

# Comparison of Criminal Actions Between the Legal System of Indonesia and Thailand

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**Abstract.** The purpose of this study is to examine the arrangement of trial criminal offenses in Indonesia and Thailand as well as the similarities and differences between attempted criminal offenses 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 research is qualitative because the data is presented in a descriptive-narrative way. The results of the study show that the law does not provide a definition of what is meant by trial, but only provides provisions regarding the terms of probation for what kind of criminal act can be punished. Attempted criminal acts in Indonesia are regulated in Article 53 and Article 54 of the Criminal Code. Provisions regarding attempted criminal acts in Thailand are regulated in Articles 80 to 82 of the Thai Criminal Code Book I. The similarity between attempted criminal acts between Indonesia and Thailand, namely the Indonesian Criminal Code and the Penal Code of Thailand (KUHP Thailand) does not provide a definition of what is meant by attempted criminal acts because are both considered as unfinished offenses and the Indonesian Criminal Code and the Thai Criminal Code both impose a penalty of two-thirds of the principal sentence.

**Keywords:** Law, Comparison, Probation

## 1. Introduction

Probation is very important regulated in criminal law [1]. A trial can be punished if a person has started an act which, by its nature, can have direct consequences that are prohibited and threatened with punishment by law [2]. Trial is a criminal act and can be punished if it is combined with one of the articles in the Criminal Code.

The trial in this criminal act is unique because in the formulation of this trial offense it is often difficult to determine the limits of the experiment itself and another difficulty that is often found is determining the boundaries between preparatory and implementing actions [3]. Generally, the act can be assumed as an act of execution, if a person has committed a part of a criminal event, if a person has not started a part of a criminal act, then his act must be viewed as a preparatory act.

The purpose of the trial of a criminal act is so that the person's evil intentions do not develop further by being realized in such a way that the implementation is completed perfectly. So for the prevention of such people should be threatened with a criminal. Threatening punishment on trial is aimed at eradicating evil wills that are evident in actions and protection of the law, which are threatened with danger.

The criminal law setting in the trial of a criminal act is different from the criminal law setting in the completion and non-completion of the act solely not because of his own will [4]. Trials are regulated in Book I on General Rules, Chapter IV Articles 53 and 54 of the Criminal

Code [5]. The definition of trial is not explained by the law, but it is stipulated that an attempt to commit a criminal act is punishable by a criminal if it meets certain requirements, such as an experiment in Article 53 of the Criminal Code and an experiment in Article 54 of the Criminal Code.

The cause of the non-arrangement of an attempted violation is because the offense is light enough to be punished. Attempted violation of specific criminal provisions may also be punished. For example, someone who tries to violate an economic crime [6].

Unlike the case with attempted criminal acts from Thailand [7]. The provisions of criminal law in Thailand regarding attempted criminal acts can be found in Book I on General Provisions. A trial can be sentenced to meet several conditions or elements that have been formulated in Article 80 of the Thai Criminal Code.

It is interesting to note that in the Thai Criminal Code the term "to attempt to commit an offense" is used. The terms attempted to commit crimes and violations are not used, but only use the terms specific offenses in Book II and petty offenses in Book III. The experimental formulation contained in the Thai Penal Code does not explicitly include an element of intention and the implementation is not completed not by one's own will as is the case in the Indonesian Criminal Code. If a trial of a criminal act ends due to an incapacitated trial of a criminal act, then in the Thai Criminal Code, no more than half of the criminal penalties stipulated for the crime in question will be imposed.

The principle is that in the Indonesian Criminal Code trying to commit a criminal act is a prohibited act and the perpetrator can be subject to criminal sanctions, even though the punishment is not up to the maximum limit as specified in the legal article that is violated, but reduced by one third of the maximum threat of criminal sanctions [8]. Only an attempt to commit a crime is punishable by a crime, while an attempt to commit an offense is not punishable. Attempts to commit a crime in the Thai Criminal Code are not punished in principle but as a reason for eliminating the crime. However, an experiment can also be punished if it is a separate crime according to the law, meaning that the maker is convicted for the crime in question.

Indonesia cannot turn a blind eye to the development of the laws of countries in the world. For the perfection of the provisions and the implementation of the trial of a criminal offense in Indonesia, it is necessary to conduct a comparative study between the criminal law of Indonesia and Thailand to find out how the provisions in the trial of a criminal act are made so as to see the merits and weaknesses of the provisions concerning the trial of a criminal offense in each country. The formulation of the problem in this research is : What are the arrangements for attempted criminal acts in Indonesia and Thailand?, and What are the similarities and differences between the Indonesian and Thai legal systems?

