Chapter 2
CHAPTER - II

REVIEW OF PUNISHMENT

1. THE SIGNIFICANCE OF PUNISHMENT

Every man has needs and necessities. The needs and necessities are the demand whether personally or collectively where it expected to meet with the demand. Man is a proponent or shoulder strap of need and necessity.

The need and necessity always develop since man in childhood grow up as adult and than till he die. In the view of the matters thats need and necessity are very much, so it is not possible cause conflict or quarrel amongst them, caused by intercontradiction of the need and necessity. The caused conflict of need and necessity might be occured when to realize or pursue it, one damage others. While it has became of his natural character that man can be survive and develop his existence only it he complies with other or society. Man is zoon politicon or social creature besides individual. Man and society are complementary. The reason that is the fulfillment of needs and and necessities where this thing, occasionally cause conflict amongst them.

The need and necessity develop continuously from time to time, from one kind or type to another, from little to much, from individually to collectively and from the adventage cause to disadvantage cause.
The conflict of needs and interest is occurred because, besides human is social creature, he is also the individual creature, selfish and always keen and follows his inclination.

The more and various the needs and interest that have been fulfilled but still remain, the thirstiness of ego have never been satisfied. Actually, it has became a character of human being who has individual desire, where it appears at the desire for defending his struggle for life. Struggle for life is a fight for acknowledgement of his individuality. Human, in his life always attempts to maintain his ego. The thing which cause human being make any efforts, takes step or defend his life is his ego.

Besides of his individual characteristic, man himself has longing for collectivity or transpersonal life. This longing conduce him to make any efforts to get in touch with others for giving shape of their collective life. Collective life needs order, peaceful, unity, respect, love etc.

Where on this side he doesn't make important or giving priority to his individualistic but he will consider his society and public demand as more important. This collective desire is oftenly passive, not lead to push acting. Both of desire are mutually contradiction. In his life, human being will always faces conflict where it occasionally is very sharply, more over when there is no the third desire of human being itself who has character as arranged and compromiser. In this point we know than that human being besides has individual character and collective character (transpersonal or organic), he is also has the third
character which is capable to maintain his character and make balance of it. When the third desire is not exist, so it is able to ascertain that both of desire aboved where they are not easy to be managed. This third desire has character such as stable, constant and revolve peacefully. This third desire also create the harmony and synthesis. Man is social creature. Life without society is imposible because collectivity desire in awareness of man is not possible to consider as non existence thing. On the contrary a society always consist of many individual. The society where his members are considered abolish "their ego" is not a society and not form of a reality. At one moment the centre of gravity lay on collectivism, but at the other moment the heart center put an individualism and the other side, none of individual who has no societal desire. Western society an example tend to has individualistic character while the society in former Soviet Union previously lean on collectivistic characteristic.

Man also, in his life needs sense of safety, save from disturbing of soul, property and infact also his dignity and prestige as well. In addition to need basic necessities like food, clothing and board, man as a member of society also has needs and necessities in form of general safety, social justic, freedom from econonic worries, respect from rights of individual, relief from torment and torture of corrupt, dealing in business, inpersonal affairs, in government, department and in the politic of those who may be in power.
From two kinds of necessities namely individual necessities and collective/social necessity, we can consider that more and more when a society develop, it will also become more and more develop the needs and necessities of individual and the society whether in quality or in quantity, it is reciprocally. This matter, as reciprocally also can create more and more various of nuisance or imbalance between the one needs and necessity and the others than it can evoke the blooming of conflicts which some times to be continue.

The conflict of imbalance that has been taking place make is not easy to get order.

The demand about the existence of order is included as a main demand of society or state, from traditional form till modern form because the present of order reflect, the existence of law neither written nor unwritten.

There is no gain saying the fact that not a society in the world dos'nt need law. ubi socitas ibi yus.

Cause of that, the nuisance of equilibrium or conflict of the needs must be prevented and do not be in let be in continuously because it will disturb the balance of social order.

Scholars like John Locke, montessquieu and Rousseau have known it with their pioneering of lesson where man has nature right where it embrace the right to survive, right of freedom and right to have something nature. However to step aside the nature right of man who
has character always want to make more important his needs should be needed what namely social contract that formulated in constitution and other regulations and it prevail between authority and people and between individual and individual in order to materialize the relationship for the sake of needs became harmony, synchron and balance.

Man continuously to make endeavours so that his social order become balance, because balance create condition in under control, peace, save and it constitutes the security of life persistence of man and society. In other words the nuisance of balance of social order should be restored. Preservation and restoration of balance of social order need orientation and rule of life. Orientation, standard or criterion of how to act and have good attitude to life together usually called norm or rule and or value.

Values are shared ideas about what is right or wrong, good or bad, desirable and undesirable. Values are general concepts, whereas norms are shared rules or guidelines for behaviour in specific situations. Norm usually carry sanction. A sanction is reward for behavior that violates a norm.

Norm also defend the persistence or existence of the society. To protect the behalf of man in society, it is obtained from several social norms. Earlier, several of that norms are not distinguished. Than, after pass through the long process, the man distinguishes the norms. The system
of norms consists of religious norms or belief, ethics norm, morality norms and law norms. Generally religious norms or belief norms is aimed to believed. This norms strive upon man as a obligation which is appeared to God and to him self. Source and root of this norm are trusts of doctrine or religion where by its follower is believed as God commandement. Morality norm is related to man as individu because its concern with personal life of man. This Ethical norm is strived to mankind in order to be formed good personal character which urge to perfect man and prohibit man make wrong doing. Murder, theft etc are not only forbidden by belief norms or religious norms, but also felt as in contradiction with ethic norm inside conscience of every man.

Ethic norms is based on custom, properness or fairness that prevail in society.

Ethic norms is pointed to subject external attitude where it is concretly for the sake of perfection or social order and go in certain direction to create peace, order or make "nice" the traffic of external interaction.

If violation upon ethics norm or the custom is occured, so, informal society authority will threaten it with sanction such as warning, belittling, denunciation, ex communication etc.

Every violation upon the three of norm which have been stated aboved will be given sanction although it is different. Sanction is nothing else than a result of reaction or consequence of the violation of norms.
Sanction in wide concept has character as gravity or in positif meaning that it has the form of appreciation (reward) like respect, sympathy, giving reward such as medal of honor and others sanction is also to be met with unpleasant or negatie shape of sanction like antiphaty, denunciation or penal. Usually, the thing which is meant as sanction is a negative meaning. With threat of punishment, deviation or violation of the norms should be prevented by society while appreciation is used to push and stimulate every one in order to obbey and loyal to the norms. In fact, sanction is created for restoring the equilibrium of social order that have disturbed by violations to previous condition.

As protector of human needs the norm such as religious or believe, Ethic norm and morality norm or customacy norm the are considered not adequate enough. The reasons are yet, many other needs of human need protection but stile not yet reached by the three norms and the needs of human that have found protection from the such norms are not guaranteed enough because when violation of that norms is accured the given reaction and sanction are not satisfactory because,

- Religious norm or believe norm is deemed, not able to give sanction that can be felt directly in this world.

- The sanction which is given by morality on ethic norm just enough to cause sence of shy, sence of fear, sence of guilty or regret to appear only. Take an example, when there is a murderer who not arrested and not brought to judge and still free to go to
some where he want to, so peoples will fell unsave although that
murderer has been dibled by the sence of deep regret and also fell
the thing like suffering as a result of his violation that has been
done.

and if ethic norm is broken or disobeyed, this is just make
denunciation, bilittling came to the surface. This type of
sanctions are also still not adequate because the fear toward
violator who might do his violation again by reason that the
sanction is felt too minor in importance. No doubt to mention that
such three social norms are considered as not satisfactory for the
protection human and society. Nevertheless it is not meant that
the three social norm do not give benefit with reason that the
three social norms have role and purpose on the society. And the
whole of norms rules or values that manage the human life are
strengthened by sanction. By the reason of the weakness of the
three social norms aboved so it is needed the protection of needs
and required other social norm that subsequently is capable to
satisfy the human needs that have obtained protection from the
social norms as stated above and also protect human needs that
have not yet derived protection from the social norms, that other
social norm is law norm.

In primitif society the concept of law and order has not yet known
the sense of fear and ignorance to barbarous method of treatment of
offenders, until the general method was used to settle disputes done by revenge personally such as dual blood feuds and reparation etc. So, in earlier society, punishment was basically on retribution and this vengeance bring the consequence about exploitation of the weak by the strong.

The life and property were most in secure and always exposed to dangers. At time, even the family members of victim or his clan settled disputes with the offender or his family. With advance civilization the sense or respect for mutual right and duties developed among people which eventually led to the evolution of law, later the state came into existence and took itself the task of maintaining law and order in the community by punishing the law breakers or offenders. The state also sought to redress the grievances of victim who were injured by the wrongful acts of criminals. Thus punishment began to be used by the sovereign as a substitute for personal vengeance. At that time, form of punishment that popular are exile, outlawry, banishment.

In the medieval period, era of religions predominance very much influence human civilization history especially in western world. Crime consider as sin and violence. Ecclesiatical punishment were mix up with the religious nations of cleansing of the soul for the reformation throughout the European continent. The declaration of human rights in France in 1989 marked the end of draconic punishment and the beginning of methodical system of punishment founded on sound
principle the right to punish is limited by the law of necessity. This brought about radical changes in the administration of criminal justice. In result, penology began to develop as an independent branch of criminal science with new treatment methods of punishment for the reformation of inmates. A scientific approach to crime and criminal has shown beyond doubt that torturous punishment tend to turn offenders more dangerous and aggressive towards the society. Alternatively, their rehabilitation through the method of reformation was consider more useful.

With this end in view the modern judicial trend is to incorporate correctional methods in the penal programme so as to rehabilitate the inmates in the community.

