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STELSEL CRIMINAL ACTS IN EMPLOYMENT CRIME IN INDONESIA

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Abstract

In Law Number 13 of 2003, it does not only recognize imprisonment, confinement or fines, but also recognizes administrative sanctions, namely in the form of a warning, written warning, limitation of business activities, freezing of business activities, cancellation of approval, cancellation of registration, temporary suspension of part or all production equipment, license revocation. Therefore, the offenses mentioned in these articles qualify as criminal offenses and the threat of punishment is cumulative alternative. Sanctions of imprisonment, confinement, and/or fines do not eliminate the employer's obligation to pay rights and/or compensation to workers or workers.

Keywords: Employment – Criminal System – Criminal Act

A. Introduction

In general, in the functioning of criminal law in the context of enforcing criminal law, it is necessary to implement policies which basically include penal and non-penal policies. The penal policy contains legal norms regarding prohibitions and obligations, accompanied by criminal threats for violators of the prohibition. Violations of the provisions of criminal law are usually called criminal acts, criminal acts, criminal events, and so on which the perpetrators can be subject to criminal sanctions provided by law. With the threat of criminal sanctions, then criminal law is said to be a sanction law which at the same time distinguishes it from other legal fields such as civil law, constitutional law, administrative law. The existence of this sanction in addition to encouraging people to obey it, is also a legal consequence for people who have violated the law.

The criminal law policy on employment crimes makes a crime a central problem, not only a national problem of a country, but is already a global problem. In connection with this problem, Barda Nawawi Arief, quoting Mac Ancel's opinion, explained that criminal law policy is both a science and an art which ultimately has a practical goal to enable positive legal regulations to be formulated properly, and to provide guidance not only to legislators but also to lawmakers. the court that applies the law,[1] while Sudarto stated that the criminal

[1] Barda Nawawi Arief dalam Edi Setiadi, "Penanggulangan Kejahatan Terorisme dengan Hukum Pidana", *Syiar Madani Jurnal Ilmu Hukum Vol. V No. 1, Fakultas Hukum Unisba*, Bandung, 2003, hlm.49.

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law policy regulates the selection for the implementation of the legislation that best fulfills the requirements of justice and efficiency.[2]

An action becomes a criminal act, it must be based on a strong moral foundation, because it is related to the approach and value approach with the use of criminal law (means of penal) in the matter of what actions should be made into criminal acts, and actions that should be used or imposed on violators.[3] The analysis of these two central problems cannot be separated from the conception that criminal policy is an integral part of social policy. This means that the solution of these problems must also be directed to achieve certain goals of the social policy that have been set. Criminal law policies, including policies in dealing with the two central problems above, must also be carried out with a policy-oriented approach. Thus, choosing and determining criminal (law) as a means of tackling crime must really consider all factors that can support the functioning and working of the criminal (law) in reality. So a functional approach is also needed and even this is an approach that is inherent in every rational policy.

Determining what actions can be used as criminal acts is closely related to the problem of crime prevention policies and is part of the law enforcement mechanism (criminal).[4] In the criminal determination stage, the purpose of the policy of establishing a criminal sanction cannot be separated from the goal of criminal politics in the overall sense, namely the protection of society to achieve prosperity. This relates to a theory of punishment, namely a relative theory or theory of objectives, which is based on the premise that crime is a tool to enforce order (law) in society. The purpose of the crime is the order of the community and to enforce that order, it is necessary to have a crime.[5] According to this theory, punishment is not to satisfy the absolute demands of justice. Retaliation itself has no value, but only as a means to protect the interests of society.

The criminal determination stage as one part of the chain of crime prevention planning for the achievement of community welfare, it must be a careful planning stage regarding what action policies should be taken in terms of punishment in the event of a violation of the law. In other words, this stage must be a strategic planning stage in the field of punishment which is expected to provide direction for the following stages, namely a stage of criminal application and a stage of criminal implementation. The policy of determining what type of criminal sanction is most considered good for achieving the goal, at least approaching the goal, cannot be separated from the issue of selecting various alternatives. The problem of selecting various alternatives to obtain which punishment is considered the best, the most appropriate, the most appropriate, the most successful or effective, is clearly a difficult problem. The determination of the type of crime by lawmakers is intended, among other things, to provide a set of tools for law enforcers in the context of tackling crime. In addition, it is also intended to limit law enforcers from using the means in the form of the established crime. Therefore, law enforcers may not use criminal means that have not been previously determined by the legislator.

B. Method

[2] Sudarto dalam Barda Nawawi Arief, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara,* Balai Penerbitan UNDIP, Semarang, 1996, hlm. 23.

[3] Muladi & Barda Nawawi Arief, *Teori-teori dan Kebijakan Pidana,* Alumni, Bandung, 1998, hlm. 160.

[4] Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana,* Citra Aditya Bakti, Bandung, 1998, hlm. 30.

[5] Adami Chazawi, *Pelajaran Hukum Pidana Bagian 1 : Stelsel Pidana, Tindak Pidana, Teori-teori Pemidanaan & Batas Berlakunya Hukum Pidana,* Raja Grafindo Persada, Jakarta, 2002, 157.

