



Criminalization of Employers Against Workers in View of the Law

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ABSTRACT

The relationship between employers and workers is the main thing in business, but this relationship is often a dispute because one party commits non-compliance in implementing the contents of the labor agreement in this case the employer does not pay the normative rights of workers, mutates under pressure / intimidation, Prohibition of organization, discrimination between women workers and male workers and other criminal acts that can harm workers. Policy in handling crime (penal policy) on the creation of harmonization of relations between employers and workers is the concept of labor relations with the industrial family relationship model based on family relationships and togetherness in accordance with the philosophy of industrial Relations. This paper aims to anticipate the criminalization of employer-employee relationships that require norms that regulate equality issues before the law related to labor crimes and supervision and criminal law enforcement, especially in the process of investigating labor crimes handled directly by the police.

INTRODUCTION

Policy or crime prevention efforts are essentially an integral part of community protection efforts (social Defense) and efforts to achieve public welfare (social welfare). According Sudarto¹ there are three meanings of criminal policy, namely :

1. In a narrow sense, is the overall principles and methods that are the basis of the reaction to the violation of law in the form of criminal;
2. In a broad sense, is the overall function of the law enforcement apparatus, including the workings of the courts and the police;
3. In the broadest sense, it is the totality of policy conducted through legislation and official bodies, aimed at upholding the central norms of society.

Marc Ancel once stated that modern criminal science consists of three components criminology, criminal law and penal policy. Plehnya stated that penal policy is a science as well as an art that

ultimately has a practical purpose to enable positive legal regulations to be formulated better and to provide guidance not only to lawmakers, but also to the courts that apply the law and also to the organizers or executors of court decisions. Subsequently, Marc Ancel suggested that the system of Criminal Law of the XX century still remains to be created. Such a system can only be established and perfected by the joint efforts of all people of Good Will and also by all experts in the field of social Sciences.³ Criminal Law Policy in essence is not merely the work of legal techniques that can be done in a juridical normative and systematic dogmatic. In addition to the normative juridical approach, Criminal Law Policy also requires a factual juridical approach which can be sociological, historical and comparative approaches and even requires a comprehensive approach from various other social disciplines and an integral approach to social policy and national development in general.

Criminal policy issues are one of the areas that should be at the center of criminology's attention. Moreover, indeed "criminal " as a form of reaction or response to crime, is one of the objects of study of criminology. the study of Criminology is a sociological study that reveals the reality of crime which ultimately becomes the basis of criminal law considerations to formulate which acts can be criminalized as a form of crime. The formulation of criminal acts becomes part of criminal policy or criminal law politics. This is in accordance with Sudarto's view that the policy or politics of criminal law can be seen from the politics of law and from the politics of crime, namely the effort to realize good regulations in accordance with the circumstances and situation at a time or the policy of the state through authorized bodies to establish the desired regulations that are expected to be used to express what is contained in society and to achieve what is aspired.

Sudarto stated that implementing the politics of criminal law means holding elections to achieve the best legislative results in terms of meeting the requirements of justice and efficiency. Political criminal law means an effort to realize the criminal legislation and in accordance with the circumstances and situation at a time and for the times to come. Moreover, in view of A. Mulder *Strafrechtspolitik* is a policy line to determine ; (a) the extent to which applicable criminal provisions need to be amended or renewed (b) What can be done to prevent the occurrence of criminal acts and (c) the manner in which criminal investigations, prosecutions, trials and executions should be carried out. Some of Mulder's concepts about political policy are based on the understanding of the criminal law system according to Marc Ancel which states that every organized society has a criminal law system consisting of several criminal regulations that contain sanctions, procedures as procedural law and criminal implementation mechanisms as a unified system. The 9 criminal regulations, of course, have the purpose of tackling crime. In the effort to overcome crime with criminal law, in essence, it is also part of law enforcement efforts, especially criminal law enforcement. Therefore, it is often said that politics or criminal law policy is part of law enforcement policy (law enforcement policy), it is also natural that criminal law policy or politics is also an integral part of social policy or politics (social policy). Social policy (social policy) can be interpreted as any rational effort to achieve the welfare of society and at the same time include the protection of society. Thus, in the sense of social policy as well as Covered social welfare policy and

social defense policy. The achievement of these objectives can only be obtained when a criminal law regulation can determine exactly what acts are criminal acts which in criminal policy studies are referred to as criminalization of acts.

