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THEORETICAL REVIEW OF EXPERIMENTS (POGING) IN THE CRIMINAL CODE

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ABSTRACT

Probation Institute regulated in the Criminal Code called poging according to doctrine is a crime that has been started, but has not been completed or is not perfect, the Criminal Code can threaten an act in order to prevent the occurrence of victims. The Problem Formulation is: How is the Criminal Law Review related to Experiments (poging) in Indonesia?, while the Research Method used is Normative Research, which is obtained from documents or library materials. The objective probation theory that the basis for the conviction of probation is because the act has endangered a legal interest, and the subjective theory of probation that the basis for the conviction of probation is the harmful nature of the perpetrator.

Keywords: *trial (Poging), criminal code, victim*

INTRODUCTION

Action is usually a process, whether sooner or later. Likewise, criminal acts in the form of criminal acts or criminal acts in the form of crimes (Brantingham & Brantingham, 2017). There are criminal acts that harm others that include dangerous stages even though the process has not been completed, but there are already dangerous stages, and of course the law does not have to wait for the completion of actions that harm other parties (McCann et al., 2000). Here it is important to organize a trial service under criminal law.

Called "poging" in Dutch, or This experiment is doctrinally a crime that begins, but is not finished or completed (Bernard et al., 2005). Although criminal law formulates different types of crimes and the threat of punishment for each crime, criminal law certainly does not bear the risk of committing crimes perfectly (Funk, 2004). Or as a result, the criminal law also threatens actions that are just beginning so that victims can be prevented. Isn't deterrence an important cornerstone of modern criminal law?

However, not all new types of legal violations at the beginner and probation levels are criminal. Criminal threats are only directed to criminal acts and not to violations as referred to in Article 54 of the Criminal Code. According to a translation by the translation team of the National Legal Development Agency, "Attempting to commit a criminal offence, where the intention to commit a crime is clear from the beginning of the execution and the non-completion of the execution, not of his own volition." The purpose of this study is expected to answer the research problem of Criminal Law Review related to Trial (Poging) in Indonesia.

METHOD

Types of Research

In writing the author's task to conduct normative legal research, according to Rianto Adi, if the data needed to answer the research problem is sought in documents or library materials, then the data collection activity is referred to as document study or called secondary data.

Normative legal research is usually only a study of documents, using secondary data sources in the form of regulations, legislation, decisions, legal theories, and opinions of leading legal scholars.

Nature of research

In this study, the author used research that is descriptive analysis. As for what is meant by descriptive research analysis, research aims to describe something in a certain area and at a certain time and analyze it. From the results of the research obtained, it is expected to provide an overview of Criminal Law Reform related to Experimentation (Poging) in Indonesia and analyze it so that a general conclusion can be drawn.

Data Type

The main data in this study are secondary data which include:

a. Primary legal data, namely, the Old Criminal Code and the New Criminal Code, Secondary legal materials, namely materials that provide explanations of primary legal materials such as opinions from legal experts (reference books on the Criminal Code).
b. Tertiary legal materials, namely materials that provide instructions and explanations to primary and secondary legal materials, such as language dictionaries and legal dictionaries.

RESULTS AND DISCUSSION

Trial (Poging)

Violations are not punishable by criminal probation, but only crimes, as stated in article 54 of the old Criminal Code which reads: "attempts to commit offenses are not criminalized". However, it turns out that not all attempted crimes can be punished. There are some offenses for which the form of probation is not punished, such as Article 184 on sparring, Article 302 on animal cruelty, and Articles 351-352 on mistreatment (Abidin, 1987).

In addition to the answer to the common question that it is better to prevent than to wait for the victim, there are two theories to answer the question of why new crimes are punished at an early stage.

1. Subjective theory based on the idea that a person or perpetrator is potentially dangerous.
2. An objective theory based on the premise that his actions are potentially dangerous.

Elements of an Experiment

Article 53 above contains three elements of experimentation, namely:

1. There is an intention
2. There is an initial implementation
3. Implementation is not completed of one's own accord

1. Intention

In Dutch texts this intention is called "voornemen" and doctrinally it is simply the desire to commit a crime (Yanev, 2018). More correctly called "opzet" or intentionality (hazewinkelsuriga; jonkers; pompe; simon). It is all-encompassing or recognizes the possibilities. According to Voss, intentionality here is just intentionality as intent.

Information:

Will or intention. In this case problems arise with this requirement because the word will in Article 53(1) of the Penal Code refers to the meaning of opzet. Opzet levels include narrow opzet and wide opset. This raises the question of whether the word will in Article 53(1) of the Criminal Code is a narrow opzet consisting of opzet as an end, or a broad opzet consisting of:

a. Opzet as a goal.

b. Opzet Set as a signal of awareness of the goal.

c. Opzet with possibilities in mind.