This study uses a normative juridical approach, namely by taking an inventory, reviewing and analyzing and understanding law as a set of positive rules or norms in the legal system that regulates human life. Specifications This research is a descriptive analytical study, namely research to describe the flow of scientific communication and analyze existing problems that will be presented descriptively. The type of data used is secondary data, including library materials related to research, secondary data includes primary legal materials, secondary legal materials and tertiary legal materials. Then the data collection was carried out through a literature study through a review of library materials related to the problem under study, then the data were analyzed in a normative-qualitative manner.

C. Discussion

1. Criminal Sanction Formulation System in Employment Crimes

The Criminal Code as the main or main source of criminal law has detailed the types of crimes, as formulated in Article 10 of the Criminal Code. According to the stelsel of the Criminal Code, crimes are divided into 2 (two) groups, namely the main crime and the additional crime.[6]

Principal crimes, consisting of:

1. death penalty
2. imprisonment
3. Criminal Cage
4. Criminal fine

Additional penalties consist of:

1. Criminal revocation of certain rights
2. Criminal confiscation of certain goods;
3. Criminal announcement of the judge's decision.

Based on Article 69 of the Criminal Code, the main punishment for crimes of a different kind is based on the sequence in the formulation of Article 10. The Indonesian criminal system, based on the Criminal Code, categorizes the types of crimes into basic and additional crimes. The differences between the main types of criminal and additional types of punishment are:[7]

1. The imposition of one of the main types of punishment is imperative (imperative), while the imposition of additional penalties is facultative.
2. The imposition of the main type of punishment does not have to be by imposing additional types of punishment (stand alone), but imposing additional types of punishment cannot be without imposing the main type of punishment.
3. The main type of punishment imposed, if it already has permanent legal force (in kracht van gewijsde zaak) requires an implementation action (executie), while additional penalties (revocation of certain rights) come into effect without first holding an execution right.

In addition to the characteristics of the additional types of punishment as mentioned above, there is

[6] Moeljatno, *Kitab Undang-Undang Hukum Pidana,* Bumi Aksara, Jakarta, 2001, hlm. 5-6.
[7] Adami Chazawi, *Op. Cit.,* hlm. 28.

another characteristic of the main types of punishment which is the basic principle of the main criminal, which is that it cannot be imposed cumulatively. According to the considerations of the legislators, as explained in the Dutch WvS Memorie van Toeichting (MvT) that imposing two main types of punishment simultaneously is not justified, because The deprivation of liberty has a different nature and purpose from the type of criminal fine.

Regarding the prohibition of cumulative imposition of this main type of crime, it has actually been proven from the way of formulating and including the punishments that are threatened in each formulation of both crimes (Book II) and violations (Book III), where:[8]

1. In the formulation of a criminal act, only one main type of crime is threatened
2. In some formulations of criminal acts that are threatened with more than one type of principal punishment, it is determined as an alternative (eg Article 340, 362, etc.), by using the word or.

Listening to the description above, it turns out that in criminal law there are three kinds of techniques or ways to formulate the crime, namely:[9]

1. A formulation that only provides qualifications or juridical names, without specifying the elements.
2. A formulation that only determines the elements, without giving qualifications or juridical names.
3. The formulation other than giving the qualifications or the juridical name also determines the elements.

In his book Barda Nawawi Arief said that, the types of crimes that are generally included in the formulation of offenses according to the Criminal Code pattern are the principal crimes, using 9 (nine) forms of formulation, namely:[10]

1. Threatened with capital punishment or life imprisonment or certain imprisonment;
2. Threatened with life imprisonment or certain imprisonment;
3. Threatened with imprisonment (certain);
4. Threatened with imprisonment or confinement;
5. Threatened with imprisonment or imprisonment or a fine;
6. Threatened with imprisonment or a fine;
7. Threatened with imprisonment;
8. Threatened with imprisonment or a fine;
9. Threatened with a fine.

From the 9 (nine) forms of the above formulation, the following can be identified:[11]

[8] *Ibid*.

[9] Sofjan Sastrawidjaja, *Hukum Pidana : Asas Hukum Pidana Sampai dengan Alasan Peniadaan Pidana*, Armico, Bandung, 1995, hlm. 124-126.

[10] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Citra Aditya Bakti, Bandung, 2002, hlm. 165-166.

[11] *Ibid*.

1. The Criminal Code only adheres to 2 (two) formulation systems, namely:
   a. Single formulation (threatened only 1 (one) principal punishment).
   b. Alternative formulation.
2. The main punishment that is threatened/formulated singly, is only imprisonment, confinement or a fine. No death penalty or life imprisonment is punishable singly.

Based on the explanation above, in relation to the system of formulating criminal witnesses in Law Number 13 of 2003, if it is correlated the sound of Article 1 paragraph (1) In the Criminal Code, if a person's actions are not regulated in the law, then the perpetrator cannot be punished for his actions. Thus, when holding someone accountable for their actions, it is necessary to pay attention to whether that person's actions are regulated by law, if it is regulated, whether the act is included in the category of the basics that negate the crime (strafuitsluitingsgronden) or not. In other words, if someone's actions are not against the law formally (formeele wederrechtelijk) because they are not regulated in the law and their actions can be categorized into the basics that negate the crime (strafuitsluitingsgronden), then that person cannot be said to have committed an act. criminal.

