Annals of R.S.C.B., ISSN: 1583-6258, Vol. 25, Issue 5, 2021, Pages. 5528 - 5533
Received 15 May 2021; Accepted 20 May 2021.

Exemptions from Liability in Indonesian Criminal Law Reform

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ABSTRACT

The need for reform of criminal law that illustrates the values that exist in Indonesia. By comparing criminal law as a method to obtain the right formula in formulating future criminal law policies. This research aims to analyze the reasons for the exemptions from liability in the Korean, Norwegian, and Greenland Criminal Code and to analyze the contribution of reasons for exemptions from liability in 3 (three) countries in reforming criminal law in Indonesia. This type of research is normative juridical with a comparative law approach. The results showed that the reasons for eliminating crimes in Criminal Code Korea, Norway, and Greenland provide different definitions and elements. The formulation of grounds for the annulment of crimes in the Korean Criminal Code and Greenland can be considered to formulate the future draft Criminal Code. Addition of penalties for completed / perfect crimes. The amount of the penalty reduction is not determined by law, so it is only a code of verification and "the implementation is not completed solely because of one's own will".

Keywords
Exemptions for Liability; Law Reform; Comparative law

Introduction

As the basis of the state, Pancasila is a religious principle commonly referred to as the basis of state philosophy (Philosophical Grondslag). Apart from being the State's basis, Pancasila is a source of values and norms in every aspect of State administration, including as a source of fundamental norms (Grundnorm) [1]. The consequences of making Pancasila as the basis of state philosophy mean that in every life the nation and state must make Pancasila the basis that animates every step of development including the development of the Indonesian National Law System development of legal substance, legal structure and legal culture [2].

Development of the legal substance/material aspects, among others, is a review of existing national legal instruments if look at the existing legislation, especially the material (substantive) criminal law in effect in our country until now it still uses Wetboek van Strafrecht (WvS) or the so-called Criminal Code (KUHP) which is a legacy of the colonial era government. The Netherlands, which belongs to the family/continental legal system ("Civil Law System"), is influenced by teachings that emphasize individualism and liberalism. According to Sudarto, in Indonesia, the views and concepts of value are based on Pancasila. In contrast, the view of criminal law is closely related to general views about the law, the state and society, and crime (crime) [3].

Initially, the Criminal Code (WvS) was seen as the parent and a form of codification and unification. However, in its development, the Criminal Code is deemed incomplete or unable to accommodate various problems and dimensions of the development of new criminal acts, which are in line with the development of thoughts and aspirations of society's needs. Besides, the current Criminal Code is not a criminal law that comes from fundamental values and socio-philosophical, socio-political and socio-cultural values that live in Indonesian society, so it is appropriate to ask whether the Criminal Code at this time still deserves to be called part of Indonesia's positive law, especially criminal law.

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This colonial legacy criminal code is not a complete criminal law system, because several articles/offences were revoked. Therefore, a new law has emerged outside of the Criminal Code, regulating special offences and special rules. However, the new law outside the criminal code, even though it is a national product, still falls within the auspices of the general rules of the criminal code (WvS) as a colonial-made main system. In short, the principles and basics of the colonial criminal law system still survive with a blanket and an Indonesian face. Although the special law makes special rules that deviate from the main rules of the Criminal Code, in its dynamics, the special Law grows like wild rules that have no system or pattern, are inconsistent, have juridical problems, and even undermine the primary building system, namely the Indonesia Criminal Code.

Furthermore, positive criminal law-oriented to the Criminal Code raises concerns, especially concerning its dogmatic and substantial nature. Teaching the criminal code from Dutch heritage directly or indirectly means teaching and instilling dogmas, concepts and substantive norms formulated in the Criminal Code. As is well known, the Criminal Code has the background of individualism-liberalism and is heavily influenced by classical currents, although there are also influences from neo-classical schools.

