

Comparison of Expired Criminal Prosecutions Between The Indonesian And Thailand Legal Systems

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Abstract. The purpose of this study is to examine the regulation on the expiration date for the prosecution of criminal acts in Indonesia and Thailand and to examine the similarities and differences in the expiration date for the prosecution of criminal acts between the Indonesian and Thai legal systems. The approach used in this research is a statutory approach and a comparative approach. This research data collection technique was carried out through conventional and online literature searches. The data analysis technique used in this study is qualitative because the data is presented in a narrative-descriptive manner. The results of the study show that the right to sue for a crime is abolished because it has expired as regulated in Article 78 of the Criminal Code. The validity period of the expiration of the abolition of criminal prosecution authority in Indonesia is generally stipulated in Article 79 of the Criminal Code. After the expiration of the grace period is stopped by the prosecution, a new expiration date is started again as regulated in Article 80 of the Criminal Code. The expiration of the grace period can also be delayed due to the postponement of prosecution as regulated in Article 81 of the Criminal Code. The provisions for the expiration of the prosecution of criminal acts in Thailand are regulated in the Penal Code of Thailand or the Thai Criminal Code, in Book I of Provisions Applicable to General Offenses Chapter 9 Articles 95-101.

Keywords: Expired; Prosecution; Comparison

1. Introduction

The legislators have determined expiration as the reason for eliminating or the reason for the abolition of prosecution against perpetrators of criminal acts [1]. There are 2 important things related to the expiration of the prosecution which is regulated in the Criminal Code. The first is regarding the period or grace period for prosecuting criminal acts which are marked by the severity of the criminal threats included. The second thing is regarding the initial calculation of the expiration grace period as formulated in Article 79 of the Criminal Code. The impact of the abolition of the prosecution is based on the consideration that the perpetrator during his life who has been in hiding with limited space for movement and independence has become an indication of punishment for his actions. Another consideration is that if the criminal act is prosecuted, law enforcers will have difficulty finding and recording all the evidence [2].

It is difficult for the perpetrators to be asked for clear and correct information because they may have forgotten what happened [3]. All perpetrators of a crime in the perspective of the Indonesian Criminal Code basically must be prosecuted before a court session, but either in general or specifically the law determines the waiver and or elimination of prosecution in certain cases because it has expired. The purpose of having an expiration date can be simplified to make it easier for law enforcement because over time a criminal act will make the investigation more difficult and it is very difficult to obtain sufficient evidence. The

determination of expiration in the Criminal Code is 6 years, 12 years, 18 years depending on the type of crime.

The principle of the passage of time is also based on the difficulty factor in uncovering cases. Filing a criminal complaint is basically the work of uncovering an event as it actually happened at the time the incident had passed. Disclosure of the incident requires evidence that is determined and regulated according to the provisions of the law, both regarding the types as well as the method and system of use. The longer the time passes, the more difficult it will be to obtain these evidences. The longer the memory of a witness will decrease and even disappear or forget about an event he has seen or experienced. Likewise, evidence objects, with a long time will cause the object to be destroyed or lost and no longer exists. The more time passes will reduce the success can even lead to the failure of a prosecution work.

The basis of this provision is the same as that of the *ne bis in idem* principle, namely for legal certainty for every criminal case so that the peace of life of the maker is not disturbed indefinitely by the threat of state prosecution [4]. If it is considered from the formulation contained in the Criminal Code, the expiration period depends on the seriousness of the crime committed [5]. Attempts to commit a criminal act, and participation, the same period of expiration as stipulated for the expiration of the main crime shall apply. Unlike the case with the expiration of the prosecution of criminal acts from the state of Thailand. The role of the public prosecutor in Thailand can only be carried out after the police complete their investigation and submit the dossier of the results of the investigation to the public prosecutor. The public prosecutor is very dependent on the results of investigations carried out by the police and in this process, the public prosecutor does not have the power to carry out investigations and cannot control or supervise and cannot provide instructions to investigators if the investigation files are incomplete or incomplete prior to the investigation. prosecution is carried out.

