

Application of Liability Principle in the National Criminal Law

HERMAN

Faculty of Law, Halu Oleo University, Kendari, South East Sulawesi, Indonesia

1. Introduction

In criminal law, the measure that determines a person can be held accountable for his criminal action is seen from the person's responsible ability. Only those who are "capable of responsibility" can be called for criminal responsibility (punished). Responsibility is based on a person's circumstances and ability (Versdelijke Vermogens) (E.Y. Kanter and S.R. Sianturi, 2002, 244).

Criminal liability is a reaction to the crime and wrongdoing, so that the birth of criminal responsibility is based on the error and the principle of legality. Therefore, in order to be criminally accountable the act must meet several criteria such as misunderstanding, absence of forgiveness, and the responsible ability of the perpetrators of criminal acts, so that in a criminal act which becomes an important issue to be noticed and proven are: (1) is the existence of an external act as the incarnation of the will (actus reus), (2) is the condition of the soul, evil attitude or bad faith that underlies the action (Mens Rea) (I Made Widnyana, 2010.58-59).

In the context of criminal accountability, many experts claim that mistakes are central to criminal responsibility, so Utrecht states that criminal liability or criminal misconduct (schuld in ruimte zin) consists of three elements, includes the responsible ability (toerekeningsvatbaarheid) of the maker, a psychological attitude of the maker due to his behavior, namely Intentional behavior (deliberate element), and Behavior is less careful or neglectful (aspal negligence) or culpa (schuld in enge zin), and there are no grounds that eliminate the criminal responsibility of the maker (anasir toerekeningsvatbaarheid) (E. Utrecht E., 1966).

In its development, criminal responsibility has an extension of meaning so that it is known for several terms namely absolute accountability and substitute accountability. The widespread concept of criminal liability begins with the increase of the subject of law in criminal law, which originally the subject of criminal law refers only to the individual (person) but extends and receives the corporation as a legal subject in the criminal law. This fact shows that errors, crimes and crimes are committed not only by individuals, but in the broad sense of the crime, crime and crime can also be committed by a corporation even if in essence the corporation is used as a medium by individuals committing a crime or a crime.

Widespread concept of criminal liability is also caused by several factors such as the existence of criminal responsibility for the actions done by others even though the act against the law is not his fault. It is known as liability for wrongs committed by others or vicarious liability.

Based on the above view, that the birth of a criminal liability as a basis for legitimizing sanctions is a mistake. However, the principle of unlawful criminal accountability is also known in criminal law, that a person should be held accountable when a loss arises from the existence of an error, so that the error factor is no longer an element to be proved for criminal liability. The concept of unlawful criminal liability is usually imposed in the case of traffic accidents. Referring to the background writing of the problem as described above, then the problem that arises is how to leverage the principle liability in national criminal law.

2. Literature Review

2.1 Criminal Accountability

Criminal liability is essentially a reaction to a committed act which is both objectionable and contrary to the law and principles of social life, or, in other words, criminal liability is a legal or juridical consequence to be accepted in relation to the conduct or not acting under the laws and regulations. In relation to this, the criminal responsibility or toerkeningsvatbaarheid experts provide restrictions and understanding among others. Accountability is a normal state of psychic and skill that there are three kinds of abilities such as being able to understand the meaning and the consequences of the actions themselves, being able to realize is an act contrary to public order and being able to determine a common will (Eddy O.S. Hiariej, 2014, 121).

Criminal liability is a psychic state, so the application of a criminal code from a public and personal point of view is considered appropriate. The basis of responsibility in criminal law is a particular psychic state in a person committing a criminal act and a connection between the circumstances and the deed done in such a way that the person may be reproached for doing the deed (Eddy O.S. Hiariej, 2014, 122).

A responsible action to the offender is a coveted behavior to him or her. The censure here does not need to be ethically reprobate, but it is quite a legal offense. Also ethically justifiable conduct, according to legal norms is our personal ethics (Eddy O.S. Hiariej, 2014, 122).

