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Relevance of Life Prison in View from the Purpose of Criminal

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Abstract

Forms of imprisonment are divided into 2 (two), namely imprisonment for a certain time and imprisonment for life. Life imprisonment is a prison sentence that is served by the convict by remaining in prison until his death. This research is a legal research that uses a statutory approach, and a conceptual approach is used to find out the effectiveness and efficiency of life imprisonment as a form of punishment. This research also describes the ineffectiveness of life imprisonment and seeks to describe forms of punishment that are more appropriate to be carried out in this modern era for the sake of upholding justice and achieving the goals of punishment.

Keywords: Efficiency, Life Imprisonment, Effectiveness, Purpose of Punishment

Introduction

According to the Sovereign of Law Theory or *Rechts-souvereiniteit*, the law itself has the highest authority in a country (Soehino, 2000: 156). As the law is made by the ruler or the state, of course it gives enthusiasm and protection to every citizen so as to

create social justice for all citizens, the positive law that exists is a form of protection from the arbitrariness of the ruler to the people, the spirit that is carried is by the existence of egal certainty. what is clear, the existence of a positive law can be known for some actions that are allowed and some actions that are prohibited in the existing system. However, positive law cannot be applied according to its own will by government power, but there is a tendency to pay attention to the legal sense or legal awareness of the community (Soehino, 2000: 158). One of the concepts of a rule of law is the protection of human rights. Talking about upholding human rights in criminal proceedings, legal certainty must also be found, so that justice can be realized for everyone who intersects with the law.

The Unitary State of the Republic of Indonesia as a rule of law country is stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI), as is the concept of a rule of law state *(Rechstaat*) where all actions within the state must be governed by law and the existence of the rule of law. This is in line with the aim of the Indonesian State as stated in the 4th paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia which is to protect the entire Indonesian nation, which also protects from the law enforcement perspective. To realize these ideals, the state must make a public rule that applies, applies to all its citizens. The rule was made solely to regulate social conditions so that all basic rights of citizens are fulfilled. One of the rules that can be made by the state and are public is a rule that contains criminal law.

The definition of criminal according to Simons, the deceased (Utrecht) in his book *Leerboek Nederlands Strafrecht* 1937 is as follows: "Criminal law is all the orders and prohibitions imposed by the state and which are threatened with a (criminal) sorrow for those who do not obey them, all the rules that determine the conditions for the consequences of that law and all the rules for carrying out (impose) and carry out the sentence" (Soehino, 2000: 7). Criminal law, in general, s used to determine which actions may not be carried out, which are prohibited accompanied by threats or sanctions for those who violate them. As a rule that contains sanctions, the criminal law certainly has the goal of establishing these sanctions for those who violate them. Sanctions in criminal law are also known as criminal sanctions. The purpose of criminal sanctions according to Bemmelen is to maintain public order and has a combination of goals to frighten, improve, and for certain crimes destroy(Ali, 2008: 137). Sanctions can also be said in everyday language as punishment, a logical consequence when something in a regulation or mutually agreed upon rule is violated. Punishment is a general and broader sense, namely as an unpleasant sanction that is intentionally inflicted on someone. Meanwhile, criminal is a special understanding relating to sanctions in criminal law. Although there is also a similarity with the general meaning, namely as a sanction in the form of an act of suffering or anguish (Hamzah, 1985).

In Indonesia, the legal rules for the material application of criminal law are contained in Law Number 1 of 1946 (UU No 1/1946) concerning Criminal Law Regulations or also known as the Criminal Code (hereinafter referred to as the Old Criminal Code). The Old Criminal Code was a legacy law from the colonial period, namely *Wetboek van Strafrecht voor Nederlandsch-Indie (WvS NI)*. The ratification was carried out through the Staatsblad of 1915 number 732 and came into effect on January 1, 1918. Law Number 1 of 1946 concerning Criminal Law Regulations also is the legal legality of changing *Wetboek van Strafrecht voor Netherlands Indie to Wetboek van Strafrecht (WvS*), which initially only applied to the regions of Java and Madura, while the Enforcement of the Criminal Code in all regions of the Republic of Indonesia was only carried out on September 20, 1958, with the promulgation of Law no. 73 of 1958 concerning Declaring the Applicability of Law Number 1 1946 concerning Criminal Law Regulations for the Entire Territory of the Republic of Indonesia and Amending the Criminal Code. As stated in Article 1 of Law no. 7 of 1958 which reads: "Law No. 1 of 1946 of the Republic of Indonesia concerning Criminal Law Regulations declared applicable to the entire territory of the Republic of Indonesia".

