

The Principle of Legality in Criminal Unlawful Acts



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ABSTRACT

In Legal Science, we recognize the existence of unlawful acts (PMH). Usually, unlawful acts are identified with acts that violate the law, acts that conflict with the rights of other people, acts that conflict with the values of decency and propriety, and acts that violate general principles in the field of law. Meanwhile, in the criminal context, an unlawful act is an act that violates the law, an act carried out outside one's power or authority, and an act that violates general principles in the field of law. The principle of legality is a principle that determines that criminal acts must first be regulated in law or a legal rule before someone commits a violation or act.

1. INTRODUCTION

The principle of legality and unlawful acts in the criminal context have two different but closely related connotations. Criminal law is part of the law applicable in a country that establishes the foundations and regulates provisions regarding actions that are permitted and prohibited, accompanied by criminal threats for anyone who commits them. When and in what circumstances those who violate the prohibition can be sanctioned and how the imposition of penalties can be carried out.

A principle is a fundamental concept in law used as a basis for determining the law. Criminal law is a branch of law with a central principle, namely the principle of legality. This principle determines that no act is prohibited and punishable unless it is first stipulated in legislation. This is in line with what was formulated by von Feuerbach, which reads

"*nullum delictum nulla poena sine praevia lege poenali*," meaning that no act can be punished except by a penal rule. Feuerbach divided the concept of the principle of legality into three major concepts: first, "*nulla poena sine lege*," meaning that any punishment or sanction must be based on a criminal law; second, "*nulla poena sine crimine*," meaning that a sanction can only be imposed if the act concerned has been threatened with a punishment in criminal law; third, "*nullum crimen sine poena legali*," meaning that an act threatened with punishment, if violated, will result in the imposition of punishment as stipulated in the law against the violator.

The essence of the principle of legality is that no act is prohibited and punishable unless it is first stipulated in legislation. In other words, there must be a law first to determine whether the intended act is prohibited and punishable. According to Sudarto, no act can be punished



except based on the strength of existing criminal law provisions. The principle of legality adopted by Indonesia in the National Criminal Code is stipulated in Article 1, paragraph (1), which states that "no one can be punished or subjected to punishment unless the act has been established as a criminal offense in the legislation applicable at the time the act was committed."

2. METHOD

This research uses a normative juridical approach or normative legal research method. This method is a type of legal research focused on analyzing library materials or secondary data. This research applies deductive reasoning with data collection tools in the form of library research, where secondary data related to the problem is collected from legal books and journals. The collected data is then analyzed through a qualitative analysis approach.

3. RESULT AND DISCUSSION

The expansion of the principle of legality in the practice of unlawful acts in criminal law and criminal acts.

According to Prof. Moeljatno, the definition of criminal law is as follows: Criminal law is part of the entire law applicable in a country that establishes the foundations and rules for:

- a) Determining which acts are prohibited, accompanied by threats or sanctions in the form of certain punishments for anyone who violates these prohibitions.
- b) Determining when and under what circumstances those who have violated these prohibitions can be subjected to the threatened punishment.
- c) Determining how the imposition of penalties can be carried out when someone is suspected of having violated these

prohibitions.

Many opinions on the meaning of material criminal law and formal criminal law explain that material criminal law contains guidelines and explanations about "strafbare feiten" (delicts; criminal acts; offenses), regulations about the conditions of criminal responsibility, the designation of persons who can be punished, and provisions about the punishment; it determines who and how people can be punished. Formal criminal law regulates how the state, through its officials, uses its right to punish and thus contains criminal procedure law. According to Simons, "strafbaarheid" means the determination of persons who can be held accountable.

A criminal act is an act prohibited by a legal rule whose prohibition is accompanied by a threat (sanction) in the form of a certain punishment for anyone who violates the prohibition. It can also be said that a criminal act is an act prohibited and threatened with punishment by a legal rule, provided that the prohibition is directed at the act (a situation or event caused by a person's behavior) while the threat of punishment is directed at the person who caused the event. The elements of a criminal act, according to Prof. Moeljatno, are:

- a) Behavior and consequences (acts).
- b) Circumstances accompanying the act.
- c) Additional circumstances that aggravate the punishment.
- d) Objective elements of unlawfulness.
- e) Subjective elements of unlawfulness.

