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Pengaturan Sanksi Pidana Terhadap Penyelenggara Negara Yang Melaporkan Harta Kekayaan Secara Tidak Benar

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Abstract

State Administrators' Wealth Report (LHKPN) is an obligation for State Administrators as an effort to prevent the occurrence of Corruption, Collusion and Nepotism (KKN) practices. However, there is a weakness in the regulation of sanctions in the regulations related to LHKPN because there are no criminal sanctions that can be imposed for reporting assets incorrectly. This causes the emergence of criminal acts, namely fraud and falsification in reporting. Therefore, criminal sanctions are needed to threaten State Administrators not to falsify their wealth reporting in the LHKPN. The aim of this research is first to describe the urgency of imposing criminal sanctions on State Administrators who report assets incorrectly. Second, formulate arrangements for criminal sanctions in the future for State Officials who report assets incorrectly The type of research used is normative legal research using library materials as data and reference sources. This research requires secondary data consisting of primary, secondary and tertiary legal materials. The data collection technique used by researchers is literature study. This research uses a qualitative analysis method by interpreting legal materials. In drawing conclusions, researchers use a deductive method, namely drawing conclusions from general statements or propositions to specific statements or propositions. From the results of the discussion and research carried out, it can be concluded that, Firstly, the urgency of imposing criminal sanctions on State Administrators who report assets incorrectly is because Law Number 28 of 1999 only regulates administrative sanctions for those who do not comply with reporting LHKPN, preventing the emergence of criminal acts in LHKPN , as well as creating fear and preventing State Administrators from reporting assets incorrectly. Second, the formula for regulating criminal sanctions against State Officials who report assets incorrectly in the future is criminal sanctions in the form of fines and additional criminal sanctions in the form of confiscation of assets that are not officially reported in the LHKPN.

Keywords: *LHKPN, State Administrators, Criminal Sanctions*

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INTRODUCTION

State Administrators are State Officials who carry out executive, legislative or judicial functions, and other officials whose main functions and duties are related to state administration in accordance with the provisions of applicable laws and regulations. State administrators have an important role in realizing the ideals of the nation's struggle. This is explicitly stated in the

Explanation of the 1945 Constitution. Therefore, state administrators must be clean in the sense of adhering to the general principles of state administration and free from practices of corruption, collusion and nepotism, as well as other disgraceful acts.

The implementation is that every state administrator is obliged to announce and report his assets before, during and after taking office. This is carried out as a preventive and repressive measure and functions as a guarantee for compliance with provisions regarding general principles of state administration, the rights and obligations of state administrators, and other provisions so that it can be expected to strengthen institutional norms, individual and social morality. The obligation of state administrators to report their assets is contained in Article 5 of Law Number 28 of 1999 concerning State Administrators who are Clean and Free from Corruption, Collusion and Nepotism. Where State Administrators are obliged to:

1. Willing to have his assets checked before, during and after taking office
2. Report his assets when he first took office, transfer, promotion and retirement
3. Announce his assets.

The Report on the Assets of State Administrators, hereinafter referred to as LHKPN, as regulated in Article 5 of Law Number 28 of 1999 concerning State Administrators who are Clean and Free from KKN and Article 2 of PP No. 65 of 1999 concerning Procedures for Inspecting the Assets of State Administrators is an obligation that cannot be done. avoided by everyone who holds the position of state administrator. As an official obligation, violations of legal norms can be subject to official sanctions in accordance with applicable laws and regulations.

This law only provides sanctions for those who do not comply with reporting their assets, even though it does not rule out the possibility that the LHKPN obligor deliberately misreports his assets. It is also difficult for other state officials who have released their terms of office to be subject to administrative sanctions again if after serving they do not report LHKPN. Especially because the person concerned is no longer an organizer and is not bound by administrative sanctions. This regulation is a form of commitment to eradicating corruption in government organizations, including monitoring every code of ethics and policies regarding finances by state officials.

State officials who report their assets incorrectly should be advised to have committed falsification and fraud in filling out the Assets Report. Forgery is an act which contains an element of untruth or falsehood regarding something (object), where something appears from the outside as if it were true even though in reality it is contrary to what is actually true.