Starting from above, it is necessary to reform criminal law that reflects the values that exist in Indonesia. By comparing criminal law as a method to obtain the right formula in formulating future criminal law policies. Sunarjati Hartono defines comparative law as a method of investigation. Not a branch of jurisprudence, as is often assumed by some [4]. The method used compares one legal institution from one legal system to another, which is more or less the same from another legal system. By comparing the law, the elements that are similarities can be revealed, and the differences can be revealed at the same time [5].

This law comparison also in general, can be said that a research method. a science which intends to compare, namely, to reveal the elements of equality and the difference from objects being compared which can be in the form of a particular legal system or legal institution that is compared with a particular legal system or other legal institutions at the same time [6].

Based on the explanation above, it is necessary to discuss further the title "Contribution of Comparative Criminal Law on Reasons for Criminal Abolition in the Renewal of Indonesian Criminal Law (Comparative Study of Legal Abolition Reasons between Indonesia and Korea, Norway, and Greenland)**.** Based on the above problems, the purpose of this study is to analyze the reasons for the elimination of crimes in the Korean, Norwegian, and Greenland Criminal Code and to analyze the contribution of reasons for criminal abolition in 3 (three) countries in reforming criminal law in Indonesia.

Research Methodology

The type of research used is normative juridical research. Research using the normative juridical method is legal research carried out by examining library materials or secondary data. In normative legal research, library material is primary data which in research is classified as secondary data [7]. Thus, the type of data obtained is secondary data. This happens because the nature of the research carried out is in the form of normative research so that the literature method is the most appropriate to the nature of this research. The research approach used is a comparative law approach, which aims to obtain in-depth knowledge of positive laws applicable in various countries[8]. The juridical aspect lies in using approaches to legal principles and

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principles in reviewing, viewing and analyzing problems. The juridical factors are regulations or legal norms related to books or literature used to compile this legal writing revolving around the reasons for eradicating crimes in the reform of Indonesian criminal law in a comparative study of reasons for criminal abolition between Indonesia, Korea, Norway, and Greenland.

Discussion

The reasons for committing a criminal offence Criminal Code in the Korean Penal Code, the reason for committing a criminal offence is categorized as an incomplete crime. Regarding the execution of the crime is not finished. Article 26 of the Korean Penal Code states as follows: If someone after committing a crime intentionally or voluntarily stops his action or prevents the completion of the commission of the crime, his sentence will be reduced or eliminated). From this formulation, it can be seen that if the planning of the attempted crime is not completed due to the's will perpetrator, namely intentionally/voluntarily: To stop the evil act or to prevent the completion of the execution of the crime, and then the criminal can be reduced or eliminated.

According to the Korean Criminal Code, the trial is not completed on one's own accord, does not automatically constitute an excuse for a criminal offence, but can also be a reason for imprisonment/mitigation of crime. It may also be noted that "the action of one's own will not complete" according to article 26 above could be a number; ruckriit or voluntary resignation, and tatigerreue or remorse.

The reasons for the abolition of the Criminal Code in the Norwegian Criminal Code contained in Article 50 explicitly explain the reasons for the abolition of crimes: Trial of crime is not considered punishable if the offender before he knows that the trial, he is carrying out is known by other people with his own free will to stop the continuation of the crime. Before the experiment is completed, or he prevents the consequences of the finished crime he has committed.

The provisions of Article 50 relating to the second element of trial Article 49. According to Article 50 a person who commits an attempted crime of crime, if: With his own free will, he stops the continuation of his evil act before the trial is completed (so there is "voluntary resignation" or Ruckritt); It prevents the consequences arising from the overturned crime he has committed (so there is an "act of remorse" or TatigerReue).

Reasons for the Abolition of Crime in the Greenland Criminal Code Article 88 sub-6 and 7 of the general provisions of part II of the Greenland Criminal Code states that: The court must consider the following circumstances for the reduction of sanctions: That the crime is incomplete (incomplete) especially if the perpetrator deliberately (voluntary) and not due to unrelated or unrelated barriers due to free barriers to the completion of the evil act or the achievement of the offender's objective, to stop the further performance of the dressing which he intended or to prevent or attempt (to attempt) to prevent its completion, or That the perpetrator, completing the crime, has deliberately (voluntarily) avoided/prevented the dangers arising from his actions or repaired or has tried to repair the damage/losses caused by the act)[9].

