

REDUCING STATE EXPENSES TO RETAIN CONVICTS IN PRISON BASED ON CUSTOMARY LAW

I Ketut Widia, Law Universitas Warmadewa Denpasar
I Nyoman Putu Budiarta, Law Universitas Warmadewa Denpasar

ABSTRACT

The phenomenon of the number of prisons in Indonesia filled with prisoners often creates various types of problems, among others, the circulation of drugs in prisons, the escape of prisoners from prison, riots that cause a large number of casualties and property in vain. In Indonesia every year always build prisons at a very high cost. Legally and economically, this is very worrying, due to the indication of the failure to work the law in society and the costs incurred by the state every day reaching three billion rupiahs to guarantee the life of a convict in prison. A fantastic amount because it is used to keep criminals. Empirical data shows, many criminals will be even more evil after entering to prison. For this reason, a big idea emerged to solve legal problems in indigenous peoples, because historically customary solutions have been the personality of the nation and better guarantee a sense of justice, in addition to fulfilling the principles of fast, cheap, and transparent cases. This research aims to answer the following problems, namely: (1). What types of cases can be resolved by custom in the community? (2). How is the procedural law of customary justice carried out in order to fulfill the sense of justice in the community? The type of research that will be used in this research is empirical law research. The theories used to analyze the problem are social engineering theory and legal system theory. The conclusion of the research is, it is indeed very feasible to carry out mediation under customary law in order to solve legal problems that occur in society. Regarding the procedural law of customary courts, all kinds of problems are resolved by deliberation to reach consensus through mediation guided by the head of customary society.

Keywords: Convict, Mediation, Customary Crime, Customary Law

INTRODUCTION

Background: Managing a prison which is also known as a Penitentiary or a Detention Center is neither easy nor cheap. In one day, the average cost incurred by the state in order to retain the contents of a prison or prisoners who are actually criminals is Rp. 3,700,000,000, - (three billion and seven hundred million rupiah). This means that the state's burden is very high every day just to keep criminals in prison. Not to mention that there are always problems in prisons such as prisoners escape from prison, fights between criminals in prison, riots in prison, drug trafficking in prisons, or being controlled from inside prisons which almost occur throughout Indonesia.

If it is examined in more depth, the various types of crimes that occur and often occur in prisons have a single cause, namely the prison is too full of prisoners. On average, every prison in Indonesia has almost one hundred percent excess capacity. (Cahyadi, Fernando & Manullang, 2007)The illustration is, if a prison has the capacity to accommodate 500 people, then the number of prisoners in prison will reach 1000 people. It can be imagined that how overcrowded and the density it would be in a prison with a very limited number of officers. Moreover, every day the state has to spend up to hundreds millions of rupiah just to repair prisons damaged by riots in prisons. Of course, all the money comes from collecting taxes paid by the people. Not to mention the cost of pursuing a convict who escaped from prison due to various causes, (Yuwono, 2015)which amounts to hundreds of millions of rupiah each time there, is an escape from prison.

Because of this, the idea or the emergence of ideas in order to reduce the number of convicts in prisons based on customary law should not be underestimated. Apart from the fact that historically the Indonesian people have been doing it since the ancient kingdom era, mediation or customary problem solving is something that has been commonly done. (Antara & Wayan, 2010) Solving problems in a customary manner is actually a form of deliberation to reach a consensus that is mandated by Pancasila as the basis of the state and the way of life of the Indonesian people.

Problems Statement

This study aims to answer the fundamental problem related to the excess number of convicts in prison. The problems are:

- 1) What types of crimes can be resolved by custom in order to create peace so that the perpetrator does not go to prison?
- 2) What is the customary criminal justice procedure so that the decision fulfills the sense of justice of the community so that the perpetrator of the crime does not go to prison?

Research Aims

- 1) In order to find out the level of understanding of village community leaders regarding customary case mediation at the village level so that the number of convicts in prison will decrease.
- 2) To identify what types of criminal cases are allowed to be mediated in a customary manner so that the suspect does not go to prison.
- 3) To find out the standard procedure for solving problems in the customary manner so that it maximally fulfills the sense of justice for the parties in trouble.