Then in early 2023, Indonesia brought a new history of criminal law renewal with the promulgation of Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the New/National Criminal Code), on January 2, 2023 and came into force after 3 (three)) years from the date of promulgation (Article 624 of the New/National Criminal Code).

For now, life imprisonment is still maintained as a form of punishment, both in the Old Criminal Code and the New/New National Criminal Code, both of which still recognize life imprisonment. In this context, life imprisonment (hereinafter referred to as "life imprisonment") indirectly seriously injures human rights, because the simple meaning of imprisonment is to deprive a person of liberty and freedom as a consequence of a violation of a established rules. It can be explained that life imprisonment, means that a person will spend the rest of his life in a restrained manner, and tormented because his freedom has been taken away. If we look at it in more detail, of course, the convict will feel very tormented in fulfilling his human needs, a simple example is the fulfillment of biological/sexual needs. This not rarely causes deviant behavior, namely homosexuality among male convicts and also lesbian deviant behavior among female convicts.

Conceptual debates around the use of life imprisonment as a means of overcoming crime have emerged since the development of a treatment philosophy in punishment. The debate about life imprisonment is increasingly sharpened along with the increasing global issue of human rights (Tongat, 2005: 5). The persistence of life imprisonment in the criminal system in Indonesia does not mean that life imprisonment has been accepted by society. Many parties objected to the maintenance of the well of life punishment because it was not considered in accordance by the idea

of correctional, namely because with such a decision the convict would have no hope of returning to society (Saleh, 1987: 62).

Through the spirit of rehabilitation, apart from not being able to fulfill life imprisonment, life imprisonment also directly or indirectly greatly affects the people closest to the convict, especially people whose lives depend on the convict. There are 3 (three) fundamental reasons for the importance of studying life imprisonment in Indonesia (Samosir, 1992: 45).

> **First,** life imprisonment as part of imprisonment is not a type of crime that originates from criminal (customary) law in Indonesia, but originates from Dutch criminal law. As a type of crime that is not rooted in the social values of Indonesian society, imprisonment, including life imprisonment, is very urgent to be adapted to the socio-cultural values of Indonesian society**. Second,** existing legislative policies on life imprisonment contain philosophical contradictions. Philosophically, imprisonment is only temporary, as a place to prepare convicts for social adaptation. Life imprisonment so far tends to be oriented towards protecting society, which is a reflection of the function of punishment as a means of preventing crime. Meanwhile, the protection of individuals has received less attention. **Third**, the protrusion of one aspect with ignoring other aspects, both individuals and society in formulating sentencing goals, not in accordance by the values that live in Indonesian society which is based on Pancasila which prioritizes justice.

The spirit of criminal law, both material and formal criminal, carries protection for the perpetrators of criminal acts to obtain legal certainty and justice related to the legal problems they suffer. Even so, the criminal law also does not rule out the responsibility of the perpetrator for violating existing criminal provisions. With various considerations regarding the types of punishment that exist in the Criminal Code, the form of life imprisonment must be corrected along with the renewal of criminal law in today's modern times. This research will also discuss several examples of cases that are closely related to life imprisonment in terms of legal certainty and justice.

Based on the above, there are conceptual problems that are interesting for deeper analysis, namely: First, is life imprisonment still relevant as a form of punishment? Second, what is the effective and efficient form of punishment in today's modern era?.

