

A Juridical Review of the Truth of Criminal Stelsel that has not been oriented on the Basis of Balance in the Penal Code

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Abstract

One of the goals of legal development is to provide fair legal certainty and balance reflected in the outcome of the Judge's decision which constitutes a series of proceedings from investigation to socialization. But until now the point is not yet reached. Therefore, in order to understand the context, in this paper, it is conducted by using a socio-legal approach with an empirical juridical approach. In the concept of a lawful state, the principle of equality before of Law which means the equality of position within the law becomes absolute. Internationally the equality of position in law is also governed by international treaties. The equality of position in law should be adopted by all UN members and it must also be balanced between perpetrators, victims and communities. Therefore, the rights of the victims must also be considered and given. That is why the goal of justice is based on the principle of balance that is a national goal in addition to social defence, and social welfare. In the positive law in Indonesia, the rules of protection of the victims have been set, but that is still specific to each rule. Thus, it still requires a further process, not, or yet to be decided in a judicial process. Islam has also arranged how to provide guarantees to victims. However, of course, it must fulfil the requirements in accordance with the provisions in the Qur'an, and the Prophet Muhammad's Hadith. Therefore, it is necessary to have legal constructs in judicial process fairly; following the development of science; until it can understand the method of interpretation; see the specifics of things; the judge must be active by evaluating the social and cultural condition of the perpetrator and the victim with a balanced explanation or balanced treatment between the perpetrator and the victim. For that, it is necessary to reconstruct the law to obtain a clear criminal stelsel rule that can be used as a benchmark for criminal and criminal proceedings. Thus, what is expected can be fulfilled by the criminal process and righteous judgment with orientation on the basis of the balance.

Keywords: Juridical Review, Criminal Stelsel, Balance Basis.

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INTRODUCTION

In Dutch, the Criminal is called a straf which is interpreted as a feeling of sorrow that is deliberately committed to a person who has been convicted of committing a crime. While legal experts in Indonesia differentiate the term of punishment by the criminal. The term punishment is a general term used for all types of sanction in the civil, administrative, disciplinary and criminal jurisdiction, whereas the term criminal law is interpreted in a narrow sense that merely sanctions relating to criminal law. There are many opinions on the interpretation of a criminal such as Sudarto who has stated that the Criminal is deliberate suffering imposed on the person who does the act in

accordance with certain requirements. While Roeslan Saleh has stated that the crime is a reaction to offence and this is a sorrow that deliberately falls on the state of the offence maker. The definition of criminal will not be separated from the definition of penalization. Penalization is a process imposed by an agency granted by the state or a principal to examine; depriving the criminal and executing a criminal decision which has been decided. Hence the penalization is the stage of the criminal justice process which begins with the process of investigation, prosecution, criminal justice and criminal proceedings.

Criminal is not a tool to achieve the goal, but rather reflects justice [1]. Citing Sudarto's opinion, I Dewa Made Suartha writes that there is no longer any classical teaching of retaliation, in the sense that crime is a must for mere justice [2]. Hence, the penalization against the use of penal provisions generally, it should be taken into account as follows:

- Do not use criminal law just for the purpose of retaliation;
- Do not use criminal law to criminalize acts that do not harm/harm others/public;
- Do not use criminal law to achieve goals when there are other and more effective ways;
- Do not use criminal law if the loss/danger arising from the crime is greater than the loss/danger of the crime itself;
- Prohibitions of criminal law should not contain more dangerous nature than actions to be prevented;
- Criminal law does not make restrictions that do not get strong support from the public.

The criminal stelsel in Indonesian Penal Code is contained in article 10 of the Penal Code written as follows, Criminal consists of a. Basic Criminal Case: 1) death penalty; 2) imprisonment; 3) criminal confinement; 4) fine penalties; 5) criminal cover. b. Additional penalties; 1) revocation of certain rights; 2) the confiscation of certain items; 3) announcement of judge's verdict.

Problem Statement

- How is the Purpose of Criminal Stelsel Penalty in the Penal Code?
- How is the Principle of balance in Criminal and Penalty?

DISCUSSION

The purpose of criminal stelsel penalization in the concept of the Penal Code

Penalization of a given the criminal offenders certainly has aims and purposes. In the present Penal Code does not specify the purpose of the penalization. The purpose of the penalization arises because of the development of legal science, therefore the purpose of the penalization is more necessary to be legitimized as the direction and guiding principle of all law enforcers within the scope of the criminal justice system, thereby unity of views in the process of law enforcement regarding the purpose of imposing criminal penalties on perpetrators. The reform of national criminal law was first called up in 1963 at the first national Law seminar. From the call, the government with legal experts formulates the manuscripts and becomes a draft law on the Penal Code.

In terms of the formulation of the purpose of the penalization in the draft Penal Code, Sudarto

explained that in the first purpose the social defence and the general prevention of social protection existed, while in the second purpose there was the purpose of rehabilitation and special prevention. The third objective is in accordance with the customary law's view of custom reactions to restore the cosmos balance because crime is considered to have even balance the situation, while the fourth objective is spiritual in accordance with the First Precept of Pancasila [3].

