

The Application of the Principle of Error against Perpetrator follow Custody Criminal

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Abstract. *The purpose of this research is to examine and analyze the application of the principle of error to the perpetrators of the crime of collection. The research method used is normative juridical, research is conducted by examining literature or secondary data. The results of the study show that the absolute principle in criminal law as the basis for imposing a crime on the accused is proven to be unlawful as in a single indictment has been fully fulfilled. So the form of error is committed by the defendant if qualified is intentional.*

Keywords: Collection; Error; Principle.

1. Introduction

Evil is an eternal problem, as long as humans inhabit this earth. Evil arose from ancient times to the present day. Its existence has never been erased, only the frequency of occurrence of crimes has changed more or less. Emile Durkheim stated that crime is a normal phenomenon in every society characterized by heterogeneity and social development, because it is impossible to eradicate it completely.¹

The Indonesian state is faced with various problems, one of which is a serious problem is the problem of crime. Where, crime itself grows and develops more rapidly. Crimes committed by a person are strongly influenced by the social structure or environment that interacts directly with that person and these crimes can spread and become bad behavior in society.² Responding to this problem,

¹Soejono Dirjosisworo, 2007, Socio Chrominology Practices of the Social Sciences in the Study of Crime, New Seminar, Bandung, p.195

²Yusril Ilza Amri, Bambang Tri Bawono and Ira Alia Maerani. Criminal Investigation of Motorcycle Stealing Goods. Law Development Journal Volume 3 Issue 1, March, 2021, p.10

regulations were made that regulate this crime which has been codified through the Criminal Code (KUHPidana).

Criminal law is a law that regulates a violation of a predetermined law, a violation and a crime against a public interest and an individual interest, and whoever does what is prohibited in a criminal law will be threatened with criminal sanctions that have been determined committed by the offender. Criminal law is also a law that maintains a stability and a moral institution that has a role in rehabilitating criminal offenders.³

One of the classifications of crimes based on statistical importance is crimes against property. Crimes against property are conventional crimes that have been committed by criminals or criminals such as: theft, embezzlement, fraud, and collection.⁴ The existence of intermediaries as containers for the crime of theft makes it easy for the perpetrators to gain profit, so that the perpetrators of theft do not have to sell their stolen goods to consumers themselves but can distribute them through intermediaries masquerading as traders. The problems that arise, both in the form of violations of the norms of social life and the rule of law to create a phenomenon that is contrary to moral and ethical principles and the rule of law.⁵

Until now there has been no clear formulation or official definition as a guide for criminal law experts. They only classify the crime of collection as a part of crimes against property. Collection as a criminal act is the final part of crimes against assets.⁶ While the term for a crime of collection in the criminal world is buying goods which turn out to be the proceeds of crime such as theft, embezzlement, fraud, extortion and also includes goods that occur because a crime has been committed, such as counterfeit currency, counterfeit notes, and fake diplomas.⁷

Article 480 of the Criminal Code (KUHP) confirms if, "Anyone who buys, offers, exchanges, accepts pledges, accepts gifts or to withdraw profits, sells, rents, exchanges, pawns, transports, stores or hides objects, which he knows or should reasonably suspect, that was obtained from a crime, is threatened with maximum imprisonment of four years because of collection." Considering that the criminal act of collecting so far still occurs, not a few of which have become criminal cases that have reached court proceedings, of course this is an interesting matter to

³Eddie Sutomo. Law Enforcement on Merger of Indemnity Claims in Criminal Case Persecution. *Law Development Journal* Volume 2 No 2, June, 2020, p.8

⁴AS Nature, 2010, Introduction to Criminology, Reflexi, Makassar, p.22

⁵Lamintang, 2019, Special Offenses for Crime Against Assets, Sinar Graphic, Jakarta, p.72

⁶Lamintang, 1997, Fundamentals of Indonesian Criminal Law Citra Aditya Bakti, Bandung, p.89

⁷Muhammad Baharuddin and Akhmad Khisni, Effectiveness of Pleidooi by The Supreme Of Criminal Murder, *Law Development Journal* Volume 2 No 2, June, 2020, p.5

observe. In this study aims to examine and analyze Application of the Principle of Error Against Perpetrator follow Custody Criminal.

