



Judges' forgiveness in criminal law in Indonesia

Luh Oki Damayanti

Faculty of Law, Warmadewa University, Indonesia

Abstract

One of the much-needed articles of the Indonesian criminal law reform has been included in the Draft Criminal Code (RKUHP) of 2019, namely Article 54 concerning the concept of "Judge's Forgiveness (Rechterlijke Pardon). This is because the Criminal Code that is still in effect today is considered very rigid and only oriented towards retaliation for perpetrators of criminal acts. As a result, many minor cases that should have been resolved amicably are actually subject to criminal sanctions that are not in accordance with the actions that have been taken and the various values that exist in society. In the realm of practice, the existence of the concept of judicial forgiveness will allow judges to take a middle path or as an emergency door in deciding the law on a case they are facing. The question is what are the dimensions of the value of judicial forgiveness in criminal law in Indonesia. Judicial forgiveness is formulated as follows (1) the suitability of the concept of judicial forgiveness with the values of religious teachings that encourage an attitude of forgiveness, (2) the concept of judicial forgiveness that upholds the values of the cultural wisdom of the Indonesian people, namely the culture of forgiveness in various regions of Indonesia whose implementation has been regulated by each community, (3) the concept judicial forgiveness that does not prioritize revenge for the perpetrator of the crime, but rather focuses more on humanitarian values by considering the condition of the perpetrator and the actions of the criminal, and (4) the concept of judicial forgiveness that can make the law more flexible and feel fair, namely not imposing sanctions on the grounds of the perpetrator's condition and on the basis of considerations of humanity and justice.

Keywords: Judicial forgiveness (Rechterlijke Pardon), criminal law reform, religious values, cultural wisdom,

Introduction

The Criminal Code, which is a legacy of the Dutch colonialists, needs to be renewed and criminal law reforms that are oriented towards policy and at the same time a value-oriented approach. In concrete terms, this renewal can be seen with the presence of the new Criminal Code replacing the old Criminal Code and several laws and regulations that have been Recodified into Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the new Criminal Code). Through the renewal of the Criminal Code, a reconstruction of the criminal justice system in Indonesia has occurred. The reconstruction of the criminal justice system is expected to be able to improve the legal system in Indonesia.

One of the much-needed articles of the Indonesian criminal law reform has been included in the Draft Criminal Code of 2019, namely Article 54 concerning the concept of "Judge's Forgiveness (Rechterlijke Pardon). This is because the Criminal Code that is still in effect today is considered very rigid and only oriented towards retaliation for perpetrators of criminal acts. As a result, many minor cases that should have been resolved amicably are instead subject to criminal sanctions that are not in accordance with the actions that have been taken and the various values that exist in society. In practice, the existence of the concept of judicial forgiveness will allow judges to take a middle path or as an emergency door in deciding the law on a case they are facing. The tendency is that the law does not side with the common people such as chicken thieves whose sentences are heavier than corruptors^[1].

Normatively, it cannot be denied that the chicken thief case has fulfilled all the theft crimes and must be sanctioned as stated in the Criminal Code. However, when viewed from a

sociological and humanitarian perspective, the theft case is only a minor case that should have been resolved amicably without any sanctions. In this context, with the concept of judicial forgiveness, the defendant (theft) can be pardoned even though he has been proven guilty based on the existing normative provisions of legal certainty. The concept of judicial forgiveness is contained in Article 54 of the 2019 Criminal Code Draft. This is important to do, considering the existence of Pancasila as a state ideology is also the basis and ideal of national law in Indonesia. The function of the legal basis and ideal of Pancasila is constitutive and regulative for the existing legal system and basic norms of the state^[3]. Consequently, various forms of legal formulations that apply in Indonesian society must be in line with and built on the noble values of Pancasila, such as the values of divinity, humanity, unity, democracy, and social justice^[4].