Criminalization (criminalization) is the object of study of material criminal law (substantive criminal law) which discusses the determination of an act as a criminal offense threatened with certain criminal sanctions. A reprehensible act that was not previously qualified as a criminal offense and threatened with criminal sanctions is not a criminal offense or decriminalization.

Thus, decriminalization is an inverse qualification, that is, the classification of an act that was initially considered a criminal legal event, but was later considered a non-criminal offense. In certain societal conditions the qualification of an act from non-criminal to criminal is carried out through social processes carried out by a person who violates the values or morality of society. The process of criminalization of acts in society often occurs immediately and is a phenomenon that often occurs and is experienced by a person or group of people who need to be examined more comprehensively through the study of Criminal Policy.

The root of the problem of "criminalization" is the academic terminology of the state's efforts to treat a behavior, which at first is free behavior, into behavior that is considered evil and deviant and followed by criminal imposition on it. Thus, criminalization refers to a specific form of behavior, not people. Criminalization is also the authority of the state, especially for institutions that have authority not just law enforcement officials, but as policy formulators who determine which acts are crimes and which acts are not crimes. In criminalization, the formulation of an act classified as a criminal offense is bound by legal principles as the basis for the starting point of policy formulation. The principles or basics of making formulation in a regulation, and or policy of establishing human life activity as a criminal act should refer to the principle of legality that requires the formulation or criminal policy in advance in a law and regulation. In the context of criminalization, the principle of legality contains several basic conceptions, norms, ethics, and legal principles that demand the establishment of a criminal law that establishes the making of what constitutes a criminal offense (criminalization).

METHOD

The research method used in writing this law is a normative juridical approach. Normative

juridical approach is a study that uses secondary sources obtained through library materials. This normative legal research usually includes: research on legal principles, research on legal Systematics, research on vertical and horizontal synchronization levels, Comparative Law and legal history. The method of this approach is carried out by studying the legal norms in legislation.

RESULTS AND DISCUSSION

Criminalization Of Workers

Crime prevention can be broadly divided into two, namely through penal or criminal law and through nonpenal or non-criminal law. Nonpenal pathways include prevention without crime, and the influence of public views on crime and punishment through the mass media. The penal path is through the application of criminal law, which in general people refer to as repressive measures (handling or overcoming). Penal policy (penal policy) in the relationship between employees and workers in the form of company regulations that contain a number of rules on the rights and obligations of workers and the rules of criminal sanctions if workers do not comply and violate these regulations for example a worker is prohibited to take something belonging to the company without permission and then the company can provide sanctions in the form of wage cuts / rental salaries at nominal prices taken and if the violation is more severe impact on the state of the company's economy then the company can provide sanctions in the form of layoffs. However, layoffs are *Ultimum Remedium* after other sanctions cannot provide a deterrent effect to the workers concerned. In addition to having a repressive meaning, the penal pathway also has a preventive meaning in a broad sense.

The punishment is also intended to prevent others from possibly committing similar acts (general prevention). Therefore, the latter view is considered forward-looking. In general, the last view above is considered more ideal in order to implement the idea of punishment than the first view which is still considered backward-looking. In addition, the Ministry of education and culture of the Republic of Indonesia, which is responsible for the implementation of the Ministry of education and culture of the Republic of Indonesia, is responsible for the implementation of the Ministry of education and culture of the Republic of Indonesia.