2. Research Methods

Approach method using juridical normative, meaning that it focuses on the rules or norms in Indonesian positive law (statutory regulations). Normative juridical research is legal research conducted by examining library materials or secondary data as the basic material for research by conducting searches and literature on regulations related to the problem under study.⁸ The specifications used are analytical descriptive in nature, provide systematic, logical explanations, analyze them in order to review literature, legislation, applicable legal norms and analyze them to draw conclusions.⁹ The data source used by secondary data consists of primary legal materials in the form of legislation relating to legal research conducted.

The data collection method with the main activities carried out is library research, reviewing, studying and processing literature, laws and regulations, judges' decisions and articles or writings related to the issues to be studied. The method of data analysis was carried out qualitatively with the method of data analysis by grouping and selecting the data obtained from the literature study.

3. Results and Discussion

Application of the Principle of Error against Perpetrator follow Custody Criminal in the Waingapu District Court Decision

An act of crime does not only refer to being prohibited and punishable by a crime. However, whether a person who commits an act is then sentenced to punishment, as has been threatened, all depends on the question of whether in committing the act he has made a mistake. Because the principle of responsibility in criminal law is not to be punished if there is no mistake (*geen straf zonder schuld, actus non facit reum nisi mens sist rea*).¹⁰ Because the principle of no crime without error or the principle of error is a fundamental principle in criminal law and becomes one of the elements of criminal responsibility of a subject of criminal law.¹¹

⁸ Soerjono Soekanto and Sri Mamudji, 2016, Normative Legal Research-A Brief Overview, Rajawali Press, Jakarta, p.14

⁹ Amirudin and Zainal Asikin, 2004, Introduction to Legal Research Methods, Raja Grafindo Persada, Jakarta, p.118

¹⁰ Moeljatno, 2008, Principles of Criminal Law, Rineka Cipta, Bandung, p.165

¹¹ Mujahid and Sri Kusriyah, Implementation of Restorative Justice in Criminal Cases at Investigation Level, Law Development Journal Volume 2 No 2, June, 2020, p.9

The criminal act of extortion has been regulated in Chapter XXX of book II of the Criminal Code as the criminal act of extortion. According to Prof. Satochid kartanegara, the crime of extortion is called the crime of facilitating, that is, because the act of receiving has encouraged other people to commit crimes that they might not have committed, if no one was willing to accept the proceeds of the crime. Likewise, the National Law Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia in Chapter XXXI of its draft proposal regarding Book II of the new Criminal Code apparently intended to include the crime of receiving money into the meaning of a new type of crime which he called malicious aid.¹²

In terms of language, pendahan is a word of study or an adjective derived from the word tadah, which has a prefix and a suffix. The word pendulum itself is a verb that denotes the crime or the subject of the perpetrator. In the Big Indonesian Dictionary it is explained that a cistern is a container used to collect something that has fallen or been thrown, to accommodate receiving stolen goods (to sell them again).¹³In the terminology of criminal law, collection is an act of intentionally gaining profit on goods originating from crime, by buying, selling, renting, leasing, accepting pledges, pawning, transporting, storing goods.¹⁴

Criminal liability or criminal liability is actually not only a matter of law per se, but also a matter of moral values or general decency held by society or community groups.¹⁵So that the basis for the existence of a crime is the principle of legality, while the basis for being convicted of a crime is the principle of error. Means that the perpetrator of a crime will not only be punished if he has a mistake in committing a crime. However, when someone is said to have made a mistake is a matter of criminal responsibility.¹⁶

The criminal act of collecting in the main form by the legislators has been regulated in Article 480 point 1 of the Criminal Code consisting of:

a. Subjective elements, which consist of:

- 1) What he knows or waarvan hij weet
- 2) Which he should be able to properly predict or warn hij redelijkerwijs moet vermoeden

¹²Lamintang, 2009, Special crimes against property, Sinar Graphic, Jakarta, p.362

¹³Reality Team, 2008, The latest Indonesian dictionary, Reality publisher, Surabaya, p.611