The basis for criminalizing an act is that formal and material criteria/benchmarks can be used, then a criminal act is essentially an act against the law, both formally and materially. By emphasizing that every criminal act is considered always contrary to the law. Therefore, the nature of being against the law is an absolute element of a crime. That is, even though the formulation of the offense is not explicitly formulated with an element of being against the law, the offense must always be considered to be against the law. So, the formal formulation in the law is only a formal measure or objective measure to declare an act against the law. The formal/objective measure must be tested materially on the perpetrator, whether there is a justification or not and whether the act is really against the people's legal awareness.[12]

It is regulated and stipulated, then the perpetrator is subject to sanctions according to the criminal provisions regulated by Law Number 13 of 2003, not merely the determination of these sanctions to avenge actions that have been committed by the perpetrators of labor crimes, but is a manifestation in the context of achieving the objectives of punishment. namely as prevention (general and specific), community protection, maintaining community solidarity, compensation / balancing. Therefore, talking about the purpose of sentencing, it is necessary to relate it to the social, cultural, and structural values of Indonesian society. However, it must be acknowledged that the social, cultural and structural values that exist in Indonesia are different from the social, cultural, and structural values that exist in other countries. So that the purpose of sentencing has a positive impact on the development of prisoners, the social, cultural and structural values that live in Indonesian society cannot be ignored.

Regarding those socio-cultural and structural values, J.E. Sahetapy said that idealism that is not rooted in the social, cultural and structural reality of the country and nation in question is a dream.[13] Likewise in Indonesia, the issue of sentencing must be linked to social, cultural and structural values that live and develop in society in order to have a positive impact on the convict and society. In order for the purpose of punishment to have a positive impact on the perpetrators of criminal acts, the social, cultural, and structural values that live in society cannot be

[12] Djisman Samosir, *Fungsi Pidana Penjara dalam Sistem Pemidanaan di Indonesia,* Binacipta, Bandung, 1992, hlm. 4.
[13] J.E. Sahetapy, *Pisau Analisa Kriminologi,* Armico, Bandung, 1984, hlm. 18.

ignored. Likewise in Indonesia, the issue of punishment must be linked to social, cultural and structural values that live and develop in society, in order to have a positive impact on perpetrators of criminal acts. The purpose of sentencing as one of the most important issues in the science of criminal law, should not only be associated with social, cultural and structural values that live and develop in Indonesian society, but must also be associated with the values contained in Pancasila, namely the value of humanity and justice, so that the purpose of sentencing is not merely aimed at revenge, but is intended as a training for the perpetrators to live in society in a civilized manner and become a useful human being and trying to create order in society.[14]

In the relationship between criminal sanctions as a penal policy and the achievement of the goal of punishing criminal acts as regulated in Law Number 13 of 2003, the penal policy, like public policy in general, must be a rational policy. One measure of the rationality of criminal policy, among others, can be related to the problem of effectiveness. So, the measure of rationality is placed on the problem of the success or effectiveness of the crime in achieving its goals.[15] Determining the basis of criminal justification from the point of view of its effectiveness is a pragmatic approach that should indeed be considered in every policy step, but the problem is how far to provide the basis for justifying the determination of a crime in legislation.

Based on the above description, in the functioning of Law Number 13 of 2003 as a tangible product of legislative policy, Law Number 13 of 2003 states that legislative policy in the application of criminal sanctions that can be imposed on perpetrators of criminal acts who violate or crime. For perpetrators of crimes, Law Number 13 of 2003 provides criminal sanctions of imprisonment or confinement and/or fines and/or additional administrative sanctions.

Below will be quoted the criminal provisions regulated in Law Number 13 of 2003, namely as follows:

Article 183 reads:

"(1) Whoever violates the provisions as referred to in Article 74, shall be subject to a minimum imprisonment of 2 (two) years and a maximum of 5 (five) years and/or a minimum fine of Rp. 200,000,000.00 (two hundred million) and a maximum of Rp. 500,000,000.00 (five hundred million).

(2) The criminal act as referred to in paragraph (1) is a criminal offense".

Article 183 refers to the qualifications of the offense in Article 74 which substance states that anyone is prohibited from employing and involving children in the worst jobs, such as:

1. Any work in the form of slavery or the like.
2. Any work that uses, provides or offers children for prostitution, the production of pornography, pornographic performances, or gambling..
3. All work that utilizes, provides, or involves children for the production and trade of liquor, narcotics, psychotropics, and other addictive substances.
4. Any work that endangers the health, safety or morals of children.

[14] Djisman Samosir, *Op. Cit.,* hlm. 12.

[15] Barda Nawawi Arief, *Bunga .... Op. Cit.,* hlm. 244.

