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Normative Analysis of Criminal Penalty Reduction of The Pinangki Prosecutor by The Judge of The DKI Jakarta High Court

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Abstract: *Pinangki Sirna Malasari is a Prosecutor who serves at the Attorney General's Office of the Republic of Indonesia who now has to languish in prison because the Prosecutor Pinangki has committed several criminal acts, which in legal theory are categorized as concurrent/combined criminal acts (Samenloop). In the process and course of his sentence, it creates problems from the public's perspective with what has been determined by the judge at the DKI Jakarta High Court. This is because Prosecutor Pinangki, who was originally at the Central Jakarta District Court, was sentenced to prison for 10 (ten) years, but after the defendant, Prosecutor Pinangki filed an appeal to the DKI Jakarta High Court, resulting in a reduced verdict and lightening the defendant, Prosecutor Pinangki. a sentence of 4 (four) years in prison. This is certainly interesting for the author to study, because there are so many responses stating that the law in Indonesia is so unfair. Apart from that, after there was a lot of discussion about the case, it certainly had an impact and influence on the community which resulted in the community also speaking up about the case. So that in this work the author conducts an analysis of the existing legal scientific theory with the practice of implementing law in the field.*

Keywords: *Pinangki Prosecutor, Joint Crimes, Judge*

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A. PRELIMINARY

Criminal punishment is a risk and consequence that must be accepted for anyone who commits a crime. The perpetrator of this crime is certainly a person or referred to as a legal subject who commits a violation or crime that is detrimental, disturbing, even involving security, order, and the public interest. Every perpetrator of a violation or crime, it is ensured that the person has violated the laws and regulations stipulated in Indonesia as a constitutional country rich in laws. This criminal punishment aims to make people more vigilant in acting in their social life. Especially for the perpetrators of criminal acts so that a sense of deterrence will arise in their character, not to commit crimes again in the future.

The provision of punishment for perpetrators of criminal acts gives rise to a meaning that the law must still be upheld for those seeking justice. Because with the enforcement of a sentence, it will bring a good image for the country, especially in matters of the existing constitution. But in terms of law enforcement, as a form of non-compliance, there are still many irregularities in the field. This means that it is still not in accordance with the existing legal theory and scholarship. This has resulted in a decline in the image of the state in the eyes of the public, especially when people finally think that law enforcement in Indonesia is blunt up and down. This of course must be addressed by law enforcement officers, because it involves the progress of the country itself. By avoiding things that are considered deviant, of course, the quality of our law enforcement will result in a good judgment, especially among the community as an element in a country.

The fit is related to the problems that became the point of writing this work, of course, there are many irregularities and even discrepancies that occurred in trying the defendants in this case, So that it becomes an interesting problem point for the author in making this paper, because after all, the output in the future of this paper This provides a new knowledge for the readers. So the author makes a comparison between the theories in science with the facts that occur in this case. Due to the facts on the ground, the role of law enforcement officers in resolving and adjudicating this case is not in accordance with the existing legal competence, both in terms of theoretical equations and in direct implementation in the field.

Furthermore, the public's view is on the status of the defendant in this case. In the end, the community gave an unfavorable view of law enforcement in this case. Not only from ordinary people, even from academics, journalists, and state officials though. Determination of the law against the defendant in this case was so easy, that in the end caused laughter to the parties, because it was considered funny and a joke. With the stipulations and facts on the ground, of course, it is necessary to carry out a normative study to produce concrete evidence in what adjustments and determinations should be like. Because this law relates to the general public, everything that is considered odd must be immediately resolved properly and appropriately.

B. THE PROBLEM

Based on the introduction described above, the main problems are as follows:

1. What is the purpose of criminal law? Achieved or not the purpose o criminal law in the determination of the case above?