From the above three points of view, it appears that criminal responsibility implies a normal psychic state so that an individual is held accountable for an action which, according to the views of society and the law of such conduct is appropriate to be denounced or punished. Normal psychic state is closely related to the ability of

a person's knowledge associated with the possibility of birth impact on the actions he did.

2.2 The Liability Principle Approach in Criminal Law

The discourse on criminal liability lies in the absence of any execution of a deed that is contrary to the provisions of the law as the basis for accountability because the first element of a criminal act is an element of error. However, the fundamental feast is, when people can be said to have made a mistake and deserve to account for their actions (Roeslan Saleh, 1983, 76-77).

The error in the meaning of leniency (*verwijtbaarheid*), is not actually an element of criminal acts as defined in legislation, but when lawmakers attempt to place mistakes through the acceptance of psychological terms (*dolus* and *culpa*) especially in criminal acts, errors can not be ignored (Jan Rammelink, 2003, 190).

Related to the error, Pompe declares that the act is qualified for errors if the act is deplorable in the eyes of the community (*verwijtbaarheid*) and can be avoided (*vermijdbaarheid*) (Jan Rammelink, 2003, 77). The act is said to be despicable in terms of the consequences caused, so in essence the act against the law can be avoided, because the will of the act against the law lies in the maker (Sudarto, 1983,88).

Furthermore, Roeslan Saleh stated that the error is a fact that a person who commits a criminal act can be ridiculed, because if viewed from the public view of the act it can be avoided by the perpetrator (Roeslan Saleh, 1983, 77). This view is principally in line with the principle of *geen straf zonder schuld*, or *actus non est reus nisi mens sit rea*, so the error (*mens rea*) becomes the basis of criminal imposition. The fact that *mens rea* are regarded as ethical values in criminal imposition is actually used by civil law countries as well as common law countries (Chairul Huda, 2006, 74).

Discourse on responsibility in the field of criminal law that requires the presence or absence of mistakes as a condition of the witness Sutorius as quoted by Chairul Huda stated that the error lies in neglecting the obligations (Chairul Huda, 2006, 77). The obligation in question is the obligation to perform acts prohibited under the provisions of law. The birth of the obligation is based on one criminal policy (criminalization of the act), so the act is prohibited in the law because the act is considered harmful and contrary to the values, ethics, morals, principles and association in society. Strengthening Sitorius's argument as quoted by Chairul Huda, that the criterion of error lies in the neglect of obligations in principle is based on several things:

- a. In the maker there is an obligation to recognize a certain act of interest that is protected by the juridical norm and *menilainnya* well. This statement implies that the criminalization of an action means that the act has a negative impact on the life of the community so that the act is prohibited to be done so that sanction is imposed for whoever does it.
- b. The manufacturer must have an accuracy of birth, in order to prevent the arrival of undesirable effects within the limits of ability. In this view, the writer considers that the author (perpetrator of the crime) should understand that the rational act does not only affect the subjects (individuals) who are victims of his actions, but also to others (people) who conscientiously deny the existence of these actions Chairul Huda, 2006, 77-78).

Based on Sitorius's view above, the element of error in crime can only be measured by using normative judgment because an act that is prohibited in law is also based on the principle of criminalization by prioritizing the element of defamation against the negative consequences. Therefore, in relation to the principle of liability of criminal liability principle herein described in several views as follows:

3. Methodology

The research was qualitative approach toward law and society condition in Indonesia under the history of the colonial of Neitherland called KUHAP that was a significant national law to be applied in Indonesia. The number of cases observed was 51. However, to simplify the analysis, the cases were focused on practical of KUHAP as legally law of criminal in Indonesia.

4. Result and Discussions

4.1 Liability Based on Fault

Liability based on fault in principle refers to Article 1 paragraph (1) of the Criminal Code (KUHP) which explicitly states that an act can not be criminal, except based on the strength of existing criminal law provisions, commonly known as the principle legality or *geen straf zonder schuld*, or in other words, a mistake is the basis of criminal liability.