The Thai legal system is influenced by the Continental European legal system (civil law system). The expiration of the prosecution of criminal acts is regulated in Book I of the Thai Criminal Code on Provisions Applicable to General Offenses, in Articles 95-101. If the perpetrator in a criminal case is not prosecuted and brought to court within the period determined by law from the date of the commission of the crime, the prosecution must be suspended with expiration. When compared to the Indonesian Criminal Code, the Thai Criminal Code is more concerned with regulating the expiration of criminal acts. In order to complete the provisions and implementation of the expiration date for prosecuting criminal acts in Indonesia, it is necessary to conduct a comparative study between Indonesian and Thai criminal law to find out how the provisions in the expiration date for prosecuting criminal acts are carried out so as to see the merits and weaknesses of the provisions regarding the expiration date for prosecuting criminal acts in each country.

This is done in order to find a better solution regarding the method of punishment in the expiration of the prosecution of criminal acts, to then make an analysis of recommendations on how the Indonesian government should be able to formulate rules regarding the expiration of the prosecution of criminal acts in the future. As for the formulation of the problem are How is the expiration arrangement for the prosecution of criminal acts in Indonesia and Thailand?, and What are the similarities and differences in the expiration of criminal prosecutions between the Indonesian and Thai legal systems?

2. Method

This type of research is library research [6]. Library research is research that is carried out through library data collection or research carried out to solve a problem which basically relies

on a critical and in-depth study of relevant library materials[7]. This research includes library research because data sources can be obtained from libraries or other documents in written form, both from journals, books and other literature.

3. Discussion

3.1. Regulations on the Expiration of Criminal Prosecution in Indonesia and Thailand

Expiration is the lapse of time which causes the loss or cancellation of the right to sue or carry out a sentence against someone who has committed a crime. In the perspective of the Indonesian Criminal Code that basically all perpetrators (in a broad sense) of a criminal act must be prosecuted before a criminal court, but either in general or specifically the law determines the waiver and or elimination of prosecution in certain cases, for example due to expiration. This is as emphasized in Article 78 of the Criminal Code that the right to sue for a criminal offense is nullified because it has expired.

In relation to the abolition of the right to criminal prosecution, that the Criminal Code contains 4 (four) things that cause the state to lose the right to prosecute criminals against the perpetrators of the crime, namely :

1. Because the act has been decided by the court with a decision that has permanent legal force (Article 76).
2. The cause of death of the maker (Article 77).
3. Because the time has passed or has expired (Article 78-Article 80).

Settlement out of court, namely by paying the maximum fine and fees when the prosecution has started (Article 82 for violations that are only punishable by a fine).

The right to sue for a crime is nullified due to the passage of time based on Article 78 Paragraph (1). The basis of this provision is the same as the basis of the provisions of Article 76 Paragraph (1) concerning the principle of *ne bis in idem*, which is for legal certainty for every criminal case so that the author is not forever disturbed and his peace of life is disturbed indefinitely by the threat of prosecution by the state, at a time. When such disturbances must end, a person who is guilty of committing a crime to avoid prosecution by the state requires him to always be alert to everyone, hide, avoid open public relations, all of which make his life uneasy. The restlessness of life for so long before the expiration date is basically a mental affliction that is no different from suffering as a result of undergoing a sentence imposed by a court.

The lapse of time for the perpetrator of a criminal act to be unable to be prosecuted because of the expiration date, namely in this case, depending on the severity of the crime threatened with the crime committed, this can be seen in the provisions of Article 78 Paragraph (1), which stipulates that the right to prosecute criminal acts becomes delete due to overtime, i.e.:

1. For all criminal offenses and crimes committed by printing after one year.
2. For crimes punishable by fines, imprisonment or imprisonment for a maximum of three years, after six years.

3. For crimes punishable by imprisonment of more than three years, after twelve years.
4. For crimes punishable by death or life imprisonment or temporary imprisonment for a maximum of twenty years, after eighteen years.

For juvenile offenders who at the time of committing the crime were not yet eighteen years of age, according to Paragraph (2), the grace period for the abolition of the criminal prosecution is reduced by one third of the provisions in the first paragraph. As stated in paragraph (2), namely for people who at the time of committing the act were not yet eighteen years old, each of the above expiry dates was reduced to one third [8].

