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LEGAL ARRANGEMENTS REGARDING REASONS FOR THE ELIMINATION OF CRIMINAL PROCEDURE IN THE CRIMINAL CODE (KUHP)

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Abstract

The current Penal Code, especially the regulation of reasons that can eliminate criminality, is influenced by neo-classical schools. Such influence is seen in considering the personal self-worth of the offender and about other conditions that cause a person to commit a violation against the law (an act that can be punished). This can be seen by the regulation regarding the abolition, reduction and weighting of penalties as formulated in Chapter III of the First Book of the Criminal Code. The birth of the reasons for the elimination of crimes in the modern criminal system is inseparable from the emergence or birth of schools in criminal law that have been known, namely the classical school, neo-classical and positive schools. These streams are not looking for a legal basis or justification of the criminal / law as contained in criminal theories, but trying to find the purpose of imposing a criminal sanction is applied along with the development of society. Reasons for the elimination of criminal penalties for perpetrators of criminal offenses are regulated in the first book (general regulation) of the Criminal Code (KUHP), which includes Article 44 which regulates mentally ill offenders, Article 48 which is forced , Article 49, which is about self-defense, Article 50, which is about implementing Law and Article 51, which is about carrying out orders.

Keywords: *Legal Arrangement, Reasons for the Elimination of Criminal Procedure, Criminal Code*



A. Introduction

The history of the existence and enforcement of the Criminal Code (KUHP) in Indonesia comes from the Dutch Criminal Code based on the concordance principle, namely the principle that the legislation imposed in Indonesia must be adjusted to the Dutch Criminal Law. Whereas the Dutch Criminal Code itself is basically a derivative of the French Penal Code that applies in the Netherlands from 1811 to 1886. While the French Penal Code was born from the thinking of Beccaria (in the classical school era), although the French Penal Code was finally revised in 1791 according to the neo classical flow. One of the characteristics of the classical school is that the punishment must be in accordance with the crime of "let the punishment fit the crime", without paying attention and considering the personal condition of the perpetrator who committed the crime. Unlike the case with neo-classical flow, that in imposing a sentence must be in accordance with the personal circumstances of the perpetrators "let the punishment fit the criminal". (H.M. Hamdan, 2012: 18).

From the description of the streams mentioned above, it can be understood that the birth of the reasons for the abolition of crime was influenced by the thoughts of the neo-classical school. Where in this period of time crime is not seen from its crime alone, but in seeing the truth and overcoming it with the criminal law must see and pay attention to the person of the perpetrator of the crime itself, not to what he did (crime). Is the perpetrator of a normal person, still underage, an actor who is in a situation or environment that is depressed so that he is forced to commit a crime or there are other factors that influence the perpetrator so that he commits a crime. All of this must be taken into consideration to impose criminal charges against perpetrators of crimes. Because not all perpetrators of crimes have the same factors or motives in committing a crime, and therefore not all perpetrators can be sentenced to the same and certain crimes. (H.M. Hamdan, 2012: 25).

Reasons for the elimination of criminal penalties for perpetrators of criminal offenses are regulated in the first book (general regulations) of the Criminal Code (KUHP), which includes Article 44 which regulates mentally ill offenders, Article 48 namely perpetrators who are forced,



Article 49, namely about self-defense, Article 50, which is about implementing Law and Article 51, which is about carrying out orders.

Historically, it was through M.v.T. (Memorie van Teolichting) regarding "the reason for the abolition of this crime, arguing that what is called reasons cannot be accounted for by someone or the reasons for which a person cannot be prosecuted". This is based on two reasons, namely: (H.M. Hamdan, 2012: 27).

1. The reason cannot be accounted for by someone who lies in that person, and
2. The reason cannot be accounted for by someone who is located outside the person.

The reason for the abolition of criminal acts can be seen from the point of the elements of offense, namely subjective elements and objective elements. Subjective elements are from the person of the perpetrator himself, for reasons of abolition of the forgiving reason is a reason that eliminates the offender's self-error found in Article 44 of the Criminal Code. Whereas from the objective element is an element that is outside the personal self of the actor concerning the action, which is the justification reason. In this case the nature of violating the law of the perpetrator is abolished for objective reasons, for example in Article 48, Article 50, and Article 51 of the Criminal Code.

B. Method

The type of research used is descriptive analytical that is describing, describing, analyzing and explaining analytically the problems raised. This study includes the type of normative legal research or library legal research that is legal research conducted by examining library materials consisting of primary legal materials, secondary legal materials and tertiary legal materials. (Soerjono Soekanto and Sri Mamuji, 2004: 13-14).



C. Discussion

Reasons for the Elimination of Criminal Procedure in the Criminal Code (KUHP).

The reason for abolishing a crime can occur because the author cannot be convicted or his actions cannot be convicted. Reasons for the elimination of crimes can be divided into: (H.M. Hamdan, 2012: 59).