The type of legal research used in this study is a type of normative legal research, which aims to examine positive legal provisions, in this case, criminal law as a source of law. This legal research uses a statute approach, then the legal norms/rules are explained through existing legal concepts so that this research also uses a conceptual approach, besides that this legal research also conducts a review of court

decisions dropped in the process of seeking justice in a case so that this legal research also uses a case approach.

Discussion and Result

Relevance of Life Imprisonment as a Form of Punishment

Talking about sentencing that ends in legal certainty and justice, it is necessary to first discuss the crime itself. According to Moeljatno, criminal law is part of the overall law in force in a country, which provides the basics and rules for (Moeljatno, 2000: 1):

1. Determining which actions may not be carried out, which are prohibited, accompanied by threats or sanctions in the form of certain penalties for anyone who violates the prohibition;
2. Determine when and in what cases those who have violated these prohibitions can be imposed or sentenced to punishment as has been threatened;
3. Determine in what way the imposition of punishment can be carried out if there are people who are suspected of having violated the prohibition.

After departing from the theoretical basis regarding criminal law which in general is a form of determining someone, then a number of introductions regarding the theories that apply in sentencing a person will be presented. Sentence and pattern, is a very important thing, especially in the judicial process. A judge has enormous authority, in determining the fate of a person, in a sense, to determine his life and freedom. The application of this authority in a reasonable manner is the hope of all parties in society. From a judge it is hoped that justice will occur which is truly reasonable and considered proportional (Soekanto, 1982: 27). From normative and sociological legal studies, sanctions are an important factor in enforcing a rule, because criminal law is a coercive public law, the application of sanctions is the main goal.

Regarding the purpose of sentencing, it can be classified into three types of theories, namely the theory of retaliation (absolute theory), the theory of objectives (relative theory) and the combined theory (Kanter & Sianturi, 2002: 59). It is very interesting to study further about the combined theory of sentencing. With the development of sentencing objectives, it is directly influenced by modern schools (Tongat, 2005: 61) This flow arose in the 19th century with its figures Lambroso, Lacassagne, Ferri, Von List, A.Prins and Van Hamel. In contrast to the classical school, this school is oriented towards the perpetrators of criminal acts and requires individualism from the criminal, meaning that in sentencing the characteristics and circumstances of the perpetrators of the crime must be considered. This flow is also called a positive flow because in searching for the causes of crime it uses natural science methods and intends to directly approach and positively influence criminals (influence the perpetrators of criminal acts in a positive/better direction) as long as

they can still be corrected. With such an orientation, the modern school is often said to have an orientation to the future.

Examine the forms of criminal sanctions contained in the Old Criminal Code and the New/National Criminal Code. It can be seen in Article 10 of the Old Criminal Code, while in the New Criminal Code it is regulated in Article 64, Article 65, Article 66 and Article 67. That is described as follows:

Table 1:
Differences in the Types of Criminal Sanctions in the Old Criminal Code and the New Criminal Code (National)

Type of Criminal	Old Criminal Code (Article 10)	New/National Criminal Code (Article 64, Article 65, Article 66 and Article 67)
Principal Crime	Death Penalty	Imprisonment
	Imprisonment	Closing Crime
	Criminal Cage	Supervision Crime
	Criminal Fines	Criminal Fines
	Closing Crime	Social Work Crime
Additional Criminal	Revocation of certain rights	Revocation of certain rights
	Confiscation of certain objects	Confiscation of certain goods and/or bills
	Announcement of judge's decision	Announcement of judge's decision
	-	Compensation payment
	-	Fulfillment of local customary obligations and/or obligations according to living law
Special Crimes	-	Death Penalty

In the context of this study, the sanctions applied for violations of the criminal law are coercive because they are contained in public law (*dwingen recht*). According to Article 68 of the New Criminal Code, there is punishment in the form of imprisonment. Rules regarding the length of time for imprisonment can be seen in Article 68 of the New Criminal Code, namely:

> *Article 68: (1) Imprisonment is imposed for life or for a certain time; (2) Imprisonment for a certain time is imposed for a maximum of 15 (fifteen) consecutive years or a minimum of 1 (one) day, unless a special minimum is stipulated. (3) In the event that there is a choice between capital punishment and life imprisonment or there is a weighting of the crime for a crime that is sentenced to 15 (fifteen) years imprisonment, imprisonment for a specified period of time may be imposed for 20*

(twenty) consecutive years. (4) Imprisonment for a certain time may not be imposed for more than 20 (twenty) years.