Determining the length of the grace period for the elimination of criminal prosecution based on the severity of the criminal threat or the severity of the crime committed is based on the view that the more serious or large the crime committed, the longer the memory of the person or society for the incident, which also means is the length of suffering felt by people and or the community as a result of committing a crime depending on the severity of the type and type of crime committed by the person. The more severe the crime committed, the longer the feeling of suffering brought by the person or society as a result of the crime he committed.

The validity period of the expiration of the abolition of the authority for criminal prosecution is generally stipulated (Article 79 of the Criminal Code), namely on the day after the act is committed, except in three cases, namely:

1. Regarding counterfeiting or destruction of currency, it is on the day after the counterfeit goods or the damaged currency is used.
2. Regarding crimes in Article 328, Article 329, Article 330 and Article 333 of the Criminal Code, it begins on the day after the person directly affected by the crime (victim) is released or dies.
3. Regarding violations in Article 556 of the Criminal Code up to Article 558a of the Criminal Code, it begins on the day after the lists containing the violations have been submitted or submitted to the clerk of the court concerned.

About time When to start calculating the expiration date is still a matter of debate. Wirjono Prodjodikoro and Hazewinkel Suringa are of the opinion that the expiration date starts on the day the crime occurred. Meanwhile, Pompe is of the opinion that the grace period begins at the time the act is committed. Eva Achjani Zulfa argues that in calculating the start of expiration, what must be considered is the meaning of "action"[1]. Some other legal experts such as Van Bemmelen and Tresna view that the meaning of this act or feit is a physical act, so the calculation of this expiration must be carried out the day after the act is committed.

The criminal justice system in each country is different from one another, and the provisions regarding prosecution are no exception. According to the Indonesian criminal code of procedure, the right to prosecution rests with the public prosecutor, in contrast to the provisions in the Thai criminal procedure code which state that the right to prosecute rests with everyone [9].

Thailand's main criminal law is the Penal Code of Thailand or the Thai Criminal Code. The Thai Penal Code is a codified legal system or legal entity regarding crimes and offenses against the public (including the Kingdom of Thailand, the King and certain members of the royal family) and/or against other people and stipulates penalties for those who violate them [10]. The Penal Code of Thailand consists of 3 books, namely:

1. General provision from Article 1 to Article 101.

2. Specific offenses (certain crimes) from Article 136 to Article 366.

3. Petty offenses (minor crimes) from Article 367 to Article 398.

The Penal Code of Thailand provides for a variety of mitigating factors that may need to be considered by criminals when determining whether to impose a lighter sentence. This allows judges to reduce sentences by half based on factors including a person's age, mental capacity, temperament, ignorance of the law, provocation and guilty plea. In criminal law, there is an expiration date for filing a prosecution [11]. Provisions for prosecution of criminal acts in Thailand are regulated in the Penal Code of Thailand or the Thai Criminal Code, in Book I of Provisions Applicable to General Offenses Chapter 9 Articles 95-101 (Provisions Applicable to General Offences sections 95-101 Prescription).

Public prosecutors in Thailand are not allowed to bring charges in court without prior investigation. The public prosecutor in Thailand has no role in the investigative phase, thus, making their decision based solely on the evidence found in the initial investigation dossier or in the supplementary dossier submitted by the police as a result of further investigation in accordance with the public prosecutor's order. Their prosecution orders are usually based on the adequacy of the evidence of wrongdoing presented to the offenders in court. They did not have the opportunity to interview the suspect prior to prosecution or give instructions for further investigation.

3.2. Similarities and Differences in the Expiration of Criminal Prosecution Between Indonesian and Thai Legal Systems

Comparative law is not a legal instrument and principles and is not a branch of law, but is a technique for dealing with foreign legal elements of a legal problem [12]. From this understanding, it can be said that comparative law is an approach that intends to gain deeper knowledge of certain legal materials. The purpose of comparative law is to obtain results in the form of data from the legal system being compared, gain deeper knowledge of the applicable legal system to improve the applicable legal system, to contribute to the unification of the legal system on a smaller or larger scale. If examined further, the purpose of comparative law is not merely to find out the differences and similarities rather than the laws being compared, but what is important is to know the causes and background of these differences and similarities.