Reason justification

The reason for justification is to abolish the lawlessness of the act, meaning that even if the act fulfills the formulation of the offense as stipulated in the law, in other words the reason for abolishing it can be sanctioned, the actions included in the justification are:

1. Emergency situation (Article 48 of the Criminal Code)
2. Forced defense / noodweer (Article 49 (1) of the Criminal Code)
3. Carry out laws and regulations (Article 50 of the Criminal Code)
4. Carrying out a valid position order (Article 51 (1))
5. Forgiving reasons (Schulduitsluitingsgrond)

This forgiving reason concerns the creator's personal condition, meaning that the creator cannot be blamed or cannot be blamed or cannot be accounted for, in other words forgiving reasons for eliminating can be in criminal the author. Which includes forgiving reasons are:

1. Not able to be responsible (Article 44 of the Criminal Code)
2. Forced / over mach power (Article 48 of the Criminal Code)
3. The defense is forced to exceed the limits (Article 49 (2))
4. Carrying out illegal orders (Article 51 (2))

In general, legal experts mostly use the term forced power to translate the term overmacht. But there are also legal experts who use other terms, such as Surjanatamihardja with "heavy opponents" and Jusuf Ismail with the sentence "forced by something unavoidable power", Wirjono Prodjodikoro with the phrase "things force", and Satochid with the sentence "force that raises helplessness" (Adami Chazawi, 2002: 27-28).



According to M.V. what is meant by coercion is: "every force, every force, every pressure is inevitable". (Teguh Prsetyo, 2010: 133). Next Prof. I Made Widnyana also defines the definition of force (Overmacht):

"Overmacht is a normative understanding, which is an event where a person is forced to commit a criminal act (offense), because of the danger, because it is under pressure, so he cannot do anything else than what he has done. The threat comes from outside the creator (perpetrator)". (I. Made Widnyana, 2010: 155)

In the legal doctrine there are two kinds of forced power, namely:

1. Absolute coercion (vis absolute),

Absolute coercion is force which is generally carried out with provisions of human or natural power that cannot be resisted. For example: (Teguh Prasetyo, 2010: 133)

- a. A was summoned by the Court to be heard as a witness, A lived in Surabaya and the Court that called A as a witness was the Semarang District Court. At the time A wants to leave, the transportation will break up altogether. So that A cannot come to be a witness.
- b. A holds the B in such a way (strongly) and then pushes B to be thrown on the glass, so that the glass breaks so that the B cannot be said to have damaged the object (Article 406 of the Criminal Code).
- c. People under hypnosis and then commit murder as stipulated in Article 338 of the Criminal Code.

2. Relative compulsion (vis compulsiva)

Relative coercion is a type of coercion that may be circumvented, however, in the person in force it cannot be expected that he can avoid it. So, maybe those in coercion can avoid it, but according to proper calculations we cannot expect that they will be able to fight. For example: A threatens B with a gun in his chest, to submit securities stored by B. B can refuse, B can think and determine his will, so there is no absolute compulsion. There is indeed coercion, but there is still a chance to consider whether B violated his obligation to keep those valuable documents. (Teguh Prasetyo, 2010: 133).



Here the power or force that forces the person is not absolute, not full. The person who was forced was still given the opportunity to choose which one to do. The difference between absolute coercion and relative coercion is that in the absolute in everything the person who forces it is the one who does what he wants, whereas in the relative, the person who is forced is the one who acts, even if in force.

Forced Defense (noodweer)

The term noodweer is formulated in Article 49 (1) of the Criminal Code, namely:

"Whoever is forced to do an act, which he is forced to do to defend himself or someone else, defend his own honor or property or belong to someone else, rather than an attack against rights and threatening immediately at that time, may not be punished.

From the provisions of the article it can be seen that there are two which are the main requirements for forced defense (noodweer), namely; there must be an attack, and the attack needs to be defended. To defend body, honor morality or property, can be interpreted that life, integrity, also objects and their owners, but not objects that are not tangible.

In this connection the attack must be interpreted as a real attack on body, honor, morality or property, but also an act that raises that which directly threatens the things above. This means that if there is no immediate situation or the threat of an instant attack, then it is not said to be a forced defense situation.

Defense Forced to surpass the limit (nootweer exces)

This provision is regulated in Article 49 (2) of the Criminal Code, namely: "Exceeding the boundary of the plots is very necessary, if the action is suddenly carried out because the feeling of being shaken immediately at that moment also, should not be punished".

"What is meant by overreaching is: (1) beyond what is necessary, and (2) may be carried out even though the attack is gone. This feature is basically an exception to the emergency defense in the first paragraph.



Which lies in the great shock of the soul (bevige gemoedsbeweging) ".
(Adami Chazawi, 2002: 52)

According to Adami Chazawi, a very precise example of a forced defense beyond limits is given by Schravendijk, namely as follows:
(Adami Chazawi, 2002: 53)

A man secretly enters a girl's bedroom with the intention of having sex with him. When the man groped at the girl's body, he woke up. In such a situation there was a mental shock between anger, confusion and great fear so he forgot to shout for help from the other occupants, suddenly the girl took a knife near her and stabbed the man.

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In this example the knife stabbing by the sadist had exceeded what was needed from the male attack by groping the girl's body. Because of this great mental shock, legal experts include noodweer exces into forgiving reasons because they erase the element of self-error, which is different from noodweer as justification for eliminating the undesirable nature of actions.