Problem Formulation

Based on the background description above, the problems that can be formulated in this research are as follows:

1. Why is it urgent to impose criminal sanctions on State Officials who report assets incorrectly?
2. How will criminal sanctions be regulated in the future for State Officials who report assets incorrectly?

Theoretical Framework

The theoretical framework is a composition of several assumptions, opinions, methods, rules, principles, information as a logical unity which becomes the basis, reference and guideline for achieving goals in research or writing.

The existence of theory in legal research is very important and useful for providing support in analyzing the problems being studied or for testing hypotheses. So theory functions as a knife or analytical tool for the problems being studied or researched.

1. Criminal Law Policy Theory

   Marc Ancel stated that modern criminal science consists of three components, namely "Criminology", "Criminal Law" and "penal policy". laws and implementing court decisions. Criminal law policy cannot be separated from the criminal law system, in this case Marc Ancel states that every organized society has a legal system consisting of criminal law regulations and their sanctions, a criminal law procedure and a criminal implementation mechanism.

   In the Black Law Dictionary, Bryan A. Garner states that criminal law policy (criminal policy) is a branch of criminal law science that is related to the protection of health (the brainch of criminal science, concerned with protecting against crime). The phrase "related to" means more emphasis on the aspect of protecting society against crime through law enforcement.

2. Relative Sentencing Goal Theory

   Traditionally, theories of punishment are generally divided into three groups of theories, namely absolute theories or theories of retribution, relative theories or goal theories, and integrative theories or combined theories. In this research, the author uses relative punishment theory or objective theory.

   This theory is based on the view of the purpose of punishment, namely to protect society or prevent crime. This means that prevention for the future is also considered. Proponents of this theory include Paul Anselm van Feurbach who argued that merely making criminal threats is not only sufficient, but requires the punishment of criminals.

   In the relative/objective theory, punishment is not intended as retribution and therefore does not recognize that the punishment (criminal) itself is the purpose of punishment. Punishment is a way to achieve a goal other than punishment itself. This goal theory arises as a result of the lack of success in the goal of retaliation.

LITERATURE REVIEW

General Overview of Crime and Punishment

1. Terms and Definitions of Criminal Offenses

   The term criminal act is essentially a term that comes from the translation of the word Strafbaar feit in Dutch, sometimes also delict which comes from the Latin word delictum. The criminal laws of Anglo-Saxon countries use the terms offense or criminal act for the same purpose. Because the Indonesian Criminal Code (KUHP) originates from the Dutch Wetboek van Strafrecht (WvS), the original term is the same, namely strafbaar feit. Indonesian legislators have used the words strafbaar feit to refer to what is known as a criminal act.

The word "feit" itself in Dutch means "part of a reality" or "een gedeelte van de werkelijkheid", while "strafbaar" means "can be punished", so that literally the word "strafbaar feit" can be translated as "part of a reality that can be punished", which is of course not correct, because later we will find out that what can be punished is actually humans as individuals and not facts, deeds or actions.

Strafbaar feit, is a Dutch term which in Indonesian is translated with various terms, because the government has not determined an official translation of the Dutch term. Therefore, various views have arisen in Indonesian as an equivalent of the term "stafbaar feit", such as: "Criminal act", "Criminal incident", "Criminal act", "Punishable act" and so on. In fact, different terms are used in various laws and regulations.

2. Elements of a Criminal Act

   To determine whether there is a criminal act or not, it is generally formulated in criminal legislation regarding the acts committed and accompanied by sanctions. In this formulation, several elements or conditions are determined which are the characteristics or characteristics of the former so that it can be clearly differentiated from other acts which are not prohibited.

   The Criminal Code is generally described into 2 (two) types of elements, namely objective elements and subjective elements. What is meant by objective elements are elements that are related to circumstances, namely under the circumstances in which the actor's actions must be carried out, while subjective elements are elements that are inherent in the perpetrator or are related to the perpetrator.

3. Definition of Punishment

   Punishment can be interpreted as the stage of determining sanctions and also the stage of providing sanctions in criminal law. The word "criminal" is generally interpreted as law, while "conviction" is interpreted as punishment. Punishment is a process or method of imposing punishment/sanctions on people who have committed crimes (rechtsdelict) or violations (wetsdelict). Punishment can be interpreted as the stage of determining sanctions and also the stage of providing sanctions in criminal law.