Together with the new criminological development particularly in the field of penology, it was generally realised that punishment must be in proportion to the gravity of the offence. It was further suggested that reformation of the criminal rather than this expulsion from society was more purposeful for this rehabilitation. With this aim in view the modern penologist focussed their attention on individualisation of offender though treatment methods. From the discription as stated above, that is the case we know the existence and role of law norm as well as with it sanction system in social life.

More far, with the others area of social life also, law norm including sanciton system, direct or indirect also has link.
How human should be conducted and do interaction with the others caused by needs and necessities may influence and give special colour upon their culture system.

Many people associate culture with the fine art, but for social scientist it has a different meaning, culture includes the values, norms, language, tools and others shared products of society that provide a plan for social life.

Remain in context of thinking like aboved, actually, there are the connection amongs norm, rule, value, culture, technology and development.

"When we try to understand the development process from the other point of view, we may state that the development is process of human interaction with his environment in such away untill derived: (a) fulfillment of necessity, (b) fulfillment of role of human nature or character, (c) achievement of equilibrium status. Interaction of man with that enviornment in the form of active endeour of man collectively to change and manipulate it and done by 3 approach;

"First, it is efforts of man to use tools or combination of tools system as "arm extending" of man, that is nothing else than technology itself. The first approach more physically approach namely artifact.

Second, it is approach where exist in social cultural environment namely ipsefact. Ipsefact is the efforts of human community for changing environment within the unit of "culture chrysalic". This
changing, for example is in form of developing of market system, developing of agriculture area upto the changing of structure and social system, economic, regulation and law order etc.

Third, approach on order of concept and value which are called mensefact, it meant the change arround the domain of insight, ideas, values, norms, ethic, ethetic''.

"Infact the three of approach can be continued simulteneously and mutually, nevertheless the ideal condition can be achieved if:

(a) There is equilibrium of the three of approach and
(b) mensefact collours the process of change with insefact and artifact approach.5

"From such approach model we will see the relation between technology capability of a society with development endeavour that have been done, it is that developing and technology application constitute a part of the whole of development and the firm connection between technology (artifact) with the change in other dimentions (mensefact and ipsefact)."6

Turn to talking about existence of norms including law norm that consist of ethic sytem too which, is capable to build individual character and societal character.

Sardar Ziauddin said ;

"Ethic is medium of our navigational, it does not constitute the goal of our journey. Ethic secure that we follow the right way, avoid hole trap
and the trap of float sands until the goal that we desire is reached."

In other words, we could say that Ethic is one of the tools for building individual character as well as societal character correctly.

Furthermore, Sardar (1985) said; external forms of culture or civilisation, is indeed depend on scientific conditions, technology and economic that may different from time to time, that is actually constitutes, the dynamic characteristic of world. But, internally, the principles that available in law system, culture and Ethic system which came from that different civilisations are always aimed to achieve the ideals of the same Ethics.

There is no gain saying that norms including law norm as one of development component and as a component of civilisation maker as firmly relating with its role of a tool of social engineering, beside that, the most essential of law function is to secure stability and certainty. Both of this things constitutes of the main goal of law as well. While law function as a social control mechanism have been known commonly "Social control mechanism is forms of a process that have been planned previously and go in certain direction to persuade, influence or even force the members of society in order to obey the prevailed norms or law order."

Social control can be distinguished into preventive social control and repressive social control. Preventive social control is formed for preventing disruption of balance between stability and social flexibility
as well as to activate social control which is aimed to restore the defected equilibrium.

Even law has function like vehicle for doing social engineering to produce the intended form of society. Operational conception concerning to the social engineering by utilizing law as a medium, have ever been put to the front by Lundberg and Lansing in its concept of prediction of consequences. They said that every law regulation which is capable to cause social change will give encouragement to ruler attitude. While the attitude of every individual materialize a function in realm where the individual has behaviour. The other operational conception about social engineering, which also utilize law as a medium is proposed by Hans Kelsen with his concept about "double aspect of law regulation". Following Kelsen said that law regulation is addressed to a member of society where it indicate to how he should has behaviour, as well as purposed to law enforcement institution in order to impose sanction on that offender.8

The whole roles of law as stated above will never be achieved without impressing of intention to its basic component, that is the man as agent and proponent. All of term that have connecting to development, social order, social engineering, justice etc. must be firmly related to the man and a thing that adhere with the man such as; status matters, human values, human resources, human rights and the other aspects of human life. How important the influence of norm to individual characteristic
building, even though we know that technology and economic system take part too, while basically all of society in the world always been to reach the same ideals where values and norms about the truth, justice, dignity, equality, freedom and the others are exist. And this is provided by ethic system in the norms including law norm. As other systems like economic, politic, technology are rarely encompass the principle of the truth, justice equality, dignity. In addition, the such systems like economy, politics, technology and soon do not equip strong sanction as provided by law system. Only in law norm or law system with its sanction system, maximum and minimum standard of human behaviour in relation of each others necessities are capable to be limited.

By the reason, man as absolute pre-requirement and main roler to create and implement all of system, therefore he must be a centre of the focus; because to man, black, white or the grey of the world will be put. The relationship between how world develop and go run with the existence and significance of moral, ethic and social science has been described by sardar as follows;

The dangers of western science bring itself into reality in form of nuclear stock room, warehouse of chemic and biology that frighten; a gotter and merung (total destroy) on environment; pass through anxiety of potential science progress in fields of like genetical and socio biological engineering that guide to form of control and new domination; it is appeared from absorption of university sciences into
secret research supported by defence department fund; separation of man from nature, the computer offensive to personality freedom; and uncontrolled technology that will drag along man run to highway toward to the future for the endly go to great collision. Simultaneously, the entire result which is not so interesting from science epistemology threaten human existence and the world that we posses. This developments constitute the results of science where infact is not netral and free value that mould its basic foundations; the isolation of knowledge from social thinkings, moral and ethic thinking and seeking this knowledge only for the sake of material and secular control upon human and nature. Relience of scientific knowledge based on observation and theory as well as confirmation about what's true and what's possible are fully "objective", no relation with human values and social problem are naive and as well as dangerous. It is not the case that it is not depend on values, but precisely science is shaped by values and consist of social and cultural themes that dominant in west civilization.9

As said before that the man is as centre of focus because all of his activities in the world is reflected in the behaviour of social, culture, politics, economic, law, government, Science and Technology, architecture, education and so on and it create what's namely as civilization.

By mean of that, it is visible the relationship among man and values system like law sytem and the other system for building
civilization. In other word, law system also forms, a tool or instrument for creating civilization by the reason of even law is capable as like a tool for social engineering as stated by Mans Kelsen in his concept regarding to double aspect of law.

The point like above can be strengthened if we try to understand about process of development. In others meaning development is a process of social transformation, that is to transform human from one condition to the better condition, human being is individual creature as well as social creature. By such cause, society transformation is involved the change quality of their individual life in whole aspect, whether spiritual aspect or cultural aspect as well the change of the quality of their social life.

Generally, society transformation through development is to be strived for rehailiting human dignity in all dimension. In spiritual level, the improving of human dignity is materialized into more and more bright and clear of spiritual life while in cultural level that is spiritual enlightenment where to be expressed to the noble of values order that capable to direct individual behaviour in society. At the end in structural level the values or idealism is capable to analyze concretly and put in the order the system, such as physical technology of environment economy, social and politics.

Structural transformation however is focussed at engineering of system and order within physical technology environment, economic,
social and politics, while on other side it is to inhibit human behaviour that has destructive character to himelf, to others, and to nature and subsequently it is to give chance to maximalise the growth of capacity and human role. To secure authority and operate the sytem and order well, it is required a law system which legally will institutionalise and formalize the system and environment order.

On the firmament like that, law system is a set of mechanism and arrangement that preserve, spurt and control the development of various life aspects at structural order including aspect of technology development. Besides that, the essential function of law is to secure certainty and stability where this thing also constitutes the goal of law. When it to be connected to economic matter, it means that the basic function of law in economic development is to secure stability and certainty of economic field.

Law and economics, indeed, that's constitutes as one of two sub system of wider social life. Economic sub system is aimed to use power resources where it is nature sources or human resources efficiently for persistence and rehabilitating the quality of life society.

Interrelationship between nature sources with man is for creating the necessities. This necessities more and more frequently face with scarcity due to the world limitedness and growing of man and society. Dialectical relation between necessity and scarcity or limitedness create attitude, principle and economic action. In effort to fullfil his needs,
every one is going to do economic action; this is an action based on principle of rationality but such rationality made decision can not be done fully as we want to. His society environment is the obstacle he might be faced.

If everyone do economic action just based on principles of rationality without care of the others need, so it might be emerge conflict or dispute that will lead to disorder condition.

To prevent dispute that might be take place, it is necessary to build a mechanism or pattern interaction among members of society, in order that utilization of economic resources in maximum does not lead to disorder.

From this matter emerges the necessity of arrangement of holding economic activity in society, subsequently a requirement about law for managing economic life floats to the surface.

According to Sibernetic theory of Talcott Parson, economic sub system is to be disciplined by sub system that is enriched with norms namely cultural sub system and social sub system. In this matter, such norms not only have function to make discipline economic activity itself. It is meant that the attendance of law system (regulation) constitutes absolute requirement to make economic activity going on well.

Economic life is assumpt there are has been exist in social order. And in that social order, economic activity is put into operation.
Economic sub system is not capable to design regulations that can bind behavior of its supporters because if it happen, that means it is contradictory with the division of primary function in society. Primary function of economic sub system is to do adaptation to environment, while primary function of law regulation is make social sub system is exist. Social sub system give legitimation to actions that have been done in economic sub system.

Law influence economic life in form of giving norms that manage economic action. Economic life needs regulations for restraining human action in order that optimation of holding society prosperous can be achieved as order with out make disorders came to the surface. Possibility about conflict might take place between law and economic constitute of interaction problem between law and economic generally. But, exactly from dialectical conflict between law and economic, it can be said as interaction pattern like influence of economic consideration into law life.