The term "criminal act" is used to refer to an act prohibited and threatened with punishment by a legal rule, where the act here includes both active behavior (doing something that is actually prohibited by law) and passive behavior (not doing something that is actually required by

law).

The objective elements of a criminal act are elements outside the perpetrator. These elements are related to situations where the perpetrator's actions must be taken, consisting of:

- a) Unlawful nature.
- b) The quality of the perpetrator.
- c) Causality.

The subjective elements of a criminal act are elements inherent in the perpetrator or related to the perpetrator and include everything contained in their heart. These elements consist of:

- a) Intent or negligence (*dolus* or *culpa*).
- b) Intention in an attempt as stipulated in Article 53, paragraph (1) of the Criminal Code.
- c) Various intentions, as found in crimes of theft, fraud, extortion, etc.
- d) Premeditation, as mentioned in Article 340 of the Criminal Code, which is premeditated murder.
- e) Fear, as found in Article 308 of the Criminal Code.

Unlawful Acts in Criminal Law

In the "Memorie van toelichting" or the history of the formation of the Criminal Code in the Netherlands, there is no clear definition of what is meant by the term "law" in the phrase "against the law." If referring to the postulate "*contra legem facit qui id facit quod lex prohibet; in fraudem vero qui salvis verbis legis sententiam ejus circumvenit*," it can be interpreted that someone is considered against the law when the act committed is prohibited by law.

The definition of unlawfulness itself, as stated by Simons, is as follows: "What meaning should be

given to the term against the law in these provisions? According to general opinion, this term means nothing other than without one's own right. While on the other hand, there are arguments that fragment the acceptable view of the existence of unlawfulness, that there is behavior contrary to the law. Without the law has a different meaning from contrary to the law, and the term against the law points only to the latter. The law referred to by the act does not have to be a subjective right but can also be a right in general. Which one is correct depends on the nature of the criminal act and depends on how the legislature formulates the term."

One of the main elements of a criminal act that is objective is the unlawful nature. This is linked to the principle of legality implied in Article 1, paragraph 1 of the Criminal Code. In Dutch, against the law is "*wederrechtelijk*" (*weder*: contrary to; *recht*: law). In determining whether an act is punishable, the legislature makes the unlawful nature an explicit element. Without this element, the legislative formulation would be too broad. Besides, the culpability sometimes included in the formulation of *culpa delictis*.

The teaching of unlawful nature holds an important position in criminal law, alongside the principle of legality. This teaching consists of formal and material aspects. The material aspect of unlawful nature in Indonesian criminal law includes unwritten law, namely customary law. However, the recognition and application of the material aspect of unlawful nature began only in 1965, with further implications being the escape of corruptors due to paying state losses in corruption cases. In its development, this teaching was then formalized in legislation such as Law No. 31 of 1999 and the draft Criminal Code.

When examining articles in the Criminal Code,



we can find the term against the law ("wederrechtelijke") to indicate the validity of an act or intention. The use of the term "wederrechtelijke" to indicate the invalidity of an act can be found in Articles 167, paragraph (1), 168, 179, 180, 189, 190, 198, 253-257, 333, paragraph (1), 334, paragraph (1), 335, paragraph (1), 1, 372, 429, paragraph (1), 431, 433, 1, 448, 453-455, 472, and 522 of the Criminal Code.

Meanwhile, the use of the term "wederrechtelijke" to indicate an intention can be found in Articles 336, paragraph (1), 368, paragraph (1), and 369, paragraph (1) of the Criminal Code. From the point of view of criminal law, the term against the law can be understood in two ways: First, the formal concept, which views that a person can be considered as against the law when the act he committed is explicitly prohibited by the law, i.e., a formal written provision. Second, the material concept, which views that an act can be considered against the law if it violates the values of decency, propriety, and the sense of justice in society.

4. CONCLUSION

In the context of criminal law, the principle of legality is a fundamental principle that ensures that no one can be punished for an act that is not previously stipulated as a crime by law. This principle is closely linked to the concept of unlawful acts, which can be viewed from both formal and material perspectives. The expansion of the principle of legality in practice indicates a need for a balance between written law and unwritten societal values to ensure justice and fairness.

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