

PROSPECTION OF PARENTAL CRIMINAL LIABILITY IN INDONESIAN CRIMINAL LAW

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ABSTRACT

Criminal law as a solution to the problems in the relationship of humanity/viable constantly evolves, it is expected also developed a dynamic, moving, follow the development of the community. Therefore, the buildings in which there are criminal law theories, principles, should join the growing. The issue of criminal liability as one of the fundamental problems in criminal law, Idema stated that Criminal Liability (fault in the broad sense) is the heart of criminal law. This means for dropping the criminal, the elements of criminal liability is a decisive factor in addition to the existence of Criminal deeds which are against the law. Criminal liability with the adagium "No Liability Without Fault" or every person liable for the criminal act, which their do themselves, in principle accounted for individually (individual liability), but as the development of the era, corresponding to utility, possible criminal liability can be redirected/replaced to others or better known as type criminal liability. The vicarious principles are "type" is the deviation of the individual nature of accountability against which one can be accounted for over the criminal acts of others have done. Parental Criminal Liability is the liability of parents against her still under who commit criminal acts, is another form of criminal liability which was replaced a type to others. It is becoming a new discourse in the criminal law, given that children under age, you should get a good education from parents, the environment or the communities where he lives, so he didn't do any act that is prohibited and is liable to criminal. Example for the young age drive vehicles without, their parents can be liable for this prohibited act. Indonesia with a criminal law comes from the Netherlands, with the criminal code as its basic system, not to recognize the doctrine of Parental Criminal Liability. Various countries such as Canada and some States in the United States, recognize the doctrine of Parental Criminal Liability, against some specific criminal acts. Interesting to examined in legislation in Indonesia to include Parental Criminal Liability in this criminal law.

Key words : Parental, Criminal, Liability in Indonesian Criminal Law

Introduction

The rapid development of the era and developed human civilization, of course, along with the various problems are that exist in society. The problems that need a solution to the problem which can be solved by law. Law is a concept / insights in human relations / community be expected to solve the various problems that arise. Therefore, the law as a concept / insights are expected to move in line with the dynamic development of society. The issue / problem of evil, which by Saparinah Sadli said as "The Oldest of the Social Problem"¹ or problems in the public relations of the oldest, of course, needs a "way out" created by the concepts / ideas in law, either the terms of prevention (treatment of the causative) and in tackling (symptomatic treatment).² Combating crime is causative, ie from the side of prevention, is how to conceptualize the ideas on crime prevention that that does not happen.³ If it is implemented in law, a lot of concepts / ideas / insights that can be contained in a rule of law, for example in the field of civil law, constitutional law, administrative law, and so on. While crime prevention is symptomatic, the treatment when the "disease" of the crime emerge, implemented in the field of law, namely by stipulating that such actions can be imprisoned. ideas / concepts / insight regarding the terms of the act can be imprisoned it can be realized in a legal norm containing the sharp sanction of criminal law.

Criminal law as a solution to problems in human relations / community that is constantly evolving. It is also expected to expand, move dynamically, following the development of society . Therefore , the buildings in which there are criminal law theories , principles , should help to develop. The problem of criminal responsibility is one of the fundamental problems in the criminal law , Idema's claimed that the Criminal Liability (errors in the broad sense) is the heart of the criminal law.⁴ This means to convict , the elements of criminal responsibility is a decisive factor in addition to the factor of a criminal act which is against the law.

Criminal liability with the adagium "No Punishment Without Fault " or No Liability Without Fault or every person liable for the criminal act , which do themselves , in principle, be accounted for in private (individual liability) , but as the development time ,

¹ Barda Nawawi Arief, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Badan Penerbit Universitas Diponegoro, Semarang, 2000, p. 11

² Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Citra Aditya Bakti, Bandung, 2005, p. 72

³ Loc. cit,

⁴ Sudarto, *Hukum Pidana I*, Yayasan Sudarto, Semarang, 1990, p. 86

according to usefulness, possible liability criminal can be transferred / changed to others, or better known as vicarious criminal liability.

