Development of Criminal Liability Model in Indonesian Criminal Code Based on Pancasila Justice Value

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Abstract: The accumulation of cases at the level of investigation, prosecution, trial, and fully loaded of the penitentiary are caused by the unfair model of criminal liability principles in the Criminal Code. According to the Criminal Code, if a person's actions meet the elements of the formulation of the offense in the Act and the perpetrator can be responsible, then the perpetrator must be punished, even if mediation has occurred among offender and victim. Therefore, it is needed to develop a model of fair criminal liability principle. This study used the socio-legal approach method by using descriptive-analytical specifications. The respondents are police, prosecutors, judges, and correctional officers. The results of the consequences by using the principle of legality and the model of the formulation of a single jail sanction cause law enforcers to always demand and drop prison. According to the Criminal Code mediation, it does not guarantee to stop the criminal proceedings. An alternative that fits Pancasila's justice value is to incorporate meditation as one of the reasons for the abolition of criminal sanction in the Criminal Code, so there is a guarantee of justice and legal certainty for the perpetrators and victims.
Keywords: Criminal Liability Model, Indonesian Criminal Code, Pancasila

1. Introduction

The accumulation of cases at the level of investigation, prosecution, trial, and fully loaded penitentiary are caused by the unfair model of criminal liability principle in the Criminal Code. According to the Criminal Code if a person's actions meet the element of formulation of the offense in the Act and the perpetrator is capable of responsibility, then the perpetrator must be punished, even if there has been an agreement between the perpetrator and the victim. The formulation of the criminal liability principle in the Criminal Code is unfair because it does not allow peaceful settlement and forgiveness[1]. There are many cases which are ended peacefully, and compensations are provided, but the perpetrators are still processed by the police and prosecutors in court[2]. So, law enforcement practices have not been able to realize the sense of justice. The nature of legal accountability in Pancasila as the ideals of national law development is the order of transcendental legal accountability oriented to the values of divinity, humanistic, nationality, populist, and social justice[3].

A rigid and formal approach in the Criminal Code which is more oriented towards legal certainty merely is incompatible with the values of the living and developing the law in Indonesian society, which is based on Pancasila as the basis for its legal development[4].

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The penal mediation, as an alternative criminal justice mechanism in Indonesia, has a bright future because of some reasons[5].

Mediation is an alternative way of dispute resolution, where the Panel of Judges advises the parties of the court. This is in line with Bingham opinion, which suggests that mediation produces better organizational outcomes than either no intervention or an adjudicatory one like arbitration[6].

The first step of mediation is offering to the parties to dispute peacefully by the Supreme Court Regulation Number 2 the Year 2003 on Mediation Procedures in court, affirming that mediation is Settlement of disputes through the negotiation process of the parties assisted by mediators (Supreme Court Regulation No. 2 of 2003). Indeed, by applying the underlying philosophy of mediation is to reach a mutually beneficial agreement on both sides through a negotiation pathway assisted by a mediator. Conflict resolution in peaceful societies relies on more than just strategies and techniques. It is based on assumptions about human relations and social patterns that are quite different from those of modern societies[7].

The principle model of criminal responsibility in the Criminal Code has not been based on the Pancasila justice value, because in the case of peace between the perpetrator and the victim and to the case which has small lost value, the cases remain formally processed. Thus, it causes the accumulation of cases in the police, prosecutors, courts, and it even makes Residents of Penitentiary full. This paper discusses how the development of a model of criminal liability in criminal justice, especially between perpetrators and victims.

2. Method

This research used socio-legal research by using descriptive analysis. According to Adler socio-legal paradigm adopt an external perspective to the legal process that seeks to analyze administrative justice in terms of concepts and categories that are derived from the social sciences[8]. The respondents were police, prosecutors, judges, and correctional officers, and the data were analyzed using the qualitative method.

3. Findings

A person being sentenced requires to have acted by the formulation of law (principle of legality), and the culprit is capable of being responsible (subjective guilt)[9]. The meaning of the legality principle as formulated in the Criminal Code / WvS, carries the consequence. The consequence of driving the acts should be mentioned in the law; if it is not mentioned, it cannot be punished. Therefore, with the existence of this principle, the unwritten law has no power to apply, and the applied criminal must also be by the law.