Research Methods

The type of research applied in this research is empirical legal research or socio legal research. The location of the research was carried out in Bali Province by taking four prisons in Bali, namely, Kerobokan Prison in Badung Regency, (Jamin 2018) Gianyar Prison in Gianyar Regency, Jemberana Prison in Negara, and Buleleng Prison in Singaraja.

RESULT AND DISCUSSION

General Description of Prison Conditions in Indonesia

Regarding the fullness of prisons in Indonesia, the data below indicates the truth, namely:

- a. Riau Pekanbaru Prison with a capacity of 330 people but is filled with 1050 convicts.
- b. Tanjung Gusta Prison Medan with a capacity of 1054 people filled with 2600 convicts.
- c. Class 2 prison in Labuan Ruku, Batu Bara Regency, North Sumatra, with a capacity of 251 people, filled with 867 convicts.
- d. Class 2A Kerobokan Prison with a capacity of 360 people but filled with 1100 convicts.
- e. Bengkulu Malabero Penitentiary with a capacity of 250 people filled with 758 people.
- f. Class 2A Jambi Prison with a capacity of 380 people is filled with 1700 convicts

(Source: Tempo.co, id edition Mei 8th 2017 accessed November 17th 2017).

One example nationally is the Bagansiapiapi Detention Center in Riau, which is the most overcrowded in Indonesia. With a capacity of 98 people, the Bagansiapiapi Detention Center contains 806 people. In other words, there is an excess capacity of up to 822%. (Suena 2012)

The description of the prison situation where the heat and stuffiness experinced when entered several prisons in Indonesia. Especially when entering the 4 X 6 meters prison rooms.

Not to mention that when it rained, I could not contain the stifling feeling because there were around 50 convicts with various bad characters in it. They sat and lay in a room filled with cots arranged in a row. More than 10 fans in the room seemed not to work because they were still hot and crowded. With a comparison of the number of people and the size of the rooms, each person has an average of about 0.45 square meters. Of course it is not enough to lie down full body while sleeping. It is true that the prison space in a prison with an average area of 0.45 square meters for each person is not feasible. It can't be avoided anymore. Prison officers accommodate them as much as possible and still fulfill the rights of the prisoners. Realizing this unfavorable situation, the inmates then transformed the cell into four-tiered beds with a height of about 60 centimeters each. Thus, everyone gets their own sleeping position. (Moelong 2002).

A room head arranges the work system to clean each cell, including the bathroom in it. Also a schedule for picking up and distributing food to fellow cell residents. In order to use the bathroom inside each cell, they also had to take turns. In each cell there are two bathrooms including a toilet, each measuring 1 X 2 meters. The assisted residents also often hold religious events so that they no longer commit crimes. It is not uncommon for prison parties to bring in clergy (priest) in order to lead the assisted residents in carrying out religious activities. (Martiman 2001).

Nationally, there are several correctional institutions in Indonesia that have more than 400% of prisoner's capacity. Among others are:

- a) Prison in Takengon (excess 597%),
- b) Prison in Banjarmasin (595%),
- c) Prison in Tarakan (543%),
- d) Prison in Bandar Lampung (528%).
- e) Langsa Prison in Aceh (502%),
- f) Kotabaru Prison in South Kalimantan (494%),
- g) Labuhan Ruku Prison in North Sumatra (490%),
- h) Dumai Prison in Riau (458%),
- i) Kupang prison in East Nusa Tenggara (430%) and
- j) The Kerobokan prison in Bali is over capacity by 460%

This condition is very much realized by the government, represented by the narrative of Sri Pugh Budi Utami, Secretary of the Directorate General of Penitentiary, said that, "The managers of detention centers and prisons must continue to work optimally under these conditions. The task is indeed upon us. So it must be accepted. Adding buildings or prisons is not a solution. Because the increase in the number of assisted residents is not proportional to the increase in the capacity of detention centers and prisons". (Windia 2010)

"The Legal Aid Community Institute sees that the Ombudsman of the Republic of Indonesia can fill in the gaps in the existing correction mechanism. All parties should encourage the Ombudsman to undertake an independent investigation into the deaths of prisoners that often occur in prison. Indeed, an investigation by the Ombudsman is needed. Later it can be an initial step for a more systematic and massive improvement in order to reduce deaths in prison.