Law support member of society to do economic activity such as productivity, creativity and inovativity as a consequences of there are a law protection that secure beneficial results of activities. In turn, this thing will push ahead market growing and spur economic development. Law in shape of instrument to interprate the goal of development into form of norms for that than implemented. More amd more effective the law can be utilized for managing human behavior, so make the
development more success. Economic development is not only need law development law itself. Development of law according to Michael Hager in "Development for the Developing Nation" is a law system that sensitive toward the development; surround whole of substantive law as well law institutionals and skill of law scholars who aware and active to support development process.

That's law system involve all actions and all activities that strengthen law infra structure namely institutionals law, profession of law, law institutional education and the entire of something regarding to dispute settlement and the problems which concern with development.

Observe, it is many relations between law and the others system such as politic, economic, social, culture etc. So, it can be considered that the efforts in development of law field become more important because it link to nation building and nation existence.

As said before the order as form of the first and the target of all regulation (law). So the order that is needed should be constitutes of main requirement for the existence of human society order.

Era of development, actually, it's changing era, it is not just enough to physical change only, but it also should be a change of human attitude in society. To face the development era, the change of physics and attitude can not be avoid, the need of law which is not just has function to preserve certainty and order only, but also law must be has function like a tool or a manager or medium of development in meaning as
distributor of activity direction toward the needed reformation or
development.
To play his role, law is strengthened by sanction system. Sanction
system that adhere at this law system is able to make this law system
to be having an authoritative bearing. Sanction system is also very close
to the matters of human status, human values, human resources, human
rights, the other aspects of life. Sanction system is also related firmly
to justice. Justice matter in sanction system contat to what is needed in
preceding case, which is aimed to what namely as proper sentence.
The failure toward to or to create this proper sentence will make filling
of injustice came to the surface whether for individual or for society,
where as the existence of punishment can not be avoided in society
although it is recognized that punishment is form of intrument of last
defence. Due to stated reason that law included its punishment system
is able to be used like a tool for social engineering, so it constitutes a
system of endeavor that capable to mobilize man toward a behavior in
accordance with the hope of society.

On the facts like above, obviously that the existence of
punishment can not be avoided or nullified in society. Special
discussion regarding to the importance of punishment existence from
criminal law, criminology and victimology will be discussed in others
pages of this chapter.
2. THEORIES OF PUNISHMENT

Law constitutes integral part of lifehood. When man is isolated from the others, than it will not be in contact or in touch. Law manage and dominate man in lifehood. As consequences therefore law order has as a starting point on respecting and protecting human. Actually this protection and respect are nothing else than reflection of one side of his necessities. In respect to the man, it is obtained the general requirements for validity of regulation of life where it is to be provided for human.

Law, infact is emerge to make a problem out, when violation of law norm, conflict, evil or unlaw are happened. It all of something going on order, smoth without conflict or violation, than no one rise question about law.

Generally, characteristic of man is like to seek his win. When his necessities is disturbed, he tend to blame others; he will ask who's wrong, who's violator, who has right, what base of regulation and what's the sanction?

Conflicts of human necessities or conflict of human interest constitute raison 'd' etre of the law including sanction.

Law norm has substance normative reality (what should be done); das sollen, it is not content natural reality or concrete incident; das sein. To make the concrete (das sein) incident become as law affair or law incident, it need das sollen.
So, between das sollen and das sein have connection. Usually, the sanction was considered as different conspicuously between law norm with the other social norms. Sanction upon violation of law norm can be forced and can be implemented to violator. Obedience on law norm is not only based on sanction that has characteristic "force", but also caused of being pushed by morality reason and faith reason. Sanction will be imposed if violation of law norm happen. So, sanction is only as form of result and not form of real characteristic of law. The ruler can give and force sanction when violation of law norm have been occured, because law enforcement is in authority monopoly. The ruler has power to force sanction upon violator. Law exist due to legally authority. The legal authority makes law. Law and his sanction is to manage and attempt the order and limit the move space of individual. Law with his function is not possible to implement with out authority. Law and sanction are authority. The authority that organize order. Law regulation and sanction constitute two things that should be closed because the existence of law regulation lied on sanction or punishment that is begun from traditional form up to modern form.

Nowadays some of major questions which are engaging the attention of penologist are whether the traditional form of punishment should remain the exclusive or primary weapon in restraining criminal behavior or should be suplemented even replaced, by a much more
flexible or diversified combination of measures of treatment of a reformative, curative and protective nature, if so to which classes of offender should their new measure be applicable, and how should their choice in particular cases be determined?

And finally, how could the reintegration of offenders into society be placed so as to efface the penal stigma and to cut off of its source.\textsuperscript{10}

History of punishment evolution noted the form and characteristic of punishment from dead penalty, tormentment, banishment and became replaced caused by influence of time and place, or caused by nature factor, social structure factor and government political factor.

Prison constitutes evolution and modification from exile, banishment, transformation, deportation which was caused by influence of nature and social structural factor.

Nowadays, many countries in the world are arranging a shorts of reformation about punishment including prisonisation.

At the beginning, this thing is occurred at European countries and America that although with different observation of background but have same principle, that is the reformation of punishment that can be able to prevent and substract crime in the future and than that reformation movement is followed by countries in the other continent. Firstly, in England, reformation of punishment used approach methods like community treatment, how after, by the other countries this thing had been followed conditionally with some adjustment such as in
America with term of correction, in Singapore and Japan with rehabilitation, in Thailand with rehabilitation and treatment and in Indonesia with correctional institution. In criminology seminar in 1969, it have been formulated definition about treatment of offenders, term of treatment in penologist technique meaning is good treatment or treatment which is aimed toward rehabilitation while the offenders are law breakers or more clearly the law breaker in investigation level (dependent) and law breaker had been convicted by judge.

Definition of prisoner is the one who had been convicted and lose his freedom as well being undergo his punishment in certain environment and restricted by kinds of suffering that he want to be avoid.

Discussion about prevention of crime and rehabilitation of prisoner as a part of congress program that had been done by U.N.O. brought big influence to countries member either national or regional.

Punishment policy in penology continuously grow and develop and still remain considered that it is not an independent knowledge and even deem that penology as a young knowledge and by that as a branch of criminology.

The effect of doctrine of punishment reformation that growing continuously today and the factors connecting to implementation of prisonment with correctional institution system cause reasoning stimulation from results of research for finding perfect definition is increase.
Punishing the offenders is a primary function of all civil status. The drama of wrong doing and its retribution has indeed been an unending fascination for human mind. In fact it has been the theme of much of the world greatest literature since ages. However, during the last two hundred years, the practice of punishment and public opinion concerning it have been profoundly modified due to the rapidly changing social values and sentiment of the people. The causal problem today is whether a criminal is to be regarded by society as a nuisance to be abated or an enemy to be crushed or a patient to be treated or a refractory child to be disciplined? or should he be regarded as none of these things, but simple be punished to show to others that anti social conduct does not finally pay. It is in this perspective that the problem of crime, criminal and punishment is engaging the attention of criminology and penologist all around the world.

The theories of punishment therefore contain generally policies regarding handling of crime and criminal. The four general accepted theories are deterrence, retribution, incapacitation or prevention and reformation or rehabilitation. It must be stated that these policies are not mutually exclusive. Each of them, however, play an important role in dealing with potential offenders.

According to Rupert Cross in punishment, prison and public, page 113-119; development of punishment theory lied on base utility theory in
order to be useful and retributive theory. Center of focus of utilitarian theory strived to efforts of crime prevention for the next time that consist of three part, those are prevention, deterrence (individual, general and long term deterrence) and reform, yet center of focus of retribution theory was aimed to obligation to fulfil repayment from what have been done by criminal and there are three parts namely "vindication, fairness and proportionality".

The Dutch writers, generally between Vos and Van Bammelen divided the base of punishment become three theories, those are absolute theory, relative theory and combination theory.

Forms of variation of such punishment theories was composed from several literatures of criminal law writers in western countries that have been developed for seeking answer of difficulties which is emerged by sharp critic about base of punishment.

Critics concerning to the base of punishment involve relation among punishment implementation and the goal as well the results which is found from punishment application.

The point of view of punishment like aboved emerge from scholars that their activities root from one science discipline family in scope of criminology, sociology and penology that had debated punished from his own knowledge. The assistance of criminology, sociology and penology that support toward to criminal law modernisation in effort to come out from shakles of difficulty is for
seeking satisfaction are basic to depend or to sustain punishment sanction. Basically the reasons for sustaining that punishment sanction revolve at three main goals, those are to protect public demand, to prevent as well to restrain crime and to rehabilitate offenders. To punish crimes is a recognized function of civilized states for centuries. But during the last two hundred years, both the practice of punishment and public opinion concerning it have been propoundly modified. The pertinent questions today is what should be the society attitude towards a criminal. Should he be regarded as a nuisance to be abated or a patient to be treated or a refractory child to be disciplined. Or, should he be regarded as none of these things, but simply an example through which it can be demonstrated to others that anti-social conduct does not pay? Thus the penologist today are concern with the problem as to what and should punishment be directed. Since punishment involves pain or deprivation which people want to be avoided, its intentional in position by the state requires justification.

Reiterated like state above that the difficulties of punishment can not be avoided by the view of that punishment is an evitable adjunct of a system of criminal law. If criminal law is defined where punishment is included, main question that we meet is whether the society should has a system of mandatory rules which is enforced by penalties. Relatively, small association of like minded people may be able to operate with rules which is not backed by sanction and a choice by the
larger society against authorizing legal punishment is at least theoretically possible. In the broader society also, threatened punishment are not always inflicted on person who has questionably committed crimes.

If actual punishment never or very rarely follow threatened punishment, the threat would lose its significance. Thus punishment in some cases is a practical necessity for any system in which threats of punishment are to be taken seriously, and to that extent, the justification is in separable from the justification of threats of punishment.