By adapting the legality principle as in the Criminal Code, it forces law enforcers to settle criminal cases formally. Furthermore, it does not allow mediation settlement, so as not to give freedom for prosecutors and judges to prosecute and punish by the purpose of crime.

The Indonesian Penal Code currently applied is a legacy of the Dutch colonial era which took effect in Indonesia on 1 January 1918 (S.732.1915), including the influenced Civil Law System [9]. It is influenced by the individualistic-liberalistic point of view[10]. Moreover, it is different from Indonesian's point of view, which is more religious, familial, monodualistic, and collectivist.

The weakness in the Criminal Code that is not oriented towards justice is from the criminal type (transport), which is more oriented towards retaliation to the "offender," and the victim is underpaid. Imprisonment is the primary criminal types of 98% from the total number of criminal offenses, and 74% of the total type is sanctioned in the Criminal Code, and the exceptional crime is only 18% (last modified by Law No. 18 prp 1960). From that composition of sanctions causes law enforcers, both prosecutors and judges, cannot choose the suitable type of sanctions for the criminal offender purposes.

The very rigid/imperative criminal formulation in the Penal Code also causes the accumulation of cases and the full Penal Institution. Since 70% formulation is in the Criminal Code with a single formulation (not alternative) and almost 98% threat to crime is imprisonment, and it is a single formulation. Thus, it always demands imprisonment verdicts from prosecutors and judges.

From the data on the crime reported by the community to all local polices in Central Java from 2013, there were 16,873 cases, and 73% of them were settled, in 2014, there were 15,855 cases, and 64% of them were resolved. In 2015, there were 14,387 cases, with 64% of them were resolved. (Central Java Province in Figures, 2016). The data shows that the number of cases reported by the community cannot all be resolved formally since 36% of cases reported to the Local polices cannot be completed on time.

The formulation of criminal sanctions in the Criminal Code and the number of reports by people in Central Java give impact on the fully loaded prisons. In Central Java, there are 23 Penitentiaries and 1 Special Child Development Institution, and 20 Detention Centers (Rutan) with a total capacity of 8205 people. The data of 2016 shows the number of 2760 detainees and 7015 inmates, so the total occupants increased as many as 9775 people (119%). With the capacity of existing prisons and detention, there are over 1570 people (19%) capacity (Ministry of Justice and Human Rights of Central Java, 2017).

Problem-solving by using criminal law is still debatable. Jeremy Bentham stated that criminality should not be used if it is "groundless, needless, unprofitable or inefficacious." The use of criminal sanctions once constituted a "chief guarantor" is a "major threat" of human freedom. It is a guarantor when it is used sparingly and thoroughly humanely; and is threatening, if used arbitrarily and by force[11].

Since criminal is a sharp and hard sanction that contains a paradox, thus the humanistic approach must be considered. The importance of the humanistic approach to the use of criminal sanctions does not only mean that the criminal punishment of the offender must be by civilized human values but also it must raise awareness of the offender about human values and social values[12].

To overcome this problem, it is necessary to develop a model of criminal responsibility principle, which allows for mediation in settlement of criminal cases. Alternative Settlement Dispute is a dispute resolution institution or a panel of opinion through a procedure agreed upon by the parties, that is, an out-of-court settlement in consultation, negotiation, mediation, conciliation, or expert opinion[13]. Mediation of penal can be used to handle cases conducted by adults and children. BardaNawawiArief explained that this method involves various parties who meet with attended by the appointed mediator. Mediators may come from formal officials, independent mediators, or combinations[14]. This mediation may be held in every stage of the process, whether at the stage of the police, the prosecution stage, the penalty stage, or after the conviction. The concept of Restorative Justice develops based on the working principles as follows:

a. Handling conflict (Conflict Handling, Konfliktbearbeitung).

b. Process-oriented (Process Orientation, Prozessorientierung).

c. Natural process (Informal Proceeding, Informalität).

d. There is active and autonomous participation of the parties (Active and Autonomous Participation, Parteiautonomie / Subjecttivierung).