2. How is the punishment system and its application in the above case?

3. What is the impact of the decision on the case in the community?

C. DISCUSSION

The imposition of punishment on a person who is a criminal is a form of risk that must be accepted by that person as a result of what he has done. Because the existence of criminal law has the following objectives:

a. To frighten people not to commit crimes, both aimed at:

   1) Scare the crowd (general preventive)

   2) Scare certain people who have committed crimes so that in the future they will not commit crimes again (special prevention)

a. To educate or improve people who have indicated they like to do evil so that they become people of good character so that they are beneficial to society.

b. According to Wirjono Prodjodikoro, these two goals are additional or secondary goals, and according to him, through these goals, they will play a role and continue the social balance which is the primary goal.

As further quoted by Andi Hamzah, in the book "Principles of Criminal Law", Van Bemmelen's view which states that criminal law is the same as other parts of the law, because all parts of law determine regulations to establish norms recognized by law. Criminal law, in one sense, deviates from other parts of the law, namely in criminal law it is discussed about the addition of suffering intentionally in the form of a crime, even though the crime has another function than adding to the suffering. The main purpose of all parts of the law is to maintain order, tranquility, prosperity and peace in society, without intentionally causing suffering.[1]

From the description of the purpose of criminal law above, it provides an explanation that criminal law absolutely provides a deterrent effect to perpetrators of criminal acts. However, sometimes there are still people who are perpetrators of these crimes who do not have a sense of deterrence from the punishment that has ensnared them. Not only providing a deterrent effect, the purpose of criminal law itself is to provide a gradual process to change a person's attitude and character in his life to lead a better life based on his attitude and character which begins to change on the basis of ensnaring a person's punishment.

If it is related to the case study being discussed by the author, the pattern and application of the law handed down to the defendant Pinangki Prosecutor has fulfilled the purpose of this criminal sentence. However, the consistency of the sentence given was not so firm against the defendant, the Pinangki Prosecutor, because of the cuts set by the DKI Jakarta High Court. The main issue is whether the Pinangki Prosecutor will

1 H. Suyanto, 2018. *Pengantar Hukum Pidana, Yogyakarta: Deepublish, Hal. 15*

feel a deterrent effect on him in accordance with the objectives of the criminal law? Or even in the end it grew a bad character in the defendant Pinangki because he felt that he was given leniency in legal entanglements who later thought that this sentence was very easy to play with? This concern is certainly a problem among the community because it is considered that this law is unfair to someone who is part of the executor of the existing government order.

But on the other hand, the purpose of criminal law to educate and improve someone who is a criminal in the case of the defendant Pinangki is unlikely to be achieved and successfully. Because, like the facts on the ground, the application of the punishment of the defendant Pinangki Prosecutor is not firm, which is not in accordance with the crime he committed. Moreover, the crime he committed was not the only one, but three crimes at once (Combined Crime/Samenloop).

Furthermore, because the criminal acts committed by the defendant Pinangki Prosecutor are concurrent criminal acts (Samenloop), in which the crimes committed are as follows:

1. Corruption (accepting bribes)
2. Money laundering crime
3. Evil conspiracy

In this case, it can be proven that the defendant, the Pinangki Prosecutor, has committed a crime that is so detrimental, especially since the crime is not just one crime. In concurrent criminal acts, it is known that there are several forms of concurrently carried out, including:

1. The act of *concursus idealis* or *eendaadse samenloop,* if a person commits an act but is included in several criminal law, regulations, so that person is considered to have committed several criminal acts (Article 63 KUHP).

2. Continuing action or *voortgezette* handling, if a person commits several criminal acts, each of which is an independent act (crime or violation) but between those actions there is a relationship with each other which must be considered as a continuing act (Article 64 KUHP). In the MVT (Memorie van Toelichting) The criteria for actions that are considered as continuing actions are:
   a. There must be a willingness
   b. Each action must be the same
   c. The grace period for these actions is not too long.

3. The act of *concursus realis* or *meerdaadse samenloop,* if someone commits several criminal acts, each of which is a stand-alone act (crime or violation) but it is not necessary for the acts to be related to each other or of the like (Articles 65, 66, 70, 70 bis KUHP)[2]

Of the three forms that are included in the concurrent criminal acts above, several criminal acts committed by the defendant Pinangki are included in the category of concurrent criminal acts of *concursus realis* or *meerdaadse samenloop.* Because the three crimes committed by the defendant Pinangki Prosecutor were several separate criminal acts.

