible, protect the community by preventing further criminal acts(Maeder, Yamamoto, & Zannella, 2016), and detain others to commit criminal acts . Similar to the Norwegian Penal Code, the General Principles of Kosovo Criminal Law Implementation are not regulated verbs expressively but are behind the formulation of legal norms of criminal conduct.

The following has mentioned:

a. Principle of Legality in Criminal Procedure

The principle of legality does not only exist in material criminal law, in the code of criminal conduct, there is also the principle of legality. In the Kosovo KUHPP, this principle has contained in Article 2 paragraph (1) and (3). In paragraph (1), it says Penal sanctions shall have executed by the present Law. In paragraph (3), the said Execution of mandatory treatment measures of rehabilitation shall be carried out by the current Law.

b. Principle of Implementing Sanctions Based on Human Rights

In the "Guiding Principles," this principle is contained therein. In that part, it is clearly stated: first, criminal sanctions must be carried out in such a way as to guarantee human actions and respect for the dignity of each individual. Second, the convict is not subject to torture, inhuman treatment, or degrading treatment. Third, criminal sanctions must be carried out with absolute impartiality. No one can have discriminated against based on race, color, sex, language, religion, political opinions or other, political or different views, social(Marenin, 2019) and national origin, social membership, wealth, economic and social status, sexual orientation, birth status, disability or another personal status in Kosovo. Fourth, during the implementation of criminal sanctions, the rights of the convicted person must always be respected. These rights can only be limited to the extent necessary for the implementation of criminal sanctions by applicable law and international human rights standards.

c. Principles of Reintegration and Resocialization of Actors to the Community

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Still in the "Guiding Principles," there are principles of reintegration and renaming of actors to the community. In one of the formulations, it has said that the goal of rehabilitation and resocialization of convicted people must be pursued as an urgent need and regulate the participation of public and private institutions or bodies, as well as individuals, in the reintegration process, has concluded with the norm that states the execution of sanctions and should, as far as possible, stimulate the participation of the convicted person in his or her own social reintegration and re-socialization.

d. and so forth.

Ideal Idea for Legal Reform of Criminal Enforcement

Legal reforms(Cao & Hebenton, 2018) have been carried out in Indonesia, but the reform(Polcin, 2018) has been carried out using a partial approach(Bhattacherjee & Shrivastava, 2018), focusing on reforming the implementation of "certain types of criminal sanctions (strafsoort)." This partial reform(Then, Carney, Bigby, & Douglas, 2018) is, for example, carried out in terms of legislative policies as follows:

1. Reform of imprisonment carried out by stipulating Law Number 12 of 1995 concerning Corrections which in this case replaces the prison(Sousa et al., 2019) system regulated in Ordonnantie op de Voorwaardelijke Invrijheidstelling (Stb. 1917-749, 27 December 1917 jo. Stb 1926- 488) along with regard to correctional facilities, Gestichten Reglement (Stb. 1917-708, 10 December 1917), Dwangopvoeding Regeling (Stb. 1917-741, 24 December 1917) and Uitvoeringsordonnantie op de Voorwaardelijke Veroordeeling (Stb. 1926-487, 6 November 6) 1926) insofar as it relates to correctional matters;
2. Renewed implementation of the death(Miao, 2016) penalty with Presidential Decree Number 2 of 1964 concerning Procedures for the Death Penalty Dropped by the Courts of the Public and Military Courts, previously the implementation of the capital punishment was carried out based on Article 11 of the Criminal Code;
3. And so on

Some of the policy formulation portraits above show that in the realm of ius constitutum, reform of criminal acts has been carried out in a partial form. Such a policy choice seems to be something that the Government intends to maintain, as evidenced by the Draft Law on the Correctional System that was compiled to renew the implementation of imprisonment contained in Act Number 12 of 1995 concerning Correctional Facilities. The reform of criminal law(Rustigan, 1980) in the field of criminal law implementation in Indonesia shows a fundamental difference with the reform of material and formal criminal law, which is carried out thoroughly with the Draft Law on the Criminal Code and the Draft Law on Criminal Procedure. A comprehensive reform of the three areas of criminal law should be carried out both in material, formal, and criminal law. Such reform is said to be the "ideal idea." As Sudarto said: Reform of criminal law as a whole must include reform of material criminal law (substantive), formal criminal law (criminal procedural law), and criminal law execution (strafvollstreckuengsgesetz). The three areas of criminal law must be jointly updated. If only one of the fields is

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updated and the other is not, difficulties will arise in its implementation, and the goals of the reform will not have fully achieved. The primary purpose of the reform is overcoming crime. The three fields of law are very closely related.