Though opinion may differ as regards punishment of offenders varying from age old traditionalism to recent modernism, roughly speaking four types of views can be distinctly found to prevail the modern penologist have termed them as theories of punishment.

**Deterrent Theory**

The earlier modes of punishment were by and large deterrent in nature. The deterrent presupposes infliction of severe penalties on offenders with a view to deter them for committing crime. It is the fulfillment of one's vengeance that underlies every criminal act. The deterrent theory also seek to create some kind of fear in the mind of others by providing adequate penalty and exemplary punishment to offenders which keep them way from criminality. Thus a rigour of penal discipline act as a sufficient warning to the offenders, as also others. Therefore deterrence is undoubtedly one of the effective policies
which almost every penal system accept despite the fact that it invariably fails in its practical application. Deterrence as measure of punishment particularly fails in case of hundred criminal because the severity of punishment hardly has any effet on them. It also fail to deter ordinary criminals because many crimes are committed in a spure of moment without any prior motive or design. The futility of deterrent punishment is evinced from the fact that quite a large number of hardenet criminal return to prison rather than a free life in society. Thus the object under lying deterrent punishment is unquestionably defeated. This view finds support from the fact that when capital punishment was being publicity awarded by hanging the person to dead in public places many people commited crimes of pick pocketing, theft, assault or even murder in those men packed gatherings despite the ghastly scene.

In earlier time crime was attributed to the influence of "evil spirit" or "free will" of the offender. So the society prepared severe and deterrent punishment for the offender for his act voluntary perversity which was believed to be challenge to God or religion. The punishment was to be a terror to evil doers and an aweful warning to all others who might be tempted to imitate them.

Retributive theory

While deterrent theory considered punishment as a means of attaining social security, the retributive theory treated it as an end itself.
It is essentially based on retributive justice which suggest the evil should be return for evil without any regard to consequences. The supporter of this view did not treat punishment as an instrument for securing public welfare. The theory therefore underlined the idea of vengeance or revenge. Thus the pain to be inflicted on the offender by way of punishment was to out weight the pleasure derived by him from the crime. In other words, retributive theory suggested that punishment is an expression of societies disapproabation for offender's criminal act.

The theory of retribution is based on view that punishment is a particular application of the general principle of justice, that man should be given their due. Punishment serve to express and to satisfy the rightous indignation with which a healthy mind community regards transgression. As such, it is some times an end in itself. It must be stated that the theory of retribution has its origin in the crude animal instinct of individual or group to retalize when hurt. The modern view, however, does not favour this view because it is neither wise nor good and it is generally condemned as vindictive approach to the offender.

The retributive theory is closely connectd with the nation of expiration which mean blotting out the guilt by suffering an approapriate punishment. It is this consideration which underlies the mathematical equation of crime, namely, guilt plus punishment is equal to innocence. Although most penologists refuse to subcribe to the contention that
criminal should be punished with a view to making then pay their dues, yet the practical utility of explanatory theory can not be holly discarded. No sooner an inmate completes his term of sentence his guilt is deemed to have been washed off and he is regulated a position as if he had committed no wrong.

**Preventive Theory**

The preventive philosophy of punishment is based on the proposition, not to avenge crime but to prevent it. It presupposes that need for punishment of crime arise simply out of social necessities. In punishing a criminal, the community protect itself against anti social act which endanger social order in general or person or property of its members. Thus the real object of the penal law is to make the threat generally know rather than putting it occasionally into execution. In England utilitarian supported preventive theory because of its humanizing influence on criminal law. They asserted that it is the certainty of law and not its severity which had a real effect of offenders. As a off shoot of preventive view crime and criminals. The development of prison institution gained momentum. The preventive theory seek to prevent the recurrence of crime by in capacitating the offenders. It suggests that prisonization is the best mode of crime prevention as it seek to eliminate the offenders from society thus disabling them from
repeating crime. The supporters of preventive philosophy recognize imprisonment as the best mode of punishment because it serve as an effective deterrent as also a useful preventive measure. It presuppose some kind of physical restrain on the offenders. According to the supporters of this theory murderers are hanged not merely to deter others from meeting similar end but to eliminate such dreadful offenders from the society.

Reformative Theory

As the time passed, the development in the field of criminal science brought about a radical change in criminological thinking. There was a fresh approach to the problem of crime and criminals. Individualized treatment became the cardinal principle for reformation of offender. This view found expression in the reformative theory of punishment. As against the deterrent, retributive and preventive justice, the reformative approach to punishment seek to bring about a change in the attitude of the offenders so as to rehabilitate him as a law abiding member of society. Thus punishment is used as a measure to reclaim the offender and not to torture or harass him. The reformative theory condemns all kinds of corporal punishment. The major emphasis of the reformist movement is rehabilitation of inmates in peno correctional institutions so that they are transformed into good citizens. These
correctional institution have either maximum or minimum security arrangements. The reformist advocate humanly treatment of inmates inside the prison institutions. It also suggests that the prisoners should be properly trained to adjust themself to the free life in society after their release from the institution. The agencies such as the parole and probation are recommended as the best measure to attain this purpose.

The reformative view suggests that punishment is only justifiable if it looks to the future and not to the past. Thus the supporters of this view justify prisonization not solely for the purpose of isolating criminals and eliminating them from society but to bring about a change in their mental outlook through effective measure of reformation during the term of their sentence. The modern penologists reaffirm thick faith in reformative justice but they strongly feel that it should not be stretched too far. The reformative methods have proved useful in cases of juvenile delinquents and the first offenders sex psychopaths also seem to respond favourably to the individualized treatment model of punishment. Hardened criminal, however, do not respond favourably to the reformist ideology.

Many penologist have denounced the 'rehabilitative ideal' or the 'reformist ideology' underlying individualized treatment model because in practice they are more punitive, unjust and inhumane than retribution or deterrence.

It is a known fact that punishment always carries with it a stigma was
much as it fetters the normal liberty of individual. It has become an integral part of law enforcement for securing social control. Punishment is inevitable for residivists who are habitual breakers. The tendency among residivists to repeat crime is due to their inability to conform to the accepted norms of society. Investigations reveal that it is the mental depravity of the offenders which make them deliquent and therefore a system of clinical treatment seems inevitable for the correction of such offenders. However, for this purpose there is a need for compartmentalisation of offenders on the basis of age, sex, gravity of offence and mental condition. This object is achieved by scientific classification of criminal into different categories, such as the first offenders, habitual offenders, residivist, juvenile, deliquents, insane criminal and sex offenders. Thus punishment should be a sort of social surgery since criminal is essentially product of conflict between the interests of society.

But, since the early seventieth years, the punishment theory namely medical model that included individual treatment where emphasize to reformative theory and individual rehabilitation have been doubted. This theory attached as many because it is considered not effective and make offenders like subject of arbitrer treatment from programs of intensive rehabilitation as well as cause sentence disparity sharply. The cost also is very expensive and have been considered it can not adjust with developing of time in program of criminal prevention and criminal justice.
Punishment theory is claimed for paying attention of justice and integrity about justice model in where punishment is hoped proportionalistic with the quality of criminal act and the degree of dependent guilty as well as about damage risk from criminal act. With that, it can be said that the public have begun to turn to classical view about punishment despite it can not said fully like that because they combine it with prevention of violator or dependent.

Actually this theory have moved and mentioned as Neo classical view. Only the term of retribution should be avoided and considered it have been implied with the other goal.

From side of approaches to justification, there are only two kinds those are retributive and utilitarian where in further development they was added with mixed theory.

Retributive justification, as simple, provide a philosophical account corresponding to these feelings, some one who has violated the rights of others should be penalized and punishment restore the moral order that has been broken by the original wrongful act. This theory was much influenced by Immanual Kant. In Kant's view the society is not just has right to punish one who has done criminal act, but also consider it is a duty of society. And punishment that will be given should balance with act like be in idea of "an eye for an eye", a tooth for a tooth. Taken as claiming an intimate connection between moral guilt and justified legal punishment, the retribution theory raise troubling question about
the proper purpose of state and about any human attempt to equate reward and punishment to moral deserts. The dispute of classical school and new classical have been started since Beccaria who has pioneered classical school that condemn cruel and brutal punishment and advocated equalized treatment for all criminals for similar offenders. He said that the guilty of criminal is not independent, but also many things are involved like family background and environment where it should be included in consideration in time to determine guilt and time to punish. This means the stressing put on the act (crime) better than to criminal. He (Beccaria) also pose question about authority of court and said that the function to define punishment for different offences must be confined by the legislator and law makers.

The central theme of penal policy was advocated by adherents of classical school, it was equality of punishment for similar offences. Cesare Beccaria had written his paper "Dei delitti e delle pene". The content of the paper among others said that actually, giving punishment also can be defended "with assumption" that it can help to prevent crime.

The Beccarias point of view of constitutes reformation of punishment in meaning punitive punishment school where it had been said that punishment goal is as deterrent doctrine.

In other side new classical school criticize equal punishment based on reason that it will not cause to be good for offenders like minors,
idiots, mentally deprived or those committing crime under extenuating circumstances. Stressing of attention by Neo Classical school is that punishment should be given in different degree and must be connected with mental condition and intention of the criminal. This also means that stressing of attention is changed by from "crime" to "criminal". Contribution that had been given by this school in penology is the stressing focus on necessity of individual punishment. This, finally lead to classification of offenders in different category according to the genesis of their criminality. Among several names of modern penologist are Raflaele Gorofalo and Enrico Ferry. Gorofallo suggested that for insane criminals should be treated leniently. In his view reformatory theory of punishment had only a limited utility in cases of young or first hardened criminals. he also rejected deterrent punishment since it failed to determine the exact quantum of punishment for a given offence under varying social circumstances. He, however agreed with Beccaria that retention of punishment is necessary for recognition of individual rights and social co-existence. Raflaele Gorofalo, Cesare Lombroso and Enrico Ferry have contributed new knowledge about criminal antrophology in Italy. Cesare Lombroso's lesson was well known with his research about etiology of crime. Enrico Ferry is also Italian penologist who supported positive views of criminology. he emphasises that punishment is needed to protect society
because crime always be in society. In his opinion punishment was a social deterrent. Since the society has to defend himself against aggressors, it has a right to punish the offenders.

