

The Principles of Justice Theory in the Aspect of Criminal

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Abstract

The principle of legality as the basis on finding the justice value on criminal law is quite unique to study more in depth. The development of criminal law giving several developments on legality aspect both formal and material, also including judge consideration on exploring and discovering the value of justice in society habits which leads to the theory and the purpose of sentencing to fulfill a sense of justice. But, in its implementation on the court, it also shows that there is still use of the judge's authority in using disparities in decisions that tend to ignore justice for justice seekers. This research will discuss on justice principal issues of justice on sentencing in criminal act.

Keywords: principle of justice, criminal law

DOI: 10.7176/JLPG/130-08

Publication date: March 31st 2023

1. Introduction

The legal principle as the fundamentals on seeking and finding the values of justice on the realm of criminal law is something unique to studied more in depth. On the one side, the act will not be stated as criminal act which imposed with penalty if it not strictly regulated on the statutory, but on the other hand whether by seeing to the existence of act as criminals with the threat of sanctions on the laws and regulations it is said that it will provide a sense of justice for the perpetrators who violate the laws in the form of prohibition in the laws and regulations. The development of criminal laws giving several developments of legality principle both formal and material, also the judge's consideration on finding the justice values on society habit which ended on the theory and its punishment purposes which known to fulfill the sense of justice.

In the legal reality, on the court process it still showing the usage of judge authority on using the disparities of verdict which sometimes abandoned the justice for justice seeker. Therefore, this research will be focusing on the justice principle on the punishment of criminal acts.

2. The Value of Justice on Punishment of Crime

Criminal law is always asking on secure, disciple, and justice value as a tool to reach its purposes. Where the purpose of criminal law is simply to reach the justice principle. It has been explained above that the punishment intend to scare society to not done any crime, both scaring many people (general preventive) and scaring certain people which has done a crime so in the future they do not do that crime anymore (special preventive); beside it also to protect the society interest and a person from the unpleasant action which caused by a violation by someone.

Here the accentuation of criminal law is not just to protect the society, but also for a person with an expectation to create a balance and harmony in society. To create a balance and harmony society to protect the society and create a social disciple, a state then made a legal regulation about prohibition and permitted which binding everyone, so indirectly, the state interest is protected as stated on laws and regulation by the state ruler.

The law regulation which are made by the state to creating a balanced and harmony in order to protect the society and creating a social disciple in form of prohibition and permission which binding everyone on society and also with the existence of regulation about sanctions for the offender, it is known as *strafbaarfeit* or criminal act. The existence of unlawful act as the initial requirement for a criminal act. In the sense that the act has been strictly regulated in the form of prohibitions and permissibility. Along with that, Moeljatno emphasized that the element of criminal act is a handling, and that action is in form of a prohibition that is definitely regulated on legal provisions.

Besides that, the criminal act will be more perfect when the prohibition or permissibility than criminally threatened for the violator of the prohibition and negligence of ability. It is more obvious that on the act of prohibition and permissibility which stated on the law must have the element of unlawful act (*wederechtelijk*)

An unlawful act is one of the conditions on determining the punishment for the perpetrator which violates the laws. Unlawful act showed "an actions is invalid". Which means when it's interpreted as illegitimate of an act as stated in Article 167 of the Criminal Code about entry into a house, yard or enclosed space which is used by others unlawfully. The averment of unlawful act element implies that when you enter someone else's house or yard, you should ask for permission from the owner of the house. When the prohibition for the act of not being allowed to enter the yard of the house or closed space which used by other people, is ultimately violated by

carrying out the act of entering someone's houses without permission, then in terms of regulations it can be said to be an unlawful act. Why so? Because it is clearly stated by the law which is known as the legality aspect of criminal law.

Besides, the aspect of unlawful act meaning "invalid purposes", to be more concrete as an example stated on Article 328 of Criminal Code or Article 339 of Criminal Code, an act of anyone takes a person away from his residence or temporary residence, with the intention to unlawfully placing that person under his control or the authority or another person authority, as stated on Article 328 Criminal Code, or the act of murder which followed, accompanied or preceded by a criminal act with the intention of preparing or to make it easier or to escape or others from criminal in case of caught, or to ensure possession of the goods obtained illegally as stated in Article 339 of Criminal Code. This criminal act by R. Soesilo is known as premeditated murder (*moord*) (R. Soesilo, 1996). Intention of taking someone away from their residence or temporary residence, with intention of placing that person unlawfully or also the act of murdering with the intention of preparing or facilitating (murderer which followed, accompanied or preceded by a criminal act) the implementation of which is an intention that fulfills an unlawful element because it is not legal according to laws and regulation. Because the act of murderer is one act which is prohibited.

