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# Implementation of Criminal Law in Indonesia

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**ABSTRACT**

The criminal law system is a procedure used to uphold the rule of law and restore order as a result of crimes – acts against the law, committed by mistake, and deserving of punishment. The research method used in this paper is normative juridical law research, namely legal research conducted by examining library materials consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The purpose of this paper is to examine the implementation of the criminal law system in Indonesia. As for the results of the study, it shows that in the criminal system, sanctions are imposed if a person fulfills the elements of a criminal act as evidenced by the presence of malicious intent (mens rea) from the perpetrator.

**Keywords**: Criminal law, Criminal Action, Punishment, Perpetrator, Sanction

## 1. INTRODUCTION

Criminal law is a legal regulation regarding criminal matters. The word "criminal" means something that is "transferred", that is, something that is transferred to an individual by the ruling agency as something that he does not feel good about and also something that is not delegated on a daily basis. Of course, there is a reason for delegating this punishment, and there is a recompense for this, as it should have something to do with a situation in which the individual concerned acts badly. The element of "punishment" as a retaliation is implied in the word "criminal".(Wirjono Prodjodikoro, 2014)

Legislators in various laws use the word "crime" as a translation of "strafbaar feit" without providing any explanation as to what is actually meant by the word "crime". The word "feit" itself in Dutch means "part of a fact" or "een gedeelte van de werkelijkheid" while "strafbaar" means "punishable", so that literally the word "crime" can be translated as "part of a a punishable reality", which of course is not correct, because later we will know that what is punishable is actually a human being as a person and not a fact, deed or action.(P.A.F. Lamintang, 2014)

The term crime actually comes from a term contained in Dutch law, namely Strafbaar Feit. This term is the official term in the Dutch Wetboek van Strafrecht (WvS) and thus is based on the concordance principle. This term is also found in the Dutch East Indies WvS, which we are now more familiar with in the Criminal Code (KUHP). In addition, the term delict is also known, which comes from Latin, namely delictum, in German it is called delict, and in French it is called delict, and in Dutch it is called delict. Whereas in the Big Indonesian Dictionary, the meaning of delict is limited as follows, "an act that can be subject to

punishment because it is a violation of the Criminal Act". (Drs. Adami Chazawi, 2019) Based on background, the purpose of this paper is to examine the implementation of the criminal law system in Indonesia.

## 2. RESEARCH METHOD

The research method used in This writing is research on juridical law normative namely legal research conducted by examining library materials consists of primary legal materials, legal materials secondary, and tertiary legal materials. (Prof. Dr. Soerjono Soekanto, S.H., M.A., Sri Mamudji, S.H., 2015)

Normative juridical research is doctrinal research or studies based on primary and secondary legal sources related to laws and regulations related to criminal law. the author also uses a descriptive-analytical approach intended to describe, examine and explain the problems to be studied, namely related to reform of the Indonesian criminal justice system in the future. The research approach used is the statutory regulation approach which refers to Indonesian laws and regulations which include the Prosecutor's Law. This research relies on secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials obtained through library research as a data collection technique, which is then analyzed using qualitative analysis techniques to get real conclusions.(Appludnopsanji, 2020)

The statutory approach (statute approach) is done by reviewing all related laws and regulations with the legal issues being studied, (Marzuki, 2019) especially Indonesian Criminal Code. In addition, research was also carried out with see how deep empirical practice implementation of legalization in the Ministry Law and Human Rights and Ministry of Foreign Affairs.

## 3. RESULTS AND DISCUSSION

Actions categorized as criminal acts or not can be seen from the elements. Because if it does not meet the elements of a crime, then an act cannot be categorized as a crime. Adami Chazawi mentions the formulations of certain criminal acts in the Criminal Code, so it is known that there are eight elements of criminal acts,(Drs. Adami Chazawi, 2019) namely:

a. Behavioral elements;
b. Elements against the law;
c. Elements of error;
d. Constitutive effect elements;
e. Accompanying elements of circumstances;
f. Elements of additional conditions to be prosecuteobjed for criminal acts;

g. Elements of additional conditions aggravate the sentence;
h. Additional elements to be punished.

