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THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER



Our Speaker



Prof. Henning Glasser
 Thammasat University



Prof. Yuzuru Shimada
 Nagoya University



Melissa Crouch
 UNSW Australia



Prof. Henk Adding
 Utrecht University



Assoc. Prof. Dr. Hj. Sri Kusriyah
 Sultan Agung Islamic University

*Democracy In Digital Era : Law,
 Governance, Sosial And Economic
 Perspective In Asia, Australia And
 Dutch*



September 23-24, 2020
 Imam Assafel Buiding, Faculty of Law, Unissula
 Kaligawe Rd KM 4 Semarang, Central Java

THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER

THEME : DEMOCRACY IN DIGITAL ERA: LAW, GOVERNANCE, SOCIAL AND ECONOMIC PERSPECTIVE IN ASIA, AUSTRALIA AND DUTCH

Keywords: *Digital Media, Political and Governance Institutions, Electoral Processes, People Representation, Digital Disinformation, Democracy, Digital Economic, Social issue*



Meet Our Speakers



Melissa Crouch
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Prof Henk Adding
Utrecht University



Prof. Henning Glaser
Thammasat University



Prof. Yuzuru Shimada
Nagoya University



Assoc. Prof. Dr. Hj. Sri Kusriyah
Sultan Agung Islamic University

TECHNICAL MEETING

1. Seminars will be conducted using the Zoom application
2. The Committee will provide a Zoom ID 1 day before the seminar

OBJECTIVE

This agenda aims to provide insights in theory and practice:

1. To exchange and discuss views on the most important issues on Democracy in Digital Era: Law, Governance, Social and Economic Perspective in Asia, Australia and Dutch and its consequences to Law in countries.
2. To discuss the challenges and practical aspect of Democracy and Governance in a Digital Era.

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- Announcement September, 06th 2020
- Full Paper Submission and Transfer September, 07-22 2020
- Conference and Presentations September 24th 2020

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KATA PENGANTAR

Bismillahirrohmanirrohim

Assalamu'alaikum Wr. Wb.

Puji syukur kehadiran Allah S.W.T, Tuhan Semesta Alam Yang Maha Esa. Alhamdulillah, sebagai ucapan syukur kehadiran Allah Subhanahu Wata'ala kami dapat menyelenggarakan The 6nd Proceeding International Conference And Call Paper dengan tema "*Democracy In Digital Era : Law, Governance, Sosial And Economic Perspective In Asia, Australia And Dutch*" terselenggara dengan baik. Pemilihan tema tersebut dipilih karena pada era searang ini kita dihadapkan dengan era industri 4.0, dimana para kandidat doktor dituntut untuk bisa menyesuaikan dengan perkembangan global dan meningkatkan kompetensi keilmuan serta kemampuan.

Pada seminar ini telah dipresentasikan hasil penelitian dosen dan mahasiswa yang diikuti oleh peneliti-peneliti dari berbagai universitas yang telah membahas berbagai keilmuan Hukum dan Humaniora.

Sesungguhnya keberhasilan dalam mencapai tujuan pendidikan yang dicita-citakan sangat tergantung pada sikap mental, partisipasi serta disiplin setiap unsur yang terlibat dalam proses belajar mengajar. Mudah-mudahan seminar Internasional yang sederhana ini dapat memberi sumbangsih dalam mencerdaskan bangsa Indonesia serta semoga Allah SWT selalu menyertakan ridho-Nya. Amin. Akhir kata, kami mengucapkan terima kasih kepada pimpinan Universitas Islam Sultan Agung, pimpinan fakultas Hukum Unissuala, pemakalah, editor dan serta pihak-pihak yang telah membantu terselenggaranya seminar ini dengan lancar tanpa hambatan suatu apapun.

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The Principle Of Culpability (No Criminal Without Error) According To The Kuhp And Islamic Law

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Abstract

The principle of culpability or the principle of error, this principle is not formulated explicitly in the criminal law regulations / KUHP as the legality principle, but this principle is absolute, because this principle is one of the three main problems in criminal law, in addition to this principle is also a requirement for imposing criminal against legal subjects. This paper seeks to explain how the principle of culpability (without punishment without error) according to the Criminal Code and Islamic law.