The fundamental principle of liability based on fault lies in error so that the first element of error is accountability or *toerekeningvatbaarheid* (Eddy O.S. Hiariej, 2014, 128). This view is based on Van Hantum's view, so the size of the responsible abilities of criminals is based on sme aspects such as, being able to understand the meaning and the result of the earnest of his own deeds, being able to realize that such acts are contrary to public order and being able to determine the will to do (Eddy O.S. Hiariej, 2014, 128).

Based on Van Hantum's view above, Eddy stated that the three measures are cumulative requirements so

that if one of them is not met, then the impact on the abolition of criminal liability (Eddy O.S. Hiariej, 2014, 128).

Regarding the element of error as accountability is associated with the elements behind the existence of accountability, some experts claim that for the existence of a criminal responsibility, it must be fulfilled the essential elements in a criminal act. The difference in view is due to some jurists embracing the flow of monistic and dualistic flow toward a delik (Tongat, 2008, 104).

A monistic view is a view which sees the whole condition for the existence of a criminal as the nature of the action. This view provides the principles of understanding, that in the sense of crime is included in the criminal act (criminal act) and criminal responsibility (Tongat, 2008, 105-106). Related to the monistic view of the elements of criminal acts, Simons argues that the elements of crime are as follows:

- a. Human actions, both in the sense of positive actions (do) and in the sense of negative actions (do not do).
- b. Threatened with criminal
- c. Against the law
- d. Done with errors
- e. By a responsible person (Tongat, 2008, 105-106).

With the view as Simons puts it, it is concluded that the entire requirement of a criminal has been attached to a criminal act. It is based on Simons's view that both criminal act and criminal responsibility are inseparable and become a unity in fulfilling the elements of delik (Tongat, 2008, 105-106).

The dualistic view implies that the fulfillment of the criminal act only refers to the criminal act, while the criminal responsibility is not an element of the criminal act, so that there is insufficient criminal just criminal acts, but there is a requirement that there is a mistake to be criminally accountable (Tongat, 2008 106) .

To illustrate, as to how the dualistic view in defining what is meant by the offense, Moeljatno's view is taken as one of the dualistic views. According to Moeljatno, a criminal act (offense) is a criminal offense for anyone who violates the ban. Therefore Moeljatno explained that for the occurrence of the offense must be met the following elements:

- a. The existence of human actions
- b. Which meets the formulation in the law (this is a formal requirement relating to the enactment of Article 1 Paragraph (1) of the Criminal Code)
- c. Unlawful (a material requirement, related to the following of the nature of unlawfulness in the negative function (Tongat, 2008, 106).

Furthermore Moeljatno also asserted that for the existence of criminal is not enough only with the occurrence of crime, regardless of whether the person doing the act is able to take responsibility or not. Therefore, the event is a crime but whether the person committing the criminal act is convicted or not will be seen how the person's inner state and how the inner relationship between the acts that occurred with the criminal actors. If the criminal acts that occurred can be disburged to the author, there is an error and can be criminalized, vice versa (Tongat, 2008, 106).

4.2 Absolute Accountability Principle

The principle of absolute liability or liability without fault in the literature is usually known as absolute liability or strict liability in which the principle of responsibility without necessity proves the existence of an error (Muladi and Dwidja Priyatno, 2010, 107). The expression or phrase absolute liability was first proposed by John Salmond in 1907, while the expression of strict liability was first raised by W. H. Winfield in 1926 (Muladi and Dwidja Priyatno, 2010, 107). Therefore, absolute liability or strict liability in principle has the same meaning that is the accountability of the perpetrators of crime without having to find whether or not there is an element of error in it.

The debate over the existence of criminal responsibility, Hans Kelsen suggests there are concepts related to the concept of legal obligation, namely the concept of responsibility (accountability) (Hans Kelsen, 2011, 95). Kelsen declares that a person is legally responsible for a particular act, so legal liability means a person is liable for a sanction if the act is contradictory. The sense that the prism of witnesses directed to the perpetrator directly means a person is responsible for his actions, so the subject of the legal responsibility is identical to the subject of the legal obligation (Hans Kelsen, 2011, 95).