Entrepreneurs who commit crimes as referred to in Article 74 may be subject to criminal sanctions in the form of imprisonment and/or fines. Thus, the sanctions imposed on the perpetrators are cumulative alternatives.

Article 184 reads:

"(1) Whoever violates the provisions as referred to in Article 167 paragraph (5), shall be subject to a minimum imprisonment of 1 (one) year and a maximum 5 (five) years and or a minimum fine of Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 500,000,000.00 (five hundred million).

(2) The criminal act as referred to in paragraph (1) is a criminal offense".

The qualification of the offense designated in Article 184, namely in Article 167 paragraph (5) is that if the employer does not include workers who have experienced termination of employment due to retirement age in the pension program, then the employer is obliged to provide workers with severance pay of 2 (two) times the provisions of Article 156. paragraph (2), reward for the service period of 1 (one) time as stipulated in Article 156 paragraph (3) and compensation for entitlements in accordance with the provisions of Article 156 paragraph (4).

Article 185 reads:

"(1) Whoever violates the provisions as referred to in Article 42 paragraph (1) and paragraph (2), Article 68, Article 69 paragraph (2), Article 80, Article 82, Article 90 paragraph (1), Article 139, Article 143, and Article 160 paragraph (4) and paragraph (7), subject to a minimum imprisonment of 1 (one) year and a maximum of 4 (four) years and/or a minimum fine of Rp. 100,000,000.00 (one hundred million) and a maximum of Rp. 400,000,000.00 (four hundred million rupiah).

(2) The criminal act as referred to in paragraph (1) is a criminal offense".

Qualifications of offenses designated by Article 185 are listed in several articles. Articles that qualify as offenses threatened with Article 185 are offenses relating to:

1. Employers who employ foreign workers are required to have written permission from the Minister or an appointed official.
2. Individual employers are prohibited from employing foreign workers.
3. Employers are prohibited from employing children.
4. Employers who employ children in light work must meet the following requirements:
   a. Written permission from parents or guardians;
   b. Written permission from parents or guardians;
   c. Maximum working time is 3 (three) hours;
   d. Done during the day and do not interfere with school time;
   e. Occupational Health and Safety;
   f. There is a clear working relationship;
   g. Receive wages in accordance with applicable regulations.

5. Employers are obliged to provide adequate opportunities for workers/laborers to carry out worship required by their religion..
6. Female workers/laborers are entitled to a break for 1.5 (one and a half) months before giving birth to a child and 1.5 (one and a half) months after giving birth according to the calculation of the obstetrician or midwife.
7. Female workers/laborers who experience a miscarriage are entitled to a 1.5 (one and a half) month rest or according to a certificate from an obstetrician or midwife.
8. Employers are prohibited from paying wages lower than the minimum wage.
9. No one can prevent workers/ laborers and trade unions/ labor unions from exercising their right to strike which is carried out in a lawful, orderly and peaceful manner.
10. Anyone is prohibited from arresting and/or detaining workers/laborers and workers/labor union officials who strike legally, orderly and peacefully in accordance with the prevailing laws and regulations.
11. In the event that the court decides on a criminal case before the 6 (six) month period as referred to in paragraph (3) ends and the worker/ laborer is declared innocent, the entrepreneur is obliged to re-employ the worker/ laborer.
12. Employers are obligated to pay workers/laborers who experience termination of employment as referred to in paragraphs (3) and (5), an award for 1 (one) time of service as stipulated in Article 156 paragraph (3) and compensation for entitlements in accordance with the provisions of Article 156 paragraph (3). Article 156 paragraph (4).

The offenses mentioned in these articles are qualified as criminal acts and the criminal threats are cumulative alternative, namely imprisonment and/or fines.

Article 186 reads:

"(1) Whoever violates the provisions as referred to in Article 35 paragraph (2) and paragraph (3), Article 93 paragraph (2), Article 137 and Article 138 paragraph (1), shall be subject to a minimum imprisonment of 1 (one) months and a maximum of 4 (four) years and/or a fine of at least Rp. 10,000,000.00 (ten million rupiah) and a maximum of Rp. 400,000,000.00 (four hundred million).

(2) The criminal act as referred to in paragraph (1) is a criminal offense".

Articles that qualify as offenses threatened with Article 186 are offenses relating to:

1. Implementers of manpower placement are obliged to provide protection from recruitment to placement of workers.
2. Employers in employing workers are required to provide protection that includes the welfare, safety, and health, both mental and physical of workers.
3. Employers are required to pay wages if:
   a. Sick workers/labor, including female workers/laborers who are sick on the first and second days of their menstrual period, are therefore unable to perform their work;
   b. The worker/labourer does not come to work because the worker/labourer marries, marries, circumcises, baptizes his child, his wife gives birth or miscarries, his husband or wife or child or son-in-law or parent

or in-laws or family member in the same house dies;

c. The worker/labourer is unable to perform his/her job because he/she is carrying out his/her obligations to the state;

d. The worker/labourer is unable to carry out his/her job because he/she is carrying out the worship ordered by his/her religion;

e. The worker/labourer is willing to do the work that has been promised but the entrepreneur does not employ him, either because of his own fault or an obstacle that the entrepreneur should be able to avoid;

f. Workers/laborers exercise their right to rest;

g. Workers/laborers carry out the duties of a trade union/labor union with the approval of the entrepreneur;

h. Workers/laborers carry out educational duties from the company.

