



## Implementation of prison criminal against elderly offenders reviewed from the aspect of justice

Teuku Alaidinsyah<sup>1</sup>, Din<sup>2</sup>, Teuku Saiful<sup>2</sup>

<sup>1</sup> Department of Law, Faculty of Law Universitas Syiah Kuala, Banda Aceh, Indonesia

<sup>2</sup> Lecture, Department of Law, Faculty of Law Universitas Syiah Kuala Banda Aceh, Indonesia

### Abstract

Imposing prison sanctions on elderly people (seniors) is contrary to the principles of justice, so that the judge's consideration in deciding criminal acts committed by elderly people becomes a just verdict for the elderly perpetrator. This research uses a type of juridical-normative research, namely legal research that conceptualize principles, rules, norms, and doctrines. This approach is also known by the public as a normative legal approach or research. Imposing prison sanctions on elderly people is contrary to the principles of justice, this is because an elderly person is a person at the final stage of human life development and is characterized by a person's failure to maintain healthy balance and physiological stress conditions so that imprisonment is not in accordance with the principles of justice when applied. to an elderly person. It is recommended to law enforcement officials, in this case investigators, to apply solutions using a restorative justice approach as a new paradigm in punishing elderly perpetrators who are excluded from immoral and non-criminal crimes that conflict with the public interest. It is recommended that judges sentence elderly criminals to probation if the maximum sentence is 1 year, provided they are not recidivists.

**Keywords:** Perpetrators, criminal offenses, elderly

### Introduction

Punishment of perpetrators of criminal acts cannot be separated from the criminal system adopted by the legal system in Indonesia. An important part of the criminal system is determining sanctions. Its existence will provide direction and consideration regarding what should be used as sanctions in a criminal act to enforce the enactment of norms. On the other hand, punishment is the most complex process in the criminal justice system because it involves many different people and institutions. (Puteri Hikmawati: 2011)

In the context of law enforcement, the process that must be carried out by every person suspected of committing a criminal act must be processed in a system known as the criminal justice system. It is difficult to imagine what it would be like if, during a period of decline due to old age, you had to deal with the law because you were suspected of committing a legal action. Normatively, every person/community who commits a violation of criminal law or better known as a criminal act, the person concerned must be responsible for the legal action they have committed. The problem is why restorative justice is not used as an aspect of justice before the law.

According to data from the Central Statistics Agency (BPS), in almost 5 (five) decades, the percentage of Indonesian elderly has increased by around 2 (two) times (1971-2023), namely to 9.6 percent (25 million) of which elderly about one percent more women than men (10.10 percent versus 9.10 percent). Of all the elderly in Indonesia, young elderly (60-69 years) dominate by far with a figure reaching 63.82 percent, followed by middle elderly (70-79 years) and old elderly (80+ years) with respective figures. 27.68 percent and 8.50 percent respectively.

The purpose of imprisonment, which was initially a deterrent with an imprisonment model and then became a correctional model, is a quite good development for improving the behavior and mindset of criminals.

By giving punishment to convicts (the term for a criminal who is serving a prison sentence), it is hoped that it can provide satisfaction or provide a feeling of relief to the victim (who has been harmed) because of the criminal act committed by the perpetrator, as well as to eliminate the anxiety caused by the perpetrator. in society.

Article 1 Paragraph 2 of Law Number 13 of 1998 concerning the Welfare of the Elderly states that what is meant by an Elderly is someone who has reached the age of 60 (sixty) years and over. Meanwhile, according to WHO, the limit for someone to be called an elderly person is 60 years to 74 years old. Elderly as old age is a period of decline for a person. The elderly experience physical, psychological and social setbacks. To maintain the originality of the research, 3 (three) previous studies will be described as follows

1. Puteri Hikmawati, "Eliminating Prison Sentences for Elderly Offenders in Criminal Law Reform, Can Restorative Justice Be Achieved", State of Law Vil. 11, no. 1, June 1, 2020.
2. Siti Hawa, *et al*, "Short Term Imprisonment for Elderly Prisoners", Novum: Legal Journal, Vol. 6 No. 3, July 2019, e-ISSN 2442-4641.
3. Natasya Bilqis Pramusti, *et.al*, "Legal Arrangements in Terms of Carrying Out Criminal Sanctions by Elderly Offenders".