## **2. Method**

This type of research is library research [9]. 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 [10]. 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. Criminal Trial Arrangements in Indonesia and Thailand**

Basically the law does not provide a definition of what is meant by probation, but only provides provisions regarding the terms of probation for what kind of criminal act can be punished. The experiment itself can be said as an act of going to something but not reaching the intended thing or it can be said that it wants to do something and has started, but is not finished. The Criminal Code itself does not provide a definition of what is meant by an attempted criminal act, but an explanation is given regarding the conditions for a crime to be said to be a trial and can be subject to punishment, namely:

1. The existence of an intention or voornemen in the sense that the person must have an intention or a voornemen to commit a certain crime.
2. There has been a start of execution or a start van uitvoering in the sense that the person's intention has been manifested in an initiation to commit the crime he wants.
3. The execution to commit the crime that he wanted was later not completed due to problems that did not depend on his will, or in other words the incomplete execution of the crime he had started must be caused by problems that were beyond his will alone.

The reasons for including the experiment as a separate offense are:

1. Basically a person is convicted for committing an offense.
2. The concept of "criminal act" (dualistic view) the size of an offense is based on the main idea of the dangerous nature of the act itself for the safety of the community.
3. Customary law does not recognize trial as an imperfect offense (onvolkomen delictsvorm), for which the offense is completed.
4. There are several acts in the Criminal Code which are considered as stand-alone offenses and are completed offenses, even though the actual execution of the acts has not been completed, so they are only trials. For example, the offenses against treason (aandlagdelicten) in Article 104, Article 106, and Article 107 of the Criminal Code.

In the Dutch literature, an attempt to commit a crime is considered an unfinished offense. Attempts to commit a crime are considered a special offense. This means another offense regulated in the second book of the Criminal Code. The opinion that an attempt to commit a crime is referred to as an unfinished offense can be expressed in several opinions in the Dutch decision.

The article regarding probation is only given by an ausdehnungsgund staff, namely that the punishment specified in the formulation of the offense can also be imposed on perpetrators who are unsuccessful in their efforts to resolve the crime. The confinement of a trial means an extension of the punishment for an offense, even though the act has only been partially carried out. It is as if there are still elements left that have not been carried out by the perpetrators, but have been subject to criminal penalties.

It can be sentenced to trial, legislators broaden the understanding of the perpetrator, including the perpetrator is a person who has not had time to complete what he wants to carry out, has not had time to complete all elements of the offense in the act he wants. The trial is a completed and stand-alone offense. For this reason, three reasons are given. The first relates to the difference in the criminal law system where it is distinguished between criminal acts and criminal liability [11].

Trial is not a stand-alone offense. It is proven that the experiment is regulated in the Criminal Code. So that if someone is accused of carrying out an experiment, an article must be charged against the desired act. Because the article has not fulfilled all of its elements due to the unfinished business of the act, the article on trial is an article that must be included in the indictment. Thus proving that the article on trials contained in the Criminal Code cannot be

indicted independently. Of course, the indictment of the experiment was followed by the crime the perpetrator wanted, namely the crime contained in the Criminal Code.

In general, the arrangements for trials are regulated according to Article 53 of the Criminal Code which states:

1. Attempts to commit a crime shall be punished, if the intention for that has been evident from the beginning of the execution, and the execution was not completed solely due to one's own will.
2. The maximum principal penalty for crimes, in the case of probation, is reduced by one third.
3. If the crime is punishable by death or life imprisonment, a maximum imprisonment of fifteen years shall be imposed.
4. The additional penalty for probation is the same as a completed crime.

If you pay attention to the first sentence of Article 53 of the Criminal Code above where it says "attempting to commit a crime is punishable", it shows that what can only be convicted is an attempt on the type of crime offense, which means that trying to commit a violation offense cannot be punished. The above is reinforced by Article 54 of the Criminal Code whose original text reads "poging tot overtreding is niet strafbaar" which means "attempting to commit an offense is not punishable".

The purpose of making the law not to punish those who voluntarily resign against a malicious intent can be seen from the *memorie van toelichting* (M.v.T) there are two reasons stated in the M.v.T. The first is that the law does not convict someone because there is an intention. Although it has been realized in the beginning of the implementation, but if the intention is deliberately canceled then the person has no more intention to commit the crime that was originally intended. The second reason is related to the interests of the community. The legislature will provide a guarantee not to convict someone if that person voluntarily no longer continues his intention.

Thailand or previously known as Siam is the only country in Southeast Asia that was never colonized by western colonialism. The name Siam was changed to Thailand which means land of free. Since 1923, Thailand, the capital city of Bangkok, has been a unitary state and has a parliamentary system of government. Parliament in Thailand uses a two-chamber system. A constitutional monarchy led by a king as a protector of Thai Buddhism and a symbol of the identity of the nation's unity.

Thailand bases their legal system on civil law. Civil law originally originated in Continental Europe which upholds formal sources of law in the form of a written constitution, such as legislation, customs, and jurisprudence. Meanwhile, common law (Anglo Saxon) bases the legal system on jurisprudence where the previous judge's decision becomes the basis for subsequent decisions.