Providing a study of what was conveyed by the Director General of Penitentiary above, is indeed in line with the idea of this research, namely reducing the number of assisted residents in Penitentiary Institutions. The excess number of inmates in prison is already at the threshold of being intolerable. However, the efforts made by the government so far by only increasing the number of prison rooms or detainees and building new prisons do not seem to have had a significant impact. Because the empirical data that occurs in the community is, the more new prisons are made, the more number of prisoners or convicts also increases and almost always exceeds the existing capacity. (Astara 2015)

Viewing that the problem keeps repeating itself from year to year, of course the idea of solving criminal cases by custom or deliberation should not be underestimated. Because the customary justice system is actually nothing new in Indonesian society. In fact, the prison system adopted by the government today is a western system originating from the Dutch and

British who had colonized Indonesia. Regionally, prison conditions in Bali are generally not much different from prisons in general in Indonesia. The descriptions below are the conditions of several prisons in Bali.

Kerobokan Prison Condition in Badung Regency

The Kerobokan Prison in Badung Regency is a very densely populated prison. Various criminal cases always occur in this prison. Starting from fights between inmates, drug trafficking, escaping from convicts, to discrimination and buying and selling luxury facilities in prisons. Attempts have been made to investigate the alleged discrimination that occurred in this prison. However, the results have not been able to satisfy the community's sense of justice..

Seeing from quantity, the Kerobokan prison is inhabited by 1,015 people or far more than the capacity of only 300 people. Of that number, 60 of them were men and women from 17 different countries. This means that the Kerobokan prison is already overpopulated. Therefore, the idea of solving problems through mediation is an idea that should not be underestimated. The police, with their powers, have already begun to apply this idea by giving the parties in question to a peaceful settlement first by means of deliberation to reach a consensus. (Mark 2009)

Negara Prison Description in the City of Negara

The State Penitentiary which is located on the west side of the State City is a small prison or Class II B detention center. The number of residents is not too many, but it can still be said to be excess because it exceeds the capacity it should have. In order to prevent unwanted things from happening outside of the country, the Police routinely carry out surveillance by conducting raids on criminals occupying prisons.

At the time of a recent raid at the State Penitentiary, officers from the Jembrana Police found knives and dozens of gas matches while sweeping a number of blocks of prisoners at the Class II B Detention Center, Negara, Jembrana Regency, Bali. Officers found a knife and 22 gas matches. Sweeping was led by Deputy Jembrana Police Commissioner AA Gde Rai Laba involving 100 members of the Jembrana Police and 15 members of the TNI Kodim 1617/Jembrana. The officers also found two wooden matchboxes, a chiseled iron, a set of game cards, a set of dominoes, three nails of various sizes and three pieces of iron. Regarding the condition of the occupancy at the State Prison, according to him, is in an overloaded condition, which should have been filled with 90 people, now there are 105 inmates, with 47 officers.

Tabanan Prison Condition in Tabanan

The condition of the Tabanan Prison, Bali, was overcrowded because the number of prisoners and detainees held in custody reached 120 people or exceeded the capacity which was only able to accommodate 47 people. "Now it is overloaded and densely due to the insufficient number of occupants and capacity," said Head of Tabanan Prison Kristiyanto, BcIP, SH in Tabanan.

He said, the capacity of Tabanan Prison was only able to accommodate around 47 people, but now the number of residents, both convicts and entrusted prisoners, is 120 people. According to him, Prison does have two functions, namely as a penitentiary and as a detention center. "This is what makes Tabanan Prison filled with inmates and prisoners entrusted, both from the police and the prosecutor's office.

Even so, Tabanan Prison will still provide good guidance and monitoring for the residents, both prisoners and entrusted prisoners. In addition to the problem of prisoners who have exceeded their capacity, said Kristiyanto, there are also problems regarding the condition

of buildings that have begun to deteriorate, such as leaking roofs. If it rains, some rooms get wet due to rainwater coming in from the leaking roof.

The Existence of Customary Justice in Society

The real existence of customary courts in Indonesia is a necessity and has existed and still exists since the pre-independence era until today. Indeed, the form is vague, but often in solving problems that arise in the community it is resolved by custom by taking the form of conducting deliberations to reach consensus. It is not easy to accept the idea of solving legal problems by means of customary deliberations. In this case, several stages of activity are needed so that the community can accept this idea. Presenting and presenting issues and ideas about prisons in Indonesia with overcapacity reaching one hundred percent should be done systematically, continuously and structurally.