   Punishment according to Hoefnagels is a process in which a person with authority carries out action against another person on the basis of a violation of the law, with coercion as its characteristic, censure as its main means, and reprimand, the aim of returning to society and relations between human beings and pressure that leads to good behavior as the approach, conflict resolution and efforts to influence perpetrators and other people who do not obey the law as the goal, where the authority to punish is a matter related to the norms and values of criminal law and criminal procedural law .

   The punishment in question relates to the imposition of a crime and the justification for the imposition of a crime on a person who, through a court decision that has permanent legal force (incracht van gewijsde), is declared legally and convincingly proven to have committed a criminal act. Of course, the right to impose a crime and the reasons to justify the imposition of a crime and its implementation are fully in the hands of the state in its reality as a spirit. In accordance with what Barda Nawawi Arief said: that the aim of criminal

policy, namely determining a crime, cannot be separated from the political objectives of the crime. In its overall meaning, it is protecting society to achieve prosperity. Therefore, to answer and understand the purpose and function of punishment, it cannot be separated from existing theories about punishment.

General Overview of State Officials' Asset Reports

1. Definition of State Administrator
   State Administrators as referred to in Article 1 point 1 of Republic of Indonesia Law no. 28 of 1999 concerning State Administrators who are Clean and Free from Corruption, Collusion and Nepotism are "state officials who carry out executive, legislative or judicial functions and other officials whose main functions and duties are related to state administration in accordance with the provisions of the statutory regulations applies." Which includes State Administrators according to Article 2 of Republic of Indonesia Law no. 28 of 1999, includes:
   1) State Officials at the Highest State Institutions;
   2) State Officials at High State Institutions;
   3) Minister;
   4) Governor;
   5) Judge; What is meant by judge here is a judge at all levels of justice.
   6) Other state officials in accordance with the provisions of applicable laws and regulations; What is meant by "Other State Officials" is, for example, the Head of Representatives of the Republic of Indonesia Abroad who has the position of Extraordinary Ambassador and Plenipotentiary, Deputy Governor, and Regent/Mayor.
   7) Other officials who have strategic functions in relation to state administration in accordance with the provisions of applicable laws and regulations.
2. Obligations of State Administrators
   State administrators have an important role in realizing the ideals of the nation's struggle. This is explicitly stated in the Explanation of the 1945 Constitution. Therefore, state administrators must be clean in the sense of adhering to the general principles of state administration and free from practices of corruption, collusion and nepotism, as well as other disgraceful acts.
   Law Number 28 of 1999 concerning State Administrators who are Clean and Free from Corruption, Collusion and Nepotism contains provisions relating directly or indirectly to law enforcement against criminal acts of corruption, collusion and nepotism which are specifically aimed at state administrators and officials others who have strategic functions in relation to state administration in accordance with the provisions of applicable laws and regulations.
3. Report on the assets of state administrators
   One of the steps taken by the government to prevent and reduce the rate of corruption in Indonesia has been carried out through the implementation of several juridical policies, one of which is through the formation of a law which specifically contains regulations regarding criminal acts of corruption,

collusion and nepotism in Indonesia. Apart from establishing laws, other steps taken by the state to deal with criminal acts of corruption in Indonesia are through the establishment of the Corruption Eradication Commission (KPK) and the implementation of mandatory LHKPN reporting regulations.

LHKPN as regulated in Article 5 of Law Number 28 of 1999 concerning State Administrators who are Clean and Free from KKN and Article 2 of PP No. 65 of 1999 concerning Procedures for Inspecting the Assets of State Administrators is an obligation that cannot be avoided by every person who occupies the position of administrator. country. As an official obligation, violations of legal norms can be subject to official sanctions in accordance with applicable laws and regulations, ranging from ethical sanctions to even criminal sanctions. In principle, LHKPN is a report that must be submitted by State administrators regarding the assets they owned when they first took office, transfers, promotions and retirement.