Imprisonment is one of the principal crimes known in the criminal justice system in Indonesia. Imprisonment in Indonesia has been known since the enactment of the *Gestichen Reglement in 1917 Stb. 708*, a regulation formed by the Dutch colonial government as a realization of the prison sentence provisions contained in *Wetboek van Strafrecht (WVS 1918*). The concept of imprisonment that was in effect during the colonial period was still valid and valid in Indonesia when it became independent until 1955. It was only in 1955 that Law Number 12 of 1955 concerning Corrections was formed which changed the paradigm of imprisonment to become a correctional facility (Napitupulu, *et, al*, 2019: 1).

Imprisonment for a certain time can be divided into 2, namely imprisonment for a maximum of 15 consecutive years and if subject to aggravation of punishment, it can reach 20 years, and life imprisonment. It can be concluded that what is meant by life imprisonment is imprisonment for as long as the convict is still alive until he dies. This provision cannot be interpreted that the prison sentence served is as long as the age of the convict when the sentence is handed down. As mentioned above, regarding the purpose of a criminal sanction, apart from causing misery, there is also the aim of improving it in a punishment. The purpose of sentencing is also a tool to change the behavior of convicts, it is hoped that after serving a period of sentencing, convicts will be able to change into good people and can be accepted back by society when finished undergoing the sentencing process.

This of course can be implemented if the sentence imposed has a time limit, the spirit of renewal of punishment that is rehabilitation and resocialization can be fulfilled in this case. However, one form of imprisonment is life imprisonment, which means it is not possible for a person to return to society, because the convict must undergo punishment in prison until the end of his life. This form of life imprisonment can be applied to crimes that can be categorized as serious, and can disrupt the public interest (Article 104, Article 106, Article 107, Article 111 paragraph (2), Article 124 paragraph (2), Article 124 paragraph (3) to -1 and 2nd, article 140 paragraph (3), article 187 3rd, article 198 2nd, article 200 3rd, article 200 paragraph (2), article 204 paragraph (2), article 339, article 340 of the Old Criminal Code). Whereas in the New/National Criminal Code, life imprisonment can be imposed on offenses namely Article 193 paragraph (2), Article 458 paragraph (3), Article 459. Article 544, Article 603, Article 604, and Article 609 paragraph (2) letter a of the New/National Criminal Code. In addition, life imprisonment is also spread in other laws and regulations outside the Criminal Code.

Today the implementation of punishment has experienced a shift in meaning to a positive direction. There is no longer the term prison in its true sense, the term prison today has been changed to the term Penitentiary, and the term convict has also changed to a Prisoner, as a place for inmates, correctional institutions are required to

foster their inmates, in line with the concept of punishment which is rehabilitation and resocialization.

According to national culture and according to customary law, there is actually nothing that includes a life sentence that requires the convict to undergo punishment until he dies. Because it can be said to be very injurious to a person's sense of humanity. There are still many forms of punishment that should be taken as a form of providing a "deterrent effect" for perpetrators of criminal acts. By shifting the purpose of a sentence which is no longer merely causing sorrow, but is already rehabilitating and resocializing, it is feared that the existence of life imprisonment will distance it from the noble ideals of such a sentence.