4. Strikes as a basic right of workers/ laborers and trade unions/ labor unions are carried out legally, orderly and peacefully as a result of the failure of negotiations.
5. Workers/laborers and/or trade unions/labor unions who intend to invite

Article 187 reads:

"(1) Whoever violates the provisions as referred to in Article 37 paragraph (2), Article 44 paragraph (1), Article 45 paragraph (1), Article 67 paragraph (1), Article 71 paragraph (2), Article 76, Article 78 paragraph (2), Article 79 paragraph (1) and paragraph (2), Article 85 paragraph (3), and Article 144, are subject to criminal sanctions of imprisonment for a minimum of 1 (one) month and a maximum of 12 (twelve) months and / or a fine of at least Rp. 10,000,000.00 (ten million rupiah) and a maximum of Rp. 100,000,000.00 (one hundred million rupiah).

(2) The criminal act as referred to in paragraph (1) is a criminal offense".

Articles that qualify as offenses threatened with Article 187 are offenses relating to:

1. A manpower placement agency in carrying out manpower placement services is required to have written permission from the Minister or an appointed official.
2. Employers of foreign workers must comply with the provisions regarding the position and applicable competency standards.
3. Employers of foreign workers must:
   a. Appointing Indonesian citizen workers as assistants for foreign workers employed for technology transfer and skill transfer from foreign workers.
   b. Carry out job education and training for Indonesian workers in accordance with the qualifications of positions occupied by foreign workers.
4. Employers who employ workers with disabilities are required to provide protection according to the type and degree of disability.
5. Employers must meet the following requirements:

   a. Under the direct supervision of a parent or guardian.

   b. Maximum working time is 3 (three) hours a day.

c. Working conditions and environment do not interfere with physical, mental, social and school development.

6. Female workers/labourers:
   a. Female workers/laborers who are less than 18 (eighteen) years old are prohibited from being employed between 23.00 s.d. 07.00.
   b. Prohibition of employing pregnant women workers/laborers who, according to the doctor's statement, are dangerous to the health and safety of their wombs and themselves between 23.00 s.d. 07.00.
   c. Entrepreneurs who employ female workers/laborers between 23.00 s.d. 07.00 mandatory:
      1) Provide nutritious food and drinks.
      2) Maintain decency and safety while at work.
   d. Employers are required to provide shuttle transportation for female workers/laborers who go to and return to work between 23.00 s.d. 05.00.
7. Employers who employ workers/laborers for more than their working hours are required to pay overtime wages.
8. Working time :
   a. Employers are obliged to give rest and leave time to workers/laborers.
   b. Rest between working hours, at least half an hour after working for 4 (four) hours continuously and the rest time does not include working hours.
   c. Weekly break of 1 (one) day for 6 (six) working days in 1 (week) or 2 (two) days for 5 (five) working hours of 1 (one) week.
   d. Annual leave, at least 12 (twelve) working days after the worker/laborer has worked for 12 (twelve) months continuously.
   e. Long break of at least 2 (two) months and carried out in the seventh and eighth year for 1 (one) month each for workers/laborers who work for 6 (six) years continuously in the same company with the provisions of the said worker/labor is no longer entitled to his annual rest in the current 2 (two) years and thereafter applies to every multiple of the working period of 6 (six) years.
9. Employers who employ workers/laborers who work on holidays are required to pay overtime wages.
10. Employers prohibit legal strikes:
    a. Replacing striking workers/ laborers with other workers/ laborers outside the company.
    b. Provide sanctions or countermeasures in any form to workers/labor and workers/labor union officials during and after a strike.

Article 188 reads:

"(1) Whoever violates the provisions as referred to in Article 14 paragraph (2), Article 38 paragraph (2), Article 63 paragraph (1), Article 78 paragraph (1), Article 108 paragraph (1), Article 111 paragraph (3), Article 114, and Article 148, subject to a criminal sanction of a minimum fine of Rp. 5,000,000.00 (five million rupiah) and a maximum of Rp. 50,000,000.00 (fifty million).

(2) The criminal act as referred to in paragraph (1) is a criminal offense".

Articles that qualify as offenses threatened with Article 188 are offenses relating to:

1. **Private job training institutions are required to obtain a permit or register with the agency responsible for manpower affairs in the district/city.**
2. Private employment placement agencies can only collect labor placement fees from labor users and from workers of certain groups and positions.
3. In the event that a work agreement for an indefinite period is made orally, the entrepreneur is obliged to make a letter of appointment for the worker/labor concerned.
4. Entrepreneurs who employ workers/laborers for more than the working time as referred to in Article 77 paragraph (2) must meet the following requirements:
   a. There is the approval of the worker/labourer concerned;
   b. Overtime work can only be done for a maximum of 3 (three) hours in 1 (one) day and 14 (fourteen) hours in 1 (one) week.
5. Employers who employ at least 10 (ten) workers/laborers are required to make company regulations that come into force after being ratified by the Minister or an appointed official. The obligation to make company regulations does not apply to companies that already have a collective work agreement.
6. The validity period of company regulations is a maximum of 2 (two) years and must be renewed after the expiration date.
7. Employers are obligated to notify and explain the contents as well as provide a text of company regulations or amendments thereto to workers/labourers.
8. Employers are obligated to notify workers/laborers and/or trade unions/labor unions, as well as the agency responsible for local manpower affairs, at least 7 (seven) working days before the lockout is implemented. The notification as referred to in paragraph (1) shall at least contain:
   a. Time (day, date, and hour) starting and ending company closure (lock out);
   b. Reasons and reasons for closing the company (lock out).