Keywords: Principle of Culpability, No criminal Without Error, Criminal Law, Islamic Law.

A. Introduction

Mistakes are one of the fundamental elements in addition to the unlawful nature of an act, and must be fulfilled so that a legal subject can be punished. According to Sudarto, it is not enough to convict someone if that person has committed an act that is against the law or is against the law. So even though the author fulfills the formulation of the offense in the law and is not justified (an objective breach of a penal provision), this does not yet fulfill the requirements to impose a sentence. For criminalization, there is still a condition that the person who commits the act has a wrong or guild (subjective guild). In other words, that person must be held accountable for his actions or if seen from the point of view of his actions, he must be accountable to that person.¹

The principle of error in the teachings of criminal law is known as the principle of no crime / punishment without error (*nulla poena sine culpa*) is related to the problem of criminal liability, which criminal law experts include the elements of this criminal responsibility, including committing a criminal act (unlawful nature).), mature or old enough so that he is said to be able to be responsible, sensible means that the perpetrator with his intellect can distinguish between right and wrong, besides that the doer also has the will to realize the action, has wrongs in the form of deliberate action or negligence, and no excuses.

Mistakes are the basis for criminal liability. Mistake is the mental state of the maker and the inner connection between the maker and the deed. If someone is wrong, that person can be reproached. Regarding the mental state of a person who performs an action is what is commonly referred to as the ability to be responsible, while the inner connection between the maker and his action is deliberate, negligent, and excuses for forgiveness. Thus, to determine the existence of an error a legal subject must fulfill several elements, including:²

². *Ibid.*, p. 91.

1. There is the ability to be responsible to the maker;
2. The inner connection between the maker and his actions in the form of intention (*dolus*) or neglect (*culpa*);
3. There is no excuse for erasing mistakes or the absence of excuses for forgiveness.

These three elements are a unity that cannot be separated from one another, where one element depends on the other elements. The principle of non-punishment without error 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 of the absence of a fault in his act. This principle is manifested in Article 6 paragraph (2) of Law 48 of 2009 concerning Judicial Powers, which stipulates that: “No one can be sentenced to crime, except if the court due to legal means of proof according to law receives the conviction that someone who is deemed to be responsible has been guilty of the act that was accused against him “.³ Both the Criminal Code (KUHP) and Islamic law also regulate this culpability principle.

From the background description above, the authors formulate a problem regarding: What is the principle of culpability (without punishment without error) according to the Criminal Code and Islamic law?

B. Discussion

The principle of culpability or the principle of error, this principle is not formulated explicitly in the criminal law regulations / KUHP as the legality principle, but this principle is absolute, because this principle is one of the three main problems in criminal law, in addition to this principle is also a requirement for imposing criminal against legal subjects.

Mistakes are condemnation of the perpetrator of the crime because from the perspective of the community, he can actually do something else if he does not want to commit the act.⁴ People can be said to have an error, if at the time of committing a criminal act, from the viewpoint of society, it can be condemned for it, namely why commit an act that is detrimental to society while being able to know the meaning of the act, and therefore can even avoid such an act.⁵ With this understanding, the understanding of psychological error which focuses on certain mental (psychic) errors of the maker and the relationship between the state of assistance and his actions is such that the maker can be held accountable for his actions⁶ not followed because it raises problems in legal practice which are triggered by the absence of an element “on purpose” or “due to negligence” in the formulation of a criminal act.

In the current Criminal Code, the criminal act of violation does not contain an element of “intentionally” or because of negligence. Therefore, the practice of law has been riddled with questions about whether the elements were not formulated “on purpose” or because of “negligence” in the violation, causing the author to be still sentenced, even though there is no one of the two forms of error. This problem arises and causes doubts about the ability of psychological error theory to explain the problem of error.⁷

Mistakes, namely conscious wills shown to commit a certain crime, mistakes are divided into deliberate and negligent.⁸ According to Moeljatno, a person who can be said to have a mistake, if he at the time of committing a criminal act, from the viewpoint of society can be criticized for it, namely why the act is detrimental to society, even though it is able to know the meaning of the act, and therefore can and should

3. Muladi dan Dwidja Priyatno, *Pertanggungjawaban Pidana Korporasi*, Kencana Prenada Media, Jakarta, 2012, p. 105.

4. Mahrus Ali, *Dasar-Dasar Hukum Pidana*, Cetakan Kedua, Sinar Grafika, Jakarta, 2012 p. 157.

5. Ibid.

6. Ibid., p. 158.

7. Chairul Huda, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Per-tanggungjawaban Pidana Tanpa Kesalahan*, Cetakan Kedua, Kencana, Jakarta, 2006, p. 70.