In 1980, the implementation of the criminal law reform symposium was either incorrect or its report contained about criminal purposes should be directed at protecting the public from crime, as well as realizing the balance and harmony of life in society by paying attention to the interests of the people, the state, the victims and the perpetrators. Therefore, the purpose of the sentence should be to contain elements of humanity, meaning to uphold the dignity and dignity of the individual, which means that the guilty can make people aware of their deeds and make them able; make people aware of their deeds and make people have a positive, constructive spirit of the crime crimes dealt with that the sentenced crimes must be fair in accordance with the good sense of conviction, the victim and the community [4].

In accordance with the concept of the Penal Code, the expected criminal purpose of any draft of the Penal Code for the year shows a common criminal purpose. In addition, the victim of crime also gets attention. Article 26 to article 30 is in the case of complaints. It is argued that a victim who is 16 years of age and unmarried and/or the victim dies, his or her heirs and/or guardians or his or her representing persons may appeal to designated law enforcement. In addition, there is an article 56 in the case of the criminal offence; Judges in accordance with paragraph 1 of paragraph 1, may consider the effect of criminal offences against victims or families of victims; the forgiveness of the victim and/or his / her sibling.

In general, the design of the Criminal Procedure Code stipulates also the sentencing guidelines, and the types of criminal sanctions (strafsoort) (Article 50 and Article 51 paragraph (1) letter I, the draft. As an illustration, it is presented with some of the concepts of the purpose of the penalization: (a) The concept of the Penal Code in 1971/1972; The draft concept of 1971/1972 formulating the criminal purpose in article 2 paragraph 1 determines that the aims and purposes of the penalization are to prevent the offence committed by the state, the community and the population; to guide insurgents and become members of a good and useful community and to eliminate stains caused by a crime [5]; (b) The draft of 1982/1982, The purpose of the penalization is set out in article 3.01.01 (1) that the criminal purpose is formulated to prevent its criminal offence by upholding the legal norms for the protection of the society; make corrections to convicts

and thus make them a good and useful person and able to live morally; resolve the conflicts incurred by criminal offenses; restoring balance and bringing peace in society, and freeing the guilt of the convicted [5]; (c) The concept of 2012; on the concept of 2012, the purpose of the Penalization is set out in articles 54 paragraph (1) and (2), which is an implementation of the idea of balance. Penalization aimed at preventing criminal acts by enforcing legal norms for the protection of the community; socialize the convict by holding the construction to be a good and useful person; resolve the conflicts incurred by criminal offences; restore balance, and bring peace to society; freeing guilt on convicts. Penalization is not meant to narrate and degrade human dignity; (d) Penal Code of the Year 2004; The 2004 draft Penal Code designates the purpose of the penalization of Article 50 that is to prevent its criminal offence by upholding the legal norms for the protection of the community; socialize the convict by constructing a good and useful person; resolve the conflicts incurred by criminal offenses; restoring balance, and bringing about peace in society; and freeing the guilt of the convicted; (e) the 2015 Criminal Procedure Law. The purpose of the penalization is set out in Chapter III on Criminal Penalties and Actions in article 55, governing the purpose of the penal offence: Purpose of the criminal law (1) preventing criminal offences by enforcing legal norms for the protection of the community; (2) to criminalize the conviction by conducting the construction, thereby becoming a good and useful person; (3) resolve conflicts arising from criminal offense, restoring balance, and bringing about peace in society; and (4) freeing the guilty in conviction. Penalization is not meant to narrate and degrade human dignity.

The principle of balance in criminal and penalization

The principle of balance in criminal law and penalties in positive law in Indonesia is not explicitly mentioned. But theoretically, the principle of balance is explained that in law enforcement or criminal proceedings, and penalties are not merely the eyes of law enforcement only, but there must be a balance between law enforcement and the protection of public order with the interests and protection of human rights. In addition to the existence of the principle of legality and error or the basis of the credibilities must be sought balance, it will be reflected that the law enforcement in it also appears to have the protection of the victim's interests. If we look at the Criminal Procedure Plan, consider the letter c that criminal law enforcement (including criminal and criminal penalties) is also intended to provide more legal certainty, legal order, public justice, and legal protection and human rights, for suspects, defendants, witnesses, and victims, for the sake of law enforcement.

The principle of balance in the Penal Code is explained in the purpose of the penalization of one of them is to resolve the conflict which is caused by the crime; restore balance; bring peace in society. In the international concept that the principle of balance has entered into the element of justice, the fairness of the right to reparation of victims must also be the attention of law enforcers. If we speak Islam that victims/societies become self-interested in making the judge decide on the involvement of the victim or his family, it will give the colour of justice to the perpetrators how the crime is to be applied or implemented. The balance we see in terms of general balance is a balanced condition that is not biased, and the weights should be neutral. If we are perspective with law enforcement, of course, weigh the judge (law enforcement). As such, law enforcement must be neutral, hence when he has to work it will certainly balance. The balance will be provided through action, treatment, service, unbiased decisions for perpetrators, victims, communities and governments. If it is based on Pancasila's philosophy, the principle of balance is an embodiment of the concept of social justice to all Indonesians.