From various theories of punishment with the lack and the superiority, however, no single theory whether deterrent, preventive, retributive or reformative can help of eliminating crimes and criminals from society. It is only through an effective combination of two or more of these theories that an ideal penal programme can be done to combat crimes.
3. OPINION BASED ON CRIMINAL LAW

Talking about criminal law generally is much more stressing on dogmatic matters or criminal law where discussion about penal sanction that has characteristic to strengthen criminal law is mite.

Until about fifties, the punishment matter in criminal law are rare found attention.

Up till now, more discussed in criminal law are the things according to basic principles of criminal law where it is involved about criminal act and criminal responsibility.

Bias attention due to still of the lack of attention to this penal and punishment matter might bring cause that the target and purpose of all criminal law will not be reached.

Proportionally, determining of penal is divided into three definitions in meanings of to define penal sanction stelsel by regulation maker, applying of punishment concretely by judge and implement the penal by authority official.

Nowadays many countries in the world make efforts about punishment reformation especially penal prison. On the beginning, it was occurred in Europe countries and America although with deterrent background and review, but actually it has similar principle that is by doing penal reformation, so, in the next day, crime revolution will be decreased in quality and quantity and then, the reformation movement is followed
by countries in others continent like Indonesia, states of Malaysia, Thailand, Singapore etc.

The central focus of analyzation of penal reformation has different observation cause by consideration of multi aspect which influence each other reciprocally. That's material of consideration is meant surrounds of reason aspect and goal aspect that make strong the need on punishment namely human aspect and others aspect, like social, economic aspect which constitute implication of penal application and medium aspect which is needed in penal implementation. The problem about sanction and punishment connecting to penal as well as penal application itself is not only related to criminal law procedure, but also criminal law implementation.

At the same time, criminal justice system itself constitutes unique system because it is differ with others social systems, the difference laid on his awareness for producting all of things that "unwelfare" where in big scale is used to reach the goal of the "welfare". All of things have character as unwelfare, can be in the forms of freedom ex-propiation, stigmatisation, property expropriation, giving physical pain, even some times expropriation of life etc, while the things that have character like "welfare" such as restraining, pressing and or prevention of crime, rehabilitation of offenders and social welfare.

Criminal justice system has multi functional dimension in side of function as society medium for detaining and control crime on certain
level (crime containment system). On the other side, criminal justice system also has function as secondary prevention, that is to try to substract criminality in residivists circle and some one who has intention to commit crime, by detection process, sentensing, and punishment implementation.

Although punishment has became a crusial feature of every legal system, th widespread of dis agreement is overcame by moral principles that can justify its imposition. On fundamental question may arise is why (and whether) the social institution of punishment is warranted and a second question concerns to the necessary conditions for punishment in particular cases. While third question connecting to the degree of severity that appropriate for particular offences and offenders. The debates about punishment are important in their own right but they also raise more general problems about the proper standards for evaluating social practices. Parts of the civil law authorize punitive consequence but in advanced legal system, legal punishment is linked to the criminal law. The law which consists of prohibition of anti social behaviour is backed by serious sanctions. Not every criminal law offence always should be followed by sanction. Alternatives disposition are oftenly possible, but a set of mandatries rules that did not provide for punishing of violators would not be part of the criminal law. The meaning and possible justification of legal punishment are therefore very closely related to the meaning and possible justification of the criminal law.
Theoretically, every penal which is imposed to an offender should or based on at least on individual conditions of matters that connecting to criminal act as well as relating to the offender. Sometimes in practical that thing may be occurred in difference until occasionally what is called as "consistency of sentencing" can not always be achieved.

Nevertheless in every sentencing act should be achieved at least "a consistency" in approach to sentencing. This is very important to be paid attention, think of failure in creating this consistency will make feeling of in justice float to the surface, because an offender may derive the penal more heavy than others and vise versa.

Likewise, public opinion about the equality before the law principle will be flawed when fluctuation in sentencing is occurred. In sentencing act, it should be deliberated various factors in order to achieve what is called "proper sentence". Proper sentence is related firmly to the conditions and environment, that surround offenders including about criminal act that have been done, essence of accusation, level of criminal act gravity, aggravating factors, criminal defences etc. Sentencing act is also related to principles of punishment with his direction from its sources, constitution, jurisprudence or from others tendentions like international resolution etc, added with consideration about level of sentencing generally or specially that had been imposed by same court or the other court.

In rational system of penal law, a close connection will exist between
accepted punishment and both the boundaries of the substantive criminal law and the procedure.

Between two systems, that are substantive criminal law and criminal procedure are determined what is called as criminals guilt where in Greek it is called Mens Rea.

Criminal justice system in his essence constitutes a process of law enforcement. By that cause, it is firmly connected to criminal law itself, either substantive criminal law including punishment matter or criminal law procedure, because criminal law itself basically constitutes enforcement of criminal law "in abstrat to" that will be created into law enforcement "in concreto". If criminal justice system that has duty to enforce criminal law do not handle seriously, it will cause that not only the goal of criminal law can not be achieved, but also this criminal justice will become as one of criminogenic factor.

In his growth, attention that had been given to the criminal justice system is large enough. Criminal justice system is however, not seen only as a tool for prevent crime but also as "problem" itself, similar with crime itself. It can be seen from several indicators like increasing of crime continously where it indicates that criminal justice system is not effective and it constitutes as a evident of failure or as a disability of such criminal justice system.

Other relation, we can see by connect it to criminal law policy that also constitutes integral part of national development policy.
Legislative policy or legislation policy can functionally refers to a part of planning and mechanism of crime prevention, even it can be started as first step. Broudly outline, planning or policy of crime prevention that poured into legislation embrace;

a. planning or policy about whether forbidden act will be handled because it seen danger and harm.

b. planning or policy about what sanction that can be imposed to offender either punishment or treatment and application system.

c. planning/policy about the procedure or mechanism system of criminal justice in framework of criminal law enforcement.

Based on that planning or policy we can refer that the policy about sanction system also form, important part of crime prevention policy. And remember legislation policy constitutes first step of crime prevention policy, so it is proper, if legislative policy is also form of part of criminal policy.

If, it is referred widely, criminal law policy is an integral part of national development broad line policy.

About link between development policy and crime, it have been iterated in United Nation congress about prevention of crime and the treatment of offenders. In one of U.N. congress report at VIth in 1980 in Venezuela, it was stated as follow.11

"..............the correlation between development and increasing criminality could not be accepted as a principle.........development was
not criminogenic per se, but could be came such if it was rationally planned, disregarded culture and moral values and did not include integrated social defence strategies."

Similar statement also seen in U.N. congress report at VIIth of 1985 in Milan that amongs others things stated;¹²

"Development is not criminogenic per se, especially where its fruit's are equitably distributed among all the peoples, thus contributing to the improvement over all social conditions; however, unbalanced or in adequately planned development contributes to increases of criminality."

To refer to the statement above it means development policy in law field included criminal law policy and its punishment, might become criminogenic factor if it is not rationally planned, it also will creates unbalanced, disregarded of cultural and moral values as a consequence it does not constitute integrated social defence strategies.

So, if the condition of legislation is not good, it could be as one of criminogenic factor. The existence of relationship between increasing crime and the unration of criminal law policy is shown in condition of penal code itself. One of disorder aspect of punishment regulation be in penal code, that is, the sanction that availabled for different offence where sometimes without a base or reason rationally. If the policy about punishment that have been poured into penal code is not well planned, it also could cause the emergence of what namely "disparity of
sentencing". Sentencing disparity, in this view is meant like imposing of different penal on offenders in similar offences and to offenders in different offences.

Cause by this conspicuous sentencing disparity according to Edward M. Kennedy in "Toward a new system of criminal sentencing; it will lead to the situation as follow:

a. it could reveal the growth or develop the feeling sarcastic from society on the exist sanction system.

b. it will fail crime prevention.

c. it will support activity of increasing crime and

d. it block rehabilitation activities on offenders.

Various efforts have been done to over come this problem, such as in form of special minimum regulation, inclusion of sentencing guideline, sentencing control pass through appeal court, coordination and discussion for judges institutionally, integrated education system for one who up holds the law, and pass through the commutation of sentence in form of remission giving policy and release with requirement (parolle).

Yet, more important is the necessary of comprehend fully on proportionally principle in sentencing this is proportionally among the interest of public, state, offender and victim.

From what stated above, it is tangible the relation of unrrational of punishment regulation with the present of sentencing disparity and the increase of crime activities.
Sentencing disparity have taken place conspicuously and finding sharp attention nowadays where it apparently can not be released from system formulation of sanction in the present regulation.

In other word, regulation could be as source of the occured of sentencing disparity indirectly. And this problem however it may cause the emergence of apathetic attitude, sarcasm and unsatisfaction on society by take the law into their own hand or make direct reaction upon offender and law enforcement agency.

Than regulation as indirectly source of the occured this sentencing disparity also can be said as indirectly source of the emerge of other offences, in other words it could become as criminogenic factor. Whereas we know that operationally, criminal law regulation including his sanction system has stratgic position on criminal justice system, because it gives definition about what behaviors (acts) are as a crime, give direction to government for removing crime and punish offender, giving limitation about sanction that can be applied for every crime.

