

Construction of Guilty Pleas and Ability of Criminal Responsibility

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ABSTRACT

That is the context of criminal law enforcement that departs from the principle of "no criminal without fault" and/or "no criminal responsibility without fault", then there are fundamental problems, related to the assessment of the objectivity of an action on the one hand, and the subjectivity of the perpetrator on the other. Which means that, in fact, an "act" can be seen physically and concretely, whereas, with regard to "fault" that is, it must be extracted from the intention and inner state of the perpetrator, then someone who is convicted and has a sense that can be held to hold criminal responsibility. Whereas, in the concept of "Guilty Pleas or Plead of guilty", it is known that a guilty plea can be used by a Judge in imposing a sentence on someone, and with that acknowledgment, someone is deemed to have declared a "fault" in his inner attitude. Thus, when linked to the concept of criminal justice, the condition of error by trial is very likely to occur, considering that one of the objectives of the judiciary is to seek material truth.

Therefore, the authors formulate a problem: (a) How is the construction of a "guilty plea" with the ability of criminal liability to be viewed in terms of the objectivity of a criminal act and the factor of the subjectivity of a criminal offender? (b) Can someone who has committed a "guilty plea" be computed in the context of punishment?

Keywords: *guilty pleas, ability, criminal responsibility*

1. INTRODUCTION

In the case of the position of "guilty plea" by the defendant is reviewed by the existence of the principle of non-self-incrimination which in the civil law system is the most important part in providing legal protection to the Defendant. Oren Gazal-Ayal and Limor Riza, expressed their opinion, that: "Strictly speaking, plea-bargaining does not exist in adversarial systems. These systems do not have the pleading stage, which allows defendants, through a guilty plea, to save the prosecutors from bringing the evidence required for a conviction at trial. "Based on this, thus, the defendant's guilty plea is placed as important evidence to convince the judge handed down the verdict. Even when a judge accepts that confession and obtains confidence without hesitation in determining someone guilty, the process of examining evidence can then be stopped. It can be seen that the Indonesian criminal justice system adheres to the acquisitor system, no longer an inquisitor, coercion or compulsory self-incrimination is contrary to the most basic principles of the criminal justice. Something softer than that is not allowed, such as asking for an answer that will be linked to other evidence, link-in-chain, because it is contrary to the principle of non-self-incrimination.

The principle of non-self-incrimination is operationally elaborated in the articles of the Criminal Procedure Code, including, Article 66: "The suspect or defendant is not burdened with the obligation of proof". Article 175: "If the

defendant does not want to answer or refuses to answer the questions raised to him, the presiding judge the trial recommends to answer and afterward the examination continues. Therefore, the suspect/defendant is not burdened with the evidentiary obligation, which also determines that the suspect/defendant may not answer in the examination process, only to be reminded if it occurs, then the examination continues (Article 66 jo 175) Next, Article 52: "In investigations at the investigation and court level, the suspect or defendant has the right to provide information freely to the investigator or judge. Article 166: Enthusiastic questions may not be posted either to the defendant or the witness. that, the defendant has the right to provide information freely, the question entangling cannot be submitted to the defendant. This is prohibited with the aim that the examination will achieve results that do not deviate from what is actually, while away from fear. Therefore, it must be prevented from coercion or pressure on the accused (Article 52 jo. 166).

According to Lamintang, the rights of suspects and defendants as contained in Article 52 constitute an important principle referred to as the beginning of van fair play in the process or the principle of reasonableness in the judicial process. This principle must be known by every law enforcer so that they truly understand that: (a) The suspect or defendant must not be treated solely as an object and examination, which has no right to do anything except answer questions raised to him or; must know what is alleged or alleged to him; (b) There is no obligation and the suspect or defendant to confess what is alleged or

alleged to him in all acronyms of the examination; (c) All forms of coercion may not be used to obtain confessions or statements of suspects or defendants, both physically and psychologically; (d) The suspect or defendant may not answer questions from the Judge, and such behavior must not make the sentence imposed on the defendant aggravated [1].