For more details, see the case of 6 February 1951 in the Netherlands:

"Driver A increased his speed to avoid checking documents, so the policeman who was watching the vehicle in the middle of the road had to jump to the side of the road to avoid vehicle A being injured. It turned out to be causing injuries."

In this case, it turned out that the court had convicted A of attempted murder. From Opzet A's point of view, his purpose was to avoid checking documents, but the court held that with increasing speed, he should admit the possibility of being hit by police. From this case it is clear that the court adheres to the concept of opzet in a broad sense (Sapardjaja, 2002).

2. Commencement of Implementation (Begin van Uitvoering)

Willpower or intention alone is not enough for a person to be punished, because if it is will alone, the person cannot be punished, and the will is free (Russell, 1930). Commencement of execution means that a certain deed has been done, leading to an act known as evil (Calabresi & Prakash, 1994). Although it looks simple, but on closer inspection it is rather difficult to correctly interpret the meaning from the beginning of its implementation (Saleh, 1987).

a. First of all, the beginning of implementation should be distinguished from preparatory actions or voorbereidingshandeling.

b. The second is whether the beginning of execution is 'beginning to do will' or 'beginning to commit crime'.

This is where various opinions and theories are born. These theories seek to establish or define limits on non-criminal preparatory actions, and the commencement of enforcement can be punished according to the element of probation. But where are the limits? To explain, X wanted to kill Y, so he made the following actions:

a. Rent or buy firearms with bullets.

b. Took the gun home.

c. keep his weapons at home.

d. Plan how to complete the will.

e. Bring a firearm to Y's house.

f. Put the bullet into the firearm.

g. Wait until Y leaves the house.

h. Pointing the firearm at Y.

i. Pull the trigger of the gun and shoot Y:

j. Accidentally jammed the gun and made no sound.

At that time, X was noticed by others and arrested. Where the beginning of the murder was forged. For those who prefer purely subjective theory. The reason according to this theory is why the experiment was punished because humans are dangerous. However, it is clear to those who support the objective theory that such experiments include only those actions that lead to

the presence of damage. Perhaps what is considered now is the action of point e. But making a sharp distinction between subjective and objective theories is pointless. This can be seen from their comments below.

Van Hamel, a proponent of the subjective theory, says that execution begins when an act shows a strong will on the part of the perpetrator to do the deed. Simons, a proponent of objective theory, distinguishes whether there is an offense of execution if it is part of a prohibited act. As for material offenses, enforcement begins when the action is likely to have consequences that are directly prohibited (Lamintang, 1997).

3. Not finished not solely by one's own will

In this regard, MVT explains that the purpose of the letter at the time was to provide assurance to a person who voluntarily quit the crime that had already begun (vrijwillige trusted). Because now it must be included in the indictment and proven by the prosecutor.

The negative proof is very difficult because the prosecutor must prove that the perpetrator voluntarily stopped his crime in order for the perpetrator and defendant to be convicted of the attempted crime. However, this was alleviated by the decision of HR 192, which later became jurisprudence, namely that.

Anyone who resigns voluntarily will not be punished.

Thus, if the resignation is not real, then the existence of one element at the time can be proved by the presence of another element sufficient to show why the offense was not completed. Therefore, it is not necessary to prove that the resignation was not voluntary.

Delik Putatif and Mangel Am Tatbestand

Finally, we need to discuss a few things that are often mentioned in Western literature: putative delicacy and mangel are tatbestand.

1. The putative offense of a crime that is alleged is actually not a criminal act or an attempt to commit a criminal act, but is a misunderstanding by someone who considers the crime committed to be a prohibited crime when in fact it is not regulated in the criminal law. Putative offenses according to the respective criminal law for the same crime. For example, a person who stores medicine. Here the person cannot be convicted because there is no provision of the criminal law prohibiting it.
2. Mangel am tatbestand means that the absence of an element is not because there is no law, but because the element is missing due to not understanding that one of the components (alleged by the perpetrator) is not necessarily fulfilled, meaning that the element is missing. For example, a man may think he has remarried and break the law when his legal wife, whom he hasn't seen in a long time, actually dies. Or someone who thought he had stolen someone else's, but the item turned out to be his because the owner had actually given it.

Many experts say the similarities and differences between impotency experiments, alleged experiments, and elemental deficiencies need not be too complicated. It is enough to check each time whether it is a crime, what constitutes a crime, and whether there is a connection between the unlawful nature and responsibility for that crime.