8. Sudarto, *Hukum Pidana I*, Yayasan Sudarto, Semarang, 1990, p. 81.

even avoid committing it. thereby.⁹

According to Van Bemmelen, the relationship between error and accountability is the most widespread error covering all the elements in which a person is accountable according to the criminal law for an illegal act, including all matters of a complex psychological nature in the form of criminal acts and the perpetrators. Error in the psycho-logical sense is the inner connection between the perpetrator and the actions he / she performs.¹⁰

Three abilities put forward by Van Hamel regarding the will to do. When it is related between the will to do wrong with mistakes as the most important element of accountability, namely:¹¹

1. Indeterminis, which states that humans have free will in acting. Free will is the basis of will decisions. If there is freedom of will, there is no error. Thus, there is no condemnation so that there is no punishment;
2. The determination which states that humans do not have free will. The decision of the will is determined entirely by the character and motive which is stimulated from within and from without. This means that a person cannot be found guilty of not having free will. However, this does not mean that people who commit criminal acts cannot be held accountable for their actions. The absence of this freedom of will creates a person's responsibility for his actions. However, the reaction to the act carried out was in the form of action for public order and not punishment in the sense of suffering;
3. The opinion that wrongdoing has nothing to do with free will. Strictly speaking, freedom of will is something that has nothing to do with mistakes in criminal law. Responsibility in the Criminal Code refers to the subject or the subject perpetrator is a person or perpetrator who can commit the criminal act. Actors or legal subjects in the Criminal Code must be individuals or individuals as regulated in Article 59 of the Criminal Code, namely: "In cases where due to a violation, penalties are determined against the management, members of the board of management and commissioners, then the board members. the board of commissioners which apparently did not interfere in carrying out the violation shall not be sentenced".¹²

In the Criminal Code, there is no provision regarding the meaning of the ability to be responsible, so related to that is Article 44 of the Criminal Code, namely:¹³

1. Whoever commits an act that cannot be held accountable to him, because his soul is defective in his body or a soul that is disturbed by illness, shall not be punished;
2. If it turns out that the offender cannot be accounted for by the perpetrator because his mental development is disabled or is disturbed by illness, then the judge can order that person be admitted to a mental hospital, a maximum of one year as probation period
3. The provision in paragraph (2) only applies to the Supreme Court, Court of Appeal and District Court. In this Article it can be concluded that a criminal act committed by a person cannot be accounted for because of one thing, namely his life is not normal.

To find out what is meant by responsibility, according to Simons, namely:¹⁴

9. Teguh Prasetyo, *Kriminalisasi Dalam Hukum Pidana*, Nusa Media, Bandung, 2010, p. 80.

10. Eddy O.S Hiariej, *Prinsip-Prinsip Hukum Pidana*, Cahaya Atma Pustaka, Yogyakarta, 2014, p. 124.

11. Ibid., p. 121.

12. Ibid., p. 129.

13. Moeljatno, *Asas-Asas Hukum Pidana*, Cetakan Keenam, Rineka Cipta, Jakarta, 1993, p. 178.

14. Teguh Prasetyo, op.cit., p. 85.

1. Able to know / realize that his actions are against the law;
2. Able to determine his will according to that awareness.

To state that being able to be responsible is being able to realize the unlawful nature of one's actions and in accordance with that belief determines one's will. According to Moeljatno, the meaning of the ability to be responsible is:¹⁵

1. Ability to distinguish between good and bad actions, those that are lawful and those that are against the law;
2. Ability that determines his will according to the realization of bad and bad deeds performed.