At this point, criminal law legislation creates "legislated environment" that manage all procedure and customs and manners that should be obeyed in various level of criminal justice sytem. Legislation policy about kinds of punishment/sanction also may be referred as criminogenic factor, in that connection to prison sanction (imprisonment). As known nowadays prison sanction is undergoing crisis era due to imprisonment is considered as a kind of dislike sntion.
Much of sharp critics was directed to this kind of sanction (prison) whether it is seen from his effectivity or be seen from the others negative effects. Critics and sharp attention toward this inprisonment are not only proposed by scholar individually, but also by nation society in the world pass through the several international congress.

In one of U.N. congress report Vth in 1975 about the prevention of crime and the treatment of offeners stated that there are crisis of truth about prison effectivity and the tendention to disregard the ability of institutional prisonism in support to prevent crime. It is occured in many countries. Instead it is also clarified that prisonism mechanism has condusive influence for merging crime and in certain things it is really creates criminal career. It means that prison sanction might be also as criminogenic factor.

As a network, criminal justice system operate criminal law as a main goal, in this view it can be in forms of material criminal law, formal crinmal law and sanction law.

There are some principles that should be used in operation of criminal law subsquent to individual which should feel to be guaranteed that the criminal justice sytem mechanism will not touch them without the reason of written law that present previously (legality principle) besides base on regulation distinctly.

Criminal law procedure as regulation for implementing criminal law recognize what namely utility principle and it can be interpreted as the
interest of the legal order. Based on this, prosecution derive his legitimation. Expediency principle can be negative when the stressing put on form of commutation of legality principle and, it can be positive when the stressing directed to obligation of prosecution besides some exception.

Such matter that pertaining to criminal justice system are also connecting to kinds of criminal act in different category and kinds of criminal act in the same category. This is also deals with the selecting of types of sanction or treatments than can be inflicted to the offenders.
4. OPINION BASED ON CRIMINOLOGY

Criminal law including punishment matter is concerned with the behavior of societal members. Although a person may be prosecuted on criminal charge if he or she conspires with others to violate a criminal statute, the person is not legally guilty of wrong doing if he or she simply comtemplates committing a crime. For held legally accountable for a criminal offence, a person must be shown to have acted otherwise. Given the onerous consequences that could follow from committing an illegal act or an criminal act, the question arises as to why people break the law. Except for these, probably few cases in which the law is violated out of ignorance or accident, what causes individuals to commit crime?

What are the factors or condition that somehow motivate, comple, draw or lead people into illegal activity? And than the next question is what sanction or what treatment will be given properly to them who have committed crime?

The questions above, indeed, not easy to answer. And actually, this study is not intend to answer that question especially, but it will discribe globally of how the relation or relevantion and the significance of punishment conception with criminology and its developed theories.

The view of the criminology as one of the branch of criminal law science is connecting to study of crime and criminal behavior, where it has a purpose to discover the causes of criminality and effective
measures to reduce crime. This is also related to treatment, custody, prevention and control of crimes. In other word, criminal policies are implemented through the agency of criminal law.

Distinctively, that criminology, penology, victimology and criminal law are interrelated and one can not really has function without the others. The formulation of criminal policy essentially depends on crime causations and there factors are correlated to with its implementation which is achieved through the medium criminal law.

The significance of criminology and or criminal science (including penology and criminal law) is basically on the facts and our apprehension of world situation today, it is dealing with the persistence of life. Crime statistic hardly present a true picture of accumulating crimes. Majority of crimes go to undetected and the other majority go to unreported or unregistered.

The world, today, is grappling against a massive crime waves and apparently, difficult to change.

This condition which was aggravated with the situation where the conventional penal treatment have fallen into disuse. The problem of crime causation that to be main discussion in criminology always shape of interesting problem, either before criminology undergone growing and develop nor after that.

"For many-many years there was a consensus amongst most criminologists that one of the major causes of crime was impoverished
social conditions. Anti-social conditions led to anti-social behaviour. The dominant paradigm was positivism or more precisely - social democratic positivism. Namely, that crime or other forms of anti social behaviour can be greatly reduced by political interventions which seek to improve social conditions. In that sense there is no difference between people like Bonger, Sutherland or Mannheim.  

Furthermore;

"But in the sixties and seventies this paradigm came under pressure, especially in Europe and America. There, the slum were demolished, education standard increased, and social welfare spendings increased, infact the highest affluence in the history of humanity seem to be achieved, but......also the crime rate increased. In Britain - to take a neutral example - in the year is 1951 by 64% whilst the number number of crimes, known to the police rose by the double of that : 72%. In America they had the same experience over that period. In Holland, as many other European countries this experience came also, only half a decade later."  

To refer how the growing of crime causation from time to time, we can refer to the development of crime causation theories and from the growing of criminology school. Because the development of theories constitutes the reflection of unsatisfaction and disabling of the prior theory.
A. Pre-Classical School

In seventieth and eightieth centuries generally, Europe was dominated by absolute king authority. State activities and social activities also was indicated with domination of religion especially orthodox cristian.

Their concept about what is crime and its problems were returned to king and his authority.

In Rome period was known crime namely crimina extra ordinaria, that's meaning is crime that is not mentioned in legislation. Among crimina extra ordinaria, there were crimina stellionatus that very well known. Crimina stellionatus was mean as evil or bad act. In crimina stellionatus did not determine or make certain about what behavior or act which is considered as bad or crime. At the time where ancient Rome law was accepted in western Europe countries at medieval century, so the definition about the crimina extra ordinaria was approved too by the authority kings, so that arbitralily law practices according to willing and the need of the king itself was emerge.

In this period, no efforts to prove really about causes of crime. Theories of criminology was determined base on what they consider as stipulation from God. They said that crime and criminals as an evidence of the fact that the individual was possesed by devil, or demon and the cure of it which was the testimony of the effetiveness of the spirit of God.
In political field appeared the names like Hobbes and John Locke. Hobbes suggested that the fear of punishment at the hands of monarch was a sufficient deterrent for the members of early society to keep them away from sinful acts which were synonymous to crime.

Montesquieu in his book "l'esprit Des lois" (1748) and Rousseau with "Dus contract social" (1762) where those books constitute a mirror of thinking that emerge as a reaction of absolute king authority. In "Dus contract social", firstly found idea about principle of legality. This legality principle, for the first time was poured in form of constitution in article 8 of "Declaration des droits del' homme et du citoyen (1789), this is a first constitution which is formed in the year of the broken of french revolution.

The pre classical thinking however was withered away with the lapse of time and developing of knowledge.

**B. The Classical School**

This school was pioneered by Cesare Bonesane, Machese de Beccaria. This school appears in medieval of 18th century. Even before a science of criminology is evolved, a school of thought had developed which, it is not directly responsible for contemporary arguments, atleast it will paved the way of modern criminological thinking to analyze the causes of crime.

The followers of this school have opinion that the human being is basically a rational animal possessing a will that enables to choose
courses of action freely. Criminal conduct must, therefore, be the result of deliberate, rational decision to break the law. Since the human beings were also believed to possess the desire to achieve pleasure and avoid pain, this deliberate choice must represent a calculated move to gain that goal - crime, in other words force follows that to deter a person from criminal ways, he must administer pain of an appropriate amount and kind to counterbalance the pleasure which is derived from crime.

This classical school was not advocating something new because the application of pain to offenders was the practice already. As a result, advocates of this school attempt to develop pain scales or "hedonistic calculi" of punishment, that identified the appropriate amount of pain to be dealt out for specific types of crime.

From several viewpoints of classical school, there are some points as the main tenets of this school as below:

(i) Man's emergence from the state involved is the application of his reason as a responsible individual.

(ii) It is the act of an individual and not his intent which forms the basis for determining criminality in him, in other words, criminologists are concerned with the "act" of the criminal rather than his "intent". They could never conceive that there could be something like crime causation.

(iii) The classical writers accepted punishment as a principle method of infliction of pain, humiliation and disagree to create "fear" in mind to control his behavior.
(iv) The profounders of this school, however, considered prevention of crime more important than the punishment itself. They therefore stressed on the need for a criminal code in France, Germany and Italy to systematize punishment for forbidden acts. Thus the real contribution of classical school of criminology lies in the fact that it underlined the need for a well defined system of criminal justice.

(v) The advocates of classical school supported the right of the state to punish offender in the interest of public security. Relying on the hedonistic principle of pain and pleasure, they pointed out that individualization was to be the basis of punishment. This is in other words meant that punishment was to be awarded keeping in view the pleasure derived by the criminal from the crimes and the pain caused by the victim from it. They, however, pleaded for equalization of justice which meant equal punishment for same offence.

(vi) The exponents of classical school further believed that the criminal law primarily rests on positive sanction. They were against the use of arbitrary powers of judge. In their opinion the judges should limit their verdicts strictly within the confines of law. They also abhored torturous punishment."
C. Neo Classical School

Neo classical school modified Beccaria's thinking through France Penal Code in 1819. The free will theory from classical school did not live long. This school suggested different treatment to offenders like minors, insane or incompetend, idiot. To the offenders like this, should be given treatment lienently due to their disability to distinguish about right and wrong.

Tendention to distinguish offenders that has relation with mental depravity as shape of progress of criminology theories development. According to this school, prevention of crime done by law implementation that more effective through criminal justice system including punishment system. However, new classical school also had been participated to the developing theories of criminology.

"The above discussion make it clear that main contribution of the neo classical school of criminology lies in the fact that it came out with certain consessions in the "free will" theory of classical school and suggested that an individual might commit criminal act due to certain extenuating circumstances which should be duly taken into consideration at the time of awarding punishment. Thus besides the criminal act as such, the personality of the criminal as whole, namely, his motives, previous life story and general character, etc. should not be lost sight of in assessing his guilt. It may be noted that the origin of jury
system in criminal jurisprudence is essentially an outcome of reaction of neo classical approach toward the treatment of offenders."^{16}

D. Positive School

Positive school pioneered by Cesare Lombroso (1876-1909) that can be considered as scientific early thinking about crime causation. Besides Lombroso, there are Enrico Ferry, Raffaele Garofalo also as main exponents of positive school of criminology. This school was convinced that majority of human behaviour determined by some factors and the others majority are in the form of reflection of world characteristic as socio-cultural where human live.