Poging Theory

1. Subjective Poging Theory. That in this theory, the act is considered an act of execution and therefore can be punished if the perpetrator shows an attitude or disposition that shows a strong will to commit the crime.
2. Objective Poging Theory: this theory, an action is considered a law enforcement action if it harms the interests of the law.

Another question arises, whether criminal law is guided by subjective poging theory or objective pogging theory.

1. If it is considered that Article 53 of the Criminal Code contains the word will or intent, the Criminal Code also adheres to the theory of objective pogging.
2. If it is found that the crime of poging is a rudimentary crime, then the threat will be reduced to 1/3 of the principal crime, and the criminal law will also adhere to the theory of objective pogging.

Thus, the drafting of the Criminal Code makes sense in the case of certain crimes, such as Articles 104 and 110 of the Criminal Code, but at the preparatory stage the convicted crime has been able to be convicted.

Impossible Poging (Ondeugdelijk Poging)

The question is what is an impossibility/capability experiment? Poging is impossibility: "If a person commits a desired act to accomplish a crime, but cannot solve the crime, then he commits the crime." It's not because of being hindered." So an incapable experiment is a crime that should not give rise to the potential for consequences. Example: When the intent to kill is carried out with prayer.

The impossibility or inability to commit a crime can be caused by an object, but it can also be caused by a target. Disability can be categorized according to its type, namely:

1. Absolute incompetence;
2. Relatively incapable.

Thus, four forms of impossibility are known to lead to unsolved crimes:

1. The tool does not work absolutely.
2. The device does not function relatively.
3. The target is really helpless.
4. The tool is not capable of it relatively.

The question is whether Experiments that do not work in any way will be punished or not. Because of an experiment whose tool or target is completely incapable of committing a crime, neither is the tool or target.

To date, attempts to commit crimes whose intent or purpose of the crime is capable or likely to be the target of the crime and the means used are also appropriate, or which may result in prohibited acts and have the potential for the execution of prohibited acts and consequences.

The so-called malfunctioning experiment is an attempted attempt to commit a crime committed in a way that has no repercussions, such as murderous intent committed with prayer. Or shoot a person who looks sleeping with the intention of killing him, but the person turns out to be a corpse, so the corpse cannot be killed. So the non-implementation of criminal acts is not because of the perpetrator but outside the perpetrator, because of inappropriate targets that are used as objects of delicacy, or objects that are not worthy of causing prohibited acts.

The incompetence of an object or goal can be both absolute (absolute) and relative (relative). Relatively dysfunctional means it may be in general circumstances, but due to special circumstances this may not always occur and the crime remains unfinished.

Examples of objects that cannot be relatively.

X wants to kill Y by shooting him. The gun exploded and the bullet hit Y, who was unharmed. The bullet accidentally hit the steel plate in his pocket and bounced. It is called relative because it is not common for people to put iron plates in their pockets, it happens by chance alone.

Examples of means that are completely incapable of absolute

X tries to kill Y by putting poison into Y's glass, but what X thinks is refined sugar, so Y does not die.

Cases with means that cannot be relatively

X, who tried to kill Y, actually put arsenic in Y's drink, but Y happened to have amazing resistance, so a normal lethal dose could not kill Y.

The question is, in these four examples, can X be charged with attempted murder of Y? All his actions are imperfect, and because they are based on something outside of X's intention and not from the cancellation of his intention, but are caused by things that are outside of him, all of them meet the provisions of Article 53 of the Criminal Code and can be punished.

Again, we are dealing with subjective and objective theory on experimental problems. All these theories answer the question of why experiments can be punished for different reasons. Subjective theory postulates that the person is harmful, whereas objective theory postulates that the person's actions are harmful. Therefore, the question of experimental incompetence is not so interesting for supporters of subjective theory. Because everything done by dangerous people, starting from the culprit, is put into the concept of probation and punished.

Proponents of objective theory will argue otherwise. In the case of objects or means that are completely inoperable, the act is clearly harmless and therefore not criminal, whereas in the case of relatively inoperable objects or means the culprit can be criminalized. Because not everyone has special conditions such as poison-resistant Y or Y who has an iron plate in his pocket.

To judge whether a state is absolute or relative, you must pay attention to the structure of a person's thinking. raises a lot of controversies.

Example: A wants to steal money from a store safe. After doing some research, A found that banks are usually full of money on Friday afternoons, as the money will be deposited in the bank the next day. That Friday night, A broke into the vault and forcibly opened the safe, which turned out to be empty because the cashier had deposited money into the bank that afternoon.

- If our thought structure is "empty", the goal is absolute incompetence. Because there is no money to take.
- But if our mindset is "chests usually contain money", the goal is relatively incapable. On other occasions, the chest will be filled again with money.