Based on all the journals above, they have different problem or topic formulations from the research that will be discussed. This journal is to answer the imposition of criminal sanctions in prison against elderly people, if examined from the aspect of justice, whether these sanctions are contrary to the principles of justice so that this journal is different from other research journals.

### Research Method

Research methods are procedures or ways of obtaining correct knowledge or truth through systematic steps. The

use of methods has implications for data collection and analysis techniques as well as research conclusions. According to Peter R. Senn, a method is a procedure or way of knowing something that has systematic steps. In the Big Indonesian Dictionary, it is said that method means an orderly method used to carry out a job to achieve something desired (Suteki: 2018).

This research uses a type of juridical-normative research, namely legal research that conceptualizes principles, rules, norms, and doctrine. This approach is also known by the public as a normative legal approach or research. This normative research stage is carried out by conducting a literature study, namely reviewing written references or sources, whether books, journals, or statutory regulations. (Abdul Kadir Muhammad: 2004)

## Discussion

### Imposing Prison Sanctions on Elderly People is Contrary to the Principles of Justice

Imprisonment is a crime in the form of restricting a convict's freedom of movement, which is carried out by confining the person in a correctional institution. Imprisonment and confinement are the main penalties that a judge can impose in addition to the death penalty, fines and criminal penalties. Prison and confinement sentences are punishments imposed by a judge through a decision given to a person who is proven guilty at trial.

Providing rewards to a person or perpetrator of a criminal act is a form of criminal responsibility for the mistakes he or she has committed. In a narrow sense, perpetrators are those who commit criminal acts. Meanwhile, in a broad sense, it includes the four classifications of perpetrators in Article 55 paragraph (1) of the Criminal Code, namely those who commit the act, those who order it to be done, those who participate in the act and those who recommend it. It is known that the age of the perpetrator when committing the crime can be classified as a child or an adult, especially for elderly people (seniors). There is no specific definition that explains this.

It is known that old age is the final stage of development in the human life cycle and is characterized by a person's failure to maintain healthy balance and physiological stress conditions. Elderly is also associated with a decrease in ability to live and individual sensitivity. In Law Number 13 of 1998 concerning the Welfare of the Elderly in Chapter 1 Article 1 Paragraph 2, what is called an elderly person is someone who has reached the age of 60 years and over, whether male or female. That there are 4 classifications of old age limits according to the World Health Organization (WHO) as follows

1. middle age: 45-59 years
2. erderly: 60-74 years
3. old: 75-90 years
4. very old: up to 90 years

The age limit in Law no. 13 of 1998 is the same as the classification of elderly (older) according to WHO and young elderly according to BPS, namely 60 years and over. However, WHO still classifies elderly people over 74 years into old people (75 – 90 years) and very old people (over 90 years). Likewise, BPS groups the elderly into young elderly, middle elderly, and old elderly. Based on these provisions, the age above 75 years for elderly perpetrators in the

Criminal Code Bill is above the elderly age stipulated in Law no. 13 of 1998.

Because of their age, a person will face many limitations, so they will need help, even though many elderly people are still productive and able to play an active role in the life of society, nation and state. UU no. 13 of 1998 differentiates the elderly into potential elderly and non-potential elderly. Potential elderly are elderly who are still able to carry out work and/or activities that can produce goods and/or services. Meanwhile, non-potential elderly are elderly who are unable to earn a living so their lives depend on the help of other people.

Paying attention to this law, the age of elderly in the Criminal Code should consider the age of 60 years old and does not have the potential for punishment. However, for potential elderly people, an age limit for elderly people who are not subject to imprisonment can be determined, namely 70 years or more. This takes into account that life expectancy in Indonesia according to BPS in 2018 reached an average of 71.2 years.

The elderly are included in the vulnerable group category, in order to be held accountable for their criminal acts, an elderly person needs special treatment and protection. Juridically, the imposition of imprisonment on the elderly in Indonesia is not specifically regulated so its implementation refers to the Criminal Code and Criminal Procedure Code which adhere to the theory of absolute punishment. who views that punishment is retribution for wrongdoing. Judges' legal considerations in several decisions, not all judges in handing down sentences expressly state the factor of old age as a guide to the judge's mitigating considerations for the defendant.