General Overview of the Crime of Fraud and Forgery of Electronic Documents

1. Crime of Fraud

   One form of crime that is still crucial and widespread in society is fraud. The definition of "fraud" in the Big Indonesian Dictionary comes from the basic word fraud, namely deception is "dishonest actions or words (lying, falsehood, etc.) with the intention of misleading, deceiving or seeking profit. Meanwhile, fraud is a process, method, deceptive act and deceptive matter.

   Fraud is a crime which is included in the category aimed at property rights and other rights arising from property rights or in Dutch it is called "misdrijven tegen de eigendom en de daaruit voortloeiende zakelijk rechten". As formulated in Article 378 of the Criminal Code, fraud means acts with the intention of unlawfully benefiting oneself or another person by using a false name, false dignity, deception or lies which can cause other people to easily hand over their goods, money or wealth.

2. Crime of Electronic Document Forgery

   Forgery, which often becomes a problem in social life, is the criminal act of forgery of letters, which is a collection containing records of words and sentences that occur from letters and numbers in the framework of everything that is created in any way that may contain a meaning resulting from the human mind. The existence of laws in a country has the function of controlling and protecting society. Normatively, in the context of discussing the crime of document forgery, there are rules regulated in positive law in Indonesia.

   In general, the crime of forgery is a crime which contains a system of untruth or fakeness regarding something (object), where something appears from the outside as if it were true, but is actually contrary to what is actually true. Therefore, counterfeiting can be a threat to the survival of society.

RESEARCH METHODS

1. Type of Research

   The type of research used in this research is normative legal research, which is a type of legal research methodology that bases its analysis on applicable laws

and regulations that are relevant to the legal issues that are the focus of the research. The normative legal research method uses a normative juridical approach, namely an approach that refers to applicable laws and regulations. This normative legal research uses a type of study of legal principles, namely Certainty, Justice and Legal Benefits.

2. Data Collection Techniques

Data collection in normative legal research is carried out by means of library studies in the form of secondary data as basic material for research by conducting searches on regulations and other literature related to the problem being researched or often referred to as library legal research.

3. Data Analysis

The analysis used in this research uses a qualitative analysis method, namely by interpreting legal materials that have been processed. The aim of using this method of interpretation (interpretation) is to interpret the law, whether in the legal materials, especially primary legal materials, there are voids in legal norms, antinomies of legal norms and unclear legal norms. In drawing conclusions the researcher used a deductive thinking method, namely the activity of thinking from general statements and then drawing specific conclusions.

RESULTS AND DISCUSSION

The Urgency of Imposing Criminal Sanctions on State Officials Who Report Assets Incorrectly

Corruption is an extraordinary crime (extra ordinary crime) seen from its complexity and negative effects which cause great damage to the country, resulting in social disasters such as increasing poverty in society and the destruction of the national economy. The problem of corruption has occurred systematically, structured and massively. One of the efforts made to eradicate the increasing prevalence of criminal acts of corruption is to require every state administrator to report their assets in the LHKPN. LHKPN is one of the obligations that must be carried out by State Administrators in carrying out their work or position. The obligation to report wealth is considered important to increase public trust in public officials and institutions, as well as supporting the achievement of the goal of effectively eradicating corruption. LHKPN aims to create State Administrators who adhere to the general principles of State administration that are free from the practices of corruption, collusion and nepotism.

The aim and function of the LHKPN is to prevent State Administrators from being free from the practices of Corruption, Collusion and Nepotism. However, at this time the LHKPN itself cannot immediately prevent the occurrence of criminal acts of corruption among state administrators. The LHKPN is only considered a formality in filling it out by state officials and is prone to being manipulated in filling it out. This is due to the weaknesses contained in the provision of sanctions in the regulations related to reporting the assets of state officials. This causes State Administrators to assume that filling out the LHKPN can be filled in haphazardly because there are no sanctions that can ensnare these State Administrators.

The threat of criminal sanctions is often understood as a form of encouragement or at a higher level of coercion so that the laws made are obeyed by the community and at the same time provide provisions for implementing officials and law enforcement officials to carry out repressive actions that contain penal/criminal elements. The threat of criminal sanctions is understood as an effective tool so that the law is obeyed by society, so laws that do not contain provisions for the threat of criminal sanctions are often seen as incomplete or useless. Criminal sanctions in regulations related to LHKPN can be one way to prevent falsification and fraud in reporting assets.