The offenses mentioned in these articles qualify as criminal offenses and the threat of punishment is cumulative alternative.[16]

In Law Number 13 of 2003, it does not only recognize imprisonment, confinement or fines, but also recognizes administrative sanctions, namely in the form of a warning, written warning, limitation of business activities, freezing of business activities, cancellation of approval, cancellation of registration, temporary suspension of part or all production equipment, license revocation. Sanctions of imprisonment, confinement, and/or fines do not eliminate the employer's obligation to pay rights and/or compensation to workers or workers.

2. Criminal Law Enforcement Against Employment Crimes

Law enforcement or in popular language is often referred to as law enforcement, is the spearhead for the creation of a good legal order in society. Soerjono Soekanto argues that law enforcement is an activity to harmonize the relationship of values that are outlined in solid and embodied rules and attitudes of action as a

[16] Lilik Mulyadi, *Kapita Selekta Hukum Pidana Kriminologi & Victimologi,* Djambatan, Jakarta, 2003, hlm. 24.

series of final stage value elaborations, to create, maintain, and maintain peaceful social life.[17] Mochtar Kusumaatmadja put forward a theory about law enforcement, known as his adage: "Law without power is wishful thinking, while power without law is injustice.".[18] This means that in order for a law to work well, a power is needed to implement it, but on the other hand it is often that power that destroys the law, namely if power is not strictly limited by law. The law is broken because power is not strictly limited by law.

The ravages of the law because power is also clearly seen in terms of the implementation of the law itself, because law enforcers have certain powers, namely the power to enforce the law, that power is often misused which can result in biased, non-neutral and legal decisions inconsistent including the decisions taken by the Supreme Court as the highest law-making institution. In fact, the Supreme Court's decision holds very central role in law enforcement and development, as stated by Mochtar Kusumaatmadja:[19]

> "In the implementation stage, these principles are confirmed through court decisions. Here the decisions of the Supreme Court as the highest court have its own meaning and position, because they serve as guidelines or guidelines for lower courts, it is very important that the decision of the Supreme Court is truly a good decision and is not reprehensible. The decision of the Supreme Court must be absolutely solid and should not be confusing."

The dilapidated law enforcement in Indonesia is also inseparable from the existence of bias in the formation of the law itself, so that the resulting law cannot be realized in practice. As has been stated that law cannot be separated from power, so that both law makers and law enforcers cannot actually be avoided from the process of bargaining for power or political bargaining, but what is happening in Indonesia is that there is too much interference in power. deep into the law-making and enforcement process. Thus, the consequence is that the rule of law can never be formulated properly, and its implementation is also never correct. Instead, this power should be controlled by law, not the other way around. How power should be controlled by law, then Lilis Rasjidi stated as follows:[20]

> "The element of power holder is an important factor in terms of the use of its power in accordance with the will of the community. Therefore, in addition to the necessity of having law as a limiting tool, the holder of this power also requires other conditions such as having an honest character and a sense of service to the interests of the community. The high legal awareness of the community is also a powerful barrier for power holders.

Based on the description above, of course, in enforcing criminal law as an effort to functionalize Law No. 13 of 2003, it is necessary to at least pay attention to the factors that affect law enforcement, namely:

1. Law (statutory regulations)

   Discussing the law (laws and regulations) in relation to the enforcement of labor law, then the review returns to the content of national law that must be stipulated in the policy of law formation, then the planning of the content of the law in question must be stated in the formulation stage (called legislative

[17] Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum,* Rajawali Press, Jakarta, 1983, hlm. 2.
[18] Mochtar Kusumaatmadja, *Konsep-konsep Hukum dalam Pembangunan,* Alumni, Bandung, 2002, hlm. 199.
[19] *Ibid*., hlm. 199.
[20] Antonius Sujata, *Reformasi Penegakan Hukum,* Djambatan, Jakarta, 2004, hlm. 3-4.

policy). This legislative policy can functionally be seen as part of planning and law enforcement mechanisms, it can even be said as an initial step.[21]

In enforcing labor law with the enactment of Law No. 13 of 2003, the regulations are adequate and tough enough to be applied to perpetrators of labor crimes, because they are formed through the requirements of good law formation. Therefore, Law Number 13 of 2003 can be used as a guide in tackling every form of labor crime.