The use of life imprisonment in international law also tends to be reviewed. Given that life imprisonment is the most severe form of imprisonment. The development of the United Nations (UN) Congress on the Prevention of Crimes and Treatment of Offenders, among other things, stated that the effectiveness of imprisonment has become a fierce debate in most countries, there is a crisis in public confidence in the effectiveness of prison sentences and the prison experience is so dangerous that it seriously hinders the offender's ability to return to obedience to the law. Furthermore, based on the report of the UN Congress, several understandings were concluded as follows (Tongat, 2005: 122):

1. Imprisonment as one of the sanctions in criminal law is often questioned about its effectiveness. The "lawsuit" of the international community continues to emerge a crisis of confidence in the prison itself;
2. The crisis of trust arises from the fact that imprisonment provides a dangerous experience for the convict, especially in relation to efforts to restore the convict's trust to comply with legal norms;
3. Imprisonment punishment and therefore including life imprisonment are still recognized for their existence, especially as an effort to guarantee the interests of society from the threat of perpetrators of crimes, especially perpetrators of serious crimes.

The balance of protection between individuals and society in imprisonment including life imprisonment is not only a necessity in the criminal law system in Indonesia because of the demands of values in society, but is also a necessity in the criminal law system in Indonesia because of the demands of values that are developing in the international community (international society). There is also a tendency for life imprisonment to cause the convict to act as he pleases while in prison considering that there are no more legal efforts to make him free from this punishment. Furthermore, criminals who commit minor offenses can joke around with seasoned criminals who are sentenced to life imprisonment, so that even after leaving prison, they will turn into master criminals who are dangerous to society. That the goal of correctional is not achieved the same very. In line with this thought, Andi

Hamza said that it was the government that created broad opportunities to produce new master criminals by imprisoning petty criminals for one or two months in prison (Hamzah, 2010: 236).

Effective and Efficient Forms of Punishment in Crime Control

Every time a person is convicted, it creates a reaction to human rights violations. Violations which are negative facts about human rights always give birth to efforts to deal with them positively. This can be seen from the tendency in social life which is not only towards an ethical direction, but moreover because of the awareness and responsibility not only to uphold human rights as the highest human dignity, but also by putting them into concrete formulations as a positive law obeyed by society. The answer to every reaction related to human rights violations in every form of punishment is against whom human rights must be protected and against whom human rights can be violated by the state.

Muladi and Barda Nawawi Arief stated that the policy of establishing a type of criminal sanction is not the start of a strategic plan. The main step of a criminal politics is precisely to set goals to be achieved. The purpose of sentencing can be used as a reference for determining the methods, means or actions to be used. The policy of determining what punishment is best for achieving a goal, at least close to the goal, is inseparable from the problem of selecting various alternatives. Selection of various alternatives to obtain which punishment is considered the most appropriate, the best, or the most effective is not an easy matter. From the perspective of criminal politics, uncontrollable crime can actually be caused by the inaccuracy of the type of criminal sanction that has been stipulated (Widayati, 2016: 170).

Currently it refers to imprisonment in Indonesia. Data as of September 2022 shows that there are 275,167 inmates who are residents of Correctional Institutions or State Detention Houses as conveyed by the Secretary of the Directorate General of Corrections of the Ministry of Law and Human Rights during a scientific discussion with the theme Value of Probation Service and Probation Service and Prosecution: Clients / Contractors or Equals. In fact, the prison population has exceeded the capacity of prison facilities and infrastructure throughout Indonesia, which should only contain 132,107 detainees (CNN Indonesia, 2022). For the cost of food for each Convict in the Correctional Institution, the Director of Basan Services and Management and the Directorate General of Corrections Agency, stated that the State issued Rp. 2 Trillion in a year to feed the Assisted Residents (Wiryono, 2022). The budget has been calculated and will be proposed for the feeding budget for 2023.