Many cases involve the elderly as criminal perpetrators, including the case of Grandma Arsyani who was accused of stealing seven teak logs belonging to Perhutani in Situbondo Regency, East Java; Grandmother Minah who was accused of stealing 3 cocoa beans in Banyumas Regency; Elderly couple Grandfather Anjo Lasim and Grandmother Jamilu Nanai who were accused of stealing 6 bamboo sticks belonging to their neighbor in Gorontalo; Musrin's grandfather was convicted of taking mangrove wood for firewood. These cases have attracted public attention and the punishment of elderly perpetrators has caused controversy.

The cases in Aceh, as an example of a case in this research, the case in criminal case No. 145/Pid.B/2023/PN Bir on behalf of the defendant Ridwan Bin Syamaun (75 years), an elderly person who was charged with violating Article 306 of the Criminal Code. The defendant is suspected of having committed the crime of neglecting his own 41-year-old child.

The chronology in the case of criminal neglect committed by the defendant Ridwan Bin Syamaun on Thursday 25 May 2023 at around 12.45 WIB or at least sometime in May 2023 took place in Krung Juli Timu Village, Kuala District, Bireuen Regency or at least whether or not in another place which is still included in the jurisdiction of the Bireuen District Court, the defendant is suspected of committing a criminal act of neglect, this act was carried out by the defendant in the following manner

1. The victim named T. Marwan Bin Ridwan Syamain alias Deri, male, born in Jakarta on September 1 1988, is the biological son of the defendant who still lives in the defendant's house located in Krung Juli Timu

- Village, Kuala District, Regency Bireuen, on Wednesday 27 April 2023 at around 14.00 WIB it was discovered that he was suffering from lung disease which according to the law, the defendant as his biological parent or someone closest to him still had an obligation to help, treat and care for him, but the defendant had left the victim untreated and was not treated and had placed him in a room at the back of the defendant's house which was dirty and uninhabitable, so when witness Safwan Ar. Bin Abdurrahman (local hamlet head) saw the situation, then witness Safwan Ar. Bin Abdurrahman took the victim to RSUD dr. Fauziah Bireuen to receive treatment and medication, and on Thursday 4 May 2023 at around 11.00 WIB the victim T. Marwan bin Ridwan Syamain alias Deri was taken back to his house to be cared for by his own family, then witness Safwan Ar. Bin Abdurrahman told the defendant that the victim T. Marwan bin Ridwan Syamain alias Deri had to receive treatment by giving him medication and oxygen as well as someone to look after him every day, but the defendant answered "Deri is my child, don't interfere."
2. After the victim T. Marwan bin Ridwan Syamain alias Deri was at home, by the defendant and his family and those closest to him, the victim was placed in a dirty and dirty room that was uninhabitable, given no care/maintenance and no medical treatment., so that his daily life is full of suffering and misery due to the illness he suffers as well as inappropriate and inhumane acts of neglect and placement by the defendant and his family and those closest to him, so that on Thursday 25 May 2023 at around 12.45 WIB victim T Marwan bin Ridwan Syamaun alias Deri is known to have died 3 or 4 days and is in a state of decomposition as per the results of Dr. Cut Mutia Mampatdi is a doctor at RSUD dr. Fauziah Bireuen Number: 58/IRM/2023 dated 08 June 2023.

Based on the chronology in the indictment of the Public Prosecutor from the Bireuen District Prosecutor's Office, the Defendant discovered that his child had been dead for two days in a room. The defendant received this information from a Geuchik named K. Next, K made a report to the Bireuen Police, alleging that R had neglected his child. So far there is no clear definition of the crime of neglect.

These forms of neglect include ignoring needs and desires, allowing people to do things that will be dangerous, neglecting to provide nutritional intake or health services, neglecting to provide appropriate education, neglecting to provide attention and affection and other acts of neglect. (Ulfiana: 2022) <sup>[11]</sup> It becomes a problem if the criminal act of neglect is committed by an elderly person, who also needs care from his family as well.