The three main values in civil law are: (1). Codification, (2). The judge bases the decision on the law, (3). The justice system is inquisitorial. This school argues that legal certainty as one of the objectives of making law can apply because the habits of life and legal actions of the community are contained in the form of written rules that have clear binding power. Meanwhile, the function of judges in giving judicial decisions is guided by the interpretation and determination of existing regulations in accordance with the limits of their authority.

Provisions regarding attempted criminal acts in Thailand are regulated in Articles 80 to 82 of the Penal Code of Thailand Book I concerning General Provisions. The conditions or elements for which a trial may be sentenced are formulated in Article 80 as follows:

Sub 1: Whoever commences to commit an offense, but does not carry it through, or carries it through but does not achieve its end, is said to attempt to commit an offense. (It is said to have attempted a criminal act, whoever begins to commit a criminal act, but does not finish it or carries out or completes it but does not achieve its result or purpose).

Sub 2: Whoever attempt to commit an offense shall be liable to two thirds of the punishment provided for such offense. (Anyone who tries to commit a criminal act will be sentenced to two thirds of the penalty imposed for the crime in question).

From the above formulation, it can be seen that the elements of an attempted criminal act according to the Penal Code of Thailand are:

1. Has started to commit a crime (so there has been a start of implementation).
2. But the execution:
  - a. Not solved, or
  - b. The result or goal is not achieved.

It is also interesting to note that the Penal Code of Thailand uses the term to attempt to commit an offense. So the term "attempt to commit a crime" is not used because the Penal Code of Thailand does not distinguish between types of crimes and violations, but only uses the terms specific offenses in Book II and petty offenses in Book III. The basic provisions governing criminal offenses can be found in the Penal Code of Thailand and the Thai Criminal Procedure Code.

According to Article 80 Paragraph (1) above, it is said that there is a trial if the implementation is not completed or the objective is not achieved. If the goal is not achieved due to an incapacity trial, Article 81 of the Penal Code of Thailand formulates the following :

“Whoever does an act by aiming at the effect which the law provides as an offense shall, if his doing of the act is certainly incapable of achieving its end on account of the factors employed in the doing, or on account of the object at , be deemed to attempt to commit an offense, and shall be inflicted with the punishment of not more than one half of the punishment provided by the law for such offense”. (Whoever performs an action aimed at the result According to the law, which is stipulated as a criminal act, it will be considered to have attempted a criminal act if the act is definitely unable to achieve its objectives, either because of the factors or tools used in the act or because the object for which it is intended and will be subject to a penalty of no more than half of the penalty imposed for the crime in question).

From the above formulation, it is clear that according to the Penal Code of Thailand, if a person already has the intention or purpose to commit a criminal act, but the goal is not achieved because of an incapacitated experiment (either unable to use the tool or unable to carry out the object), he/she remains sentenced to a maximum of half of the criminal penalty for the crime in question. So a little lighter than the experiment formulated in Article 80 above.

The termination of the implementation of one's own free will (there is a voluntary resignation) in the Penal Code of Thailand is formulated separately in Article 82. The non-completion of the execution (in the trial) of one's own free will, according to the Penal Code of Thailand, does not automatically constitute a reason for the abolition of the crime. The non-completion of the trial of his own free will can be the reason for the abolition of the crime as long as the act committed does not constitute a criminal act. However, if it is a separate crime, the perpetrator will still be punished for the crime in question.

### **3.2. Similarities and Differences in Trial Crimes Between Indonesia and Thailand**

Attempted criminal acts can occur in any country, because when a person commits a criminal act, there will be a possibility that the criminal act he has committed is not completed due to reasons, where these reasons are regulated by law. Of course, there are some differences or similarities from one country to another. The following will describe the legal comparison between Indonesia and Thailand to find out the similarities and differences between Indonesia and Thailand attempted criminal acts.

#### 1) Similarities of Trial Crime Between Indonesia and Thailand

The legal rules of both the Indonesian Criminal Code and the Penal Code of Thailand do not provide a definition of what is meant by an attempted criminal act, but only provide provisions regarding the conditions for which trial of a criminal offense can be punished. The trial conditions in the Indonesian Criminal Code are contained in Article 53 of the Criminal Code, namely: [12]

- a. The intention or will of the perpetrator.
- b. There is the beginning of the implementation of the intention or will.
- c. Implementation is not completed solely beyond the intention or will of the perpetrator.

Therefore, in order for a person to be convicted of trying to commit a crime, these three conditions must be proven to exist for him, in other words an experiment is considered to exist if he fulfills these three conditions. The requirements or elements of the attempted criminal act in the Penal Code of Thailand are contained in Article 80 of the Penal Code of Thailand, namely:

1. Has started to commit a crime (so there has been a start of implementation).
2. But the execution:
  - a. Not solved, or
  - b. The result or goal is not achieved.