2. Law enforcement issues

From a policy approach, this issue is related to the empowerment of the legal apparatus. The policy of empowering legal apparatus can be carried out in a planned manner and directed at improving the quality, efficiency, effectiveness of the administrative order, enforcement of capabilities, discipline, dedication, exemplary, professionalism, and welfare. The above policies absolutely must be carried out considering that good law enforcement policies must also be accompanied by policies for developing human resources, work procedures, organization, infrastructure and facilities for law enforcement. Problems in enforcing criminal law in the field of manpower cannot be separated from the role of labor inspectors as investigators who can be given special authority as civil servant investigators in accordance with the applicable laws and regulations.

3. Public Law Enforcement Awareness Issues

There is an erroneous opinion, which is quite widespread in various circles, namely that law enforcement is only through a process in court. In addition, there is also another opinion, that it is as if law enforcement is solely the responsibility of law enforcement officers. Against this erroneous opinion, it is necessary to clarify that in fact law enforcement is the obligation of the entire community and for this the understanding of rights and obligations is absolutely absolute. The community is not a spectator of how the law is enforced, but the community actively plays a role in law enforcement.[22]

In order to address the issue of legal awareness by using a policy approach, we must be able to seek and find factors conducive to legal unconsciousness.[23] If this has been done, then policies related to legal behavior will be made. The policies in question can be pursued with legal effectiveness, including legal sanctions (in legislative policies), namely negative sanctions and positive sanctions whose intent is to generate stimulation so that humans do not commit disgraceful acts or take actions that are not commendable.[24]

The regulation and stipulation of the act as an employment crime in Law Number 13 of 2003, then the perpetrator is subject to sanctions according to the criminal provisions, not merely the stipulation of these sanctions to avenge actions that have been committed by the perpetrators of labor crimes, but is a manifestation in the context of achieving the purpose of punishment, namely as prevention (general and specific), community protection,

[21] Muladi & Barda Nawawi Arief, *Op. Cit.,* hlm. 173.
[22] Koesnadi Hardjasoemantri, *Hukum Tata Lingkungan,* Gadjah Mada University Press, Yogyakarta, 1999, hlm. 375-376.
[23] Solly Lubis, *Politik dan Hukum di Era Reformasi,* Mandar Maju, Bandung, 2000, hlm. 32
[24] Soerjono Soekanto, *Efektivitas Hukum dan Peranan Sanksi,* Remaja Karya, Bandung, 1985, hlm. 2.

maintaining community solidarity, taking / appeals.[25] Therefore, talking about the purpose of sentencing, it is necessary to relate it to the social, cultural, and structural values of Indonesian society. However, it must be acknowledged that the social, cultural and structural values that exist in Indonesia are different from the social, cultural, and structural values that exist in other countries.

In order for the purpose of punishment to have a positive impact on the perpetrators of criminal acts, the social, cultural, and structural values that live in society cannot be ignored. Likewise in Indonesia, the issue of punishment must be linked to social, cultural and structural values that live and develop in society, in order to have a positive impact on perpetrators of criminal acts. The purpose of sentencing as one of the most important issues in the science of criminal law, should not only be associated with social, cultural and structural values that live and develop in Indonesian society, but must also be linked to the values contained in Pancasila.

Based on the above description in the relationship between criminal sanctions as a penal policy and the achievement of the goal of punishment for criminal acts as regulated in Law Number 13 of 2003, the penal policy, like public policy in general, must basically be a rational policy. One measure of the rationality of criminal policy, among others, can be related to the problem of effectiveness. So, the measure of rationality is placed on the problem of the success or effectiveness of the criminal in achieving its goals. Determining the basis of criminal justification from the point of view of its effectiveness is a pragmatic approach that should be considered in every policy step, but the problem is how far to provide the basis for justifying the stipulation of punishment in legislation.

Discussing this problem, the following is a review of the problem of criminal effectiveness from 2 (two) main aspects of the purpose of punishment, namely aspects of community protection and aspects of improving perpetrators. It should be noted in advance that what is meant by the aspect of "community protection" includes the purpose of preventing, reducing or controlling criminal acts and restoring the balance of society (among others resolving conflicts, bringing a sense of security, repairing losses/damages, removing stains, reinforcing values values that live in the community), while what is meant by the aspect of "repairing perpetrators" includes various objectives, including rehabilitation and re-socialization of perpetrators and protecting them from arbitrary treatment outside the law.[26]

The two main aspects of the purpose of sentencing by Barda Nawawi Arief are stated as follows:[27]

1. Aspects of community protection

   Viewed from the aspect of protection/public interest, a crime is said to be effective if the crime can be prevented or reduced as far as possible. So, the effectiveness criterion is seen from how far the frequency of crime can be reduced. In other words, the criterion lies in how far the "general prevention" effect of crime is in preventing citizens in general from committing crimes.

2. Aspects of improvement actors

   Judging from the aspect of improving the perpetrators, the measure of effectiveness lies in the

[25] Muladi, *Lembaga Pidana Bersyarat,* Alumni, Bandung, 1995, hlm.
[26] Barda Nawawi Arief, *Bunga .... Op. Cit.*, hlm. 224.
[27] *Ibid.*, hlm. 225.