The vicarious principle is an exception to the principle of fault liability to the exclusion of the individual, in addition there are also exceptions to the principle of the strict liability that other (criminal) liability, namely the criminal liability without fault (*mens rea*). Parental Criminal Liability is part of the criminal responsibility of substitute or other forms of vicarious criminal liability models. vicarious criminal liability generally applies to corporate criminal liability or in the classic model in the UK the owner or manager accountability for criminal acts of his subordinates.

Minors who commit criminal acts or other terms are under age / infancy / minors / minderjarig is the subject of criminal acts that are differentiated by the subject of criminal acts of adults. In principle, minors who committed a crime, criminal liability are different from adults, both objectively disapproval against offenders (minors) because not have a good understanding of a prohibited act and punishable, as well as criminal sanctions. Interesting to discuss the shape / model is right for the criminal responsibility of minors, whether the model of direct criminal responsibility, or a vicarious model of criminal responsibility, in this case the parents who do such accountability. Minors with a criminal offense is certainly very much influenced by external factors that shape the character, so that a more precise understanding of determinism is dominant against the minors.

The issue date laws in Indonesia about the parental criminal liability for minors is the discourse of the criminal responsibility of parents for minors who drive vehicles on the highway. Interesting to discuss about it, and the possibilities of other types of criminal offense committed by minors are accountable to parents. Basic idea for parental criminal liability is minors did not have full capability to liable their actions. It is beside from determinate paradigm. Determinate paradigm explains that someone is doing something not in the act of free will, this is caused by external factors that affect a person act like that. Not alike adult people, who is doing something with free will.

Based on above, it is interesting to discuss about parental criminal liability, especially for prosecution in Indonesian Criminal Law.

Vicarious Criminal Liability And Parental Criminal Liability

Vicarious criminal liability is an exception to the principle of criminal liability in principle is an individual criminal liability. In the classical doctrine of criminal responsibility is from the common law system (English). Vicarious liability is a liability imposed upon others of wrongdoing by others. Such accountability such as occurs in conduct that is still within the scope of employment or occupation. Classically, the case of vicarious liability in the UK generally occur regarding the relationship between workers and employers (delegation principle). The parental criminal liability is a form or other variations of vicarious liability but not exactly the same, because in parental criminal liability, the parents of minors who committed a crime, may be liable, at least if there has a guilty mind / *mens rea* in the form of negligence. Parental criminal liability is criminal liability where children under age (under age) when committing a crime, the parents accountable. Judging from criminal liability parental history was a form of accountability to civil and criminal liability. The basic idea is minors (minors or under-age) is the full responsibility of parents or society have an obligation to oversee, so if there is a child to commit, and parents negligent watch, then the parents can be subject to liability either for compensation or tort law as well as criminal.

The Age Limit Of Criminal Responsibility Of Children In Indonesia

The age limit of criminal responsibility of children in Indonesia as stipulated in Act No. 11 of 2012 on the Criminal Justice System of the Child, Article 1 paragraph 3 :⁵

Children in conflict with the law, hereinafter called the child is a child over the age of 12 (twelve) years, but not yet the age of 18 (eighteen) years allegedly committing a crime.

Parental Criminal Liability Case In USA

In *Moore v. Crumpton*, the North Carolina Supreme Court held that the parents of a seventeen-year-old who broke into a woman's house and raped her were not liable for the acts of their child because the parents could not have prevented their son from leaving the house while they were sleeping. The court thus followed the common-law policy that parents do not generally have sufficient control over their children to justify imposing liability on those parents for the acts of their children. At common law, parents were held liable only if:⁶

- (1) they directed or subsequently ratified the act; or if the child
- (2) was acting as the parent's agent or servant;
- (3) was entrusted with a dangerous instrumentality, such as a gun, or was negligently given access to an automobile; or
- (4) the parents' negligence was a proximate cause of the harm.