In Indonesia has long had the same provisions as ADR, namely Arbitration. Arbitration is known in Indonesia in conjunction with the adoption of the Reglement op de Rechtsvordering (RV) and the Het HerzieneIndonesischReglement (HIR) or RechtsreglementBitengewesten (RBg) since the Arbitration was initially outlined in articles 615 to 651 *reglement of de rechtvordering*[13].

In its development practice, in Indonesia, there are two arbitration bodies, namely BANI (National Arbitration Board of Indonesia) and BAMUI (Badan ArbitraseMuamalat Indonesia). Every arbitration body has a different history and characteristics. In Indonesia, the term ADR (alternative dispute resolution) as a relatively new term is known, but the actual settlement of disputes by consensus has long been done by the community, which mainly emphasizes the efforts of consensus and kinship. In line with Broadbent opinion which argues that alternative dispute resolution (ADR) processes, so that inevitably a proportion of cases would settle rather than having to be decided by a judge in a courtroom [13]. ADR value is also by the cultural values of socio-cultural systems in Indonesia.

ADR would like to place the substance of the procedure of enforcement and law rule enforcement in the settlement of disputes acceptable to both parties and uphold the principle of certainty, justice, and legal efficacy as the use of normative approaches and empirical approaches[15] by resolving disputes peacefully in accordance with Supreme Court Regulation No. 2 of 2003 by asserting that mediation is the settlement of disputes through the process of negotiating the parties with the assistance of the mediator. Of course, by applying the underlying philosophy of mediation is to reach a mutually beneficial agreement for both parties through a negotiation pathway assisted by a mediator. A mediator tasked by Chapter III of Perma Number 2 of 2003 develops three legal objectives.

Although penal mediation does not yet have a legal umbrella in the criminal justice system in Indonesia, some regulations attempt to allow this method implicitly. BardaNawawiArief explained the development of penal mediation arrangements in Indonesia:

Although criminal matters in principle cannot be resolved out of court, in some instances it may be possible to settle criminal cases outside the court, including:

1) In the case of a criminal offense committed in the form of a violation that is only threatened with a fine of fines. According to Article 82 of the Criminal Code, the right of authority to claim the offense is abolished, if the defendant has paid the maximum fine. The provisions of Article 82 of the Criminal Code are known as "afkoop" or "payment of fines of peace," which is one of the reasons for the eradication of prosecution...

2) UU no. 39 of 1999 on Human Rights Court also opens another possibility in granting authority to Komnas HAM to mediate in cases of human rights violations. However, there is no provision that explicitly states that all human rights violations can be mediated by Komnas HAM, because according to Article 89 (4) Komnas HAM can also only advise the parties to resolve the dispute through the courts (sub-c) or simply give recommendation to the Government or Parliament for follow-up of the settlement (sub d and sub e). Similarly,

no provision explicitly states that the consequences of mediation by Komnas HAM can eliminate prosecution or punishment. In Article 96 (3), it is only determined that "mediation decisions are legally binding and valid as valid evidence."

3) In some other countries, penal mediation is possible for crimes committed by children and cases of domestic violence (domestic violence). However, the penalty mediation provisions are not contained in Law no. 3 of 1997 on the Juvenile Court and in Law no. 23 of 2004 on Domestic Violence

4) The demise of the prosecution authority as contained in the Criminal Code and the Criminal Draft Concept are incorporated into one article and extended to the following terms:

The prosecution authority shall be void if:

1) There has been a decision that obtains a permanent legal force
2) The defendant passed away
3) Expired
4) Completion outside the process
5) Maximum penalty of voluntary fines paid for crimes committed shall only be punishable by the maximum fine of category II
6) Maximum of fines shall be paid voluntarily for a crime punishable by a maximum imprisonment of 1 (one) year or a maximum fine of category III
7) The President grants amnesty or abolition
8) The prosecution is terminated because the prosecution is submitted to another country based on the agreement
9) A criminal complaint that no court or complaint is withdrawn
10) The imposition of the principle of opportunity by the Attorney General.