"special prevention" aspect of the crime. So, the size lies in the problem of how far the crime has an influence on the perpetrator/convict. There are 2 (two) aspects of criminal influence on the convict, namely the early prevention aspect (deterent aspect) and the reformative aspect.[28]

The amount of attention and thought that has been devoted to the issue of "the purpose of punishment" is already part of the plan to form the Criminal Code which is currently being reviewed at the National Legal Development Agency. Various forms and efforts to overcome crime have been carried out, but crime has not decreased. Criminal law as the ultimum remidium which some people consider capable of providing psychological pressure so that others do not commit crimes, seems to be doubtful to tackle crime in the field of employment. Therefore, it is necessary to conduct a review of the criminal system that has been used so far, is it adequate or not?

The court as an institution in charge of imposing a crime must be sure that the sentence imposed has a positive impact on the convict or not. The problem of imposing a crime is not just a matter of the severity of the crime, but also whether the punishment is effective or not, and whether the punishment is in accordance with social values, culture and structures that live and develop in society. Therefore, the purpose of sentencing is not only related to the interests of the perpetrators of the crime or victims and the families of the victims, but also to the interests of the general public, as written by Muladi and Barda Nawawi Arief, as follows:[29]

"The purpose of the policy of establishing a criminal sanction cannot be separated from the goal of criminal politics in its overall meaning, namely the protection of society to achieve prosperity".

Based on the description above, the determination of criminal sanctions against every labor crime must lead to the achievement of the purpose of punishment and if analyzed, the purpose of punishment will be achieved if in its implementation includes:[30]

1. The purpose of punishment is prevention (general and specific)
2. The purpose of punishment is the protection of society
3. The purpose of punishment is to maintain community solidarity
4. The purpose of punishment is compensation/offsetting

To achieve the goal of punishing the perpetrators of labor crimes, the purpose of the punishment must lead to the prevention of criminal acts by affirming legal norms for the protection of the community, socializing the convicts by conducting coaching so that they become good and useful people, resolving conflicts caused by criminal acts. , restore balance, and bring a sense of peace in society, and free the guilt of the convict. In addition, the purpose of sentencing is not intended to suffer or demean the human dignity of the perpetrators of labor crimes.

The indicator of the rise and fall of the frequency of crime cannot simply be used as a measure to determine whether or not a crime is effective. Moreover, there is another side to the aspect of "community protection", namely that sentencing is also aimed at "restoring the balance of society". How far is the effectiveness of criminal sanctions to achieve the ups and downs of the frequency of crimes that are more

[28] *Ibid.,* hlm. 229.

[29] Muladi & Barda Nawawi Arief, *Op. Cit.,* hlnm. 91.

[30] Muladi & Dwidja Priyatno, *Pertanggungjawaban Korporasi dalam Hukum Pidana*, STHB, Bandung, 1991, hlm. 118-121.

quantitative in nature. Indicators of community balance have been restored, among others, there has been conflict resolution, there has been peace and security in the community, the stains in society have disappeared or the values that live in society have recovered. These indicators are more than quantitative in nature and they are what Roger Hood and Richard Sparks argue are other aspects of "general prevention" that are difficult to study. This difficulty was also raised by Karl O. Chirstiansen when discussing several considerations regarding the possibility of a national criminal policy.[31]

In connection with the above description in relation to criminal acts (which are regulated and determined by Law Number 13 of 2003), there are quite interesting things about the problem of the purpose of punishing perpetrators of labor crimes, namely considering that most of the forms of crime employment is within the scope *"administrative penal law",* although sometimes the punishment is quite severe, there is a tendency to use the principle of solidarity more, namely criminal law is placed in its position as the ultimum remedium and many administrative and civil sanctions are applied, it is necessary to consider as an effective deterrent effort that can be achieved against the punishment of criminals employment, to place criminal law as a premium remedium. Thus, it is necessary to consider the function of criminal law which ultimum remedium becomes premium remedium,[32] because the crime of manpower destroys the joints of the life of a nation and can endanger the survival of a nation. In connection with the use of criminal penalties as a premium remedium, it must be done carefully and selectively. This step must always consider objective conditions related to the act, subjective matters relating to the perpetrator, the public's impression of the crime and the set of sentencing objectives to be addressed.

C. Closing

The criminal system in criminal acts that are regulated and determined by Law Number 13 of 2003 is qualified as a criminal offense and the criminal threat is an alternative cumulative nature considering that most of the forms of labor crimes are within the scope of "administrative penal law", although sometimes the punishment is quite severe, so there is a tendency to use the principle of solidarity more, namely the criminal law is placed in its position as the ultimum remedium and administrative and civil sanctions are widely applied, it is necessary to consider as an effective deterrent effort that can be achieved against the punishment of perpetrators of labor crimes , to place criminal law as a premium remedium in law enforcement, so it is necessary to consider the function of criminal law which is ultimum remedium to be premium remedium.

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[31] Karl O. Christiansen dalam Barda Nawawi Arief, *Bunga …. Op. Cit*., hlm. 228

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