The continuation of unlawful act it is more emphasized with threats in form of sanctions against the perpetrators of criminal act which have fulfilled the unlawful element in the action which they committed (either in the form of prohibition or permissibility). In line with the purpose of punishment which scares society to not done any crime, both scares a lot of society (general preventive) and scares several people which have done a crime so they will not do any crime in the future (special preventive). Apart from that it is also to protect the interest of society and person from the unlawful act caused by a prohibited action by someone. Which sanction is a mandatory requirement in the context of criminal law.

Justice will be fulfilled when there is self-control over the act of gaining self-benefit by seizing what belongs to another person or refusing what should be given to another person, as the meaning of Aristoteles understanding toward the value of justice, then individual interest is the one which protected or a group from the other individual or group act which are not ethical (violating morals and ethics) hence it make disharmony in life. In this case, the individual will be disturbed because their goods are taken away, but in the scale of life as social creatures which live together, then the social order will also be disturbed. So, the interests of society members as a society system need to be protected.

The state has duties and obligations to protect their society through making a legal justice, certainty, and expediency. So, it is integrated with the legal purpose to enforce justice. Hence, society will be orderly and dynamic.

In connection with that matter, then the concept of justice will be fulfilled when there is law that regulates and organizes society life. whereas those regulates are still in form of idea which written on the law by the states. In this case, it is done on formulative step on penal reform (Barda N.A., 2008) then it will be including the values of justice by stipulating it in a laws and regulation. It means that state is trying to protect the society which is raped by a person or other group with the value of justice on the weaker public interest. This also seen that the effort that is made on the formulative steps in form of law enforcement.

Even though it cannot be denied that the benchmark for law enforcement is not only at the formative stage or the determination of legal provisions, but in terms on applying these provisions and the execution process also contribute to law enforcement which is expected to provide justice as well as certainty and benefits of law.

The threat of sanctions in legal provisions as one of the elements of crime act is also a manifestation of the existence of a balance value between prohibitions of permissibility which will manifest in sanctions when there is a violation of these regulations. As one of the balanced values between prohibition and threat in form of sanctions, it is also an idea in form of justice value on a regulation which is expected to be obeyed by the society, hence the harmony and safety on society could be fulfilled.

Even though it cannot be ignored, that as a social creature that lived together with several needs and different social interests, then it raises a rights and obligation which is not same for everyone. So, even though the legal regulations are set to align the rights and obligations of a person which is different, but still made a conflict between people in society.

So that the legal regulations are not only made an idea by state in form of laws and regulation, but the implementation is also important. Then it is the main duty of the state to implement those regulations. Then it will bring other legal purposes, which are legal certainty and legal benefits that lead to the value of legal justice.

From that, then a partial understanding of justice value is seen as a rule of law that states an act in form of prohibitions and permissibility which threatened with a sanction. Because as the fulfilment of legal certainty and legal benefits, as well as legal justice will be obtained and ensured for both society and individuals through stages or a continuous legal process.

Moeljatno interpreted criminal law as part of the whole law which applied to a state. Which established the foundations of a states and regulations to:

1. Determining which actions may not be carried out, which are prohibited, accompanied by threats or certain criminal sanctions for anyone who violated them.
2. Determining when and in what cases those who have carried out the prohibitions may be imposed or sentenced to punishment as has been threatened; and
3. Determining on how the criminal imposition could be held if the suspected person violated those regulations.

The terms of criminal law by Moeljatno then expanded into the terms of material criminal law and formal criminal law. where the material criminal law concerns about an act which are prohibited and accompanied by threats or criminal sanctions, and formal criminal law concerns about the implementations of the criminal whose substance concerns when, in what case those who carry out the prohibitions are subject to the punishment as threatened and how the imposition of the punishment is carried out if it is suspected that a violation of this regulations has occurred.

So, when we want to pay attention to the aspects of justice on a sentence, then to achieve justice, of course it cannot be separated from material and formal criminal law. As we know, punishment isn't the final part of determining sanctions in the form of a crime against someone who has violated the prohibition and should not be carried out as threatened in the legal provisions. Therefore, the law enforcer as part of the effort to create and giving a justice for society, then the value of justice has to be held by the law enforce on the implementation of criminal law so it will give justice for society and automatically certainty and expediency of law will be fulfilled, and the authority of the law is always upheld.