Crime, in addition to being a humanitarian problem, is also a social problem. Faced with this problem, many efforts have been made to combat it, and it has even been included in the framework of Criminal Policy. Crime prevention using criminal

sanctions, is the oldest way, as old as human civilization itself. Criminal is a relic of past savagery. Crime is an act of cruel treatment. There followed a wave of changes in views on crime in continental Europe and Britain, which was a humanistic reaction to criminal cruelty. At that time developed the thought of determinism which states that people do not have free will in doing an act, because it is influenced by personal character, biological factors and environmental factors of society.

Crime a manifestation of the abnormal state of a person's psyche, so in its development, action is needed as an attempt to improve the state of the perpetrator of the crime. Crime is also seen as a manifestation of the abnormality or immaturity of the perpetrator of the crime, so the attitude of convicting must be replaced by an attitude of treating. A new development of the foundations of penal servitude began in the 19th and early 20th centuries. Since the founding of the Union Internationale de droit penal, a movement towards a rational treatment of crime, using the results of new thinking derived from sociology, anthropology, and psychology. An important objective of this movement is to refer to the main objective of criminal law, namely the opposition to evil acts, seen as a crime of society, knowledge of criminal law and criminal legislation, must pay attention to the results of anthropological and sociological studies, and the criminal is a powerful tool controlled by the state, in opposition to crime, but it is not the only tool, it cannot be applied alone, but always in combination with social measures, in particular with preventive measures.

Employers and workers are the main actors at the company level, employers and workers have the same interest that is thinking about the survival and progress of the company, but on the other hand the relationship between the two also has the potential for conflict, especially when related to perceptions and interpretations that are not the same about the interests of each party whose conditions are always different. In the case of industrial relations, the author may qualify criminogenic factors that cause conflict.

The background of criminal acts in Labor Relations include demands for workers' rights such as demanding wage adjustments, wanting to establish labor unions, BPJS participation, dismissal of Labor Relations, and other normative rights by conveying their aspirations through labor organizations or by striking or protesting, this triggers the criminalization of employers against workers, especially for union officials. Criminalization of union officials rife occurred after

the strike as has happened at a rally in oil palm plantation company Buol in 2014, chronology of events against the chairman of the Union PT. Hardaya Inti Plantation, Mr. Abdullah, after the demonstration in the company area, the chairman of the union immediately received criminal sanctions from the company by reporting to the local police because he was considered to have provoked and alleged incitement to workers to participate in strikes and demonstrations, strikes that were not in accordance with the provisions were considered a criminal offense that could, whereas all this time strikes that are not in accordance with the provisions only result in the loss of workers' rights to wages that should be received. However, the strike was used as a criminal act as a form of criminalization of workers as an attempt to hinder the advancement of workers' organizations in fighting for the fate of workers. Workers face a variety of threats, both from employers and from the authorities, ranging from threats of layoffs, civil and criminal lawsuits, repressive measures from security forces and the threat of labor law liberalization. Layoffs are a powerful weapon for companies to reduce the actions of workers, especially layoffs caused by crimes (gross errors) such as stealing. Layoffs for workers who make serious mistakes must still receive permission from the Industrial Relations Dispute Resolution agency. Gross misconduct falls within the scope of criminal law. Therefore, termination of employment (layoffs) still have to ask permission. Thus, before the layoff is granted, there must be a final court decision and appeal in accordance with the presumption of innocence. However, in the current labor regulations, layoffs for workers who make gross mistakes can be directly granted by the company. The direct layoff can be given on condition that the worker concerned is proven to be caught red-handed or there is a confession or evidence in the form of an incident report and supported by at least 2 witnesses. Thus, the latest labor law does not respect the presumption of innocence. Workers who are laid off can file a lawsuit.