The subjective element against the law PAF Lamintang states that a person can be sentenced to a crime if that person has fulfilled the elements of a crime that has been formulated in the Criminal Code, because in general the Articles in the Criminal Code consist of elements of a crime which basically can be divided into two elements, namely subjective elements and objective elements. The subjective elements and objective elements can be explained as follows (P.A.F. Lamintang, 2014):

1. Subjective elements are elements that are attached to the perpetrator himself or related to the perpetrator himself, and are included in that is everything that is contained in his heart. As for those included in the subjective elements, among others:
    a. Intentional or unintentional (Dolus or Culpa)
    b. The intention or voornemen on a trial (poeging), as referred to in Article 53 paragraph (1) of the Criminal Code.
    c. Various purposes or ogbrands.
    d. Plan ahead.
    e. Feelings of fear.
2. Objective elements, namely elements that have to do with circumstances, namely in the circumstances in which the actions of the actor must be carried out. The objective elements of a criminal act include:
    a. Unlawful nature or ederrechtilijkheid.
    b. The quality of the perpetrator.
    c. Causality, namely the relationship between action as a cause and reality as an effect.

According to Wirjono Prodjodikoro, there are two elements of criminal law. First, there is a norm, namely a prohibition or order (rules). Second, there are sanctions (sanctie) for violating the norms in the form of threats with criminal law. These norms exist in one of the other areas of law, namely the field of constitutional law (staatsrecht), the field of state administrative law (administratief recht), and the field of civil law (privaatrecht or burgerlijk recht).(Wirjono Prodjodikoro, 2014)

The types of criminal acts according to Andi Hamzah are distinguished on certain grounds, as follows (Hamzah, 2017):

1. According to the Criminal Code (KUHP), it is distinguished between crimes contained in Book II and offenses contained in Book III. The division of criminal acts into "crimes" and

"offences" is not only the basis for dividing our Criminal Code into Books II and Books III, but is also the basis for the entire criminal law system in the legislation as a whole.

2. According to the way of formulating it, it is distinguished into formal criminal acts (formeel delicten) and material criminal acts (materiil delicten). Formal criminal acts are criminal acts that are formulated that the formulated prohibition is to commit certain actions. For example, Article 362 of the Criminal Code is about theft. The core material prohibition of criminal acts is to cause prohibited consequences, therefore whoever causes prohibited consequences is the one who is held accountable and punished.
3. According to the form of wrongdoing, criminal acts are divided into intentional criminal acts (dolus delicten) and unintentional criminal acts (culpose delicten). Examples of intentional criminal acts (dolus) regulated in the Criminal Code include the following: Article 338 of the Criminal Code (murder) namely intentionally causing the loss of another person's life, Article 354 of the Criminal Code intentionally injuring another person. In negligence offenses (culpa) people can also be punished if there is a mistake, for example Article 359 of the Criminal Code which causes the death of a person, other examples as stipulated in Articles 188 and Article 360 of the Criminal Code.
4. According to the type of action, active (positive) crime, active action is also called material action, is an act to make it happen indicated by the movement of the body of the person who committed it, for example, theft (Article 362 of the Criminal Code) and Fraud (Article 378 of the Criminal Code). Passive crime is divided into pure and impure criminal acts. Pure criminal acts, namely criminal acts that are formally formulated or criminal acts whose elements are basically in the form of passive actions, for example regulated in Article 224, Article 304 and Article 552 of the Criminal Code. An impure crime is a crime which is basically a positive crime, but can be committed in an inactive manner or a crime which contains prohibited elements but is carried out without doing anything, for example regulated in Article 338 of the Criminal Code.

According to Adami Chazawi, the types of criminal acts can be distinguished on certain grounds, namely as follows(Drs. Adami Chazawi, 2019):

1. According to the Criminal Code system, a distinction is made between crimes (misdrijven) which are contained in book II and violations (overtredunggen) which are contained in book III;
2. According to the method of formulating it, a distinction is made between formal crimes (formed delicten) and material crimes (materiel delicten);
3. Based on the form of the crime, it is distinguished between intentional criminal acts (doleus delicten) and unintentional criminal acts (culpose delicten);

4. Based on the type of action, it can be distinguished between active/positive crimes which can also be called commission crimes (delicta commissionis) and passive/negative crimes), also called omission crimes (delicta omissionis);
5. Based on the time and period of occurrence, it can be distinguished between criminal acts that occurred immediately and criminal acts that occurred for a long time or lasted a long time/continuously;
6. Based on the source, it can be distinguished between general criminal acts and special criminal acts;
7. Viewed from the point of view of the legal subject, it can be distinguished between communia crimes (delicta communia, which can be committed by anyone), and proporia crimes (can be committed only by people who have certain personal qualities);
8. Based on whether or not a complaint is necessary in terms of a determination, a simple crime (growne delicten) and a criminal complaint (klacht delicten) are distinguished;
9. Based on the severity of the punishment threatened, it can be distinguished between the principal forms of crime (eenvoudige delicten), aggravated criminal acts (gequalificeerde delicten) and reduced criminal acts (gepriviligieerde delicten);
10. Based on protected legal interests, the types of criminal acts are not limited depending on the protected legal interests, such as crimes against life and body, against property, criminal acts of counterfeiting, crimes against good name, against decency and so on;
11. From the point of view of how many times an act becomes a prohibition, a single crime (enkelvoudige delicten) and multiple criminal acts (samegestelde delicten) are distinguished.