The existence of punishments or sanctions in criminal law does not necessarily function as retaliation for perpetrators of criminal acts, because in connection with the development of criminal law the function or use of criminal sanctions has also experienced paradigm developments. The functions of criminal sanctions currently used are:

1. As a means of enforcing legal rules both in criminal law and enforcement in other legal disciplines;
2. As a means of providing punishment and a deterrent effect for perpetrators of criminal acts;
3. As a tool to improve the behavior of perpetrators of criminal acts, so that criminal sanctions must contain educational elements;
4. As a means to prevent and overcome the occurrence of criminal acts;
5. As a means of social protection (social defense) by protecting the sense of security and tranquility for both individuals and the general public, so as to create a just and prosperous social environment.

Law no. 28 of 1999 only regulates administrative sanctions for those who do not comply with reporting LHKPN

In the LHKPN itself there is no regulation regarding criminal sanctions imposed on State Officials who report assets incorrectly. Rather, it only regulates administrative sanctions that can be imposed on State Officials who are disobedient or not timely in reporting their assets. However, the administrative sanctions provided are also considered weak and ineffective in their enforcement. The non-compliance of state officials is due to the fact that the form of sanctions given is only administrative sanctions which have little impact on violators. These administrative sanctions are also based on the internal policies of the respective agencies, which means that this prevention process does not run optimally and still has gaps.

Administrative sanctions are not enough to provide a deterrent effect for law violators and are still the dominant understanding, especially when related to eradicating corruption. Administrative sanctions in Indonesia have a number of weaknesses so that they have not been effective in reducing the occurrence of legal violations whether committed by public bodies or officials. One of these weaknesses is that legal sanctions cannot be executed directly. The administrative law system does not have an authorized institution to compel the implementation of administrative court decisions as in the execution of criminal law carried out by the prosecutor's office.

Prevent the appearance of criminal acts in the State Administrator's Wealth Report (LHKPN)

The weakness of sanctions regarding State Officials' Asset Reports results in non-compliance with the reporting mechanism and the assumption that the LHKPN is just a formality. This causes the emergence of criminal acts in reporting, namely criminal acts of fraud and falsification in filling out wealth reports carried out by state officials. Therefore, there are discrepancies between the assets reported and the assets owned by state administrators.

Fraud can be defined as an act or statement made by someone who is dishonest or lies with the intention of misleading or deceiving other people for the benefit of themselves or their group. Fraud in the LHKPN is carried out by dishonestly filling in the assets owned by a State Official with the aim of hiding the majority of his assets with the aim of ensuring that there is no disproportion between his assets and the income owned by a State Official.

Meanwhile, counterfeiting is a crime which contains a system of untruth or falsehood regarding something (object), where something appears from the outside as if it were true, even though in fact it is contrary to the truth. This falsification can take the form of hiding certain wealth, changing the origin of wealth from the actual one, reducing the nominal amount of certain wealth unilaterally and other practices.

Create fear and prevent State Administrators from reporting assets incorrectly

Criminal sanctions are a punishment for cause and effect, the cause is the case and the consequences are the law, the person affected will receive sanctions, either going to prison or being subject to other punishment from the authorities. Criminal sanctions have the aim of protecting society from all criminal acts or misleading evil acts, giving fear to those who want to commit crimes or who will violate the law and preventing criminal acts or criminal incidents. This can reduce the crime rate in society.

LHKPN as one of the efforts to prevent criminal acts of corruption in Indonesia is considered to have not been effective. Because currently, the regulations regarding LHKPN do not mention the imposition of criminal sanctions for reporting assets incorrectly. The absence of criminal sanctions contained in the regulations regarding LHKPN means that State Officials are not afraid of not reporting their assets or they even dare to report incorrectly the assets report which is their obligation.

Arrangement of Criminal Sanctions in the Future Against State Officials Who Report Assets Incorrectly

The current acts of corruption are caused by many state administrators who have fallen into the abyss of greed that is based on materialism. The efforts made by the Indonesian government to optimize the prevention and eradication of

criminal acts of corruption continue to be carried out seriously, sustainably and consistently. Efforts to eradicate criminal acts of corruption in Indonesia are carried out through 2 efforts, namely:

1. Prevention efforts
2. Enforcement efforts

In relation to efforts to prevent criminal acts of corruption, one of the preventive steps taken by the Indonesian government is through the implementation of LHKPN regulations which are carried out under the coordination of the Corruption Eradication Commission (KPK) which is aimed at all State Administrators as well as several other public officials who are considered to have vulnerable positions. against corruption. This step is also a form of accountability and transparency for every State Administrator official.