The part that forms the basis of the evidence, that the defendant's confession is not an instrument of evidence (Article 184). In this case, the evidence that is acknowledged as a limitation in Article 184, are: (1) Legal evidence is: a. witness statement; b. expert statement; c. letter; d. instructions; e. defendant's statement. (2) Things that are generally known do not need to be proven. In the International Covenant, this has also been stated in the International Covenant on Civil and Political Rights (ICCPR), which has been ratified through Law Number 12 of 2005. In that sense, the ICCPR fully guarantees a person's right not to be found guilty before being proven legally (presumption of innocence). Article 14 Paragraph (3) letter g of the ICCPR states that "In determining criminal allegations against him, every person has the right not to be compelled to give testimony against themselves or plead guilty (non-self-incrimination)".

In addition, with regard to the principle of negativity which must be met by the judge to be convinced of the occurrence of a crime and determine who did it, reflected in Article 189 Paragraph (4) of the Criminal Procedure Code that, "The statement of the defendant alone is not sufficient to prove that he is guilty of committing an act which was indicted by him, but must be accompanied by other evidence. " Meanwhile, regarding the evidentiary obligation, or who has to prove it, according to the Criminal Procedure Code is charged to the Public Prosecutor. This is as regulated in Article 66 of the Criminal Procedure Code, "The suspect or defendant is not burdened with the obligation of proof." According to the explanation of Article 66, this provision is the embodiment of the principle of "presumption of innocence", where the principle is regulated in general explanation of item 3 c of the Criminal Procedure Code "Every person who is suspected, arrested, detained, prosecuted and/or confronted before a court hearing must be deemed not guilty until a court ruling states his guilt and obtained permanent legal force."

This principle of presumption of innocence has also been recognized internationally. Among others, it is regulated in Article 14 Paragraph (2) of the ICCPR: "Everyone accused of a criminal offense shall be entitled to the presumption of innocence until proven guilty according to law." As a basic component of the right to a fair trial, the principle of presumption of innocence guilty means, among other things, that the burden of proof in a criminal trial depends on prosecution and the accused has the advantage of being doubted. Also, Article 14 Paragraph (3) letter g of the ICCPR states that: "In determining allegations of criminal offenses against him, every person has the right not to be compelled to give testimony against themselves or plead guilty." This provision is often referred to as the principle of non-self-incrimination. Although this provision does not

explicitly regulate evidence obtained by force, it has long been interpreted that the evidence cannot be accepted in court. Also, the silence of the suspect or defendant cannot be used as evidence to plead guilty and no negative consequences can be drawn from exercising the right to remain silent from a suspect.

From the explanation above it can be seen that the principle of presumption of innocence has been expressly governed by statutory regulations, which are not only recognized in Indonesia but are also internationally recognized. The principle of presumption of innocence is one form of guaranteed protection of human rights. In its application in judicial practice, one of the biggest difficulties in implementing an accumulator system concerns the issue of proof, as confirmed by Carolin E. Damaska who stated that: "One such belief, frequently voiced, is that the rules of evidence under the common law adversary system of criminal procedure present much more formidable barriers to convictions than do corresponding rules in the non-adversary civil law system. This belief is then related to a more general feeling that the higher evidentiary barricades 'to conviction somehow emanate from the very nature of adversary proceedings and that their lowering smacks of the inquisitorial' continental procedure [2]. The draft Criminal Procedure Code directs the trial procedure with an adversarial system or between the public prosecutor and the accused / legal counsel more balanced. Thus, various things can benefit and accelerate the judicial process, and greatly assist law enforcement officials in carrying out their duties. John Langbein argues that: "... without these two eyewitnesses, a criminal court could not convict an accused who contested the charges against him. Only if the accused voluntarily confessed the offense could the court convict him without the eyewitness testimony"[3].