In this case, the Panel of Judges at the Bireuen Class II B Court believed in the request for leniency for the defendant who was an elderly person, the Panel believed the decision to be handed down by the judge would always be based on efforts to fulfill a sense of justice for both the Defendant and the community, and was expected to be in line with criminal purposes. The aim in question is not merely retribution for a mistake, but also education for the defendant so that he does not repeat his actions, education for the public so that they are aware and do not fall into acts that are contrary to the law and restoration of social values because of criminal acts

that have occurred. It is important to know the objectives of punishment which can be classified based on theories about punishment. Traditionally there are three major theories related to punishment, namely

1. Absolute theory or retributive theory (retributive/vergelding theory) The main essence of this theory is retribution. Experts are of the view that the imposition of punishment can be justified, because a crime has occurred, a crime which has shaken society. If someone commits a crime, that act will cause suffering to other members of society. To return to the original state, suffering must be reciprocated by suffering, which consists of a punishment (nestapa) and the punishment must be felt as a sorrow (leed) by the perpetrator. Thus, the absolute theory or theory of retaliation views the main purpose of crime or punishment as providing retribution for the actions committed by the perpetrator.
2. Relative theory or goal theory (utilitarian/doeltheorieen) according to this theory the aim of punishment is no longer as a means of retaliation but has been linked to a certain goal. Punishment is imposed not quia peccatum est (because people commit crimes) but ne peccetur (so that people do not commit crimes). Crime is not just for retaliation or compensation for people who have committed a criminal act but has certain useful purposes.
3. Combined Theory (verenigings or gemengde theorien) which is the middle path taken by this third school because both the absolute flow and the relative flow have their respective weaknesses. The combined theory or theory that combines this will base punishment on the principle of retribution on the one hand and the principle of maintaining social order. This theory is a combination of these two theories.

Whereas during the trial, the Panel of Judges did not find anything that could eliminate criminal responsibility, either as a justification or excuse, so therefore the Defendant must be held accountable for his actions. And to impose a crime against the Defendant, the Panel of Judges considers the aggravating and mitigating circumstances of the Defendant. The aggravating circumstances are that the defendant is irresponsible, the defendant is complicated, and the defendant does not regret his actions. Meanwhile, the mitigating circumstances were that the defendant was old and sickly, which was due to the defendant's age being 74 years old when the verdict was read out.

That the aggravating circumstances arose also due to illnesses that occur in elderly people, the panel considered that the Defendant was complicated with his testimony even though it is common knowledge that elderly people are prone to dementia, so he often has difficulty remembering events. - existing events. It becomes a problem if the person responsible for the crime is a grandfather (elderly) who himself needs to receive care from someone else.

Criminal Code (hereinafter referred to as the New Criminal Code) has considered the age of the elderly in the criminal system, by setting an age of over 75 years for perpetrators of criminal acts so that, wherever possible, they will not be subject to imprisonment. In the discussion of Article 72 of the New Criminal Code, this age limit was postponed, between the ages of "above 70 years" or "above 75 years" for perpetrators of criminal acts so that, as far as possible,

they would not be sentenced to prison. This provision was one of the issues that was pending in the Drafting Team Meeting (Timus), but in the subsequent Timus Meeting it was agreed that "age over 75 years" for perpetrators should, as far as possible, not be sentenced to prison (under Article 76), taking into consideration the life expectancy that is required. the higher it is. (Princess Hikmawati: 2020).

This provision gives the judge the possibility not to impose a prison sentence. The conditions that must be met so that the judge cannot impose a prison sentence are

- a. The defendant committed a crime that is only punishable by imprisonment
- b. The judge believed there was no need to impose a prison sentence after considering the purpose of the sentence, the guidelines for the sentence, and the guidelines for imposing the prison sentence.
- c. The defendant has never been sentenced to prison for a crime committed after the age of 18.

In this case it does not mean that elderly perpetrators will be exempt from criminal punishment. Judges are given the option to impose a fine as a substitute for imprisonment on defendants who commit crimes that are only punishable by imprisonment, intended to overcome the rigid nature of the single criminal formulation which seems to require judges to only impose imprisonment. Apart from that, it is also intended to avoid short sentences of imprisonment.

By giving the judge a choice, considering the objectives and guidelines of punishment, this is in accordance with the objectives of punishment adopted by the combined theory, which wants to base punishment based on retribution and maintaining social order. The conditions for judges not to impose fines are very strict.

According to Article 70 paragraph (2) of the Draft Criminal Code, the provisions for eliminating imprisonment for elderly offenders do not apply to crimes which are punishable by a prison sentence of 5 (five) years or more, crimes which are punishable by a special minimum sentence, or certain crimes which are very serious. endangering or harming society, or causing financial harm or harming the country's economy. There are many criminal offenses punishable by imprisonment of under five years in the Draft Criminal Code. Several examples of criminal acts are punishable by a maximum imprisonment of 4 (four) years.