These efforts also do not necessarily prevent and eliminate fraudulent actions by State Officials. This is due to the existence of a legal vacuum in the regulations regarding LHKPN. This legal vacuum is the absence of criminal sanctions that can ensnare State Officials in reporting their assets.

Criminal sanctions are considered important to apply in the regulations regarding LHKPN to prevent the emergence of criminal acts in LHKPN and force State Administrators to obey and report their assets correctly and honestly. Because the LHKPN is prone to manipulation by State Administrators who consider reporting assets to be just a formality and does not require reporting it correctly.

The aim of criminal law policy is to tackle crime, where tackling crime is essentially an integral part of efforts to protect society (social defense) and efforts to achieve prosperity (social welfare). As the aim is to combat crime, criminal law policy is defined as a way of acting or policy of the state (government) in using criminal law to achieve certain goals.

Criminal law policy is related to the issue of criminalization, namely what actions are considered criminal acts and penalization, namely what sanctions should be imposed on perpetrators of criminal acts. Between criminalization and penalization, it is central to handling it, so a policy-oriented approach is needed. Criminalization covers the scope of unlawful acts (actus), criminal liability (mens rea) as well as sanctions that will be imposed in the form of punishment and treatment.

The regulatory idea that the author will put forward is to include regulations for criminal sanctions in the form of fines and additional criminal sanctions into Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. This is in line with Miracle Sihombing's previous research in 2013 with the title The Urgency of Setting Criminal Sanctions in Reporting the Assets of State Officials as an Effort to Prevent Corruption Crimes which also suggested criminal sanctions against State Officials who intentionally misreport their assets. the author formulates namely:

"State officials or other persons, who are required to permanently or temporarily carry out public works, who deliberately falsely create or falsify information regarding the assets they report, may be subject to sanctions in the form of:

a. a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 250,000,000.00 (two hundred and fifty million rupiah), and/or;
b. confiscation of property that is not officially reported in the LHKPN."

The incorrect information in question includes assets reported that do not match the assets actually owned, as well as assets reported that are not the personal property of State Officials. The reason the author formulated a fine is because of Article 9 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which explains the criminal act of falsifying books or a special list of administrative checks carried out by civil servants. Therefore, the author formulates a criminal fine based on article 9 of the Corruption Law.

CLOSING

Conclusion

1. The urgency of imposing criminal sanctions on State Officials who report assets incorrectly is because Law Number 28 of 1999 only regulates administrative sanctions for those who do not comply with reporting LHKPN, preventing the emergence of criminal acts in State Officials' Wealth Reports (LHKPN), as well as provide fear and prevent State Administrators from reporting assets incorrectly. With the criminal sanctions regulated in LHKPN reporting, it is hoped that it will force State Administrators to be orderly in reporting their assets and give State Administrators the fear of reporting their assets incorrectly.
2. Regulation of future criminal sanctions against state officials who report assets incorrectly is a fine of at least IDR 50,000,000.00 (fifty million rupiah) and a maximum of IDR 250,000,000.00 (two hundred and fifty million rupiah) as well as confiscation of property that was not officially reported in the LHKPN.

Suggestions

Based on the results of the research and analysis that has been carried out, the researchers have several suggestions as follows:

1. Based on the impact that occurs as a result of incorrect reporting of assets by State Administrators, it is important for the government to immediately make arrangements for criminal sanctions that can ensnare those reporting incorrect assets under Indonesian positive law. Thus, State Officials who report assets incorrectly can be prosecuted and prosecuted.
2. Imposing criminal sanctions on State Officials who report assets incorrectly, namely in the form of fines and additional criminal sanctions in the form of confiscation of assets, with the aim of creating fear of State Officials who intend to report their assets incorrectly and give effect deterrent to State Officials who have committed these crimes so that they do not repeat the same actions in the future.

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