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## Causal Factor of Criminal Act Recurrence in Indonesia

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**Key words:** Recidivist, crime, criminal act, rehabilitation, Indonesia

**Abstract:** One of the things which damage social system is the existence of recurrent criminals or called as recidivist. These criminals usually repeat the same crimes, even though they have been imprisoned. Countermeasure of recidivist crime is carried out in the criminal justice system which is an vehicle in the society to cope with crimes. It is required, therefore, a right process of rehabilitation to prevent the recurrence of criminal act. This research is analytical descriptive, tool of data collection in this research is by conducting interviews (field research) and library research. Data analysis used in this research is qualitative analysis. The causal factor of criminal act committed by recidivist in Indonesian system of criminal law is because of social stigmatization and environmental condition of social institution. The stigmatization comes from social anxiety against former convicts, that their wrongdoings will influence other people to do acts which violate the law. Other cause is the effect of prisonization or deviation in the prison community resulted from destructive power in the life of prison residents. The form of recidivist rehabilitation in Madaeng prison is carried out by two ways, those are individual and group rehabilitation.

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### INTRODUCTION

A man, since, he was born to this world has associated with other men in a receptacle called as society. At first, he is related to his parents and the older he becomes, the wider the spectrum of his association with other people in the community. And then he begins to realize that culture and civilization he goes through so far are the outcome of past experience. He knows too that in various things he has something in common with other people whereas in other things he has typical characters for himself. When he gets older he begin to understand that he is free in his relationship with other people but he cannot do arbitrarily.

In fact, he has learned this since he was a little boy. From his father, mother, brother and sister he learned what acts for him to do and what acts for him not to do. He eventually realizes that life in the community sees a rule as guidance obeyed by most of the people. Relationships between people and between people and community or their group are regulated by series of values and norms from their conduct and later it becomes patterns.

So, since, the man comes to this world, he begins to realize that he is part of wider human unit and the unit has a culture. Sociologically the law is important and social institution that constitutes a set of values, norms and behavior patterns which indicate about human basic

needs. There is criminal justice process in the legal function in order to seek the truth as far as people can reach without sacrificing the rights of the suspect. When a man does something wrong, the law declares him as guilty and when he doesn't do that the law states him as not guilty. An universal evidence indicates that the human can make mistakes in the perception and memory and he tends to be vulnerable against suggestive outside influences.

According to Rahardjo<sup>[1]</sup> to treat prisoners needs basis of social institution system that people is protected against recurrent criminal act by the prisoners or convicts and the wrongdoers are also protected by providing them life assurance as useful people in the community. It can be seen clearly from the legal enforcers that sentencing is not an act of retaliation from the state. The convicts are not sentenced by torture too but sentenced by taking their liberties.

Sentencing means the state tries to maintain need and public interest which cannot fully done by the citizens themselves. So, if a person is jeopardized by other person, he cannot do by himself to get even but his need and interest are represented and executed by the state. The objective of rehabilitation is to socialize and it consists of three items:

- After being released from social institution, he doesn't do criminal act anymore
- To become useful person, take active and creative role in building his nation and country
- He has capability to get close to God and to get happiness in this and other world

Being self-confident only can make someone will capable of changing his life and condition to be better off. Self-confidence is an element that can shift human mind, to get through higher spiritual manifestation. Because self-confidence is an unlimited power, eternal power that gives life, power, initiative to human mind.

## **MATERIALS AND METHDOS**

### **Theoretical framework**

**Emile Durkheim (1858-1917):** Emile Durkheim from French is one of important figures who developed sociology with classical teachings. In his theories about society, Durkheim emphasized legal norms related to solidarity types found in the society. In the society it will be seen legal norms whose sanctions cause suffer for those who violate the legal norms. It also can be seen legal norms whose different sanctions with repressive ones. The connection between social solidarity with repressive law resides in behavior which results in crime. According to Durkheim, there are two types of positive solidarity, they are characterized as follows.

In the first solidarity, a person is directly connected to the community. In the second solidarity, a person depends on the community. In the second solidarity, the community cannot be seen from the same aspect. In the first one, community is collective unit with the same belief and emotion. In the second one, community is a system consisting of various functions which constitute fix or steady relationships from aforementioned two differences cause another difference that can be used to determine characteristic and name for the two types of solidarity.

The aforementioned theory of Durkheim tried to relate law with social structure. Law is used as a tool of diagnosis to find structural requirements for development of social solidarity. He saw the law as dependent variable that is an element which dependent upon the social structure but he also saw the law as an instrument to maintain social structure or unit and to determine social differences<sup>[2]</sup>.