Positive school opposed classical school and neo classical school opinion where seen that human being has free will and always rational and hedonistic. Through scientific study about crime phenomenon as a social phenomenon this school attempted to find cause and effect relationship by analyzing criminal behavior. This analyse done by learning physic characteristic.

If classical school be of a certain opinion that punishment constitutes way to control crime on the contrary positive school has opinion that control of crime can not be done by pronouncement of sanction only, but should be done by solving the cause previously.

"The greatest contribution of positive school to the development of criminal science lies in the fact that the attention of criminologist was
drawn for the first time towards to the individual, that is, the personality of criminal rather than his act (crime) or punishment. This certainly paved away for the modern penologists to formulate a criminal policy embodying the principle of individualization as a method and reformation. Thus positivists introduced the methodology and logic of natural science in the field of criminology. 17

*Clinical School of Criminology*

This school also still categorized as a part of positive school. Talking about this school is did not much to be done by the reason of the cost for the realization this treatment is considered very expensive, this school is also not popular like the others schools. This school emphasis on emotional aspect of human nature. "Prof. Gillin therefore remarks that theory of modern clinical school on the side of criminogenesis presupposes offender as a product of his biological inheritance. Conditioned in his development by experience of life to which he has been exposed from infancy upto the time of the commission of crime. Thus clinical school takes into account variety of factors, it further suggest that the criminal who do not respond favourably to correctional methods must be punished with imprisonment or transportation for life while those who are merely victims of social conditions should be subjected to correctional methods such as probation, parole, reformatories, open air camp etc." 18
And the most popular treatment in this school is individual treatment. As Prof. Dr. Steven De Batselier said as follow;

The word 'treatment' is being used more and more for the totality of sociological, penal, educative, medical and psychological measures being used to integrate the deliquent in social life and to prevent residivism. Much discussion is also given to the relevancy of this word 'treatment', because it implies that the deliquent is classified as being sick, with chiefly pathological descriptions applied to him. In this way, any social responsibility would be lifted from him, while it is often precisely this that he want to affirm, by his deliquent behavior, in face of the community.  

Furthermore he continued; "much more important is to make the 'treatment' more individual, as has already been done in the meting out of punishment, making them more individual. This points to the importance of individual therapy, as it also respects the individual's personality, in case remodelling the delinquent and favoring his readaptation to social life."  

As said above this theory besides very costly, due to the program of individualisation it is also considered like spoil offenders.

**Sociological School of Criminology**

Sociological school of criminology refer that much factors such as, economy, religion, cultural, political, ideologic, density of
population, mobility, employment situation etc are as big influential to create crimes. Actually, this school is included a part of positive school. Sutherland is a famous name of sociological school. With 'differential association' approach, Sutherland give comprehension of that criminal law enforcement (police, courts and correction) included environment factor that need pay attention in crime causation.

The next development is, the entrance thinking of Sellin (culture conflict), Merton (Anomic), Cohen (deliquent subculture), Matza (deliquency and drift) etc. According to this school, to offenders should be given treatment through persuasive method rather than traditional punitive methods, because, they state that crime is a product of a great variety of factors which can not be reduced into general propositions (multiple factor theory). So, no specific theory of criminal behavior ever possible, because crime is happened caused by combination of some factors or environment. This theory was opposed by Cohen. Cohen said that, that is wrong, to locate "causes" of crime in the "factors", because the latter can readily be eliminated without changing the social environment.

E. Critical School

Critical school of criminology consider that, it is not important whether human being has free will or not like followed by classical school, or whether human being tied by biological factor (physic), or
social that provide the basis and embody the world where human being live.

This school was started with the entrance of interactions perspective like Howard S. Becker with "Labeling approach to crime and than expand to "sociology of conflict" approach by Richard Quinney (1970), William J. Chambliss & Robert B. Seidman (1971). Two approach used by this school like mentioned aboved that are:

(a). interactionist approach learn about how the process of giving "lable" of crime and criminal by society. In interactions approach firstly attempted to understand the meaning of act (behavior) of offender itself. The efforts of the offender to protect himself with "self image as not a criminal" (non criminal self image) oftenly are defeated by the pressure of environment (law enforcement agency, society members) in order that he will accept himself as a criminal (criminal a image). This pressure among others is mirrored in process that he should passed through since arrested until sentencing. This process is oftenly felt as "humiliate his dignity", because that is, felt like "the ceremony of status degradation".

Interactionist approach also try to describe the emergence of "secondary devience", that is a condition where the offender will place himself around a "devient identity" as a reaction of presses or tension like aboved and after that, he might become a "residivist".
Oftenly mentioned that this approach is to complete the approach of positives school (as far as this postives school attempt to discribe about" primary devience). The interactionist approach try to understand the meaning of crime event for law enforcement agency (criminal justice personnel), for common society, for a certain groups in that society. The derived comprehensions will make us possible to explain the social reaction. On the event of crime, social reaction can be moulded and given by legal institutions (criminal justice institution), or given by certain groups in society. In relation with social reaction by certain groups in society toward special events, than became important is the quality of authority which is possessed by groups itself. The authority quality among other things make the group are possible to influence the formulation of crime and the implementation of law enforcement. This is like criminalisation process. This thing provide the basis of thinking of conflict approach that consitutes a part of critical approach.

And the second approach of critical school is:

(b). conflict approach that refer the aspect of power in crime formulation. Conflict approach considers that they are who posses the greater power could easy to determine the behavior that opposite with their interest as behavior that need to be threatened by sanction. They are also will be able to influence
the implementation of criminal law enforcement. It means, crime causation in wider meaning be in society itself.

So they conclude that crime prevention is not done through effective law enforcement (classical school) and also not by finishing or neutralizing the cause which is found by scientific research (positivist school). But criticals school has opinion that prevention of crime can be done through democratic society by reducing the abnormal cause conflict and discrimination process of those are who lack of power.

They also emphasize to more human approach to primary offenders by reducing "labeling process" that create self essence crisis and secondary devience.

Quinney's Book "the social quality of crime (1970) and Chambliss & Seidman in "law, order and power" much talked about criminalisation process and it constitutes base of thinking of critical school.

Refer to development of the exist school in criminology we can consider that crime causations are complicated, and its developing is continuously followed the development of society, science and technology.

No matter what the base that came out for constructing the theories, in order to reduce and prevent crime. It can not eliminate the exist elements of punishment conception. The reality like aboved is sufficient to give us discription about the significance of criminal law
and his sanction system as a medium for preventing and reducing crime. Although with environment and the other factors as reason of crime causation, but it not enough to use such reason as a base for eliminating punishment system from society. Only, that there is big question that is which punishment system is a good and needed.

The system of law including criminal law with its punishment system consists of some sub systems in one unity system that surround many aspects of human life beside others sub system like economic, politic, culture, education etc. every system has interrelationship with others, it means, if the law system including criminal law system does not work well, so, it might influence the other system.

And from the theories of the existing school, finally, we understand that every school has the lack and superiority of each others. It also indicate that how complicated the problem is. In other words, no school is more eminent and more corrects than others.

In encyclopaedia crime and justice, it was said;

"The major theoretical controversies in criminology have concerned the hegemony of one or another parent discipline and, within discipline the relative importance of different perspectives, such as strain versus control. Much of what has been happening since the mid-1900 may be characterized as "normal science" elaborating and carrying to completion earlier work, both theoretically and empirically (Harris and Hill). Sutherland broad principle of differential association (Sutherland
and Cressey) has been modified by several scholars, based on learning theories developed in psychology (see, for example, Albert Bandura). Sutherlan's principle, as well as Robert Merton's Seminal idea in "social structure and anomie" was also extended by Albert Cohen and by Richard Cloward and Lloyd Ohlin, among others. Social control theory, brought back into prominence by Albert Reis(1951), has been elaborated by Hirschi and others. Labeling theory and symbolic interactionist thought have undergone transformation as well".

Prof. Duncan Chappell in his article "some comparative observations on the causes and prevention of crime" presented in seminar on criminology, Semarang Indonesia, Oct. 1988, said; that "Debate and discussion about the causes of crime and explanation of the variations found among nations in rates of reported crime, it is filled with controversy and uncertainty. There is substantial disagreement among criminologist about these basic issue - disagreement which is often based on ideological grounds. For example a marxist interpretation of causes of crime differs markedly from a capitalist interpretation. Disciplinary perspective also tend to influence theories of crime causation. Psychiatrists, for instance, are more likely to favour explanations of criminal behavior based upon individual pathology while sociologists tend to see crime as a product of a range of factors present in the social environment.

"Controversies over the relative importance of one or another
perpective often result from addressing different levels of explanation. The problem has been posed in a number of ways. Alex Inkeles suggests that sociologists have ignored personality in the equation involving social structure, culture and behaviour; they need to add consideration of group process (short). Harold Fines Stone maintains that the "dichotomization of theoretical approach" between social organisation and structure, on the one hand and social psychology on the other, requires "transitive concept" that might help bridge these levels of explanation."21

"explanation of the differences found in the rates of reported crime among nation also vary but specific cultural factors appear to play a significance role in determining whether or not a particular country has a high or law rate of crime. Examples will be given from a number countries, including the United States, Japan, Saudi Arabia and Australia.22

Refer to development of the theories of criminology it is visible the relevantion and the signficance of punishment system, in its relation with other system and moreover we know that crime is develop followed by changing era.

We also, of course, can refer that the economic growth, the developing of science and technology are not capable to prevent the increase of crime in quality or in quality.