2 Fitri Wahyuni, 2017. *Dasar-Dasar Hukum Pidana di Indonesia, Tangerang Selatan: Nusantara Persada Utama, Hal. 131*

From what is written in a scientific theory of law, of course, everything that happens in the real field must be in accordance with what has become its provisions. Likewise, in the Pinangki Prosecutor's case, when the defendant Pinangki Prosecutor commits several criminal acts, the scientific theoretical reference is this concurrent/combined criminal act (Samenloop). In concurrent criminal acts (samenloop) it is known as the law giving system, because this concurrent consists of several criminal acts which can be the same or even different, it is necessary to have a criminal system in enforcement and its application in real life. The main issue with the combination of committing a crime is about how the system of giving punishment for someone who has committed a combined offense, in the Criminal Code there are four theories that are used to provide punishment for perpetrators of criminal acts together,that is :

1. Absorption System or Pure Absorption System. In this system, the punishment imposed is the heaviest of the punishments imposed. In this case, it is as if a light sentence is absorbed by a heavier one. The weakness of this system is that there is a tendency for criminals to commit lighter crimes in connection with the threat of heavier penalties. The basis of this suction system is Article 63 and 64 KUHP that is for a combination of single criminal acts and continued acts.

2. Sharpened Absorption System. In this system the threat of punishment is the heaviest punishment, but still has to be added 1/3 times the maximum maximum sentence stated. This system is used for a combination of multiple crimes where the principal penalty is the same. The basis used is Article 65 KUHP

3. Pure Cumulative System or Pure Summation System. The pure cumulative system is a system for criminal acts that are threatened or subject to sanctions without any reduction. This system applies to a combination of multiple crimes against offenses with offenses and crimes with offenses. The legal basis is Article 70 KUHP.

4. Limited Compilation System. The limited accumulation system is the threat of punishment for each crime that has been committed, totaled up. However, it must not exceed the heaviest maximum plus one third. This system applies to a combination of multiple criminal offenses, where the principal penalties are not the same. The legal basis in Article 66KUHP.[3]

Of the four systems above, only three are often used, namely pure absorption systems or pure absorption systems, sharpened absorption systems and limited accumulation systems. Meanwhile, the pure cumulative system or the pure summation system has never been used in practice because it contradicts the samenloop teaching which in principle relieves the defendant.[4] In this case, the above theories need to be applied to concurrent/combined criminal acts in practice in the field, the purpose is solely to provide punishment for the perpetrators of criminal acts in accordance with the provisions of the legislation.

3 *Ibid.*

4 *Ibid.*

The system of giving criminal penalties from the theory above, seen from the aspect of the Pinangki Prosecutor's case, is included in the category of combined criminal acts, which, as has been written above, the Pinangki Prosecutor has committed three related crimes. In this case, can the application of the law against the defendant Pinangki be said to be in accordance with the existing theory or not? Previously, let us know how the process of determining the sentence for the defendant Pinangki Prosecutor was and what articles were stipulated in his entrapment.

1. Pinangki was declared to have violated Article 11 of Law Number 31 of 1999 concerning the Eradication of Corruption. Where the article reads as follows:

"Everyone who commits a criminal act as referred to in Article 418 of the Criminal Code, shall be punished with a minimum imprisonment of 1 (one) year and a maximum of 5 (five) years and a minimum fine of RP. 50,000,000.00 (fifty million rupiah) and a maximum of RP. 250,000,000.00 (two hundred and fifty million rupiah)."[5]

Next, let's examine and find out what the contents of Article 418 of the Criminal Code (KUHP) are related to the article above. Article 418 reads: *"An official who accepts a gift or promise, even though he knows or should suspect that the gift or promise was given because of the power or authority related to his position, or in the mind of the person giving the gift or promise that is related to his position, is threatened with imprisonment for a maximum of six months or a maximum fine of four thousand five hundred rupiah."*[6]

2. The determination of this article for the defendant Pinangki is appropriate and appropriate, because the crime he committed is related to his position of power as a civil servant and state administrator.