In practice, judges in making decisions are based on legal factors, namely statutory regulations that should be clear and obvious so that the interpretation made by the judge can be facilitated so that the interpretation becomes the same so that there is no difference in the judge's decision in almost the same case. This is very important because regulations that have multiple interpretations create inconsistencies in a decision in almost the same case, so that clear and obvious legal rules can be one of the factors in realizing justice and legal certainty. The criminal justice system in Indonesia tends to resolve criminal cases, especially in minor criminal cases (under 5 years) with the imposition of a prison sentence (criminalization). The tendency of judges to impose prison sentences is directly proportional to the number of crimes that have been increasing every year. This means that the large number of prison sentences has not had

a positive impact in reducing the crime rate in society ^[5]. In the development of the current criminal justice system, another alternative is known in the criminal justice system, namely the "Judge's Pardon Institution". Regarding the implementation of the Judge's Pardon Institution, it has been widely applied in various countries and this institution as an alternative to punishment has emerged progressively, especially for minor criminal cases. Based on the description above, the formulation of the problem that will be raised and become the focus of this study is how is the dimension of the value of judge forgiveness in criminal law in Indonesia?

Method

This paper uses a normative research method conceptualized as a phenomenon that can be observed in real life. In this study, an approach is used in the form of a statutory approach (the statute approach), through a review of laws and regulations that are related to the issue being discussed.

Result and discussion

1. Godly Values

One of the fundamental characteristics of Indonesian criminal law is law based on divine values (religion). This means that everything that includes legal activities in this country, from the formulation stage, judiciary, to the execution stage must be based on and inspired by religious guidance. In other words, the main characteristic of Indonesian criminal law is divine criminal law. Such a statement is not surprising considering the existence of Pancasila itself as the basis of the paradigm and ideals of national law in the first principle contains the value of religiosity (divinity) ^[6].

The divine value above can be found in the concept of judicial forgiveness offered by the Draft Criminal Code. Such a statement is because in every religion recognized by the Republic of Indonesia, forgiveness is prioritized over demanding mistakes and retaliation. Therefore, the existence of the Article related to the concept of judicial forgiveness can be said to be a modernization of National Criminal Law that prioritizes the values of the first principle of Pancasila, namely in accordance with legal norms derived from religious teachings so that harmony is realized between physical and spiritual life. Moreover, forgiving fellow human beings is the guidance of all religions and will provide rewards in the afterlife and avoid hostility ^[7]. For example, in the concept of Hinduism, the concept of good karma or the law of karma phala by forgiving criminals and surrendering to God.

2. National Values

Talking about the relevance of national values to the formation of law in a nation, it cannot be separated from various things related to the nation itself including culture, customs, and traditions in a nation. Indonesia, for example, as a nation with diverse cultures, customs, and traditions, the law in Indonesia cannot be separated from the various national variables inherent in Indonesian society. The importance of maintaining national values or nationalism is in line with the value of the third principle in Pancasila. Where it is appropriate that the value of the third principle in the form of a spirit of unity is contained in the construction of national law that applies in Indonesia, including the criminal law system. Given the existence of

the Criminal Law that is currently in force in Indonesia, it does not fully reflect the existing Indonesian national values. This is because the Criminal Code applied in Indonesia is a legal product left over from the Dutch colonial government, so it cannot be applied immediately. But we must look at the socio-cultural conditions of the existing Indonesian society. Therefore, the existence of the concept of judicial forgiveness in the Draft Criminal Code will actually be able to make the legal system in Indonesia more relevant to the cultural culture of the Indonesian nation itself. This concept makes the quality of the legal system in Indonesia, especially criminal law, more nationalistic in character and in line with the values of unity as stated in the third principle of Pancasila.

Forgiveness is a choice of attitude and behavior that is institutionalized, forgiveness is a choice of attitude from someone who is positioned as a victim of a detrimental act, both material and immaterial losses carried out by other people or parties. The concept of forgiveness has long been carried out and spread across various regions of Indonesia. This concept appears in various forms of implementation in Indonesian society, where it can be concluded that the concept of forgiveness in indigenous communities cannot immediately eliminate criminal acts, there are still sanctions given but these sanctions are not only for the benefit of the victim and perpetrator but also to restore the balance that has been damaged due to the crime ^[8].