The following is the opinion of experts regarding criminal acts and the elements mentioned. The first group is those who are categorized in the "monolist school", this was revealed by D. Simons quoted by Sudarto in his book.(Buku Hukum Pidana 1, 2018) Sudarto revealed that strafbaar feit is "een strafbar getelde, onrechmatige, met schuld verband staande handeling van een toerekeningsvatbaar person". This means an action or deed that is punishable by law, contrary to law and carried out by someone who is capable of being responsible).

Then Van Hamel also revealed that strafbaar feit is "een weetelijk amschreven menschelijke gedraging, onrechmatig, starwardig en aan schuld te wijten". This means that human actions that are formulated in laws are against the law, carried out by mistake, and deserve to be punished. Meanwhile, according to Moeljanto as quoted by Sudarto(Buku Hukum Pidana 1, 2018) reveals actions that are prohibited by a rule of law and punishable by crime, provided that in this case it is remembered that the prohibition is aimed at actions, namely a situation or event caused by a person's behavior. Meanwhile, the criminal threat is aimed at the person who caused the incident.

The dualistic view distinguishes the separation between the prohibition of an act and the sanction of a criminal threat (criminal act or actus reus) and the accountability of the maker (criminal responsibility or the mens rea). In order for an act to meet the requirements to be called a crime, it must fulfill several elements. In every crime or criminal act in general we can break it down into two kinds of elements, namely subjective elements and objective elements. The subjective element is an element that is attached to the perpetrator or related to the perpetrator, and includes everything that is contained in his heart. While the objective elements are the elements that have to do with the circumstances in which the actor must act. The Criminal Code has also mentioned objective and subjective elements.(P.A.F. Lamintang, 2014)

Objective Elements in Leden Merpaung's book on the theoretical principles of criminal law practice, he describes the objective elements as follows (Marpaung, 2017):

1. Human actions that are included in the main objective elements are as follows:
    a. Act is an active action called a positive action; And
    b. Omission is not actively doing and is also called a negative action.
2. Consequences arising from human actions: Closely related to causality, the effect in question is endangering or eliminating the interests defended by law, for example life, body, independence, property rights or property, or honor.
3. Circumstances: In general, these conditions are distinguished by:
    a. The circumstances at the time the act was committed; And
    b. The state after the act was committed.
4. Punishable nature and unlawful nature: With regard to the reasons that acquit the defendant from punishment. Unlawful nature is against the law, namely with regard to prohibitions or orders

Subjective Element in Leden Marpaung's opinion in his book the theoretical principles of criminal law practice which outlines the subjective elements as follows(Marpaung, 2017):

1. Intentional: According to experts, there are three forms of intentionality, namely:
    a. Intentional as intent;
    b. Deliberately aware of certainty; And
    c. Consciousness with awareness of possibility (dolus eventualis).
2. Unintentional is a lighter form of error than intentional. There are two forms of Unintentional, namely:
    a. Not careful; And
    b. Do not presume the consequences of the act
3. Elements of Unlawful Nature: One of the main elements of a criminal act that is objective in nature is against the law. This is related to the principle of legality implied in Article 1

paragraph (1) of the Criminal Code. In Dutch, against the law is wederrechtlijk. In determining whether an act can be punished, legislators make unlawful behavior a written law. To be able to convict a person who has committed a crime there are provisions in the procedural law, namely:

a. The alleged or charged crime must be proven; And
b. The criminal act is only said to be proven if it fulfills all the elements contained in the written formulation.

It is said further that if the element against the law is expressly contained in the formulation of the offense, then this element must be proven, whereas if the element against the law is not explicitly stated, then it does not need to be proven.

Based on the notions of unlawful nature, the doctrine distinguishes unlawful nature as follows:

a. The nature of formal violation of law, namely an act against the law if the act has been regulated in law. So, using written legal literature; And
b. Material unlawful nature, that is, there is an unlawful act even though it has not been regulated in law. Its backing uses general principles found in the field of law.