3. Pinangki also violated Article 15 jo conjunction with Article 13 of the Corruption Law regarding evil conspiracy. The article reads as follows: Article 15:

"Everyone who conducts experiments, assists, or conspires to commit a criminal act of corruption, shall be punished with the same punishment as referred to in Article 2, Article 3, Article 5 to Article 14."

Furthermore, in this article there is another related article, namely Article 13 of the Anti-Corruption Law, which contains the following articles: *"Any person who gives a gift or promise to a civil servant by remembering the power or authority attached to his position or position, or by the giver of a gift or promise deemed attached to that position or position, shall be punished with imprisonment for a maximum of 3 (three) years and or a fine. 150,000,000.00 (one hundred and fifty million rupiah) at most."*[7]

The stipulation of this second article on the crime committed by the defendant, the Pinangki Prosecutor, is also correct. Because it still relates to the power and authority of his position as a prosecutor (civil servant).

5 Undang-Undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi
6 Kitab Undang-Undang Hukum Pidana
7 Undang-Undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi

4. In addition, because in the statement it is clear that the Pinangki Prosecutor also conspired together with Djoko Tjandra, Anita Kolopaking, and Andi Irfan Jaya to promise something in the form of 10 million US dollars to officials at the Attorney General's Office and the Supreme Court. The purpose of the evil agreement was so that Djoko Tjandra could enter Indonesia without serving a criminal sentence by issuing an MA fatwa.
5. Defendant Prosecutor Pinangki also violated the money laundering article, namely Article 3 of Law Number 8 of 2010 concerning the Crime of Money Laundering. Previously, the description of the defendant Pinangki's case which resulted in being snared by this article because the Pinangki Prosecutor was found guilty of money laundering with a total value of 375,229 US dollars or around RP. 5.25 Billion. The money came from the convict of the Bank Bali case, Djoko Tjandra, which was given in connection with the management of fatwas at the Supreme Court (MA). The contents of Article 3 of Law Number 8 of 2010 are as follows:

"Any person who places, transfers, transfers, spends, pays, grants, entrusts, takes abroad, changes form, exchanges for currency or securities or other actions on assets which he knows or reasonably suspects is the result of a criminal act as referred to in paragraph (1). Article 2 paragraph (1) with the aim of concealing or disguising the origin of assets shall be punished for the crime of money laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah).[8]

In the article above stated the intent in Article 2 paragraph (1), for more clarity in the completion, let us know how the contents of the article, as follows: Article 2 paragraph (1): "The proceeds of a crime are assets obtained from a criminal act:

a. *corruption;*
b. *bribery;*
c. *Narcotics;*
d. *Psychotropic;*
e. *labor smuggling;*
f. *Migrant smuggling;*
g. *In the banking sector;*
h. *In the field of capital market;*
i. *In the field of insurance;*
j. *Customs;*
k. *excise duty;*
l. *Trafficking in persons;*
m. *Illegal arms trade;*
n. *Terrorism;*
o. *Kidnapping;*
p. *Theft;*
q. *Embezzlement;*
r. *Fraud;*
s. *Counterfeiting money;*
t. *Gambling;*
u. *Prostitusi;*
v. *In the field of taxation;*
w. *In the forestry sector;*
x. *In the environmental field;*
y. *In the field of marine and fisheries; or*
z. *Other crimes punishable by imprisonment of 4 (four) years or more, Those committed in the territory of the Unitary State of the Republic of Indonesia or outside the territory of the Unitary State of the Republic of Indonesia and such crimes are also criminal acts under Indonesian law."*[9]