When compared with Indonesia, the discussion on comparative law is very different. Indonesia takes the notions of comparative law from the definitions of experts because basically the government is different from Indonesia. Thailand's government is similar to that of England. There is a prime minister who functions as a parliamentary government and a hereditary monarch who serves as head of state. The current Thai government has existed for the last 700 hundred years. The current king comes from a family line that has ruled since the fall of the Ayuthaya empire. The king serves as head of state and spiritual leader, but has no political authority.

Responsibility for the administration of criminal law in Thai shared by several organizations. These organizations are the Royal Thai Police, the Attorney General's Office, the Court of Justice, the Ministry of Justice (Department of Probation and Central Control and Protection) and the Ministry of Interior Law (Department of Corrections). Reforms in the Thai legal system have emerged since BE 2428 (1885) when King Rama V authorized his younger brother, Krom Laung Pichitpreechakorn, to accommodate all opinions about the court system.

Prince Sawadisophon, the king's younger brother, conveyed the idea of forming a Ministry of Justice 3 August 2433 BE (1890).

Late 2434 BE (1891), the Thai government revealed the establishment of the Ministry of Justice. This announcement was dated March 25, 2434 BE, but was only published in the State Gazette April 10 BE (1892). Prince Sawadisophon, who was later appointed Krom Phra Sawasdivatvisit, was the first Minister; Prince Krom Laung Pichitpreechakorn is the second Minister and Prince Rapipatanasak (Krom Luang Rajburi Direkrit) who has overhauled the Thai legal system, is the third Minister (2439-2453 BE). As Minister of Justice, Prince Rajburi Direkrit has played an important role in shaping the new legal system.

Indonesia and Thailand are interesting countries to compare because of several similarities that make them relevant, including:

1. Being in the ASEAN region so that it has a community culture and culture that both hold to the lifestyle, noble values, customs, and traditional customs with "eastern" characteristics.
2. Even though Indonesia's total Gross Domestic Product (GDP) is much larger, on average, the economic levels of the people of these two countries are balanced and fall into the category of countries with good economic prospects.
3. The legal and judicial systems are both based on civil law and not common law.

As a result of the passage of time, a criminal act committed by a person cannot be prosecuted. Thus the perpetrators of criminal acts cannot be brought to justice so that the perpetrators can move freely. Criminal acts that have been committed are no longer investigated or processed. The impact of the abolition of this prosecution is based on the consideration that the perpetrator during his life who has been in hiding with limited space for movement and independence, has become an indication of punishment for his actions. Another consideration is that if a criminal act is prosecuted, law enforcers will have difficulty finding and recording all the evidence. It is difficult for the perpetrators to be asked for clear and correct information because they may have forgotten a lot about the incident. The following will describe the legal comparison between Indonesia and Thailand to find out the similarities and differences in the expiration of criminal prosecutions between Indonesia and Thailand.[13]

3.3. Similarity in the Expiration of Criminal Prosecution Between Indonesian and Thai Legal Systems

The legal rules in both the Indonesian Criminal Code and the Penal Code of Thailand do not provide a definition of what is meant by the expiration of the prosecution of criminal acts, but only provide provisions regarding the expiration date of the prosecution of criminal acts. Provisions regarding the expiration date of prosecution of criminal acts in Indonesia are contained in Article 78 of the Criminal Code, namely:

1. The authority to sue for a penalty is abolished because it has expired :

- a) Regarding all violations and crimes committed by printing after one year.
 - b) Regarding crimes that are punishable by a fine, imprisonment, or imprisonment for a maximum of three years, after six years.
 - c) Regarding crimes punishable by imprisonment of more than three years, after twelve years.
 - d) Regarding crimes punishable by death or life imprisonment, after eighteen years.
2. For a person who at the time of committing the act was not yet eighteen years old, each of the above expiry dates shall be reduced to one third.

The provisions regarding the expiration date of prosecution of criminal acts in the Penal Code of Thailand are contained in Article 95 of the Penal Code of Thailand, namely : In a criminal case, if the offender is not prosecuted and brought before the court within the time specified below from the date of the commission of the crime, his prosecution shall be suspended by expiration:

1. Twenty years for an offense punishable by death, life imprisonment or twenty years imprisonment.
2. Fifteen years for offenses punishable by imprisonment of more than seven years but not up to twenty years.
3. Ten years for offenses punishable by imprisonment of more than one year up to seven years.
4. Five years for offenses punishable by imprisonment of more than six months up to one year.
5. One year in the case of a criminal offense which is punishable by imprisonment of one month and below or can be punished in other ways.