According to Simons, a person according to the legislators considered that he had done something wrong, if he could realize that his act was against the law and accordingly he could determine the will of that act.¹⁶

1. On purpose;

Intention is divided into 3 (three) types, namely:¹⁷

- a. Deliberate with intent;

It can be said that the criminal perpetrator really wants to achieve the result which is the main reason for the existence of the threat of criminal law. Regarding deliberate purpose, there are 2 (two) accompanying theories, namely:¹⁸

- 1) Will theory, namely the theory put forward by Von Hippel. According to him, deliberation is a will that causes a result of that action. Thus, that action really becomes the purpose of the action being performed. Example: A points the machete at B and A slashes it, so B dies. There is an intent if A really wants B's death;
 - 2) Imagine theory, namely the theory put forward by Frank. According to him, based on a result of psychological reasons, it is impossible for that effect to be desired. Manusa can only wish, hope or imagine the possible consequences. It is formulated that deliberate is when the result is imagined as a result, and because of that the act is carried out by the person concerned in accordance with the image he has previously made. Example: the death of B by A is only imagined in advance that if a machete is stabbed at B then B will die. B's death was just a foreshadowing;
- b. Willfulness with certainty;
Whereas it can be said that the perpetrator of the criminal act knows for certain or is absolutely sure that other than the intended result, another result will occur. The perpetrator realizes that by doing the action there will definitely be other consequences.
 - c. Deliberate with possibility.

The actions of the perpetrator openly are not accompanied by an image of certainty about the result in question but only imagine a mere possibility of that result.

2. Ignorance (culpa).

According to Simons, neglect consists of two parts, namely not being careful to do an act, besides being able to predict the result. However, even though an act is carried out with care, it is still possible for the failure to do so knowing that from the act there may be a result which is prohibited by law. Ignorance occurs

15. Moeljatno, op.cit., p. 178.

16. Eddy OS Hiariej, op.cit., p. 123.

17. Wirjono Prodijodikoro, *Asas-Asas Hukum Pidana di Indonesia*, Ereco, Bandung, 1989, p. 61-66.

18. Teguh Prasetyo, op.cit., p. 96-97.

when a person continues to do the act even though he already knows or suspects the consequences.¹⁹

According to Moeljatno, he said that forgetfulness is a very gecompliceerd structure, which on the one hand leads to errors in one's actions outwardly, and on the other hand refers to the person's inner state. With this understanding, culpa contains the meaning of error in a broad sense which is not an intentional one.²⁰Omission or omission is undesirable, experts generally agree that negligence is a form of error that is lighter than intentional. That is why sanctions or legal threats against violations of criminal norms are carried out with lighter weight.²¹

- a. In general, what is done in a big way or culpa lata, is a very big negligence, so that people who have such mental attitude are disgraceful, because they do not care about the interests of others protected by law.²²This negligence is meant by conscious negligence or it is also called luxuria, which means that the actor thinks that the result will not occur because of his actions, even though that view is then wrong. The relationship of consciousness between the perpetrator and the consequences that could have been avoided can be proved. The perpetrator has considered the possible consequences of his actions, but he believes that he can still avoid or prevent them.²³
- b. Light negligence, which is called a culpa levis, is negligence that is so minor that it does not need to cause a person to be convicted.²⁴This negligence is meant by unconscious negligence or what is referred to as negelientia, where the perpetrator has absolutely no thought that the prohibited consequences may arise because of his actions. Strictly speaking, the perpetrator has no thought at all about the possible consequences that will arise.²⁵

In addition, a person is said to be guilty of committing a criminal act because there is no excuse for forgiveness for the act he has committed. Reasons for forgiveness arise when someone's actions have illegal value, but for certain reasons that make the perpetrator forgiven. The reasons for the elimination of a crime that are included in the excuse reasons contained in the Criminal Code are as follows:²⁶

1. Relative force;
2. Forced defense that goes beyond borders;
3. Carrying out an illegal office order, but the defendant thought the order was valid.