3. Human Values

For law enforcement officers such as judges, lawyers, police, public prosecutors and correctional institutions, they are chosen people who are tasked with upholding justice and truth. Not only that, but the sanctity of their duties, their authority, their honor, and the public's trust in them are at stake in the judicial process. For that reason, in the criminal justice process, various human values must be prioritized. The urgency of the element of human values in law enforcement means not only looking for what is right and what is good. But looking for what is most appropriate to do. This human value will lead to efforts to place the situation and conditions as the main consideration in making ethical decisions. In this context, the basic assumption of human values is that the quality of an action depends on the situation. Whether an action must be done or not cannot be ascertained except by paying attention to the concrete situation ^[9].

In the criminal law system in Indonesia, the reflection of the values of the second principle of Pancasila in the form of human values is something that cannot be ignored in the formulation of law. Considering the humanitarian value of the law in its practical realm, it cannot be separated from the theory of legal utility which is closely related to various forms of consideration in sentencing for the actions of criminals, including considerations of the absence of other nobler choices, rationally bringing greater good, and choosing the option with the smallest risk. Therefore, the existence of the concept of judicial forgiveness in the Draft Criminal Code will be able to make the Indonesian Criminal Code feel more humanitarian which is part of the ideological value for the life of the Indonesian nation.

4. Justice Values

The law can be said to be fair if the law itself can treat fellow human beings according to their respective

obligations and rights, and without favoritism or discrimination. The realization of justice is important to uphold and fight for. This is for the purpose of repairing the damage and inequality experienced by the lower classes, and existing regulations must be made in such a way and position themselves as guides to correct the injustice experienced by the weak. The existence of the spirit of justice is also a value of Pancasila, namely the fifth principle. Therefore, it is fitting that the value of justice in the context of national law in Indonesia should not be ignored, both in material and formal aspects. Related to the value of justice in Pancasila as a paradigm and ideal of law in Indonesia, the existence of the concept of judicial forgiveness will be able to make the law more flexible and feel fair. Weak people who were previously affected by the rigidity of the law such as cases of chicken theft, in the future can receive forgiveness or pardon from the judge in accordance with Article 54 paragraph (2), namely not imposing any criminal/sanctions on the grounds of the perpetrator's personal circumstances and on the basis of humanitarian considerations and values of justice. On this basis, it is not an exaggeration to say that the existence of the concept of judicial forgiveness is one of the alternative breakthroughs in order to avoid rigidity, especially in Criminal Law. Through this concept, it will be possible to make the legal punishment system in Indonesia more reflective of the values of social justice and humanity ^[10].

Conclusion

The values of the Pancasila philosophy in the concept of judicial forgiveness formulated in the Draft Criminal Code (RKUHP). This major conclusion can be seen from the following description. First, the dimension of divine values in the concept of judicial forgiveness. This dimension can be seen from the conformity of the concept of judicial forgiveness with the values of religious teachings that encourage an attitude of forgiveness. Not only that, the concept of judicial forgiveness can also create spiritual satisfaction with a court decision, both physically and mentally. Second, the dimension of national values in the concept of judicial forgiveness. This dimension can be seen from the concept of judicial forgiveness that upholds the values of the cultural wisdom of the Indonesian people, namely the culture of forgiveness in various regions of Indonesia whose implementation has been regulated by each community. Third, the value of humanity in the concept of judicial forgiveness. The dimension can be seen from the concept of judicial forgiveness that does not prioritize retaliation for perpetrators of criminal acts, but rather on humanitarian values by considering the conditions of the perpetrators and the actions of the perpetrators. Fourth, the value of justice in the concept of judicial forgiveness. This dimension can be seen from the concept of judicial forgiveness which can make the law more flexible and feel fair, namely not imposing sanctions on the grounds of the perpetrator's condition and on the basis of considerations of humanity and justice.

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