The balance in criminal law can be divided into formal and material legal. Formally legalized the existence of a criminal nature and additional criminal penalties. Both of them in criminal law is applied in stages to formal cases (considered the weight listed in the law). Legal material is a lighter criminal or in contact with other than legal (formal) norms such as extra criminal conducting customary or religious obligations and others. The balance in terms of orientation to the perpetrators is directed to them to be deterred and not to commit another crime (preventive specials). As for the victims, they do not retaliate or play their own judges, they are satisfied that their rights as a citizen are protected and whose expectations are fulfilled that is the perpetrator to be punished. Aside from that, for the direction of balance in criminal law, criminal penalties are not merely criminal cases (such as criminal stesel in the Penal Code of the 10th article), but there are adequate penalties that should be directed to materially compensated victims, and return shame in the sense of restoring the honour of the victim, the perpetrator and society.

Penalties are generally based on formal law as a formal legal basis and material legality with the aim of fulfilling the sense of justice within society. Therefore, in the process of penalization, there are three roles, namely perpetrators and victims and law enforcement (judges) as a balancing role that will determine based on real conditions in the process. Hence the role of the balancing can be said to be active when in the process of conflict resolution to find and decide who should be responsible (determining who is wrong and who is the victim). It is stated in the context of Passive as a mediator of the verdict on the matter

posed to them as a consequence of law enforcement. In determining the verdict that the verdict on which a judge is subjected to a criminal offence may be suspended if a condition of a particular condition may be committed by a convicted or convicted person or that the criminal may be revoked. Relating to the balance of the criminal act on the protection of victims by the payment of compensation or the performance of customary obligations in terms of balance and protection of the community. Justice-oriented in the principle of balance can be used in legal prudential law in Indonesia.

By Barda Nawawi Arief quoted by Syamsul Fatoni wrote that balance is used in the foundation of justice that includes; (a) Monodualistic balance between public interest or society and individual interests; (b) The balance between the perpetrator's interests (criminal individualism), and the interests of victims of crime; (c) The objective element balance that is the act of zahir and inner attitude (subjective); (d) The balance between formal and material criterions; (e) The balance of legal certainty, flexibility, and justice; (f) The balance of national values with international values (global and universal).

The balance principle is not regulated in criminal stelsel in the Penal Code. This can be seen from the content of the Penal Code that the principle of balance is not found in it. That's why; (1) Since the beginning of the Penal Code, there have been changes since Indonesia was still in colonialism until Indonesia was independent. At the time the Penal Code was in place in Indonesia the formation and condition of Indonesia under Dutch colonial rule then the interests of colonialism were prioritized. (2) The concept of positivism, leading to the enforcement of the law in Indonesia and also underlying law enforcement in Indonesia is still oriented to the perpetrators. (3) Law enforcement officers, in general, are still oriented to power alone as "instrument of power." Law enforcers have great authority on the state's behalf and are less concerned with human dignity (physical or mental pressures). (4) In article 1, it is stated that the judge to impose criminal penalties should be based on the established law, thereby providing a conditional provision to the judge and to impose such criminal penalties as set forth in the Penal Code.

Aside from that, all of us see examples of court decisions that regulate the verdict of a public trial, the absence of a clause that orders the fulfilment of the right of "Reparisi" victim to the crime. As in the case of crime on property, the crime of life, mortality and other cases of victims.

CONCLUSION

Penalize the criminal actor is given aims and purposes

In the present Penal Code does not specify the purpose of the penalization. The purpose of the penalization arises because of the development of legal science, therefore the purpose of the penalization is more necessary to be legitimized as the direction and guiding principle of all law enforcers within the scope of the criminal justice system, therefore there is a unity of view in the process of law enforcement about for the purpose of imposing criminal penalties on perpetrators. The reform of national criminal law was first called up in 1963 at the first national Law seminar. From the call, the government with legal experts formulate the manuscripts and becomes a draft law on the Penal Code.

The balance principle is not regulated in criminal stelsel in the Penal Code

This can be seen from the contents of the Penal Code itself that the principle of balance is not found in it. That is why since the beginning of the Penal Code, there have been many changes as Indonesia is still in colonization until Indonesia is independent. At the time the Penal Code was enacted in Indonesia the formation and condition of Indonesia under the Dutch colonial rule, therefore the importance of colonialism was preferred, the concept of positivism, leading to the enforcement of law in Indonesia and also underlying the law enforcement in Indonesia is still oriented to the perpetrators, law enforcement officials in general still oriented to power alone as the "instrument of power." Law enforcers have great authority on the state and less well-regarded human dignity (physical and mental pressures). In article 1, it is evident that the judge to impose criminal penalties must be based on the prescribed law, therefore, because of such a provision that the judge has the power to impose such criminal penalties as regulated by the Penal Code. Other than that, if we look at the examples of some court decisions that regulate the general court decision, there is no clause/ruling that orders the right of the Reparisi victim of crime. As in the case of crime on property, crime in life, morality case and other victims.

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