Running a Law (wettelijk voorschrift)

The basis for the elimination of criminal law is because it runs the rules of the law stipulated in Article 50 of the Criminal Code, which states: anyone who commits an act to carry out the laws and regulations must not be punished.

This means that in terms of carrying out the law orders, it must be carried out proportionally. For example, a policeman who shot a criminal who fled when he was about to be arrested could be justified, instead he shot someone who only stopped people who violated the escape traffic signs.

Execute Position Orders

The basis for the elimination of criminal conduct for carrying out a position order (ambtelijk bevel) is regulated in Article 50 (1) which reads: anyone who commits an act to carry out a position order given by a power that has the right to do so cannot be punished.

This provision is the same as the reason for the abolition of a crime because of carrying out the law. In both cases, the abolition of criminal acts abolishes the law, and also in both cases is an act which may be carried out as long as the authority is exercised under the command of the law and order of office. The difference is that in the position order there is a public relationship between the person giving the order and the person who is given the order in casu to do a certain act, with the authority of the order given under the law (legal). In order to carry out the law, the validity of carrying out the order is in the law. (Adami Chazawi, 2002: 58)

Run an Invalid Order Command with Good Appeal

Abolition of criminal acts for carrying out illegal orders with good intentions is formulated in Article 51 (2) which reads:

"A position order given by an unauthorized power does not exempt from punishment, except if the employee under him believes that the order is as if given the right to legitimately and exercising the order is the duty of the employee under the order"

A person who commits an act based on an illegal order is not punished, if the person meets the requirements:



1. If the order is invalid, it is assumed that the order is legitimate or properly he thinks that the order is valid.
2. The order must lie in the power of the person ordered.

Example: A Police officer gets an order from the Chief of Police to arrest an agator at a general meeting or generally a person accused of committing a crime, but it turns out that the order is invalid.

Here police agents cannot be jailed for:

- a. He should suspect that the order was invalid.
- b. The execution of the order is within its authority. (Teguh Prasetyo, 2010: 144-145)

Reasons for Special Applicable Criminal Elimination

Special criminal sanctions are the abolition of criminal acts specifically applied to certain crimes (deli-delik) stipulated in the Criminal Code. The following are the provisions for reasons for criminal deletion that apply specifically to others:

1. Article 110 (4)

"May not be punished for anyone who means it turns out that it will only provide or facilitate changes in state with a general understanding."

Paragraph 4 relates to criminal prohibitions/threats contained in (1) and paragraph (2) Article 110. The ones which read;

- a. Consensus will do one of the crimes described in Articles 104, 106, 107, and 108 punished equally with the crime.
 - b. The sentence also applies to people who for the purpose of providing or facilitating one of the crimes described in Articles 104, 106, 107 and 108.
2. Article 166

This provision relates to Article 164 and Article 165 of the Criminal Code. Article 164 is about an agreement between several people to commit a criminal offense from Articles 104, 106, 107, 108, 113, 115, 124, 187, or 187 buses of the Criminal Code known to that person. Whereas Article 165 is about the intention to carry out these



criminal acts, coupled with several other criminal acts which are also severe in nature, such as a soldier who fled during the war, military treason, premeditated murder and others. (H.M. Hamdan, 2012: 88-89).

According to Article 166 of the Criminal Code, the criminal threat of the two Articles does not apply (the perpetrators are not convicted). This is because the officer commits the act with the intention of avoiding or protecting from criminal prosecution against himself or his relatives, or his family because of marriage in a straight line and to the third degree, or to a husband or wife, or to someone who in his case he could be freed from the obligation to give testimony before a court hearing relating to his position or job. The reason for the abolition of the crime only applies specifically to people who have family relations with the criminal offenders as stipulated in Article 164 and 165 of the Criminal Code, and do not apply generally to others.

3. Article 314 (1)

This article is related to the criminal act of insulting / defaming someone. In this case there is one thing that can eliminate the criminal against the criminal act, namely if it turns out that what was done (alleged/humiliated) to the person, proved correct in accordance with the decision of the judge who has permanent legal force. This means that the person who is humiliated or defamed has been proven and has been convicted of an act that was humiliated/accused of him.

Therefore, the nature of being against the law of the good name insulters/polluters is eliminated (lost). Based on the principle of error, that people will not be convicted if they have no mistakes. The act he has committed is to accuse or insult someone with allegations of committing something, but the accusation is actually true and has been proven through a decision of a judge who has fixed legal force.



E. Conclusion

Reasons for which a person cannot be accounted for or reasons cannot be accepted by someone, namely:

1. The reason cannot be accounted for by someone who lies in that person, and.
2. The reason cannot be accounted for by someone who is outside the person.
3. Reasons for the elimination of criminal penalties for perpetrators of criminal offenses are regulated in the first book (general regulation) of the Criminal Code (KUHP), which includes Article 44 which regulates mentally ill offenders, Article 48 namely perpetrators who in a forced state, Article 49, which is about self-defense, Article 50, which is about implementing Law and Article 51, which is about carrying out orders.

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