The settlement of criminal cases with the mediation will result in a justice settlement because:

1) The nature of volunteerism in the process

The parties believe that alternative dispute resolution provides a potential solution for problem-solving better than litigation procedures.

2) Fast procedure

Because the procedure is informal, the parties involved can negotiate terms of use. This will speed up the problem-solving process to prevent delays and protracted problems, as is usually the case when the matter is resolved through litigation in court.

3) Non-judicial decisions.

The authority to make decisions remains with the parties involved or not delegated to third party decision-makers. This means that the parties involved have more control and can estimate the outcome of the dispute to be achieved.

4) Flexibility in designing problem-solving conditions.

This procedure can avoid litigation procedure constraints in courts that are severely limited to court decision-making based on a narrow legal point.

5) Save time

In the process of solving the problem through the litigation process in court, significant delays in waiting for the certainty of the date of the hearing until the verdict often occur.

6) Cost-effective

The cost is usually determined by the length of time spent. In many ways, time is money, and problem-solving delays cost very much.

7) Maintenance of relationships

This is in contrast to a court decision that places one party in a winning position, and the other is a losing position, which can lead to hostilities between them.

8) Decisions that last all the time

This decision usually lasts all the time; if later in the future, the dispute raises problems, the parties are more likely to use cooperative problem-solving methods than by applying adversarial or conflicting approaches.

Mediation of penal as an alternative to the current judicial system is necessary, in developing a model of criminal liability in the Criminal Code, even if the offender is proven to meet the element of fault:

1. Accountable to the offender, or the responsible ability of the offender (de toerekeningsvatbaarheid van de Vader / die Zurechtnungsfaahigheit);
2. There is a particular mind relationship within the offender, both in the form of deliberate (opzet / formats) and negligence (Schuld / fahrlassingkeit);
3. There is no reason to eradicate the accountability of the offender, or there is no reason for erasing a mistake (geenschuldduitstuitingsgronden/ keinenchuldausschiesungsgrunde8, but if it has been mediated, then it is expected to stop the criminal proceedings.

Thus, it can automatically reduce the accumulation of cases, and it is proven as the quicker, cheaper, and simpler dispute resolution process. Further, it can also provide full possible access to the disputants to obtain justice, strengthen and maximize the function of the courts in dispute settlement in addition to the process of dropping punishment. It is more in line with Pancasila's justice value because the development of the National Criminal Law System cannot be separated from the policy of development of the National Law System based on Pancasila as the values of the aspired public life. Therefore, National Criminal Law Development should also be based on and derived from / oriented to the basic ideas Pancasila, which contains the balance of values /ideas/paradigms:

1) Religious morals (Deity);

2) Humanity (humanistic);

3) Nationality;

4) Democracy; and

5) Social justice.

The development of a criminal liability model in the Criminal Code is done by including penal mediation as the reason for the abolition of criminal prosecution. According to the Criminal Code the authority to demand the abolition of the Criminal Code is since there has been a permanent decision from the judge of Article 76, the death of the accused (Art. 77), expiration (Article 78), there has been a maximum fine payment to individual officers for offenses which are only threatened with fines (Article 82), and reasons beyond the Criminal Code are abolition and amnesty. By adding penal mediation as the reason for the abolition of criminal prosecution, it will guarantee justice and legal certainty for the perpetrator and the victim. Hence, it reduces the accumulation of cases, since there is a guarantee; if mediation has been done, then the case will be terminated.

4. Conclusion

The accumulation of cases at the investigation, prosecution, and trial level, and the full number of residents of the penitentiary institutions is partly due to the formulation of criminal sanctions in the Criminal Code. 74% of the cases used a single jail criminal threat system, so there is no alternative for law enforcement to prosecute and impose other than jail. There is no guarantee if the case settled by mediation will abolish the criminal prosecuting authority. The alternative which suits Pancasila's fair values is to include mediation as one of the reasons for the abolition of criminal sanction in the Criminal Code. Therefore, there is a guarantee of justice and legal certainty for perpetrators and victims of crimes that have committed peace.

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