¹⁴Hamzah, 2009, Criminal Law Terminology, Sinar Graphic, Jakarta, p.98

¹⁵ Muhammad Baharuddin and Akhmad Khishni. Effectiveness of Pleidooi by The Supreme Of Criminal Murder. *Law Development Journal Volume 2 No 2, June (2020), p.7*

¹⁶ Roni Wiyanto, 2012, Principles of Indonesian Criminal Law, Mandar Maju, Bandung, p.180

b. Objective elements, which consist of:

- 1) *Copeneor* buy
- 2) *Burenor* rent
- 3) *Inruilenor* exchange
- 4) *In panda nemenor* mortgage
- 5) *Als geschenkanne* or receive as a gift or as a gift
- 6) *Uit winstbejagor* driven by the intent to make a profit
- 7) *Verkopenor* sell
- 8) *Verhurenor* rent out
- 9) *In pand gevenor* mortgage
- 10) *Vervoerenor* transport
- 11) *Bewarenor* deviate and
- 12) *Verbergenor* hide

The description regarding the crime of collection as regulated in Article 480 number 1 of the Criminal Code, it can be seen that for the first subject of the crime of collection is the element of *waarvan hij weet* or what he knows. Because the criminal act of collection regulated in Article 480 point 1 of the Criminal Code has two kinds of subjective elements, each of which is intentional or *dolus* and unintentional or *culpa* or in other words because it is not a crime of collection regulated in Article 480 point 1 of the Criminal Code has subjective elements which are *pro parte dolus* and *pro parte culpa*, so in the indictment the public prosecutor can indict the two subjective elements together against a defendant who was charged with committing the crime of receiving money as referred to in Article 480 point 1 of the Criminal Code.¹⁷

One of the incidents of applying the Principle of Error Against Perpetrator follow Custody Criminalin the Waingapu District Court's decision, it occurred on Monday, March 28, 2022 at around 23.50 WITA, located in Kapeka Village, RT 011, RW 006,

¹⁷PAF Lamintang, Theo Lamintang, 2009, Special Crimes Against Assets, Sinar Graphic, Jakarta, p.369

Patawang Village. After committing the theft of 1 (one) female Horse, aged 8 (eight) months, black fur color, burnt stamp on right face thigh (Z06), left front thigh, right cheek burn mark (H02), hotu plain, belonging to the victim LT aka LU. Defendant III contacted Defendant I where at that time Defendant I was with Defendant II, then Defendant III ordered Defendant I and Defendant II to come to Defendant III's house, not long after that Defendant I came together with Defendant II, when they had gathered at the house Defendant III, then Defendant III informed Defendant I and Defendant II that Defendant III had taken 1 (one) female horse, aged 8 (eight) months,

Defendant III invited Defendant I and Defendant II to move 1 (one) female horse belonging to the victim from the legong/ex-excavator excavation site to the Lamtaro Tree Forest and Tuak Tree Forest in Padang Pau Kampung Kapeka Rt. 11 RW. 06 Patawang Village. So that the owner of the horse does not know about it, and later the horse will be sold and from the sale of 1 (one) female horse belonging to the victim will later be distributed to Defendant I and Defendant II by Defendant III, after that the Defendants immediately walked to where the horse was were tied up, when the Defendants arrived at the legong/ex-excavator excavated site where the horses were tied, Defendant III immediately untied the horse's ropes from the tree and pulled the horse out of the legong/ex-excavator excavation site to go to the Forest of Lamtaro Trees and Tuak Trees,

Tuesday, March 29 2022, at around 10.30 WITA, the witness belonging to the victim LT alias LU informed witness A and witness N that the horse belonging to the witness belonging to the victim LT alias LU had disappeared, and witness LT alias LU also came to Defendant III's house asking for help to find his lost horse, then Defendant III asked for 3 (three) copies of the Horse KKMT from the witness LT alias LU, and Defendant III asked for money from the 3 (three) copies of the Horse KKMT in the amount of Rp. 3,000,000 (three million rupiah). Deedsthose who do, order to do or participate in doing, buying, renting, exchanging, accepting pledges, receiving gifts, or to take profits, selling, renting, exchanging, pawning, transporting, storing or hiding somethingin the form of 1 (one) female Horse, aged 8 (eight) months, black fur color, burnt stamp on right face thigh (Z06), left front thigh, right cheek burn mark (H02), hotu plain which is known or should be presumed that obtained from the crime of collection.¹⁸