**Max Weber (1864-1920):** Many teachings came from Max Weber contribute development of sociology. Particularly about legal sociology he discussed at length in the chapter 7 of the book *Wirtschaft and Gesellschaft* which was recollection of books from the writings about economy and society.

He studied political, religious and economic influences on development of law and also the influences of legal theorists, legal practitioners and what he called honoratioren. The honoratioren is people who have characteristics as follows. Because of economic status, the people directly succeed to occupy positions of leadership without compensation or they compensate nominally. They occupy respectable social status such that it eventually becomes tradition.

In the analysis of his object, Max Weber used method of logical formalism developed by western civilization. In the legal theory he suggested four legal ideals irrational and material law, legislator and judge base their decisions merely on emotional values without referring to any norm. Irrational and formal law, legislator and judge refer to irrational norms because they are based on forecast. Rational and material law, decisions made by legislative and judge refer to holy book, policies made by the ruler or ideology. Rational and formal law, the law is based on abstract legal concepts. So, formal law tends to set systematic framework of legal norms, whereas material law is more empirical. The two legal types can, however, be rationalized, the formal law is based on pure logic, whereas material law is on its usefulness.

**Method of research:** Approach method this research uses method of juridical, empirical, sociological approach by conducting observation to find data. Method of data

collection From the research of our group with the theme recidivist, we use technique of data collection. By observing crimes committed by recidivist. By interviewing criminals and legal enforcement officer. By looking at written data (documentation) kept by legal enforcement officer in Mulyorejo and Madaeng prison. In this research, data is presented qualitatively by making use of descriptive analysis, i.e., by describing the data in the forms of explanations.

## **RESULTS AND DISCUSSION**

The question or problem in Criminal law and sentencing in history always go through change. Every year, its existence goes through much change along with dynamic development of society. This change is natural because people will always try to develop for increasing their prosperity by looking at their experiences in the past. This question requires serious attention because of criminal law limitation and capability in coping with crimes. Criminal law almost always be used to threaten various crimes which will possibly develop in various sectors. Criminal law sanction should be implemented by rational approach, otherwise it will cause the crisis of overcriminalization and the crisis of overreach of the criminal law.

Mardjono Reksodiputro said in his thesis in the seminar "Pers dan Kriminalitas" that criminal justice system is a system in a society for coping with problem of crime. The words 'coping with' in this definition mean effort to control crime in order to put it in the limits of social tolerance. Romli Atmasasmita disagreed with this meaning because Mardjono did not differentiate between the terms system of control and law enforcement which has definition to control or seize upon or to do control in order to cope with crime<sup>[3]</sup>.

Phenomena of criminal act today are influenced by various factors, both internal and external factors. Criminal act is increasing along with era development. Various reasons and backgrounds used by criminal actor to do crime. And these become serious threat to the society and law enforcers, not to mention this crime is committed repeatedly by the same individual or group, even though they have been imprisoned. Consumptive style of life becomes trigger of criminal act attributable to difficulties in economy.

**What's your opinion about this?** Underdeveloped economy generally means as a condition of economy where most of people cannot fulfill their material needs minimally. Economic activity is one of fundamental human activities. Therefore, the implementation of law is influenced by economic factors. And there is no modern system of economy can work well without legal order.

Generally, the prominent reason of criminal action is because the criminal actor wants to have normal life. In this situation is difficult to apply the law consequently and effectively. This indicates that there is a close relationship between law and economic condition.

Research on economic problems related to legal field is useful for legal effectiveness. It also useful to create a condition in which harmony exists between legal development and social development, particularly in the economic sector.

### **Internal factor:**

- Economic difficulty, increasing life need and high price of basic need is not compared to income, this causes crime to pay economic need/want
- Consumptive style of life, the actor loses his rational mind about right or wrong action resulted from behaviour and overreach want
- Bad feeling (revenge) against condition and neighborhood that negative image is difficult to be rehabilitated
- Legal knowledge of the criminal actor is minimal so that he assumes that criminal sanction doesn't create such powerful effect that he won't repeat the crime

### **External factor:**

- Free sex and condition of neighborhood is the factors can create an opportunity for individual or group to commit criminal act spontaneously and/or purposely. It requires active role of many parties such as family, parents, teachers, religious and social figures
- Social sanction causes a heavy pressure for criminal actor to do good deed and to be accepted by society
- Organized, a network member is a form of groups or syndicate which protects criminal actors. This organization is threat to the society
- High unemployment is the reason why someone commits criminal act

According to our observation, recurrence of criminal act is divided into. Sentencing is meant to make a person to feel regret and he won't do criminal act anymore. Therefore, the rules are harsh and even inhuman frequently, but along with era development, rehabilitation has changed, i.e., to increase convict's consciousness on his existence as human being. Regaining consciousness is carried out by way of introspection, motivation and self-development. Introspection is for the convict, to get to know himself by knowing himself someone can change himself.