That opinion gives a clue, that when there are no two witnesses, then enough with a guilty plea, the judge can decide the case. It can be concluded, that with the guilty confession from a defendant on the charges that have been filed by the Public Prosecutor, theoretically, there are indeed irregularities when faced with the principle of non-self-incrimination and presumption of innocence. However, when examined in terms of the usefulness and efficiency of the judicial process, someone who voluntarily declares guilt and the judge has the confidence to decide on the case, thus the mechanism for the Recognition of the Criminal Procedure Code becomes the main alternative that can be used by judges, which is also in line with the principle of quick justice , simple and low cost, which on the one hand, in practice, will benefit the defendant, because getting compensation is only 2/3 of the sanctions charged by the Public Prosecutor.

In international human rights law, article 14 (3) (g) of the ICCPR states that in determining each indictment, every person has the right not to be forced to testify against himself or admit guilt. Article 8 (2) (g) of the American Constitution stipulates that "everyone has the right not to be forced to witness against himself or plead guilty". Which in this case, originated from Miranda Rules which became the principle of criminal procedure law in the

United States originating from the 1966 *Miranda vs. Arizona* case which finally led to the Fifth Amendment of the Bill of Rights: "No person shall be held to answer for capital, or otherwise infamous crime, unless on a presentation or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject to the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation". The real form of the application of *Miranda Rules* is a *Miranda Warning* that must be given at least by the police when arresting suspects and before interrogation. Generally, the police will say: You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to speak to an attorney, and to have an attorney present during any questioning. If you cannot afford a lawyer, one will be provided for you at government expense. The Human Rights Committee states that the guarantee that no one is forced to testify against himself or confess guilt, must be understood in the absence of physical or psychological pressure either directly or indirectly from the authorities investigating the suspect/defendant, to obtain a guilty plea. The Human Rights Committee found violations of Article 14 (3) (g) in the case that the suspect was forced to sign a statement declaring himself guilty.

According to the opinion of the writer, with the concept of a guilty plea in the Criminal Procedure Code, it does not mean to rule out the existence of non-self incrimination, which can be considered to have a very substantial effect on protecting the rights of a person before a court. The guilty plea is indeed intended to speed up the trial process, but in the context of negative evidence and beyond reasonable doubt, the judge must also pay attention to a number of principles of "minimum evidence of proof" by which, affirming and ensuring that the position of guilty confession cannot stand alone, unless accompanied by other evidence, with which the guilty plea is on the one hand and the corresponding evidence as a supplement, can be judged "legitimately and convincingly" in determining someone guilty of a criminal offense charged.

2. SHARIA CONSTRUCTION OF GUILTY PLEAS AND ABILITY OF CRIMINAL RESPONSIBILITY

The imposition of sanctions in a decision, is the result of the considerations of judges, with confidence and intuition to reach a decision that is acceptable to the public. Oemar Seno Adji said: "In the framework of the freedom of the judge to determine the severity of the sentence in which he can move within the limits of the maximum sentence or choose the type of sentence, it can be stressed here that these reasons, both he was used as a basis for weighting

the sentence nor lighten it up, it is not an essential meaning anymore"[4]. With regard to judicial imprisonment, Barda Nawawi Arief asserted that criminal individualization is important for the judge's consideration, including, that: (1) Accountability (criminal) is personal/personal (personal principle); (2) Crimes are only given to guilty people (the principle of culpability, no criminal without error); (3) The criminal must be adjusted to the characteristics and conditions of the perpetrator, this means that there must be flexibility/flexibility for the judge in choosing criminal sanctions (type or severity of sanctions) and there must be the possibility of criminal modification (changes/adjustments) in their implementation [5].

The criminal conviction of a defendant does not merely apply the sound of the law to a concrete event, but it is necessary to have considerations regarding events, criminal acts, evidence and also an assessment of the defendant. Continuing the previous section, the use of a guilty plea will have implications in the criminal justice system, because in this system there will be opportunities for criminal deterrence for defendants who have pleaded guilty to charges made against him. This refers to Article 199 paragraph (5) of the Draft Criminal Procedure Code, which states that: "the conviction of a defendant may not exceed 2/3 of the maximum criminal offense charged". Thus, if the judge receives a "guilty plea" from the defendant, the judge must obey to alleviate the crime (1/3 of the criminal threat from the intended crime).