The principle of non-punishment without error (the principle of culpability) as the principle of humanity is also the main principle in Islamic law. According to Islamic law every criminal act has general elements that must be fulfilled, that in addition to fulfilling the formal element (ar-rukun asy-syar'i), namely there must be a text that prohibits the act and threatens with punishment, there must also be an element material (ar-rukun al-maddi), which is to commit an act or inaction which forms a criminal act, besides that the perpetrator must be a mukalaf person, meaning that he is able to be responsible for the crime he has committed or the moral element (ar-rukun al-adabi) .²⁷

In Islamic law, there is a basic rule that according to syara ' , there is no imposition of a law except for a milkalaf who is capable of understanding the arguments of imposition and to carry out the law. The work that is charged is only work that may be carried out and accomplished and known by the mukallaf so

19. Mahrus Ali, *Sistem Pertanggungjawaban Pidana*, Raja Grafindo Persada, Jakarta, 2015, p. 41.

20. Ibid., p. 42

21. Leden Marpaung, *Asas-Teori-Praktik Hukum Pidana*, Sinar Grafika, Jakarta, 2005, p. 25.

22. Zainal Abidin Farid, *Hukum Pidana I*, Cetakan Ketiga, Sinar Grafika, Jakarta, 2010, p. 344.

23. Eddy. Hiariej OS, op.cit., p. 151.

24. Zainal Abidin Farid, op.cit., p. 325.

25. Eddy. Hiariej OS, op.cit., p. 152.

26. E.Y. Kanter & S.R. Sianturi, *Asas-Asas Hukum Pidana di Indonesia dan Pe-nerapannya*, Stora Grafika, Jakarta, 2002, p. 90.

27. Sri Endah Wahyuningsih, *Perbandingan Hukum Pidana Dari Perspektif Religious Law System*, Cetakan Kedua, Unissula Press, Semarang, 2013, p. 94.

that it can encourage him to do it.²⁸

This basic rule aims to explain the requirements for the implementation of a legal decision that must be fulfilled by a mukallaf and the actions that are ordered. There are two conditions that must be contained in a mukallaf to be accountable for his actions, namely:²⁹

1. The mukalaf must be able to understand the proposition of taklifi, namely the texts (provisions) of syara 'which contain the law of taklifi (demands, such as orders, prohibitions, etc.) because people do not have the ability to understand (mental disorders, for example) how is it possible to carry out imposition on him;
2. The mukalaf is deemed appropriate and deserves to be held accountable and sentenced. The actions that are charged must fulfill several conditions, as follows:
 - a. The law / order of action may be implemented and also does not apply to a legal imposition that is impossible to carry out;
 - b. A law is within one's ability to do or leave it. If the law does not exist such criteria, a legal imposition becomes invalid;
 - c. The law / command must first be completely understood by someone to be implemented later.

What is meant by perfect understanding is as follows:

- a. Understand the laws of taklifi. This can happen when the law is enacted and broadcast to the public. People who are not aware of orders or restrictions will certainly not act in accordance with these orders and prohibitions. The application of this rule to a criminal act means that there is no criminal act without a text (provision) in advance which is broadcast and promulgated to the public;
- b. In the legal provisions itself, there are factors that motivate a person to do or not to act. This means that a mukalaf must know that he will be punished if he does not act. The application of this requirement means a text concerning the conduct of a criminal act containing provisions concerning the law.

In line with the above opinion, in the Islamic Law Encyclopedia, it is stated that a person who is held accountable for his actions is: "Only a person who can be assigned taklif (imposition) has the ability to work on and understand taklif's argument. And also "only the work that is charged is possible and can be done and known by the mukalaf in such a way as to encourage him to do the job".³⁰

According to A. Hanafi, the factors that result in criminal responsibility are immoral acts, namely acts against the law, namely doing actions that are prohibited by the law. Although acts against the law are the cause of criminal liability, two conditions are still needed together, namely: knowing (idrak) and choice (ichtiyar). If one of the conditions does not exist, there is no accountability.³¹

According to Islamic law, an order or prohibition is a burden-beban (taklif) of the Shari'a. Therefore, taklif is only imposed on everyone who has a sound mind and understands the taklif (legal imposition). Taklif is a call or something that is communicated (khitab). A person who is able to understand the summons (asl khitab), but does not understand the details, whether it is a prohibition or an order, brings reward or punishment, then that person is like a madman and children who are not yet mumayyiz (not able to distinguish any things. good and bad), therefore they are not given taklifs.³²