Providing understanding to the community, especially to traditional village leaders, that deliberation to reach consensus in resolving problems in the community is something that has always been done before the Dutch legal system was enforced with a prison sentence model. Before the Dutch colonized Indonesia, in Indonesia there were no prisons because most legal cases and community problems were resolved by deliberation to reach consensus according to local wisdom.

The big idea of this research is to try to develop local law or customary law in order to be able to reach and accommodate every problem that exists in the community. Based on the results of the research, there are several legal cases that can be resolved by customary law to prevent criminals from going to jail, including:

- a) Theft or embezzlement with a value of not more than ten million rupiah.
- b) Insult, defamation, adultery which are still classified as a criminal offense with a pure complaint offense.
- c) Corruption with a value of below one hundred million rupiah.
- d) One-on-one fights or mass brawls.
- e) Murder insofar as the victim's family forgives and the perpetrator admits his mistake then apologizes and pays compensation or burial costs and covers the family's living expenses.
- f) Traffic accidents.
- g) The crime of sexual harassment.
- h) Domestic violence.
- i) Divorce cases.
- j) Cases of distribution of inheritance which often lead to conflict and violence to murder.

In contrast to crimes that are considered extraordinary, such as drug abuse, terrorism, and corruption in the amount of more than one hundred million rupiahs, it is still legally processed until the perpetrator of this type of crime can go to prison with the maximum sentence.

Procedures for Conducting Customary Deliberations

Regarding the customary procedures for resolving problems, in general the implementation is through deliberation to reach consensus. The parties in the case, or the victim, represented by his family and the perpetrator, are confronted at the local village office, escorted by a local customary security unit known as the *Pecalang*. If it is deemed that they need security assistance by law enforcement officials, the village party may ask the Police and the Indonesian National Army for assisting as security during a village court hearing. Local elders or customary leaders, or whatever their names are in each region because they are given obligations, therefore they have the authority, among others:

- a) Receiving reports or complaints from the public either in the form of individuals or community groups.
- b) Perform actions deemed necessary at the scene.
- c) Telling a suspect to stop and check the suspect's identity.
- d) Conducting arrests, detention and searches, if necessary confiscate evidence related to a criminal act if deemed necessary.
- e) Conducted an arrest and confiscation of documents.
- f) Take a picture of someone.
- g) Calling people to hear their testimony either as suspects or as witnesses.
- h) Bring in experts if necessary in relation to case examination.
- i) If there is insufficient evidence, the local customary leader may stop the investigation and investigation.
- j) Take whatever action is necessary as long as it does not contradict the prevailing norms in society.

Observing the procedure above, of course there are many questions, where do the costs come from, and where do the costs come from doing such high-risk work. Furthermore, who could do such a complicated job if the quality of human resources in the local customary village was still not that high if there was no legal background education that should have taken approximately four years?

As for the types of customary sanctions that can be imposed, the emphasis is on sincere forgiveness by the perpetrator of the customary offense and compensation by the perpetrator of the customary offense to the victim or to the victim's family. If peace efforts through customary courts do not reach an agreement, then the case is immediately transferred to the police as an official who has the authority to carry out investigations and has high coercion because they have the instrument for that. In other words, the legal process will take place in accordance with the provisions of the Criminal Procedure Code, which will lead to the criminal being imprisoned. If this were the case, it would mean that the idea of reducing the number of prisoners in prison could not be realized.

However, whatever the risks raised, the idea of adjusting cases according to custom should be given good appreciation, because it has been proven to be able to solve problems in a traditional way so that criminals can avoid going to prison which is much feared and incurs high costs that must be borne by the community and country.

CASE AND ANALYSIS

Case 1

In this case, the criminal act of defamation was analyzed violating the Act of Electronic Information and Transaction and general criminal offenses. Sitting his case started with an announcer at a television station in Denpasar named Bunga (not his real name). Because of being a celebrity, She has many fans and admirers. One of his fans is Made Taro (not his real name). With a fairly high ability in the field of computers, Made Taro edits a photo of Bunga so that his appearance becomes full without clothes. With that editing, Bunga looks very attractive so that it becomes a byword on social media. The indication of legal violations committed by Made Taro is not sufficient to reach there with his expertise in the internet sector. Made Taro exploits and distributes naked photos of Bunga to the Whatsapp (WA) Group and eventually develops into social media.