If the perpetrator has been prosecuted and brought to justice, but the perpetrator fled, or was insane, and the court gave an order to adjourn the trial for a specified period of time taking into account the date of escape or the date of issuing the order for the suspension of sentence. court, it will be deemed that prosecution is also precluded by expiration.

3.4. Differences in the Expiration of Criminal Prosecution Between Indonesian and Thai Legal Systems

There are some differences regarding the expiration provisions for criminal prosecution between the Indonesian and Thai legal systems. First, namely the length of time that is applied to the expiration of the prosecution of criminal acts. From Article 78 Paragraph (1) it can be seen that the minimum expiry time for prosecuting criminal acts is one year for all violations and crimes committed by printing [14]. The expiration of the prosecution of criminal acts with a maximum period of eighteen years, namely for crimes punishable by death or life imprisonment.

The provision for the expiration of the prosecution of criminal acts in Article 95 of the Penal Code of Thailand, namely the minimum expiration date for prosecuting a criminal offense is one year, namely in the case of a criminal offense punishable by imprisonment for one month or less or can be punished in other ways, while the expiration date for prosecuting a

criminal offense is at least one month. The maximum period is twenty years, namely for offenses punishable by death, life imprisonment or twenty years imprisonment.

Second, the legal system of the Indonesian Criminal Code regulates the expiration date for people who at the time of committing the crime were not yet eighteen years old. The stipulation is that the duration of each prosecution for criminal acts as referred to in Article 78 Paragraph (1) is reduced to one third. Unlike the Thai legal system, the Penal Code of Thailand does not regulate people who at the time of committing a crime were not yet eighteen years old. The Penal Code of Thailand regulates the expiration of runaway or insane offenders, and courts issue orders to adjourn the trial for a specified period of time taking into account the date of escape or the date on which the order was issued.

Third, the Indonesian Criminal Code provides provisions for exceptions to the expiration period which takes effect on the day after the act is committed, namely in the case of counterfeiting or destroying currency, regarding crimes in Article 328, Article 329, Article 330, and Article 333, regarding violations in Article 556 to Article 558a [15]. The Penal Code of Thailand does not mention any exceptions to certain crimes. The Penal Code of Thailand only mentions the provisions regarding the limitation of crime if the perpetrator of the crime escapes while the perpetrator has not yet served a sentence or has not fully served the sentence.

Fourth, the Penal Code of Thailand does not mention any provisions regarding the termination and postponement of the expiration of the prosecution of criminal acts. In the Indonesian Criminal Code, the termination of the expiration date is regulated in Article 80, namely the act of prosecuting the expiration date, as long as the action is known to the person being charged, or has been notified to him in the manner prescribed in general rules, while the postponement of expiration is regulated in Article 81, namely the postponement of criminal prosecution in connection with with pre-judicial disputes.

4. Conclusion

The right to demand a criminal offence because it has expired is regulated in Article 78 of the Criminal Code. The validity period of the expiration of the abolition of criminal prosecution authority in Indonesia is generally stipulated in Article 79 of the Criminal Code. After the expiration of the grace period is stopped by prosecution, a new expiration date is started again as regulated in Article 80 of the Criminal Code. The expiration of the grace period can also be delayed due to the postponement of prosecution as regulated in Article 81 of the Criminal Code. The provisions for prosecuting criminal offenses in Thailand are regulated in the Penal Code of Thailand, in Book I of Provisions Applicable to General Offences Chapter 9 Articles 95-101 (Provisions Applicable to General Offences sections 95-101 Prescription).

The legal rules in both the Indonesian Criminal Code and the Penal Code of Thailand do not provide a definition of what is meant by the expiration of the prosecution of a criminal act, but only provide provisions regarding the expiration date of the prosecution of a criminal act. The differences between the Indonesian Criminal Code and the Penal Code of Thailand regarding the expiration of the prosecution of criminal acts are in terms of the length of time applied, the perpetrators of the crime who are not yet eighteen years old, the exceptions to the grace period, and the provisions regarding the termination and postponement of the expiration of the prosecution of criminal acts.

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