In this modern era, the imposition of criminal sanctions on criminal law violators must be carried out as effectively and efficiently as possible to reduce the rate of criminal acts which are increasing day by day as the number of people increases. One form of punishment that reflects effectiveness and efficiency is the death penalty. In the Old Criminal Code itself, death penalty is reserved for anyone

who violates the provisions in Article 104, Article 111 paragraph (2), Article 124 paragraph (3), Article 140 paragraph (3), Article 340, Article 365 paragraph (4), Article 368 , Article 444, Article 479 K paragraph (2) and Article 479 paragraph (2) of the Old Criminal Code. Whereas in the New/National Criminal Code it is intended for anyone who violates the provisions in Article 191, Article 192, Article 212 paragraph (3), Article 459, Article 479 paragraph (4), Article 588 paragraph (2), Article 598, Article 599 letters a, Article 600, Article 610 paragraph (2) letters a and b of the National Criminal Code. Several laws and regulations outside the Old Criminal Code and the New/National Criminal Code which include capital punishment can be seen in Law Number 5 of 1997 concerning Psychotropics, Law Number 26 of 2000 concerning Human Rights Courts, Law Number 20 of 2001 Regarding Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes, Law Number 15 of 2003 concerning the Stipulation of Perpu Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism, and the death penalty most often committed is the death penalty as stipulated in the Law Number 35 of 2009 concerning Narcotics.

One of the main and perhaps the oldest premises of thought supporting the death penalty is the theory of retaliation. Based on the theory of retaliation, capital punishment is imposed because capital punishment is an attempt to maintain and uphold decency and justice. Criminals are imposed not because they promote a goal or goodness, but solely to repay crimes that have been committed by someone so that decency and justice in the form of an absolute balance are still achieved (Izad, 2019: 10). More Karl. O Christiansen identified 5 (five) main features of the theory of retributive (retaliation), namely:

1. *The purpose of punishment is just retribution*;
2. *Just retribution is the ultimate aim, and not in itself a means to any other aim, as for instance social welfare which from this point of view is without any significance what over*;
3. *Moral guilt is the only qualification for punishment;*
4. *The penalty shall be proportional to the moral guilt of the offender*;
5. *Punishment point into the past, that is pure reproach, and it purpose is not to improve, correct, educate or resocialize the offender* (Widayati, 2016: 173).

The application of death penalty aims to strengthen the punishment system itself. Although there is much controversy about the death penalty which is a violation of human rights. Lombroso, as the father of criminology, also expressed his opinion, namely: There are several types of humans, including certain people who are of the type and physique of criminals. For people like that, it won't be much use to be educated and taught to be prepared to return to the midst of social life and to be expected to become good members of society, to become useful members of society, so that because of that people when they commit crimes it will be better just removed from society (Sumanto, 2017: 28). Theoretically, death penalty is an absolute

punishment. The nature of such a crime is based on absolute basic assumptions. The perpetrators are seen as having absolute elements or characteristics, namely having committed a crime which is absolutely very dangerous and/or detrimental to society. There is an absolute error and the perpetrator is considered absolutely unable to change for the better or be repaired (Sumanto, 2017).

The retributive view presupposes punishment as a negative reward for deviant behavior committed by members of the public so that this view sees punishment only as retaliation for mistakes made on the basis of their respective moral responsibilities. This view is said to be backward-looking. Besides the just desert model, there is also another model, namely restorative justice, which is a process in which all parties involved in a particular crime jointly solve problems and deal with the consequences that will arise in the future (Tim Pengkajian Hukum, 2012: 16). So there can also be alternatives regarding other forms of punishment that lead to the view of restorative justice as a violation of humans and human relations so that the perpetrators of criminal acts are obliged to make things better by involving victims, perpetrators and society in finding solutions to repair, reconciliation , and reassuring the heart so as to create justice for all interested parties.

The existing forms of punishment are essentially a method or process towards the goal of punishment itself. Indonesia and other countries internationally are also competing in creating and implementing a form of criminal sanction that is suitable for its development. As explained previously regarding the ineffectiveness and efficiency of life imprisonment as a form of punishment both in terms of fulfilling justice and its ineffectiveness and efficiency in terms of the economic budget, and the ever-capacity of correctional institutions in Indonesia add to the complexity of the problem regarding forms of punishment applied to the offender. The United Nations (UN) in 1990 also sparked the United Nation Standard Minimum Rules of Non-Custodial Measures which became known as the "Tokyo Rules". This document states that an effective non-imprisonment sentence can reduce overcrowding (UNODHC, 2017: 4).