⁵ UU No. 11 tahun 2012 tentang Sistem Peradilan Pidana Anak

⁶ Jason Emilios Dimitris, *Parental Responsibility Statutes and The Programs That Must Accompany Them*, Stetson Law Review 1997-1998, p.663

Parental Liability In CANADIAN LAW

In Canada parental liability of minors who commit criminal acts are not regulated in criminal law , but in civil tort law . This can be seen in the regulations in Ontario , Manitoba and British Columbia.⁷

Parental Criminal Liability Act In USA

California's Penal Code section 272 has served as a model for many recent parental responsibility statutes.⁸ While the statute originally penalized only the offense of contributing to the delinquency of a minor, the legislature added an amendment including a parental responsibility provision in 1988.⁹ It reads: "For purposes of this section, a parent or legal guardian to any person under the age of 18 years shall have the duty to exercise *reasonable care, supervision, protection, and control* over their minor child."¹⁰ Section 272 was amended at the request of Los Angeles prosecutorial agencies to target parents for "the express purpose of deterring juvenile delinquency, particularly juvenile gang activity, by affecting parental actions perceived to cause such delinquency."¹¹ The criminal parental responsibility provision imposes a fine, not to exceed \$2500, imprisonment of no more than one year, or both for parental violations.¹²

In Madison Heights, Michigan, an ordinance declares that "it shall be unlawful for the parent of any minor to fail to exercise reasonable parental control" if the child commits criminal acts as the result of that failure.' If the minor commits two or more criminal acts within a twelvemonth period, the parent "may be deemed guilty" and may be punished with a \$500 fine, a 90-day jail sentence or probation.(MICHIGAN MADISON HEIGHTS, MICH., CODE § 8-221 (1970)¹³

Parental Criminal Liability Prospection In Indonesian Criminal Law

In the Indonesian Criminal Law, both in the Penal Code or the Criminal Law outside the Criminal Code, are not familiar with the parental criminal liability to minors who commit the crime. The basic idea is the lack of parental supervision of children who commit criminal acts. Frequent case in Indonesia is the case of traffic accidents involving minors, where the child is not his time driving a motor vehicle. so far only a civil damages are applied, rather than criminal.

Prospecting the parental criminal liability can not be separated from the study of penal policy, which is a function of penal policy is to realize the criminal law regulations are better in the future. In relation to the parental criminal liability, meaning it needs to formulate the parental criminal liability for the minors who commit criminal acts in the Basic Principle of Indonesian Criminal Law

The Draft Criminal Code in Indonesia, has not yet formulated regarding parental criminal liability. The new draft criminal code Indonesia formulate deviation principle mistake of strict liability and vicarious liability. Strict liability and vicarious liability set forth in Article 39:¹⁴

1. For certain crimes, the law may determine that a person can be imprisoned solely for the fulfillment of the elements of the offense regardless of their faults.

2. In cases determined by law, any person can be held accountable for criminal acts committed by others.

Departing from the above, it should be formulated that criminal offenses committed by minors (minors), caused by the negligence of his parents, the parents can be accounted for. This is caused by minors, its did not have the full capability to liable for his actions.

Conclusions

1. The parental criminal liability of minors who commit criminal acts have not been regulated in Indonesian Criminal Law.
2. It is necessary for regulating the parental criminal liability of minors who commit criminal acts because of the culpability of parents , in the Indonesian Criminal Law because minors did not have full capability to liable for his actions

⁷ [https://en.wikipedia.org/wiki/Parental_responsibility_\(criminal\)](https://en.wikipedia.org/wiki/Parental_responsibility_(criminal))

⁸ Pamela K. Graham, *Parental Responsibility Laws: Let The Punishment Fit The Crime*, Loyola of Los Angeles Law Review, 2000, p.1736-1737

⁹ Loc.cit

¹⁰ Loc.cit

¹¹ Loc.cit

¹² Loc. cit

¹³ *Criminal Liability of Parents for Failure to Control Their Children*, Valparaiso University Law Review, 1972, p. 332

¹⁴ Indonesian Draft Criminal Code 2015

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