4. Elements of Error: The element of error in Dutch is called schuld which is also the main element of a crime, which is related to the perpetrator's responsibility for his actions, including criminal acts or criminal acts. The element of guilt is so important that there is a well-known adage, namely "no crime without fault" which in Dutch is "geen strarf zonder schuld".

There is also an adage "actus non factim reum, nisi mens sit rea" which means that actions do not make a person guilty, unless there is a wrong mental attitude, so a wrong mind or quality mind or mens rea is a mistake which is the subjective nature of a crime. because it is within the doer. Below will be explained the opinion of criminal law regarding mistakes (schuld) which in essence is criminal responsibility, namely(Teguh Presetyo, 2010):

1. Metzger

   Error is the entire condition that provides a basis for whether or not personal reproach against perpetrators of criminal law.

2. Simon

   Error is the existence of a certain psychological state in a person who commits a crime and there is a relationship between this condition and the act committed, which is such that the person can be reproached for committing a personal act.

3. VanHamel

Error in an offense is a psychological understanding, related to the mental state of the offender and the materialization of the elements of the offense due to his actions. Mistakes are a liability in law.

4. Pompes

   In violation of norms committed due to mistakes, usually the unlawful nature is the external aspect. What is against the law are his actions. In it, what is related to the will of the doer is guilt.

5. Moeljatno

   A person is said to have made a mistake, if at the time he committed a criminal act, seen from the point of view of society, he could be reproached, that is why he committed an act that was detrimental to society, even though he was able to know the bad meaning of the act.

## 4. CONCLUSIONS

Criminal law is a legal regulation regarding criminal matters. The word "criminal" means something that is "transferred", that is, something that is handed over to an individual by a competent authority as something that he does not feel good about and also things that are not delegated on a daily basis. The term crime actually comes from a term contained in Dutch law, namely Strafbaar Feit. This term is the official term in the Dutch Wetboek van Strafrecht (WvS) and thus is based on the concordance principle.

Crime is human behavior that is formulated in law, against the law, which deserves to be punished and is done by mistake. Actions categorized as criminal acts or not can be seen from the elements. Because if it does not fulfill the elements of a crime, then an act cannot be categorized as a crime. The types of criminal acts when viewed from the perspective of the Criminal Code can be divided into Books II and III, namely Offenses and Crimes. Apart from that, it can also be divided into dolus and culpa, formal and material crimes.

Against the law is the main element in determining whether an act is a crime or not. Against the law is divided into against formal and material law. In the type of against the material law, it is further divided into against the material law in the positive function and against the law in the negative function.

The element of error in Dutch is called schuld which is also the main element of a crime, which is related to the perpetrator's responsibility for his actions, including criminal acts or criminal acts. The element of guilt is so important that there is a well-known adage, namely "no crime without fault" which in Dutch is "geen strarf zonder schuld". There is also an adage "actus non factim reum, nisi mens sit rea" which means that actions do not make a person guilty, unless

there is a wrong mental attitude, so a wrong mind or quality mind or mens rea is a mistake which is the subjective nature of a crime. because it is within the doer.

## REFERENCES

Appludnopsanji, P. (2020). Restrukturisasi Budaya Hukum Kejaksaan Dalam Penuntutan Sebagai Independensi di Sistem Peradilan Pidana Indonesia. *Sasi*, *26*(4), 571. https://doi.org/10.47268/sasi.v26i4.359

Buku Hukum Pidana 1. (2018). *Prof.Sudarto,SH.* Yayasan Sudarto.

Drs. Adami Chazawi, S. (2019). *Pelajaran Hukum Pidana 1*. Rajawali Pers.

Hamzah, J. A. (2017). *Hukum Acara Pidana Indonesia* (Edisi Kedu). Sinar Grafika.

Marpaung, L. (2017). *Asas Teori Praktik Hukum Pidana* (Edisi Cet.). Sinar Grafika.

Marzuki, P. M. (2019). *Penelitian hukum* (14th ed.). Jakarta.

P.A.F. Lamintang. (2014). *Dasar-dasar hukum pidana Indonesia* (Cet.1). Sinar Grafika.

Prof. Dr. Soerjono Soekanto, S.H., M.A., Sri Mamudji, S.H., M. L. L. (2015). *Penelitian hukum normatif* (17th ed.). Rajawali Pers.

Teguh Presetyo. (2010). *Kriminalisasi dalam hukum pidana*. Nusa Media.

Wirjono Prodjodikoro. (2014). *Asas-Asas Hukum Pidana di Indonesia*. Refika Aditama.