As an alternative punishment according to the Tokyo Rules above, that the general objective of non-prison punishment is to find an effective alternative punishment for the perpetrators of crime and to provide the possibility for law enforcement to be able to change the sentence committed. The positive impact of punishment according to the needs of each individual is evident because this alternative punishment provides a condition where they can still be free so that they can still work, study, interact with their families (Napitupulu, 2019: 4).

Furthermore, the opinion of Jeremy Bentham stated that the study of law with society sociologically must be based on utilitarian theory which pays attention to punishment (penal) as a tool to make a snare and prevention efforts but does not have to be applied if it is not needed." (Tueseng, 2019: 2). In this context, the settlement of criminal acts based on the punishment of perpetrators with criminal justice

mechanisms does not have to be carried out if the victims and perpetrators of criminal acts agree that the settlement of these crimes is carried out based on the principles of kinship by imposing responsibility on the perpetrators of criminal acts to make remedies for the consequences caused by the crime he committed and agreed to by the victim.

Strengthening the above argument, Bernard L. Tanya expressed his view that today the tendency to use alternative settlement forums (outside standard courts), is not only a typical phenomenon in simple societies, but also in developed societies (Tanya, 2011: 33). Legal morality moves towards positive law, namely incorporating a tendency to impose sanctions into the legal process. Positive law does not discriminate, does not really consider the specific context of an offense or the practical value of alternative sanctions, in the positive law paradigm, crime is not a violation of a certain obligation, but the act of disobedience itself (Nonet & Selznik, 2011: 55).

Regarding the limitations of understanding in the meaning of restorative justice, the following describes 2 (two) views, namely: (1). Tony Marshall stated that "*A generally accepted definition of restorative justice is that of a process whereby the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future*" (Braithwaite, 2002:), means that Restorative Justice also provides a place for goodness in the future; and (2). Mark S. Umbreit and Marilyn Peterson Armour (2004) States that "*Restorative justice is viewed as complementary to the criminal justice system because it attends to issues that the traditional system neglects. Regardless of the position taken, the vision of restorative justice is grounded in values that are resonating with an increasingly broad range of individuals and communities throughout the world, presenting many opportunities for new and widened impact*." In this case Restorative Justice provides more benefits than other criminal law enforcement and has wider benefits.

Conclusion

Based on the description of the discussion above, it can be concluded that: **First**, life imprisonment which includes the fulfillment of the purpose of punishment in the framework of retaliation is said to be obsolete. Life imprisonment in addition to overcrowding the number of convicts or inmates in a correctional institution, besides that because there is no recovery mechanism for the convict makes life imprisonment no longer suitable to be associated with the concept of correctional in criminal law. **Second**, there are many more effective and efficient ways or forms of punishment that can be carried out against convicts. When viewed from a retributive point of view (retaliation), the application of capital punishment seriously and indiscriminately can be a deterrent effect which is still the prima donna of punishment in Indonesia. Conversely, if you still want to provide development concepts to the convict, then restorative justice can be applied in punishment.

Based on the results of the discussion and conclusions as described above, the following recommendations can be made: **First**, it is necessary to abolish life imprisonment in the regulation regarding the forms of punishment that can be imposed on convicts. This is because it is still possible and there are other more effective and efficient forms of punishment that can be carried out. So, there are only 2 (two) choices, repair or destroy the existing convicts. So that any crimes that occur will be dealt with more quickly. **Second**, it is necessary to strengthen the imposition of death penalty in Indonesia, currently it is felt that death penalty is only applied to perpetrators of narcotics and terrorism crimes. It is necessary to enforce and apply it as often as possible to criminal acts or other crimes whose nature has seriously damaged the decency and decency prevailing in society. Besides this, the spirit of restorative punishment is also necessary echoed to improve the situation which had already been damaged due to the occurrence of a criminal incident.

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