8 Undang-Undang Nomor 8 Tahun 2010 Tentang Tindak Pidana Pencucian Uang

9 *Ibid.*

In the category of entanglement in the article on the crime of money laundering, it is very clear what has been done by the defendant, the Pinangki Prosecutor. Because in addition to the defendant exchanging money, the defendant also spent the money to meet all his needs and lifestyle, where the source of his finances was from the source of criminal acts, even the inmate Djoko Tjandra in the Bank Bali case. So in terms of ensnaring the third article, according to the author, it is also correct. Based on the explanation of the entrapment of the defendant, Prosecutor Pinangki, which was deemed appropriate in the sentencing and entrapment of the reason, but it still caused a problem that continued to be a question among the public, especially because of the cuts or remissions in determining the sentence for the perpetrators of the above crimes namely the Pinangki Prosecutor. Which was originally determined by the Central Jakarta District Court with a prison sentence of 10 (ten) years to 4 (four) years as a result of a decision at the DKI Jakarta High Court after the Pinangki Prosecutor submitted a memorandum of appeal. And strangely, the Public Prosecutor (JPU) at the High Court level argues that there is no need to file an appeal on the grounds that the demands submitted are in accordance with the demands that have been filed by the Public Prosecutor (JPU) at the first court level, namely the Central Jakarta District Court. Other than that, The judges at the DKI Jakarta High Court argued and reasoned why it happened and decided that the sentence was finally lighter than the previous decision at the District Court because the High Court judge considered that the 10 (ten) year sentence was too heavy, especially since the defendant Prosecutor Pinangki pleaded guilty and said he regretted it. His actions have been sincere about being fired from his profession as a prosecutor. Moreover, the defendant, the Pinangki Prosecutor, has a child who is under the age of 4 (four) years, which he said still needs to get love from his mother. Therefore, the defendant is still expected to behave as a good citizen. Whereas, by the judge at the Central Jakarta District Court as the first court, the Pinangki Prosecutor has been sentenced to 10 years in prison and a fine of RP. 600,000,000.00 (six hundred million rupiah).[10]

The entrapment of the articles that are demanded by the Public Prosecutor (JPU) at the District Court level is considered appropriate for a defendant, moreover the verdict set by the Judge at the District Court is so firm and clear, because the purpose of criminal law is to provide a sense of deterrence and provide good lessons for students. Other people in order not to commit a criminal act is likely to be achieved and implemented. On the other hand, it is still in the system of giving punishments in a combination of criminal acts (Samenloop), from the explanation and description of the case above, according to the author's analysis that in accordance with legal, scientific theory, in practice, judges in the District Court must have carried out the stages in accordance with their provisions. Judging from the start of the trial and sentencing of the defendant, Prosecutor Pinangki, that the judge at the Central Jakarta District Court used a limited cumulative system of law enforcement. Because in the sentence an addition has been made, but does not exceed the

10 https://www.cnnindonesia.com/nasional/20210615073849-20-654352/alasan-hakim-potong-vonis-jaksa-pinangki-punyaanak-4-tahun

maximum maximum plus a third, and the principal sentence is not the same as the multiple crimes committed by the defendant Pinangki, namely imprisonment and a fine.

However, the decision of the Central Jakarta District Court is actually different from the decision or verdict set at the DKI Jakarta High Court after an appeal was filed. Where the verdict handed down was actually lighter than the one previously handed down at the Central Jakarta District Court. Even though the crime committed by the defendant Pinangki Prosecutor is not a case that is included in the category of minor crimes. The attitude taken by judges in making decisions is an important and the main component so that the integrity of the judge's profession is maintained. In other cases, a judge should consider and decide a case that must be based on the principles of justice, legal certainty and usefulness so that the decision issued and determined becomes an ideal decision.