3. Conclusion

Punishment or also known as criminal determination or also the imposition of sanctions in the form of punishment is part of the criminal law process which carried out by the state to provide a sanction in the form of criminal acts against a person (group) in society who has violated the prohibition, action which may not be carried out as threatened on the regulations. Punishment is carried out when the elements of a criminal act have been fulfilled or it has been proven that the violation committed, the imposition of a sentence will finally be determined.

Punishment as one of the legal processes will give suffer for a person which sentenced as threatened for the acts which committed and the suffering or pain (*wijn*) as a shackle on freedom spiritually. Hence, it could interference the social relation on society also interference a relation to God. On the other side, the shackled of freedom is breaking our basic rights which given by God. Therefore, justice is important for our lives which must be searched, obtained, and maintained so it gives peace to our lives.

No matter how big it is, justice will be felt when rights and obligations are fulfilled, or when the heart is magnanimous to accept a sanction in the form of criminal sanctions which are threatened in legal provisions for criminal acts which committed, both in individual life and on society.

References

- Chazawi, A. (2013). *Pelajaran Hukum Pidana bagian I, stelsel pidana, tindak pidana, teori-teori pemidanaan, dan batasan berlakunya hukum pidana*. Jakarta: PT. Raja Grafindo Persada
- Ujan, A. A. (2001). *Keadilan dan Demokrasi, Telaah Terhadap Filsafat Politik John Rawls*. Yogyakarta: Penerbit Kanisius.
- Santoso, A. (2012). *Hukum, Moral dan Keadilan, sebuah kajian filsafat hukum*. Jakarta: Kencana Prenada Media Group.
- Hamzah, A. (2008). *Asas-asas Hukum Pidana edisi Revisi 2008*. Jakarta: PT. Rineka Cipta.
- Abidin, A. Z. (1983). *Asas – Asas Hukum Pidana dan Beberapa Pengupasan Tentang Delik-Delik Khusus*. Jakarta: Penerbit Prapantja.
- Halim, A. R. (1981). *Hukum Pidana Dalam Tanya Jawab*. Ghalia Indonesia
- Arief, B. N. (2008). *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*. Jakarta: Kencana Prenada Group
- Rato, D. (2002). *Filsafat Hukum Suatu Pengantar, Mencari, Menemukan dan Memahami Hukum*. Surabaya: Penerbit Laksbang Justitia
- Zulfa, A. E. & Adji, I. S. (2011). *Pergeseran Paradigma Pemidanaan*. Bandung: Lubuk Agung
- Makarao., M. T. (2005). *Pembaharuan Hukum Pidana: Studi Tentang Bentuk-bentuk Pidana Khususnya Pidana Cambuk sebagai Suatu Bentuk Pemidanaan*. Yogyakarta: Kreasi Wacana.
- Marwan. M. (2009). *Kamus Hukum*. Surabaya: Reality Publisher.
- Muladi & Arief. B. N. (1992). *Teori-teori dan Kebijakan Pidana*. Bandung: Penerbit Alumni.
- Ali. M. (2012). *Dasar-dasar Hukum Pidana*. Jakarta: Sinar Grafika.
- Moeljatno. (2012). *KUHP Kitab Undang Undang Hukum Pidana*. Jakarta: Bina Aksara.
- Moeljatno. (1983). *Perbuatan Pidana dan Pertanggungjawabannya Dalam Hukum Pidana*. Jakarta: Bina

- Aksara.
- Kartanegara, S., (1954-1955). Kumpulan Catatan Kuliah Hukum Pidana II. Student of PTIK Class V.
- Aburaera, S., et. al. (2013). *Filsafat Hukum, Teori dan Praktik*. Jakarta: Kencana Prenada Media Group.
- Soesilo. R. (1996). *Kitab Undang Undang Hukum Pidana (KUHP) serta Komentar-komentarnya Lengkap Pasal demi Pasal*. Bogor: Politea
- Saleh., R. (1983). *Perbuatan Pidana Dan Pertanggungjawaban Pidana*. Jakarta: Aksara Baru.
- Effendi., R. (1981). *Azaz-azaz Hukum Pidana*. Makassar: Lembaga Kriminologi Unhas.
- Utrecht. (1986). *Hukum Pidana I*. Surabaya: Penerbit Pustaka Tinta Mas