Some Jurisprudence on Objective or Means Inadequacy in experiments:

HR 29 July 1899

- The imperfect functioning of the means used to commit the crime does not preclude the possibility of punishment in court. In this case, because rust prevents the bullet from escaping from the barrel of the revolver.

HR 25 August 1931

The fact that there is no money in the cash register drawer does not prevent attempts at imperfect violent theft,

HR March 29, 1949

A man who was shot with a gun for two weeks was given yellow phosphorus several times a day which could have caused death, and he did not die in an assassination attempt because the dose of poison he received was not much that could be deadly. This is the same as attempted murder that can be punished?

Finally, we need to discuss some of the things that are often mentioned in Western literature: namely putative delicacies, and Mangel am tatbestand. Putative delicacy, in fact, is not a criminal act or attempted crime, but a misunderstanding by someone who believes that the act committed is a prohibited act, when in fact it is not regulated in criminal law. This dubious crime can occur because each country has its own criminal laws and regulations for the same crime. For example, a person who stores a certain amount of illegal drugs in the Netherlands is not threatened with a crime. Here the person cannot be convicted because there is no provision of the criminal law prohibiting it.

Mangel an Tatbestand means "element-deficient element". Therefore, the absence of the criminal element is also due to misunderstanding, not because there is no law, but because one of the criminal elements (alleged by the perpetrator) is not fulfilled. For example, a man may think he has remarried and break the law when his legal wife, whom he hasn't seen in a long time, actually dies. Or someone who thought he had stolen someone else's, but the item turned out to be his because the owner had actually given it.

New Criminal Code Bill: Trial

The new Criminal Code contains several provisions governing the probation process, such as:

Article 17

(1) An attempted crime is when the offender's intention is proven from the commencement of the commission of the offence in question, but its execution is not completed, has not achieved results, or has not caused a prohibited effect against his own will.

(2) The commencement of the implementation referred to in sub-article (1) shall be when: (a) the act committed or intended to commit a criminal offence (b). acts committed directly can give rise to the criminal act in question;

(3) The maximum penalty for attempted crime shall be two-thirds of the maximum principal penalty for that crime.

(4 Attempts to commit crimes punishable by death or life imprisonment are punishable by up to 15 years' imprisonment.

(5) The additional penalty for attempted crime is the same as the additional crime for the crime concerned.

Article 18

(1) An attempt to commit an offence after commencing the commission of an offence is committed in accordance with article 17 paragraph 1, a. does not complete the offence, if the offender: does not act voluntarily. or b. To prevent the achievement of an objective or consequence of deliberate actions.

(2) If an attempt as referred to in paragraph 1 causes losses according to laws and regulations or is a separate criminal offence, the offender may be held liable for the crime.

Article 19 Even if you try to commit a crime with a maximum fine of category II, it will not be punished.

The New Article 19 Category II fine can be set at

Article 79

(1) The most criminal fines are set based on

Most fines are determined as follows:

a. category I, Rp1,000,000.00 (one million rupiah);
b. category II, Rp10,000,000.00 (ten million rupiah);
c. category III, Rp50,000,000.00 (fifty million rupiah);
d. category IV, Rp200,000,000.00 (two hundred million rupiah);
e. category V, Rp500,000,000.00 (five hundred million rupiah);
f. category VI, Rp2,000,000,000.00 (two billion rupiah);
g. category VII, Rp5,000,000,000.00 (five billion rupiah); and
h. category VIII, Rp50,000,000,000.00 (fifty billion rupiah).

(2) Provisions regarding the amount of fines in the event of a change in the value of money shall be determined by government regulations.

CONCLUSION

There are two basic theories about the criminality of probation, namely the objective probation theory that the basis for the probation conviction is because the act has endangered a legal interest, and the subjective experiment theory that the basis for the probation can be convicted is the dangerous character of the perpetrator. These theories have different consequences in: (1) incapable experimentation; and (2) the boundary between the preparatory act and the beginning of the execution.

Conditions for probation under Article 53 paragraph (1) of the Penal Code: 1) The existence of intention; 2. The intention has been evident from the beginning of the implementation; 3) The implementation was not completed; and,4) The non-completion of the performance was not due solely to his own will; However, the condition "non-completion of the execution is not due solely to his own will" is not essentially a condition for the conviction of probation but is a reason for criminal removal.

Finally, in the New Criminal Code Bill, Article 18 Attempted to commit a Criminal Act shall not be punished if the perpetrator after initiating the implementation as referred to in Article 17 paragraph (1): a. does not complete his act of voluntarily will; or b. by his own will prevents the achievement of the purpose or effect of his actions.

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