From the above provisions, it is clear that the Greenland Criminal Code does not formulate an understanding of experimental elements. Although based on article 8, attempted crime is punishable. However, based on articles 88 sub 6 and 7, the judiciary provides a reduction of sanctions if a person commits a crime that is not resolved (commits an attempt): Intentionally or voluntarily stops further execution of the act that was intended, or prevent or attempt to prevent the solution; so, when there is a "voluntary resignation" or Ruckrit. Intentionally or voluntarily

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preventing harm resulting from his actions or repairing or trying to repair the damage/losses caused by his actions; so, if there is something called TatigerReue

Efforts to reform criminal law, in essence, include the field of criminal law policy which is part of and closely related to law enforcement policies, criminal policies and social policy. Therefore, the reform of criminal law in principle is part of a policy (rational effort) to renew the substance of the law in order to make law enforcement more effective, tackle crimes in the framework of protecting society, and overcome social problems and humanitarian problems in order to achieve national goals, namely social protection and social welfare.

Besides, criminal law reform is also part of an effort to review and reassess basic thoughts or ideas or socio-philosophical, socio-political and socio-cultural values that underlie criminal policies and criminal law enforcement policies so far. It is not a criminal law reform if the criminal law's idealized value orientation is the same as the old criminal law's value orientation inherited from the colonizers (WvS). Thus, criminal law reform must be formulated with a policy-oriented approach and a value-oriented approach.

Therefore, criminal law reform should be based on the basic ideas of Pancasila, which is the basis for the values of the national life that are aspired to and explored for the Indonesian nation. The basic ideas of Pancasila contain a balance of values / ideas in it. The following is the balance of ideas/values meant by Religious, Humanistic, Nationalism, Democracy and Social Justice. In reforming it is also necessary to look at the pillars of the law enforcement system as a whole, including The pillars of legislation (which make the "legal substance"); The pillar of judication (which is the "legal structure" in enforcing the law in concreto), and the pillar of education (particularly the Law College which builds a "legal culture", including national law.

Regarding the substance of the law, one of them is a discussion of the reasons for eliminating crime. The reason for the annulment of punishment is a regulation that is primarily aimed at judges. This regulation establishes under what circumstances a perpetrator has fulfilled the formulation of an offence that should be convicted, is not convicted. The judge places the legislators' authority to determine whether there are special circumstances as defined in excuses for criminal annulment. These reasons for the annulment of crimes allow a person who commits an act that has fulfilled the offence's formulation but is not sentenced.

Contrast to reasons that can abolish prosecution. The judge decides the reason for annulment of punishment by stating that the nature of against the law p erases the author of deletion's actions or mistakes because of the provisions of the laws that justify the actions or forgive the maker. There are two types of grounds or reasons for the elimination of crimes, namely justification and excuse. In some criminal law literature, it can be seen about the meaning of justification and excuse for forgiveness and the differences, one of which is in Roeslan Saleh's book that: If someone is not convicted of an act that matches the formulation of the offence it is due to things that result in the absence of resistance. The law is an act, then these things are said as justification. Actions that are generally seen as wrong actions, in certain instances are seen as justified actions, are not wrong actions [10].

On the other hand, if a person who has committed an act that matches the formulation of the offence is acquitted because it is not appropriate for that person to be criticized, he should not be blamed, then the things that cause him not to deserve to be criticized are called things that can forgive him—also shortened on forgiving reasons.