Furthermore, in the case of criminal liability which is qualified as absolute liability or not, Hans Kelsen uses a traditional theoretical approach to differentiate between accountability based on error and absolute accountability (Hans Kelsen, 2011, 95). The simple statement that sanctions are marked by the fact that the action qualified as offense is given psychological conditions, such as the particular soul circumstances of the maker so that if the act is anticipated or in the interests of harmful effect is a delicacy called error or in a broader sense categorized as *dolus* and *culpa* (Hans Kelsen, 2011, 96). Therefore, if the sanction is imposed only on the offense given the psychological condition, then its accountability must be based on the mistake of the maker known as culpability by emphasizing the element of error from the existence of criminal responsibility,

Referring to the above description, the absolute liability considers that there is no relevance between mistakes and actions of the offender, so the relationship between the act and the consequences does not contain any psychological qualifications. Hans Kelsen states that there is no relevance between whether the act of the perpetrator anticipates or wishes for an effect, it is sufficient to say that his deeds cause consequences that are considered harmful and contrary to the law, and there is an external relationship between the act and the consequences, so that the absence of a relationship between the mental state of the offender with the consequences of his deeds being important (Hans Kelsen, 2011, 95).

Based on Hans Kelsen's view above, one draws the conclusion that in the case of criminal liability, there is no relevance between error, desirability or anticipation of a consequence of his actions, so that criminal liability is a legal responsibility (sanction) which must be accepted directly by the manakalah the act is against the provisions of the law.

Strengthening the above argument, Barda Nawawi as quoted by Muladi and Dwidja stated that most of the absolute responsibility is usually found in the offenses set out in the law which generally relate to public welfare offenses (Muladi and Dwidja Priyatno, 2010, 109). Therefore, in the legal system of cammon law, the birth of absolute responsibility is contained in three qualifications:

- a. Public nuisance (disruption of general order, blocking the highway, issuing unpleasant odors,)
- b. Criminal libel (defamation and defamation)
- c. Contempt of court (violation of court order) (Muladi and Dwidja Priyatno, 2010, 109).

Absolute criminal responsibility, the error is not very important because it has no relevance to wanting or not wanting the birth of an act, so L. B. Curson states that, the absolute responsibility is based on the reasons:

- a. It is essential to guarantee compliance with certain laws and regulations required for social welfare
- b. The proving of mens rea becomes very difficult for violations related to general welfare.
- c. The high level of social hazard posed by the acts concerned. (Muladi and Dwidja Priyatno, 2010, 108)

Based on the above description, then the birth of absolute responsibility in principle is based on existing legislation, so that actus reus and mens rea nature is depeteable to be determined with certainty. Therefore, for certain crimes, the concept of absolute accountability becomes important in order to realize the social order and realize the common prosperity for all people.

Absolute responsibility which in some literature is known as absolute liability or strict liability implies an absolute accountability by a person who commits a crime. Therefore in the doctrine of absolute accountability stipulates that a person who commits an act contrary to the law then the perpetrator must be directly responsible in accordance with the provisions of applicable law.

4.3 Vicariuos Liablity

The substitute accountability according to Romli Atmasasmita as quoted by Muladi and Dwidja is in principle a criminal liability imposed on a person for the wrongful acts of another (Muladi and Dwidja Priyatno, 2010, 109).

Judging from the nature of legal liability, vicarious liability is not in principle an original concept in the field of criminal law but an adopted concept of another field of law, since the concept of vicarious liability is a foreign concept in the civil law law system and its development begins in the common law system where in the common law system the concept of criminal responsibility is generally synonymous with the concept of civil liability (Chairul Huda, 2006, 41).

In the British criminal law system, vicarious liability is restricted to certain criminal offenses, which are criminal charges that require the existence of quality, a criminal offense that requires a relationship between workers and employers, and criminal offenses that require accountability of corporations (Muladi and Dwidja Priyatno, 2010). , 110-113). However, corporate responsibility in the UK is not limited to certain areas of the law, although not all crimes can be committed by corporations.