Supervision is essentially part of law enforcement efforts, especially criminal law enforcement policy (Law Enforcement Policy) can be interpreted as a rational effort to achieve the welfare of society and at the same time includes aspects of community protection (social Defense policy) including the issue of supervision of criminal labor crimes. Supervision by the government through the Ministry of Labor is to ensure legal certainty in the implementation of legislation in the field of Labor. Supervision is carried out in the

workplace or industrial area by supervising and inspecting directly with regard to the implementation of laws and regulations regarding wage policies, women and child workers, foreign workers, as well as supervision of Occupational Safety and health, Jamsostek/BPJS, and worker organizations. To achieve the purpose of supervision as an effort to enforce the labor crime law as a whole.

To ensure a decent life it is necessary to have a source of income that is constant and sufficient enough to meet the needs of the worker and his family. Income and security needs can be in the form of wages, benefits and facilities both during work and when unable to do work. Wages and Social Security also serve as a means of protection and a means of increasing productivity. Low wages cannot support economic growth. With low wages, workers have difficulties in fulfilling nutrition and health, enjoying educational facilities and improving people's quality of life. Therefore, the improvement of wages and social security of workers and their families need to be one of the targets of Social Development.

Wages or salaries are rewards given for the outpouring of workers' services to be able to meet the needs of his life and the needs of his family. In addition, wages have socio-economic implications. The level of wages in Indonesia in general is still low. Such low wages can indeed occur because of the low level of productivity of workers or because of the inability of the company to pay high wages. Low wages can also occur because employers deliberately suppress wages with the intention of increasing corporate profits. In general, the productivity of workers is low, that is, due to the low level of education and skills and the lack of training followed, and mainly due to low wages and working conditions. The managerial skills of many entrepreneurs today are also generally still low. Many entrepreneurs still rely on government facilities rather than the ability to take advantage of business opportunities. Likewise, there are still quite a number of entrepreneurs who have illusions that they will make huge profits by suppressing workers' wages. It is necessary to realize that in today's technological century, low wages are no longer a comparative advantage of a country. Low wages can even cause counterproductive and can weaken employers in competition and will threaten the survival of the company, the impact of the low wage policy is. First, low wages will result in low levels of nutrition and health of workers, so that workers can not work wholeheartedly, energetically productive. Especially when there is a noticeable difference in

income. The worker does not feel part of the company, so the worker does not show responsibility and dedication. Second, low wages and low health levels cause workers to feel saturated and tired quickly, so they cannot work productively. In carrying out the work often occurs wasteful use of materials and damage to the means of production. Third, low wages are often used as an excuse to justify cheating workers, as well as forgive workers who lack discipline. Fourth, low wages are often a source of unrest, rallies and strikes that result in disruption of the production process and huge losses for the company. With the role and function of such wages, the government is obliged to regulate the protection of workers' wages, namely so that the wage level meets the requirements of justice and a decent life for workers and their families. For this reason, the government sets the regional minimum wage, which is the lowest wage allowed by underprivileged employers in a province for a certain group of workers.

The regional minimum wage is generally still low, because in its determination it is always considered the condition of underprivileged companies. The ability of companies to pay wages is not the same. The minimum wage is generally below the level of minimum physical needs. Therefore, for certain sectors that are higher, the regional minimum wage applied to the sector is also generally still lower than the KFM. However, there are still some employers who do not follow the minimum wage regulations. There is even a tendency for some companies that are actually reasonable to provide wages that are far more than the minimum wage to only provide minimum wages. Many companies have enjoyed various facilities such as the use of Technology, Management, Credit Facilities, ease of export and import, as well as various infrastructure facilities and other economic facilities, but still provide low wages.

CONCLUSION

Criminalization of the relationship between employers and workers occurs due to internal factors, namely, the demands of workers' rights such as demanding wage adjustments, wanting to establish labor unions, BPJS participation, dismissal of Labor Relations, and other normative rights by conveying their aspirations through labor organizations or by conducting strikes or demonstrations, this triggers the criminalization of employers against workers, especially for union officials. Furthermore, the inconsistency / application of labor legislation that is actually the norm can answer the relationship between

employers and workers is a harmonious relationship by promoting equal rights and interests in tackling labor criminalization.

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