28. Ibid.

29. Ibid., p. 94-95.

30. Ibid., p. 95-96.

31. Ibid.

32. Ibid.

In Islamic law, to determine whether there is an act against the law, the element of one's intention is very important, as the Hadith received from Umar bin al-Khattab: "Verily, the work depends on the intention, and in fact every human being gets a reward according to what he / she wants. intend".³³

The principle of culpability in the Qur'an, among others, is implicitly contained in:³⁴

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا
 آكْتَسَبَتْ رَبَّنَا لَا تُؤَاخِذْنَا إِنْ نَسِينَا أَوْ أَخْطَأْنَا رَبَّنَا وَلَا تَحْمِلْ
 عَلَيْنَا إَصْرًا كَمَا حَمَلْتَهُ عَلَى الَّذِينَ مِنْ قَبْلِنَا رَبَّنَا وَلَا تُحَمِّلْنَا
 مَا لَا طَاقَةَ لَنَا بِهِ ۗ وَاعْفُ عَنَّا وَارْحَمْنَا أَنْتَ مَوْلَانَا
 فَانصُرْنَا عَلَى الْقَوْمِ الْكَافِرِينَ ﴿٢٨٦﴾

1.

Surat al-Baqarah verse 286

Meaning: Allah does not burden someone but according to his abilities. He gets reward (for goodness) that he earns and he gets torment (from evil) that he does. (They pray): "O our Lord, don't punish us if we forget or we are wrong. O our Lord, do not burden us with heavy burdens as you carried on those before us. O our Lord, Thou shalt not take upon us what we cannot bear. Please forgive us; forgive us; and have mercy on us. You are our Helper, so help us to the disbelievers".

ادْعُوهُمْ لِآبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ
 فَإِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا
 أَخْطَأْتُمْ بِهِ ۚ وَلَكِنْ مَّا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا
 رَحِيمًا ﴿٥﴾

2.

Chapter A1-Ahzab (33) verse 5

Meaning: Call them (adopted children) by (using) the names of their fathers; that is what is fairer with Allah, and if you do not know their fathers, then (call them) your brethren in your religion and in your first place. And there is no sin against you for what you have mistaken for it, but what your heart will do. And it is Allah Most Forgiving, Most Merciful.

In line with this principle, Hasanudin argues that according to the basic rules, punishment is imposed

33. Ibid.

34. Ibid., p. 97-98.

for deliberate acts, and punishment for wrongdoing is only an exception, then the continuation is that every finger that is done deliberately is subject to punishment, but if it is done wrongly, then it is not subject to punishment, as long as syara ‘does not determine the punishment for people who do it because they are wrong, such as in murder and persecution, because these two fingers are prohibited from occurring, either in a deliberate state or in a wrong condition.’³⁵

So, based on the above opinion, only criminal acts committed on purpose can be punished, while mistakes are not punished before there is a text which states explicitly that committing an act because of wrongdoing is penalized.³⁶

The principle of criminal responsibility based on mistakes is also reflected in the provision that according to Islamic law, criminal liability can be eliminated for 2 (two) things, namely:³⁷

1. Matters related to actions (justification reasons), and which are included in the reasons for eliminating crimes related to actions according to A. Hanafi are:
 - a. Legal defense;
 - b. Teaching;
 - c. Treatment;
 - d. Sports games;
 - e. The elimination of guarantee for the safety of life and property
 - f. Exercise authority and carry out obligations for the authorities (carry out office orders).
2. Things related to the self-condition of the maker (excuses for forgiveness), among others:
 - a. Forced;
 - b. Drunk;
 - c. Crazy;
 - d. Immature.