For elderly offenders, there are conditions given to judges to eliminate imprisonment, namely that it applies to crimes which are punishable by imprisonment for less than 5 (five) years, and does not apply to crimes which are punishable by a special minimum sentence, or certain crimes which very dangerous or detrimental to society, or detrimental to finances or detrimental to the country's economy. Apart from that, if the judge believes that it is not necessary to impose a prison sentence after considering the purpose of the sentence and the sentencing guidelines, the perpetrator can be sentenced to a fine.

Based on these provisions, elderly offenders may be subject to a fine, as an alternative to imprisonment. However, the conditions for imposing a fine for perpetrators with a threat of less than 5 (five) years, as a substitute for eliminating imprisonment, namely without victims; The victim does not mind; or not a repetition of a criminal act.

## Conclusion

Imposing prison sanctions on elderly people is contrary to the principles of justice, this is because an elderly person is a person in the final stages of human life development and is characterized by a person's failure to maintain healthy balance and physiological stress conditions so that imprisonment is not in accordance with the principles of justice when applied. to an elderly person.

## Suggestions

It is recommended to law enforcement officials, in this case investigators, to apply solutions using a restorative justice approach as a new paradigm in punishing elderly perpetrators who are excluded from immoral and non-criminal crimes that conflict with the public interest. It is recommended that judges sentence elderly criminals to probation if the maximum sentence is 1 year, provided they are not recidivists.

## References

1. Echwan Iriyanto, Halif. "Plan Element in the Crime of Premeditated Murder A Study of Decision Number 201/Pid.B/2011/PN. Mrs The Intent Element In The Premeditated Murder An Analysis of Decision Number 201/Pid.B/2011/PN. Mr", Journal: Judicial, E-ISSN: 2579-4868; P-ISSN: 1978-6506, 2021, 14(1).
2. Endang Pratiwi, *et al.* Jeremy Bentham's Utilitarianism Theory: Legal Goals or Legal Product Testing Methods? (Jeremy Bentham's Utilitarianism Theory: Legal Purpose or Methods of Legal Products Examination?), Constitutional Journal, 2022, 19.
3. I Gusti Ayu Devi Laksmi CDM, *et al.* "Imposing Sanctions Against Perpetrators of the Crime of Murder (Case Study at the Singaraja District Court in Case No.124/Pid.B/2019/Pn.Sgr)", University Justisia Community e-Journal Ganesha Education Legal Studies Program, 2020, 3(1).
4. Imam Hakmad. "Criminal Sanctions for Neglecting Children in Indonesia", Al-Qanun: Journal of Islamic Social and Legal Studies, 2021, 2(2).
5. Mursal Anis. "Analysis of Judge's Decisions in the Application of Retributive Theory Linked to the Sense of Justice for Victims in Criminal Persecution", UNES Journals of Swara Justitia, 2023, 7(2).
6. Puteri Hikmawati. "Eliminating Prison Sentences for Elderly Offenders in Criminal Law Reform, Can Restorative Justice Be Achieved", State of Law Vil, 2020, 11(1).
7. Rudi Wahyu Suharto, Abdur Rahim. "Child Abandonment Reviewed in Islamic Law and Law Number 39 of 1999 concerning Human Rights", Mizan: Jurnal of Islamic Law, 2020, 4(1).
8. Sakhowi. "Prevention and Handling of the Crime of Domestic Neglect in the People's Democratic Republic of Algeria", Khatulistiwa Law Review, 2021, 2(2).
9. Siti Hawa, *et al.* "Short Term Imprisonment for Elderly Prisoners", Novum: Legal Journal, 2019, 6(3). e-ISSN 2442-4641.
10. Sri Hastuti Puspitasari. Paradigm of the Relationship Between State Power and Human Rights Protection in Indonesia, Law Journal, 2003, 23(10).
11. Ulfiana Khaira. "Domestic Neglect by Husbands as a Form of Domestic Violence Seen from Law Number 23 of 2004 concerning the Elimination of Domestic

- Violence", Faculty of Law Student Scientific Journal (JIM FH), 2022, 5(1).
12. Wulandari, *et al.* "Review of Islamic Law and Positive Law regarding the Impact of Child Neglect Due to Parental Divorce", Qadauna: Scientific Journal of Islamic Family Law Students, 2022, 3(3).