Due to her vulgar appearance the image quickly went viral on social media until it was finally discovered by Bunga and her extended family. Of course, Bunga and her extended family objected and protested to I Made Taro. Initially, this multi-layered violation case wanted to be resolved by litigation or through legal procedures by reporting it to the authorities. On the suggestion of his extended family who is also a customary leader (*bendesa*), the problem was resolved by deliberation to reach a consensus, finally Made Taro and his family were summoned by the head of customary leader to conduct mediation to resolve the problem. Returning to the

idea of reducing prison content and the cost of treating criminals in prison this model from the past, at the present, in the future will always be feasible because it reduces the protracted settlement burden and very high court costs. In the next development, Made Taro and his family apologized in a customary manner which was stated in an underhand deed in the form of an apology statement, in other words a criminal case which was punishable by 5 years in prison and a fine of Rp. 1,000,000,000.00 can be resolved customarily by deliberation to reach consensus in other words the idea of reducing the number of prisoners in prison can be accommodated by customary courts.

CONCLUSION

Paying attention to the problems formulated, there are two conclusions that can be conveyed, namely:

- 1) Cases which deserve to be resolved by custom in deliberation to reach consensus are cases in which crimes are not a type of crime with the threat of imprisonment of up to five years in prison. For example, cases of traffic accidents even though there are fatalities as long as the perpetrator is willing to provide compensation, cases of fraud and embezzlement in the amount of not more than one hundred million rupiah, cases of fights, vandalism, cases of humiliation, defamation, sexual harassment, domestic violence, divorce, and so on. If the case is big and it is very dangerous to society in general, such as crimes of corruption, terrorism, narcotics, of course, it must go through a criminal justice mechanism.
- 2) Regarding the procedures for resolving cases in a customary manner, in general, it emphasizes deliberation efforts to reach consensus mediated by local customary elders and accompanied by law enforcement officials, especially the police.

SUGGESTION

In connection with the problems and research findings, there are two suggestions that can be delivered, namely:

- 1) The government, in this case the President and the House of Representative, should pay attention to the existence of customary courts by amending the Criminal Procedure Code and then entering the provisions of the article on customary courts as the first reference in solving both criminal and civil problems.
- 2) The village apparatus should further improve the quality of themselves so that they are able to handle problems that arise in the community in a fair, transparent, useful and dignified manner. Besides that, understanding and realizing that customary justice is more fulfilling a sense of justice and can reduce the number of prisoners in prison.
- 3) To people who are involved in legal problems, it is really very good if you are willing to solve problems in a customary manner before going to the police which has been proven to be very costly and labor intensive.

REFERENCES

- Cahyadi, A., Fernando, E., & Manullang, M. (2007). *Introduction to legal philosophy*. Date, Jakarta.
- Yuwono, D.I. (2015). *Application of law in cases of sexual violence against children*. Yustisia Library, Yogyakarta.
- Antara, K., & Wayan, I. (2010). *The contention of state law politics and cultural politics, autonomy of traditional villages*. Udayana University Press, Denpasar.
- Jamin. (2018). *The model of strengthening customary courts in the judicial power system as an instrument for decentralizing justice based on a pluralist constitution in bali province*. Universitas Sebelas Maret, Solo.
- Suena. (2012). *The procedure for completion of case by the bali traditional village council*. MUDP Bali, Denpasar.
- , (2013). *Guidelines for investment in traditional village*. MUDP Bali, Denpasar.
- Moelong. (2002). *Qualitative research methodology*. Rosdakarya Youth, Bandung.
- Martiman, P. (2001). *Application of reversed evidence in corruption offenses (Act No. 31 of 1999)*. Publisher: Mandar Maju, Bandung.
- Windia. (2010). *Customary law Q&A*. MUDP Bali, Denpasar.
- Astara, W. (2015). *The contention of the political, state law and autonomous culture of traditional villages in bali*. Udayana Press, Denpasar.

Mark, Y. (2009). "*Sexual violence and remedies, remedies for victims, perpetrators and communities*". Original Title. "Sexual Offending and Restoration". PT. BPK. Gunung Mulia, Jakarta.