It can be said that the regulation on criminal mitigation in Article 199 of the Draft Criminal Procedure Code is no different from the concept of plea bargaining which implies an agreement to alleviate criminal threats for suspects/defendants who claim, Michael O'Hear, stated: "Finally, I assume that a plea offer (which can be made either side) involves an express promise by the defendant to plead guilty to one or more specified charges in return for either the dismissal of other charges, a favorable sentencing recommendation by the prosecutor or both "[6]. Lesser criminal convictions as referred to, are only the admission of guilt that can convince a judge, as a basis for proof until the judge obtains beyond the reasonable doubt that is substantial if, in the evidentiary law adopted by Indonesia, such acknowledgment is a reinforcement of the judge's conviction in addition to meeting the minimum threshold of proof as a condition of proof from *negatief wettelijk*. However, another perspective was put forward by Lucian Dervan and Vanessa Edkins, that: "When the deal is good enough, it is rational to refuse to roll the dice, regardless of whether one believes the guild establishes beyond a reasonable doubt, and regardless of what one is factually innocent"[7].

The opinion above suggests that, when a judge who has gained confidence in the confession, then there is no need to consider conducting an examination, in other words can get rid of all the evidence that doubts him, so that the judge can accept with confidence that a confession of guilt can encourage confidence without the slightest doubt. This is also in line with the principle of speedy justice which allows judges to have enough confidence and one valid evidence, which is sufficient as a basis for deciding cases.

Nyoman Sarikat Putra Jaya stated, that: "Recognition of the accused must be given voluntarily and outlined in the official report signed by the defendant and the public prosecutor. The consequence of the defendant's recognition is that the rights obtained by the defendant concerning the examination of the case are lost, the defendant is deemed to relinquish the rights guaranteed by law".

With a guilty plea, a defendant will be able to avoid the time-consuming process of examination and verification, when it is known that the evidence is already very strong. Furthermore, a defendant will also benefit from consideration for obtaining a criminal sentence on him. This is in line with Asher Flynn and Kate Fitz-Gibbon who give an opinion about the purpose of plea bargaining practice, that: "The secrecy surrounding plea bargaining fuels several concerns regarding the 'just' nature of plea agreements and their potentially negative impact on the parties most affected by them. In particular, concerns arise in relation to the potential pressures that plea bargaining can create, which may compel persons accused to plead guilty. While some form of pleading pressure would likely exist in a transparent plea bargaining system simply due to the benefits of a plea deal (for example, conviction on a reduced charge and/or lower sentence)" [8].

Margareth Etienne and Jennifer K. Robbenolt, stated that: "Theoretically, encouraging apologies early in the criminal process may be a laudable goal given the potential benefits of apologies to victims, offenders, and communities. But empirically, the growing literature on apologies in psychology and law raises important questions about whether apologies — when made before sentencing — would lead to more favorable results for the offender. Given the overwhelming portion of cases that are solved through guilty pleas, we argue that most defendants are impossible to participate in pre-sentencing remorse or apology rituals without regard to the effect of the apology on plea bargaining outcomes [9].

Based on the above opinion, the author responds that, an apology from the offender to the victim, before the conviction, can also be the basis of criminal offenses imposed on the offender, with the apology and regret, impose a lighter criminal, as a consequence of plea bargaining will be beneficial for both perpetrators and victims. Although in practice, the victim is very difficult to accept an apology from the perpetrator, because it is still oriented to retaliation with the most severe punishment. About criminal mitigation against the defendant who has admitted his guilt before the judge, and the judge accepts with his conviction, it can be said that this reluctance thinking originated from the existence of relative (utilitarian) criminal purposes.

In line with the objective of punishment in Article 54 of the Draft Criminal Procedure Code: (1) Preventing criminal acts by enforcing legal norms for the protection of the community; (2) Carry out corrections of the convicted person thereby making him a good and useful person, and able to live in a society; (3) Resolving conflicts caused by criminal acts, restoring balance and bringing a sense of peace in society; (4) Freeing the guilt of the convicted

person; (5) Criminalization is not intended to narrate and demean human dignity.