Furthermore, if a comparison of similar cases is made in relation to something that is the reason, the defendant Pinangki Prosecutor does seem unfair in the verdict he received with other cases and for the same reason. Here the author cites one case which has the same reason as the Pinangki Prosecutor's case, which is about still having minors. The following are excerpts from the case:

“A mother and baby in North Aceh are in prison because of the ITE Law. Isma Khaira (33 years) and her baby (6 months) are imprisoned in the Lhoksukon detention house, North Aceh Regency. Isma's case began when he recorded a video of a village head fighting in North Aceh. Then he uploaded it on his social media account. The village head in the video did not accept Isma's post. Then he reported Isma to the police with a libel complaint. In the report of the village head, Isma was found guilty and sentenced to 3 months in prison by the Lhoksukon District Court. She and her baby have been in prison since February 19, 2021."[11]

From the above case, many parties tried to ask for leniency by changing the type of punishment given and even asking to be released because an Isma has a child who still needs breast milk from the mother all the time. But in this case, law enforcement officials did not grant the slightest to his request. In fact, when we talk about humanity, the request for lightening should be accepted and granted.

Judging from the point of view of the reasons in the above case and the Pinangki prosecutor's case, of course, law enforcement does not have the same policy, even though the Isma case can be a guideline to consider in passing a verdict on Pinangki prosecutors. It's true, an Isma commits a crime, However, in the same situation with Prosecutor Pinangki where one of the mitigating reasons is having minors, but the determination of the policy is not the same, even though this case can be a strong consideration in determining the sentence against Attorney Pinangki. Although the basic difference is to state that the court that tried him is different, the case is different, but as an effort to consider it can actually be said to be

11https://www.cnnindonesia.com/nasional/20210303111017-12-613085/ibu-dan-bayi-di-aceh-utara-mendekam-di-penjarakarena-uu-ite

legitimate, so that there is no impression from the public that the law is too blunt to a Pinangki prosecutor.

From a series of legal processes for criminal acts committed by the Pinangki Prosecutor, there are many perceptions and views from the community, especially a view that expresses disagreement with what the judge has imposed on this Pinangki prosecutor. Finally, apart from the public's contra attitude towards the individual Prosecutor Pinangki himself, the image and integrity of the law in Indonesia are also considered weak by the existing community. This means that the law is still indifferent, the law is still blunt up and sharp down, as well as other allegations and estimates that arise in society. Even though it cannot be denied that in fact law enforcement officers have implemented the law well in accordance with the provisions of the existing laws and regulations, it's just that the public does not understand what is the authority of each law enforcement officer in the environment of their professional performance.

From the cases that occurred and the determination of the punishment given, of course it had an influence on the community, both on their attitudes and character, as well as on the public's view of the existing government. The impacts that arise from the community include:

1. People think that the law in Indonesia can still be bought and indiscriminately;

2. Downturn can even lead to the loss of public trust in the government and the ranks of the state order;

3. Make the middle and lower class people reluctant to do an act because it will cause fear not reluctance;

4. The law is considered blunt up and sharp down.

The impact that occurs in society, of course, will affect the progress and development of the country, especially in social life, so that what is demanded is the role of the government and law enforcement officers must be able to serve and facilitate justice properly.

F. CONCLUSION

Criminal law is a law related to the public interest. Because the purpose of this criminal law is expressly to provide security and order in the community. In addition, the existence of a criminal law that is imposed on a person because on the basis of the actions that someone has done certainly has an influence on society, especially for the perpetrators of the crime itself. The influence obtained for the community is as a form of the pilot so that we as a society must continue to apply and do good and obey the laws and regulations that have been made. With the regulations and making the perpetrators snared punishment, then the continued influence on the community to remain vigilant and careful in behaving in their daily lives. Then the influence for the perpetrators of the crime itself is an effort to make a deterrent so that the perpetrator does not commit a crime again in the next time. Whether it's the same crime or differently.

Furthermore, in every sentencing decision that is assigned to a defendant who has been proven to have committed a crime, of course, there is a role for law enforcement officers in it, starting from

the initial process until the final decision has been determined by the judge in court. Judges in court have a very big responsibility in every case decision that is determined. It cannot be arbitrary and must of course be in accordance with the laws and regulations accompanied by the principle of justice for a defendant. Included in the Pinangki Prosecutor's case above, that a judge must act in accordance with the integrity of his profession so as not to cause bad allegations from the public. Because this law relates to the interests of all citizens, then real justice must really be upheld.

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