*Based on*Chapter480 paragraph (1) Jo. Article 55 paragraph (1) 1stCriminal Code, Article 191 paragraph (1) Law Number 8 of 1981 concerning Criminal Procedure Code and PERMA number 4 of 2020 concerning Electronic Administration and Trials and other relevant laws and regulations in court. Declare that Defendant I and Defendant II mentioned above have been proven legally and convincingly guilty of committing the crime of "finishing" as in the single indictment of the

¹⁸Decision on Criminal Case Number: 60/Pid.B/2022/PN Wgp

public prosecutor. Declare that Defendant III was not legally and convincingly proven guilty of committing a crime as stated in the single indictment of the Public Prosecutor. Sentenced punishment to Defendant I and Defendant II respectively with imprisonment for 1 (one) year and 2 (two) months. Therefore acquitting Defendant III from the single indictment of the Public Prosecutor.

The description of the act can be said to be a criminal act of detention, so only one of the types of action is proven. "An important element of this Article is "a person should know or suspect" that the goods originate from a crime. So a person does not need to know for sure what crime the goods came from, but he only needs to suspect that the goods came from the proceeds of crime. The existence of intermediaries as containers for the crime of theft makes it easy for the perpetrators to gain profit, so that the perpetrators of theft do not have to sell their stolen goods to consumers themselves but can distribute them through a receiver under the guise of a trader. QThe purpose of sentencing is not merely retaliation for their actions, but also aims to maintain order and a sense of justice in society and educate so that these wrong actions are not repeated either by the Defendants or other people, thus the Panel is of the opinion that the sentence imposed in this decision is appropriate. and in proportion so that it is deemed appropriate and fair.

The Principle of No Criminal Without Guilt or the Principle of Guilt implies that a person who has committed an act that is contrary to the applicable criminal law regulations cannot be punished because there is no guilt in his actions.¹⁹This principle is manifested in article 6 paragraph (2) of Law no. 4 of 2004 concerning Judicial Power, which stipulates that: "No one can be sentenced to a crime, except if the court because of a valid means of proof according to law, gets the conviction that someone who is considered to be responsible, has been guilty of the act he was charged with. " So that the application of the Principle of Error is an absolute principle in criminal law, namely as a basis for imposing a sentence.²⁰But what is the effect of this principle in convicting someone. Whereas the principle of error is the basis for accountability. Meanwhile, mistakes are the state of the soul of the creator and the inner relationship between the maker and his actions. There is a mistake in someone, then that person can be reproached. Regarding the state of the soul of a person who commits an act is what is commonly referred to as the ability to be responsible. Thus there were no reasons for criminal exceptions that could eliminate the criminal responsibility of the Defendant, in their decision the

¹⁹Widya Hari Sutanto and Umar Ma'ruf. The Role of State Attorney Prosecutors to Restore State Financial Losses in Criminal Actions of Corruption to Make Justice. Law Development Journal Volume 3 Issue 1, March, 2021, p.9

²⁰ Muladi & Dwidja Priyatno, 2012, Corporate Criminal Responsibility, Kencana Prenada Media Group, Jakarta, p.105

Panel of Judges concluded that the Defendant had been legally and convincingly proven guilty of committing a crime.

The accused must be found guilty of that and punished in accordance with the criminal provisions governing the actions of the accused. Based on the decision of the panel of judges above, all material elements of the single indictment of the public prosecutor have been completely fulfilled. From the consideration of the judge, the form of error committed by the defendant if qualified is intentional. In this case, deliberately can mean intentionally to do something and deliberately not to do something that should be done.

4. Conclusion

Application of the Principle of Error Against Perpetrator follow Custody Criminalin the decision of the Waingapu District Court, it is an absolute principle in criminal law as the basis for imposing a crime on the defendant who is proven to be unlawful as in the single indictment which has been fully fulfilled. So the form of error committed by the defendant if qualified is intentional.

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