Plato said that nobody can change destiny of someone else but himself. Motivation is the next step, convict is provided with technique of motivation to motivate himself or other people. Technique of

self-motivation is much more important. Because if someone can motivate himself, he will always be positive in looking at all angles of life. When someone has been capable of motivating himself, then it is necessary for him to know self-development.

How are public legal knowledge and consciousness level? Legal diffusion is correlated with how the law spreads in the society and then it is discovered by individuals. One of main instruments of diffusion is socialization via. speeches delivered regularly or irregularly. The speeches can be delivered directly or indirectly, particularly via radio or television. Legal socialization should be order which doesn't limit freedom, and the freedom doesn't violate order of law. For example, legal socialization explains people rights and duties. Moreover, socialization carried out by law enforcement officers should not limited on law enforcement but it also discusses on reality that law order has limits<sup>[4]</sup>. Survey should be conducted first before legal socialization is held because there is possibility that in certain places, some parties don't like legal socialization. But it should be explained clearly that legal socialization is not intended to arouse unsatisfied sentiments, it will explain, however, legal reality and legal rule which regulate life relationship and socialization. So, legal socialization intends to encourage or emphasize synchronization between order and freedom.

**Law as instrument of social engineering:** As vehicle of social engineering, law is an instrument intended to change behavior of the people, in accordance with predefined goals. Legal communication is necessary to be carried out so that the law can influence people behavior. So, the law must spread and go as far as possible. The legal communication, can be held formally, i.e., via. a formal organized mechanism. But there is an informal mechanism too. These are called as diffusion that is spread of certain cultural elements in the community in question. The process of diffusion can be influenced by: acknowledgment that cultural element (in this case is the law) has usefulness whether exist or no influence of other cultural elements which could be negative or positive influence<sup>[5]</sup>.

As a new element, the law may be rejected by the community because it is in contrary to old element function. Position and role from those who spread the law, influence legal effectiveness in changing and regulating people behavior. This is one of limitations in applying law as vehicle of social engineering. With other words, problem relating to mechanism of communication should be resolved first. In order to identify problems relating to application of law as vehicle of social engineering, one needs to discuss structure of choice-decision, available vehicles to carry out social engineering via. the law, relationship between law and behavior and so forth.

So, norm is a guidance for behavior as expected. A legal norm which contains what is forbidden or what should do for legal subject, is also legal norm for law enforcement officer to take an action against violators. Legal norms also intend to change and regulate behavior, these can be carried out by providing psychological feedbacks for stakeholder who obeys and violates the legal norms. Formulating tasks of law enforcement officer to do an action such way that these are in accordance with harmony or inharmony of stakeholder's behavior with legal norms. Changing behavior of third party, who can influence stakeholder's behavior. Trying to change perception, attitude and values of stakeholder.

The aforementioned steps are just parts of a model which certainly have weakness. But with the model one at least can identify problems relating to ineffectiveness of legal norm system in changing and regulating people behavior. At least there are indications where weaknesses in legal application are<sup>[6]</sup>.

## CONCLUSION

Criminality or criminal act is increasing these days. Many factors which influence the criminality. What phenomena is going on this era at present, is it because culture, neighborhood, social consciousness about law and order? Our research and observation in Polek Mulyorejo Dan Rutan Klas I Surabaya will provide a discourse about criminal act lately terrifying people. Reason, goal, why is this criminal act become topic in this writing particularly relating to criminal act 'penjambretan' in KUHP Pasal 365, are explained in order to make people to know various factors which influence behavior of committing the criminal act, both internal and external factors. There are many reasons and backgrounds underlying the criminal actor to commit crime. These become serious threat to the people and law enforcement officer, and this crime is committed repeatedly by the same man or group. And there is no regret for the actors after serving punitive sanction. How action and reaction from law enforcement officer in safeguarding order and security should be supported by various parties, starting from community, neighborhood, education, family and etc.

So, norm is a guidance for behavior as expected. A legal norm which contains what is forbidden or what should do for legal subject, is also legal norm for law enforcement officer to take an action against the violators. Legal norms also intend to change and regulate existing behavior in the community. Active role from the people is required in maintaining order and security, in addition to this responsibility is on the law enforcement officer.

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