The codification of criminal law execution can be the ideal policy chosen. (Widyawati, 2019). Moreover, a comparative study of criminal law above shows that many countries already have a penal code. Michael G. Faure, a professor from Maastricht University, said codification was the final form of a process of harmonizing laws and regulations that sought to gather applicable rules into one document. Therefore, codification has often considered a form of restatement of the standards currently in force. The opinion of Justice from Nicholas Kasirer from McGill University, codification as a modem legislative technique, and on how historically contingent this legal technique may result in fact.

Codification, as a legislative technique, provides many benefits. Finbarr McAuley, on one occasion, explained: Codification is associated with the civil law legal tradition of continental Europe, but it also has deep roots in the common law going back to the early decades of the 19th century. In both legal traditions, the aims of criminal law codification have remained more or less constant since the first modern codes:

1). to bring order to the sources of criminal law by eliminating confusion and uncertainty;

2). to improve access to the criminal law by digesting it into a single authoritative instrument;

3). to reinforce the democratic legitimacy of the criminal law by recasting it in a modern enactment binding on judges and citizens alike;

4). to enhance comprehension of the criminal law by rendering it in a uniform drafting style and intelligible idiom; and

5). to promote conceptual consistency in the interpretation and application of the law by standardizing the meaning of key terms used across the spectrum of criminal offenses.

The codification of the criminal law will thus make the criminal law more certainty because it makes the criminal law clearer and makes criminal law more easily accessible. The public, in general, will easily find the rule of law for criminal conduct (it would make it easier to find the relevant legislation). Why is it more comfortable because the criminal law can be directly observed and read in the "Criminal Code Law."

In principle, the codification of criminal law is not merely a "gathering" or "compiling" of legal norms of criminal conduct, but rather as a formulation policy(Persak, 2019) that contains a nation's intellectual conception of how a crime(Schröder, 2019) is carried out under the values that live in the community. So that the Criminal Code includes the mental understanding of the Indonesian people about how the crime was carried out. KUHPP can also have said as an "intellectual revolution" of the Indonesian people towards the current regulation, which is incomplete towards codification, which has systematic and holistic characteristics.

The codification model chosen was the open codification model. The Penal Code (KUHP) contains the implementation of criminal sanctions for all types of sanctions provided in the KUHPP but still opens the opportunity for the birth of criminal law outside the Criminal Code. It is logical because the KUHPP opens the

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possibility for the delivery of law outside the KUHPP in which of course, can contain a type of criminal sanctions beyond those already stipulated in the general part of the KUHPP.

V CONCLUSION

The scope of material contained in the Criminal Code in the future generally includes how criminal sanctions are carried out. Regarding the range that needs to be in the Criminal Code, among others:

1. The book I about General Conditions (General Part) which contains the understanding of the terms used in the Criminal Code, the principles of penal execution; the purpose of criminal offenses and guidelines on criminal conduct in Indonesia; and

2. The Book II of the Special Rules (Special Part) which contains the material to be regulated includes: various norms of the implementation of criminal sanctions against various types of criminal sanctions that exist in draft the penal code, including the application of imprisonment, execution of criminal cover, implementation of criminal supervision, implementation of criminal fines , the implementation of social work crime, the criminal conduct of revocation of certain rights, the application of criminal confiscation of certain goods and / or bills, the application of criminal announcements of judges' decisions and so forth; as well as the authority, duties and functions of various criminal offenses; transitional provisions and so forth.

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