Attempts to commit a crime in the Indonesian Criminal Code and the Penal Code of Thailand are both considered an unfinished or incomplete offense as a criminal act. Article 53 of the Indonesian Criminal Code states that an attempt to commit a crime is punishable by punishment, if the intention of the maker has been confirmed by the start of the act and the act is not completed until it is completed only because of things that do not depend on his own will. Article 80 of the Penal Code of Thailand stipulates that in carrying out an attempted criminal act, whoever begins to commit a criminal act, but does not complete it or carries out or completes it but does not achieve its result or purpose.

In imposing criminal charges against perpetrators of attempted criminal acts, both the Indonesian Criminal Code and the Penal Code of Thailand both impose a penalty of two-thirds of the principal sentence, although each Criminal Code differs in the delivery of the amount of the sentence imposed. Article 53 Paragraph (2) of the Indonesian Criminal Code states that the maximum principal penalty for crimes, in the case of probation, is reduced by one third. In Article 80 Paragraph (2) of the Penal Code of Thailand, it is stated that whoever tries to commit a crime will be sentenced to two-thirds of the penalty imposed for the crime in question.

#### 2) Differences in Trial Crime Between Indonesia and Thailand

Attempted criminal acts in Indonesia are regulated in Article 53 and Article 54 of the Criminal Code. Trials in the Indonesian Criminal Code distinguish between attempted crimes

and violations. Provisions regarding attempted criminal acts in Thailand are regulated in Articles 80 to 82 of the Penal Code of Thailand Book I concerning General Provisions. The basic provisions governing criminal offenses can be found in the Penal Code of Thailand and Thailand's criminal code of procedure.

The Penal Code of Thailand uses the term to attempt to commit an offense. So the term "attempt to commit a crime" is not used because the Penal Code of Thailand does not distinguish between types of crimes and violations, but only uses the terms specific offenses in Book II and petty offenses in Book III.

In the terms or elements of the experiment as stated in Article 53 of the Indonesian Criminal Code, it is stated that there is an intention or will of the experimenter. Unlike the case with Article 80 of the Penal Code of Thailand, the intention or will of the perpetrator is not stated in the article as an element or condition of an attempted criminal act. In addition, Article 80 of the Penal Code of Thailand states that there are elements of results or goals that are not achieved that are not stated in Article 53 of the Indonesian Criminal Code.

According to Article 81 of the Penal Code of Thailand, it is stated that the trial is not capable of being punished with a maximum sentence of half of the criminal penalty for the crime in question. This incapacity trial is not mentioned in the Indonesian Criminal Code and is not mentioned in the Indonesian Criminal Code.

An incapacitated experiment whose object is relatively imperfect is an act aimed at manifesting certain evils on certain objects, which can generally be achieved, but in certain special circumstances the object causes the crime not to occur. For example a safe which generally contains money, which in general, thieves can take the money in it. But in certain circumstances, for example during the day the money has been used to pay employee salaries, so the safe is empty.

Article 53 Paragraph (3) of the Indonesian Criminal Code stipulates that if a crime is punishable by death or life imprisonment, a maximum imprisonment of fifteen years is regulated, while in Paragraph (4) an additional sentence of trial is regulated which is the same as the completed crime. This is not regulated in the Penal Code of Thailand. The Penal Code of Thailand only states that if what is done is included in or constitutes a crime according to the provisions of the law, he will be punished for the crime in question.

#### **4. Conclusion**

Basically, the law does not provide a definition of what is meant by probation, but only provides provisions regarding the conditions for probation for what kind of criminal act can be punished. Attempted criminal acts in Indonesia are regulated in Article 53 and Article 54 of the Criminal Code. Provisions regarding attempted criminal acts in Thailand are regulated in Articles 80 to 82 of the Penal Code of Thailand Book I concerning General Provisions.

The similarity of attempted criminal offenses between Indonesia and Thailand, namely the Indonesian Criminal Code and the Penal Code of Thailand do not provide a definition of what is meant by attempted criminal acts, attempts to commit a crime in the Indonesian Criminal Code and the Penal Code of Thailand are both considered as unfinished offenses and The Indonesian Criminal Code and the Penal Code of Thailand both impose a penalty of two-thirds of the main crime. The trial in the Indonesian Criminal Code distinguishes between attempted crime and violation while the Penal Code of Thailand does not distinguish between types of criminal acts and violations, the Indonesian Criminal Code states that there is an intention or will of the perpetrator of the experiment, in contrast to Article 80 of the Penal Code of Thailand, the intention or will of the perpetrator of the experiment. the whereabouts of the

perpetrator were not stated, and there was an incapacitated trial according to the Penal Code of Thailand.

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