The application of the vicaious liability Low as quoted by Sutan Remi states that as a practical matter, however, vicarious liability is normally imposed by the employer is "without fault" both in the sense that no act was committed and no means rea is required (Sutan Remy Sjahdeini, 2006, 87).

As with strict liability, vicarious liability also applies only to certain types of crime. In addition, vicarious liability also does not require mens rea. Therefore accountability with this vicarious system states that although a person does not commit a criminal offense and has no faults in the usual sense it can still be held criminally accountable. as legal experts claim that a person may be held accountable in a criminal manner if elements of a crime are met.

Related to vicarious heblity, Chairul Huda stated that the substitute responsibility in criminal law is an exceptional concept, because in principle it is not a concept born in pure criminal law (Chairul Huda, 2006, 42). However this concept of accountability can be applied if there is a delegation and interpretation of the action.

Strengthening the argument above, Ashwort as quoted Chairul Huda states that replacement responsibility can only occur if there are circumstances as follows:

- a. The existence of delegation of deeds

Ashwort states that the courts will make the person vicariously liable for the conduct of whom to whom management of premises has been delegated, so that the owner, commanding officer or person responsible shall be responsible for his undertaking works for him or to his command.

b. Interpretation of his deeds

Concerning the concept of interpretation of his actions, the Vicarious liability principle is applied when so long assistant is acting as an agent rather than as a private individual, so that although there is no delegation but the interpretation of the facts of his actions shows that the offender did not in his personal capacity. The term that the perpetrator did not in his personal capacity so that the popular term on this subject is the superior respondeat, which developed in Rome in relation to the accountability of the Romans for the actions perpetrated by his slaves (Chairul Huda, 2006, 42-43).

Based on the above description, the fundamental question is whether the vicarious liability system or teaching can be applied in the field of criminal law, while it is known that the vicarious liability of the law against the law in the field of law of torts based on the doctrine of respondeat superior (Sutan Remy Sjahdeini, 2006, 84).

The vicarious liability doctrine states that there is a relationship between master and servan or between principal and agent (power of attorney) applies the maxim principle ie qui facit per alium facit per se, whereby a person who acts through another person is deemed to be himself doing the act, as long as such acts do not deviate from the commission of such acts (Sutan Remy Sjahdeini, 2006, 84). Therefore, the application of vicarious liability can only be done after it can be proved that there is a subordinate relationship of the employer with the person committing the crime, so in the UK vicarious liability is generally related to a criminal offense determined by law (Statutory offences).

4.4 The Liability Principle Approach in National Law

The system of criminal responsibility in national criminal law in principle refers to the provisions of Article 1 paragraph 1 of the Criminal Code which is clear that an act can not be criminal, except on the strength of existing criminal legislation, which in practice is known as the principle of legality. Therefore, for the existence of criminal responsibility for an act, then the action should first be set in the legislation first.

In relation to criminal acts, it is generally formulated in a written legislation that is the Criminal Code (Penal Code). In its development there are various characteristics, types, and motives of criminal acts, so to go to anticipatory criminal law, pursued by the policy of making a special criminal law law outside the Criminal Code, as well as criminal provisions in some laws. This shows that Indonesia's criminal law is elastic and dynamic, and does not shut down and get stuck on the legistic teachings, so that the present and future criminal law of Indonesia is responsive and justisipatif towards the development of society (Syaiful Bakhri, 2010, 3).

Indonesian criminal law that is elastic and dynamic means that Indonesian criminal law not only refers to the Criminal Code alone, but also other legal rules outside the Criminal Code which are made to follow the development and accommodate the community's need for law. Indonesian criminal law also does not get stuck on the legistic teachings that perceive that all rules of law must be published and written in a legislation first, so that what is mentioned in the law is the law.

