

## Abstract

Law reconstruction in Indonesia constitutes an urgent and significant matter by the reason of beside it is the real need of society, and it is also adhering with development process and nation identity building.

One of system of law which is necessary to be straightened out is the system of criminal law where as one of its substances along with its instrument are the system of sanction that all this time still remain put the system of dutch colonial legacy in to operation as it available in Indonesian Penal Code (K. U. H. P.) and some other regulation. Although it can not be denied by the fact that the Indonesia Penal Code had undergone some alterations and additions, but it does not deals with the basics. Thus, the smelt and colour of colonialism are remain present.

As consequences the spirit, values and principles within that system colour and affect the system and activity of criminal law enforcement too, whose as such system, that is western system is not guaranteed compatible with the personality and needs of Indonesia society.

The issue of punishment matters become more significant because it is firmly related to human matters such as human status, values, rights, resources and other aspects of life where all of such aspects are german to the term of "development", "social order", "social engineering", "law and justice" as demand of modern country.

The issue above become more urgent due to the present condition now days which is aggravated by the situation where the compensational penal treatment and the available theories of punishment in criminal law and criminology that had been built to respond the emerge problem, have fallen in to disuse and crime remain rose enourmously.

Those condition obviously also give impact to crime revolution in Indonesia as the follower of western system of law. Such facts above lead to the necessity to reconsider the existing system of punishment where it have been put in to effect for hundreds years while the results is still far from good achievement.

To reach the purpose, a method which is used is by comparing the present system of punishment in Indonesia with other existing system, that is Islamic system where it almost have been forgotten and very much misunderstood.

The other purpose of this work, is obviously wish to make some clarification about punishment conception of islamic criminal law along with its implication in order to be achieved an intact and true comprehension.

The result of the comparison and clarification of both systems might be able to be contributed to the process of reconstruction of criminal law system in Indonesia.

Moreover, some values or principles in islamic punishment conception might be able to be a participant to colour the character of Indonesian criminal law system where a big part of the user of the system are following islam as belief.

This study is included in normative legal research or also called as doctrinal research.

The review of this work based on the view of criminal law and use the view of penology, criminology and victimology as well.

Thus the approach method where it is also common in accompany a doctrinal research head to the juridical and theoretical approach.

As for historical approach is also used in small portion.

By such approachs, it is hoped the purpose of this work as have been mentioned before will be reached.

Normative qualitative analysis as method of data analysis accompanied by descriptive analysis are used to examine the research material in this work.

How ever, the use of comparative analysis method in this work is also necessary in order to be found the deversities of both systems.

As conclusion of this study, it has been derived the matters as follow :

1. Generally, the system of criminal law and its sanction constitute a guidance and method to solve the emerge

problem of ethic, moral and social of society, it is a social code with multi function.

Broadly speaking, the involvement of this system in to other system of life is imperative.

2. Indonesian criminal law system with its punishment conception as well which is catagorized as similar with the European conception is man made law that emerges as typical reaction from certain condition of 18th century where rationalism and secularism with its implications have important role and affect the formation of criminal law till now-with the result that is law issue is aliniated from theology.

3. Islamic criminal law with its punishment system is devine law where his come is intended not to be specialized for certain time, place or society.

As one of basic character of islamic law where its punishment is included, constitutes integrated and interconnected totality from its every aspect, in a hierarchical and horizontal relationship with others.

4. Punishment issue in Islamic law is not a mere civil and legal as in seculer or western system but also religious and moral as well.

Punishment system in Islamic law however can not be appreciated with out consider this holystic character. Thus, punishment in Islamic law is combination of law, ethic and method of problem solving.

5. Reconstruction of criminal law with its punishment system in Indonesia as a part of endeavors of nation identity building to respond and anticipate the emerge problem is necessary. The existing system is not satisfactory and compatible to the character, needs and demand of Indonesian nation.
6. Despite the implementation of Islamic law (Sharia) generally or Islamic system of punishment in special requires the Islamic condition around all system of society, but it is not meant that the general principle and values of Islamic system of punishment can not be able to be applied in non Islamic society even for Indonesian her self.

The certain step to be recommended in this work are as follow;

1. a comprehensive method of teaching of on going subjects of islamic law and criminal law in law faculties of Islamic University domain is needed.

This step should be accompanied by the addition of as compulsory subject of the developing positive science as well.

2. It is also required special groups to study and analyze intensively by using interdiscipliner approach and subsequently develop the existing principle and tenets of islamic law or criminal law in micro perspective. The results can be spreaded to academic society or to be recommended to government.