This relative criminal punishment theory pivots on three main objectives of punishment, namely preventive [10], deterrence [10], reformative [11]. This theory seeks the basis of criminal law in organizing orderly societies and consequently namely criminal objectives for crime prevention. This theory was developed in ancient times. Seneca, referring to the teachings of the Greek philosopher Plato, stated: *nemo prudens punit, quia peccatum, sed ne peccetur* (a wise man does not punish because of sin, but so that sin no longer occurs) [12]. According to Karl O. Christiansen, there are several main features of relative theory: (1) The purpose of punishment is prevention; (2) Prevention is not a final aim, but a means to a more objective aim, e.g. social welfare; (3) Only breaches of the law which are imputable to the perpetrator as intent or negligence qualify for punishment; (4) The penalty shall be determined by its utility as an instrument for the prevention of crime; (5) The punishment is prospective, its point into the future; it may contain elements of reproach, but neither reproach, nor retributive elements can be accepted if they do not serve the prevention of crime for the benefit or social welfare [13]. Roeslan Saleh in his book wrote about the specific objectives of criminal imprisonment based on relative theory, namely: (1) Frightening theory, which argues that the purpose of this crime is to frighten people so that they do not commit criminal acts, both the maker himself (special prevention) or other people (general prevention); (2) Correcting theory, which argues that the criminal will educate the maker so that he becomes a good person in society [14].

Adherents of this special intervention theory, both Von Lizst and Van Hamel, they do not start from the perpetrators of crime, from their sensitivity to criminal threats and the effects of criminal reparation, but from the interests of maintaining the rule of law. The goal-setting as proposed in the context of this relative theory is very clear. Positively the supporters of this teaching require the application of a crime or act (*maatregelen*) which in concrete aims and is useful for preventing criminal acts. Negatively they want useless, useless suffering. A. Prins, Van Hamel and Von Lizst as the leading relative of the theory, founded Union Internationale de droit penal in 1988. Important points of the Union are: (1) The purpose of criminal law is that opposition to evil acts is seen as a symptom of society; (2) Knowledge of criminal law and criminal legislation must pay attention to the results of anthropological and sociological studies; (3) Criminal is one of the powerful tools controlled by the State in the fight against crime. That is not the only tool. Cannot be applied alone, but always combined with social action, especially a combination with preventive action [15]. The relative theory is included in the development era of modernism, which focuses its attention on the person who commits a crime and grants criminal acts between those intended to protect the public against the dangers posed by the maker. So, in this modern flow of freedom to form legislation to determine the type of crime, the size of the

crime, and how to carry out the crime (strafsort, strafmaat, strafmodus) [10].

With the concept of a guilty plea as a criminal offense, it will increasingly conical, that, tougher convictions against someone who has declared a guilty plea is no longer useful. Therefore, confession of guilt can be considered as surrender and justify that the defendant committed the criminal act charged with him. Thus, concerns about the loss of the element of retaliation to the defendant will be conveyed when the defendant feels that he regrets all his actions and admits the mistake voluntarily.

3. CONCLUSION

The results of this study are that: (1) "Confession of guilt" in principle can be expressed as the ability of criminal liability, which can be judged that the statement stated voluntarily and realized the truth by the author of guilty, subjectively is the basis of the existence of someone declared "able to be responsible", and at the same time can be used as proof of the element of "error". In terms of the objectivity of criminal acts and the factor of the subjectivity of criminal offenders, a guilty plea will fulfill the element of "criminal liability" according to the principles and teachings of criminal law. (2) In the conviction of someone who states a "guilty plea", it is very relevant if criminal sanctions are given, on the basis that, "punishing someone who has confessed to his deed is not useful if punished more severely". This view is in line with utilitarians, who base punishment on the aspects of the benefits and objectives of the convicted person.

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