Furthermore, Indonesia's criminal law is responsive and justisipatif towards the development of society. This shows that Indonesian criminal law is also open in responding to the public's need for law. However, the intended responsive law is not an open law and has no limits in adapting to the needs of society, but the responsive law in question is a law that offers something good in society and retains the integrity of the law itself (Philippe Nonet and Philip Selznick, 2011, 87).

The development of regulation of an act which is reproachable for harming, inhibiting developmental ideals, and contradictory and life-principle in society, also brings consequences to the essential elements of criminal responsibility. Therefore, if it refers to the provisions of Article 1 of the Criminal Code, then the error is a formal requirement of accountability. However, the criminal law system which is separately regulated as a special criminal law also recognizes the absolute liability (strict or absolut liability) and vicarious liability as stipulated in Law No. 32 of 2009 on the Protection and Management of the Environment which does not require any errors.

The receipt of strict liability and vicarious liability doctrine in national criminal law is marked by the receipt of the corporation as a legal subject which can be held criminally liable. Corporations as legal subjects are principally different from individuals (human beings), so that corporate criminal acts and liability are different from individuals as legal subjects.

Furthermore, related to the doctrine of strict liability and vicarious liability is not only applied to corporations but also on humans as legal subjects. The doctrine of strict liability and vicarious liability is also known in the Military Criminal Code which also embraces the command responsibility system. The command responsibility system is in principle similar to the vicarious liability system.

Based on the above view, the Indonesian criminal law in principle moves along with the development and the society's need for law, so that for certain criminal acts in the draft of the Criminal Code (ius constituendum)

(RUU-KUHP, 2015) in addition to using liability based on fault also uses the doctrine of strict liability and vicarious liability. Therefore, criminal liability based on the principle of liability based on fault also uses the strict liability and vicarious liability doctrine set in Article 38 and Article 39 RKUHP 2015 states that as such article 38,

- (1) No one shall have a criminal offense punishable without error.
- (2) Mistakes include elements of accountability, deliberate, negligent, and no excuses

Based on the provision of Article 38 of the Criminal Code above, the concept of criminal liability implies the fulfillment of elements of errors that include deliberate and negligent and not the reason for forgiving. Therefore, the principle of liability based on fault is fundamental in the case of criminal liability. As such article 39,

- (1) For certain crimes, the law may determine that a person is liable to be solely penalized because of the fulfillment of the elements of the offense without regard to any errors.
- (2) In the case provided by law, any person shall be held liable for any offense committed by another person.

Referring to the provisions of Article 39 above, the principle of criminal liability in RKUHP not only uses the principle of liability based on fault, but also uses the principle of strict liability and vicarious liability. Strict liability is explicitly mentioned in Article 39 Paragraph (1) RKUHP of 2015 stating that criminal liability to perpetrators of criminal acts merely concerns the fulfillment of elements of offense by not necessarily proving the existence of wrongdoing. Furthermore, the principle of vicarious liability is also explicitly mentioned in Article 39 Paragraph (2) of the Criminal Code by stipulating that in the case of the law, any person shall be criminally liable for any offenses committed by another person. So the principle of criminal liability in strict liability and vicarious liability is related to the fulfillment of statutory offenses.

4.5 Liability Principle dengan Pendekatan Victim Oriented

The purpose of punishment or punishment grounds is retribution, the reason being that a person is guilty of a criminal offense that can be accounted for under the law, the deliberate judge on behalf of the public interest and the legal interest impose sanctions on the perpetrator (Augustinus Pohan et al (ed all), 2012 , 233). Nevertheless, the basis or purpose of the crime shall be in accordance with the proportion of each consequence of the action. Therefore, in addition to this retaliation, punishment is also concerned with the restoration or safeguarding of public order and security (Augustinus Pohan et al (ed all), 2012, 224).