"The rise of crime in affluent societies was not bound up on political
systems. Not only in USA, one of reachest and most affluent societies, crime rose enourmously. Also in the Soviet Union crime persisted after the achievement and establishment of the socialism. There exists - to a certain level - full empoyment with a reasonable standard of living but also there the rising crime rate is a problem.\textsuperscript{23}

Based on the facts like aboved, it indicates about the significance of punishment on the one hand and the failure of the existing punishment system on the other hand. The failure of scholars in finding the appropriate theories that can be used as a back to prevent and reduce crime have also confessed by Prof. Sahetapy, an Indonesia criminologist like he stated as below:

"Various theories about crime causation have been proposed by various scholars from multi-disciplines. But, till now, it is remain, no one theory which could answer satisfactorily all questions and challenge totally, neither theoretically nor empirically, that are of whether about the concept of thinking, theory, research methodology or its substance. Moreover, the theories which is considered as progressive and radical as well as and firstly has been estimated could answer all problem and present challenge, such as theories of modern criminology and critic, or radical like marxist criminology theory where by its supporters was boasted it is as if the best theory, it appears, not capable to give satisfaction answer. (vide inter alia, inciardi 1980, Hall Williams 1982, Migel wulher 1987, Peter Auggleton 1987, Rene Van Swaanningen 1988).\textsuperscript{24}
But more important, although, it seem that whatever the conditions and situation that be in or environment, human may not be in prustation, he should always to has endeavor to create a better condition and how to solve the problem and that's endeavor will be supported by sense of curiosity that have existed on an human itself.
5. OPINION BASED ON VICTIMOLOGY

Victimology as study of the relationship between victim and offender in all its aspects was founded in the late 1940. But in facts, discussion about victim of crime has been legally neglected. The term of crime victim has been known since the existence of crime and offender (criminal). Generally it can be stated that, no crime without victim, and no victim without offender. The relationship between victim and offenders constitutes two but one although there are certain offence that may be happened of what have known in criminology literature as "victimless crime", because victim and offender are one or oneness (victim is offender, offender is victim). It is for instance like narcotic criminal act, gambling, although actually, there are no victim directly, but due to his act, his society (environment) his family also might feel damage, directly or indirectly. The development of attention about victim, actually, had been started since medieval century. The attention about the victim of crime constitutes birth embryo of a new branch of knowledge that known with "victimology. In medieval century, when "primitive law" is still valid within nations society in the world, there had been determined the existence of personal reparation like compensation of loss that had been done by offender or his family to victim as a result of his act. In era before the present of the form of government and political institution where still based on tribal organisation, than, the forms of
punishment as blood revenge or compensation constitute a normal thing that happened every day. In the period of "Government" like stated above, all endeavor of social prevention was still in individual hand, and relation between offender and victim remain in how to survive. The basis of consideration to take revenge at that time, much more to depend power that possessed behind social status and to prevent crime in the future. After that there are happened the development about expropriation of responsibility by tribes on the each act of the tribe members. Revenge among members of tribe was not exist and changed with revenge of inter tribes. This condition, however, as form of beginning of the emerge of collective responsibility in tribe society life.

Parallel with the development of victimology in the end of 19th century and in the first of 28th century, so therefore the development of criminal law begin undergoing the change.

The intended change are, at the first, the behalves of victim considered as protected sufficient by giving sanction to the offender, but than, there are begin to be developed thinking about urgency of about the existension of the other forms of punishment besides institutionalized punishment like compensation for victim.

Apart from technical problem about who are which has obligation to give compensation to the victim of crime, one exact thing from the development like aboved is that, it have been occurred about friction of
attention and main issue in criminal law development today. The intended friction and issue is that criminal law do not only to be focussed toward offender and his criminal act, but also focuss the attention to on consequences that might emerge as a result of intended criminal act. How the importance of consequence of a criminal act that happened in society, it will be proved by determinated victim problem as a one of research standard index about crime development as that had been done by Sellin and Wolfgang (1971).

How importance knowledge about this victim of crime has been clarified by Szabo (1982) that stated among others;

"we can therefore say, that thanks to victimological perspective, criminology has become a science not only of the authors of crime, the norms and how to determine the crime, but also the victim, the third element indispensable and indissociable from the criminological theoretical approach."

What the meant of the victim of crime?

Prof. Sahetapy (1986) gave definition as below;

"a victim is might be an actual person, a legal person, who has suffered harm, damage, injury or any kind or form of loss, either physically or mentally not only from a legal view point, but also from sociological, economical, political or cultural perspective.

Cohen (1985) gave the other definition, because he more stressess the definition of victim to "the innocent victim", that is; someone who his
pain and suffering have been neglected by the state, while it spends immense resources to hunt down and punish the offender who is responsible for that pain and suffering.

From text draft of United Nation Declaration on the protection and assistance of crime victims (1983) is obtained the definition as follows; "Crime victim is some one who suffers loss, whether from injury, derivation of property, social disadvantage or emotional trauma as the result of an act, for which he or she was not resoomble, which has been prescribed in a criminal code or penal statute.

That declaration is also added with definition of:

"Crime victim which are as well as, family of victim and they are who accept the same result due to prevent crime, give aid to victim or personal criminal justice.

While in resolution adopted by the general assembly, 1985 about basic principle of justice for victims of crime and abuse of power mentioned that; victim of crime means person who, individually or collectively have suffered harm including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omission that are in violation of criminal laws operative within member states, including those laws prescribing criminal abuse of power. And furthermore it was mentioned;

"the provisions contained here in shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language,
religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin and disability.

While, what the meant of victim of abuse of power as follow:

"Victim" means person who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omission that do not yet constitute violations of national criminal laws but of internationally recognize norms relating to human rights."

From several definitions about victim we can consider that it have been happened the extention of the definition of victim where it also indicates the occurrence extention about the definition of "offender".

The facts also indicate that conditions and situation of crime world become more and more serious.

This facts lead to the condition where the existing punishment system today must be reanalyzed. The fats like above also indicate how the immense harm and loss will go to us if this situation remain in it's persistence. By the extention of offenders definition we can consider about powerless victim and the powerful offenders.

On the discussion about prevention of crime in VIIth U.N. Congress in Milan, 1985. Among other, it is remembered about new dimention of criminality in the context of development like the present
of industry and business activities that disturb equilibrium of ecology like pollution of environment, cleaning unchangeable natural resources. Killing a kind of rare animals and damaging of sea life. Commerce of unhealthy products and so on. Sandra Walklare (1989) has stated some reasons for giving more attentions about activities of business corporation; the first is that such activities do not morality figure in our everyday conception of victim of crime. They are even less likely than children to appear in such images. Secondly, they are activities which can not be covered by the survey method and have therefore to some extent been neglected within the wider interest in victim of crime. Thirdly and this is related to an explanation of the first two reason), this victimizing behavior which for the most part goes on behind our backs. Common sense knowledge is much more likely to tell us that victims of corporate activity are victim of disasters or accidents rather than victim of criminal activity. So, if our attention was focussed solely on what common sense tell us we would be in danger of neglecting these activities.

Likewise the victimization of children she (Sanra Walkhare) said among others;

The victimization of children, more commonly referred to as child abuse, is an all to common issue which recieves media attention, particularly when the statutory services fail in their duty to protect a child from such abuse. That abuse, whilst difficult to measure and
monitor, is a much more widespread phenomenon than perhaps we would care to believe. The reaction to the situation in Cleveland in 1987 is perhaps an reluctance to accept the view that child abuse is a much more common experience than official statistics portray.

Much is made of the fact that how firm the relation between victim and offender when it departs from the situation about "powerless" versus "powerful". In other words more and more power less the victim to be, it will be more and more "powerful" the offender to be and it lead to the victimisation situation closely.

This thing will give us comprehension where to the "powerful" offenders must be given special treatment or special sanction as a protection of human rights widerly. From some typology of crime that have been composed by scientists we can see that the meaning of "powerless" victim in victimisation process is not only rooted from physic or psychologist condition but also caused by the conditions of social, economic, politic or cultural. These are some typology that had been made such as; typology from Schafer (1977);

1. Unrelated victims
2. Provocative victims
3. Precipitative victims
4. Biologically weak victims
5. socially weak victims
6. Self Victimizing victims
7. Political victims.

Typology from Mendel Sohn:

1. The completely innocent victim or ideal victim.
2. the victim with minor guilt and the victim due to his ignorance
3. the victim as guilty as the offender and the voluntary victim.
4. the victim more guilty than the offender, "the provoker victim",
   the "imprudent victim".
5. the most guilty victim and the victim who is guilty alone.
6. the "stimulating victim" and the "imaginary victim".

On the contrary, it is also visible that many victim have important role

to create victim precipitation in victimization process such as from

some types of victim in Mendelsohn typology.

While Hentig had composed thirteen categories of victim.

1. The young
2. The female
3. The old
4. The mentally defective
5. Immigrants
6. Minorities
7. Dull normals
8. The depressed
9. The acquisitive
10. The wanton
11. The lone some and heart broken

12. Tormentors

13. The blocked, exempted and fighting.

and many others typologist that had been made by scholars to make easy our acquaintanceship about victimology and victimisation process. The relationship of criminal law (punishment) and victimology (victim typology) and victim precipitation in victimization process might give us comprehension and understanding about "victim position" in enforcement of criminal justice system and offenders sentencing process. It is firmly tied with determining and approving of guilt element and giving sanction.

Crime with the importance role of victim may should be given special consideration in sentencing process. From this comprehension also need consideration about the necessary or unnecessary of giving compensation to victim or his family. If there is no attention to victim, it conduces what is called as "an essential part of criminal law policy desicisons" in form of society participation toward the crime prevention will become dwindle and it also make. "Insecurity" sence float to the surface and more worst it can support personal initiative for taking revenge either personally or in form of "vigilance group".

But on the other side, on the contrry that attention or giving too much rights to victim of crime based on procedural rights model like "partie
civile Model" in France and nebenklage in Germany, also contain danger. The involvement of victim actively in sentencing process might create sense of revenge for offender and it will support precipitation of "secondary victimization".