In the current criminal code, the division of reasons for eliminating criminal acts as mentioned above. Regarding the reasons for justification, it is formulated as follows: a person who commits a prohibited act but is carried out to implement the provisions of the statutory regulations, is not sentenced. Anyone who commits an act that is prohibited, but said action is to carry out an office

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order, is not punished. Anyone who commits an act that is prohibited due to an emergency is not sentenced. Anyone who is forced to commit an act that is prohibited because of his defence against an attack or threat of an unlawful attack against himself or another person, moral honour, one's property or another person, shall not be punished for implementing the law; carry out a legitimate office order; emergency state; or forced defence. However, another justification (which is not placed under the title of justification, but is implied in another article), is the absence of materially unlawful nature (the principle of AVAW - Afwezigheid Van Alle MaterieleWederrechtelijkheid).

Regarding excuses for forgiveness consisting of errors regarding facts and errors regarding the law (error facti& error iuris); forced power (relative); forced defence that goes beyond the limit; in good faith carry out invalid office orders. There are other forgiving reasons (which are not placed under the title of Forgiving reasons but are implied in another article), namely the absence of errors (the principle of green strafzonderschuld); unable to take responsibility; and children under 12 years of age.

The reasons for abolishing crimes in Indonesia are different from the three countries (Korea, Norway and Greenland). First, with the Korean Criminal Code, in Indonesia, provisions such as those in Korea are not included in the Indonesian Criminal Code. According to the article above, they cannot be punished unless otherwise stipulated in the law regarding acts of preparation or conspiracy to commit crimes that do not reach the initial stage of the act. Second, with the Greenland Criminal Code. Including the implementation, the element was not completed, not solely because of his own will" as the third element of the experiment in article 53. Thus, the absence of this third element, namely if the execution was not completed due to his own will, would result in the person not being convicted because it was deemed a reason for erasing. Criminal. Pompe or it is seen that there are excuses for forgiveness.

In the formulation of the draft criminal law book, it clearly states that the reasons for future criminal abolition need to be considered so that the other three excuses that are not explicitly included in the sub-heading of "excuse reasons" are then included in the sub-heading "excuses forgiving". Other changes in punishment are as follows: Reformulation of the guidelines for punishment by adding the forgiveness factor of victims / their families; Death penalty is affirmed as a special punishment; The term nominal punishment for children is changed to be verbal punishment; There is an affirmation of the principle that imprisonment against children is only used as a last resort. The inclusion/affirmation of the idea of "diversion" in Rule 17.4 Beijing Rules which contains the principle that in the child's interests (taking into account the purpose and guidelines of the punishment), the judge can at any time stop or discontinue the examination process. In the case of fines for children, a paragraph is added, which confirms that the special minimum fines do not apply to children. Additional penalties can be imposed as a stand-alone punishment or the main punishment and can be imposed with other additional penalties. There are guidelines/rules for implementing criminal fines against corporations; Other additions that were also considered were several reasons for abolishing crimes in Korea and Greenland. Addition of penalties for completed / perfect crimes. The amount of the penalty reduction is not determined by law, so it is only a code of verification and "the implementation is not completed solely because of one's own will". Of course, considerations to include the above elements in the formulation of the Criminal Code Bill in the future must be adjusted to the values that exist in Pancasila and cultural conditions in Indonesia.

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Conclusion

The reasons for eliminating crimes in the Korean, Norwegian and Greenland Criminal Code provide different definitions and elements. First, in the Korean Criminal Code, the elements of reason, namely stopping the evil act, or preventing the completion of the crime's execution, can reduce or abolish the criminal. Second, in the Norwegian Penal Code, there is "voluntary resignation" or Ruckritt, and there is "an act of remorse" or TatigerReue. Furthermore, in the Greenland Criminal Code, there is "voluntary resignation" or Ruckrit and something called TatigerReue.

The formulation of reasons for the annulment of crimes in the Korean Criminal Code and Greenland can be considered to formulate the future draft Criminal Code. Addition of penalties for crimes completed / perfect. The amount of the penalty reduction is not determined by law, so it becomes only a code of verification and "the implementation is not completed solely by one's own will". Of course, it must be following the values that exist in Indonesia, namely containing a balance of values / ideas in it. Following is the balance of ideas/values referred to as Religious, Humanistic, Nationalism, Democracy and Social Justice.

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