Based on the above description, the criminal accountability of the perpetrators committed or punishment of perpetrators is directed to and divided into several components i.e (a) Intenalisasi or affirmation of the enactment of legal norms, (b) General Prevention (*generale perventie*), (c) special Prevention (*special preventie*), (d) security or in other words eliminates threats in public order, (e) re-enforcement of perpetrators, and recovery of injury resulting or damages caused by a crime. (Augustine Pohan et al (ed all), 2012, 224-226)

The criminal sanction with the determination of the criminal as described above shall relate to the recovery and fulfillment of the right of the victim suffering material and material losses as mentioned in point 6 above may occur if the Public Prosecutor filed a civil suit during the criminal proceedings. Nevertheless, civil lawsuits in criminal cases are rarely used by prosecutors because the process is not working properly, whereas most victims in addition to claiming material damages would instead demand compensation for losses in material matters (Augustinus Pohan et al., 2012, 226).

Referring to the above view, the fundamental question is whether the criminal justice process has so far been concerned with the protection and attention to the fulfillment of the rights of victims of crime? Bearing in mind that the administration of the judicial process is not only pivotal to the punishment or fulfillment of legal responsibility for anyone committing a crime by imposing sanctions in the form of a criminal to anyone who does so, but also the protection and attention of the crime victims. On that basis, criminal responsibility should not only pivot on giving witnesses as a responsibility to the law of the perpetrator but also the responsibility of the perpetrator to the victim over the suffering, the losses that the victim experienced in the nature of the material.

Law enforcement and criminal law handling, law enforcement officers are faced with the obligation to protect two interests at the same time that are contradictory in principle namely, the obligation to protect the interests and rights of victims of material and material crimes, and the interests of suspected perpetrators (the principle of presumption of innocence) as the right of every suspect to be considered innocent before a binding court decision (Didik M. Arief Mansur & Elisatris Gultom, 2007, 24-25).

Criminal liability with a victim-oriented approach is a principle of accountability by prioritizing the interests and fulfillment of rights to crime victims. The victim oriented approach is principally motivated by the lack of attention to the interests and rights of victims of crimes that have been neglected.

Strengthening the argument above, Andi Hamzah stated that in discussing criminal procedure law especially related to human rights, there is a tendency to peel off the rights of perpetrators of crime without regard to the rights of victims (Didik M. Arief Mansur & Elisatris Gultom, 2007.25), so that the victim does not get adequate legal protection in relation to the fulfillment of his / her rights. Gilbert Geis states that to attentive

attention to the victims (Didik M. Arief Mansur & Elisatris Gultom, 2007, 26).

In relation to the protection of victims with the concept of responsibility oriented to the fulfillment of the rights of victims who had been abandoned in the criminal justice system is one of the concerns of the international community. Therefore, based on the Declaration of Basic Principle of Justice for Victims of Crime and Abuse of Power issued by the United Nations in Milan Italy on December 11, 1985 so that the protection of victims of crime is an integral part in the effort of criminal law enforcement (Maya Indah, 2014, 115). The UN recommendation in the declaration includes, (a) the victim must be treated with respect to her dignity, and given the right to claim compensation, (b) crime victims should be informed of their roles, timelines, and progress in handling their cases, and victims of crime must receive compensation from perpetrators of crime or their families (Maya Indah, 2014, 115).

5. CONCLUSION

Criminal law enforcement and handling, law enforcement officers are faced with the obligation to protect two interests at the same time that are contradictory in principle namely, the obligation to protect the interests and rights of victims of material and material crimes, and the interests of suspected perpetrators of crime (principle of presumption of innocence) as the right of every suspect to be considered innocent before a binding court decision. Therefore, the liability principle with the victim oriented approach here is the responsibility of the perpetrator of the crime against the victim. The responsibility is not only oriented to the determination of criminal or saknsi to the perpetrator but the responsibility of the perpetrator against the victim relating to the losses suffered by the victim and the compensation can be either the provision of restitution to the victim or compensation to the victim.

6. SUGGESTION

Related to criminal responsibility in national legal system should not only be directed to the determination of criminal as *primum remedium* by prioritizing criminal punishment to perpetrator, but more than that that determination of criminal responsibility to perpetrator of crime should also be directed to fulfillment of victim right so that orientation is responsibility legal and morally giving restitution to the victims who suffer as a result of a crime.

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