Actions carried out by the maker are actually criminal acts and should be punished, however Islamic law abolishes the penalties due to the condition of the maker at the time of committing the crime.³⁸

The reasons for the elimination of crime according to Islamic law are also reflected in the provisions of the Qur’an and the Prophet’s Hadith, which include the Hadith narrated by Ahmad, Abu Daud and At-Tirmidzi, the Prophet Muhammad SAW said, meaning: “The sins of the following three people are forgiven. : crazy people until they are sane, people sleep until they wake up, and small children dream of having intercourse ”(Hadith Riwayat Ahmad, Abu Daud, and At-Tirmidhi).³⁹

In accordance with the above Hadith, Ali ibn Abi Talib once said to Umar bin Khattab: Do you know that neither good nor bad deeds are recorded, nor are they held accountable for what is done, because of the following:⁴⁰

1. A crazy man until he realizes;
2. Children until she reaches puberty, and

35. Ibid.

36. Ibid.

37. Ibid., p. 98-99.

38. Ibid.

39. Ibid.

40. Ibid., p. 99-100.

3. People who sleep until they wake up (Imam Bukhari Hadith).

Abdurrahman I. Doi said that a child would not be subject to punishment for the crime he had committed. Because there is no legal responsibility for a person of any age until he reaches puberty. The qodhi (judge) will only retain the right to reprimand his mistakes or set some restrictions for him which will help correct him and stop him from making mistakes again in the future.⁴¹

In Islamic law, actions due to mistakes, forgetfulness and because they are forced are also reasons to eradicate crime, according to the Hadith, which means: “Being lifted from my people is wrong, forgetting and what they are doing because they have to”.⁴²

Apart from being the reasons for the eradication of crimes, these three reasons are also reasons for removing sins, so before Allah SWT there is no responsibility in the hereafter, this is in accordance with the theory of responsibility (redeemer) that the existence of ‘uqubat as a function of responsibility is because’ uqubat can make up for the afterlife sanction. The afterlife sanctions for a Muslim will be canceled by the sanctions imposed by countries in the world. The argument is as narrated by Bukhari and ‘Ubadah bin Shamit ra, saying:⁴³

We were with Rasulullah SAW in an assembly and he said, You have pledged me to not associate Allah with anything, do not steal, do not commit adultery, then he read the whole verse. “Whoever in the study fulfills it, then the reward is with Allah, and whoever gets it something, then the penalty is kifarath (fine) for him, and whoever gets it something, Allah will cover it, maybe forgive or maybe. chase “.

From the study of the principle of culpability in Islamic law, it can be summarized as follows: Islamic law adheres to the principle of culpability as a fundamental principle that is reflected in the rules of Islamic law, both in the Al-Qur’an and Hadith. In principle, according to Islamic law only people who are able to be responsible can be punished (punished), and people who are deemed incapable of being responsible can be subject to reduced sentences in the form of takzir punishment that is adjusted to the benefit of both the perpetrator, the victim and the community.⁴⁴

In principle, a person who can be convicted is a person who commits an act on purpose, punishment for a criminal act committed due to wrongdoing (negligence) is only exceptional as long as the syara ‘determines so.⁴⁵

C. Closing

The principle of error in the teachings of criminal law is known as the principle of no crime / punishment without error (nulla poena sine culpa) is related to the issue of criminal responsibility. The principle of culpability or the principle of error, this principle is not formulated explicitly in the criminal law regulations / KUHP as the legality principle, but this principle is absolute, because this principle is one of the three main problems in criminal law, in addition to this principle is also a requirement for imposing criminal against legal subjects.

In the Criminal Code, to determine the existence of an error a legal subject must fulfill several elements, including the ability to be responsible to the maker, the inner relationship between the maker and his actions in the form of deliberate (dolus) or negligence (culpa), and the absence of reasons. eraser or

41. Ibid.

42. Ibid.

43. Ibid., p. 100-101.

44. Ibid.

45. Ibid.

absence of excuses.

In Islamic law, the principle of non-punishment without error (the principle of culpability) is a humanitarian principle which is also the main principle. According to Islamic law every criminal act has general elements that must be fulfilled, that in addition to fulfilling the formal element (ar-rukun asy-syar'i), namely there must be a text that prohibits the act and threatens with punishment, there must also be a material element (ar-rukun al-maddi), which is to commit an act or inaction which forms a criminal act, besides that the perpetrator must be a mukalaf person, meaning that he is able to take responsibility for the crime he has committed or the moral element (ar-rukun al-adabi) .

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