Criminal Policy About Vigilantism Against Suspected Criminals

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Abstract
Vigilante action against suspected perpetrators of criminal offences is a phenomenon in the Province of North Sumatra, which violates various values of Pancasila, various principles, various provisions of articles in laws and regulations, and also public order. Vigilante action against suspected criminal offenders is a violent crime that is a social problem, which must be prevented and overcome through criminal policy. This research examines the current criminal policy regarding vigilantism against suspected perpetrators of criminal offences. In connection with that, this research using Criminal Policy Theory, is focused on examining the current criminal policy regarding vigilantism against suspected perpetrators of criminal acts. This research is a type of normative research. The method used in this research is normative juridical research method. This research is prescriptive analysis, using various types of data in legal research. The results of the study concluded that the current criminal policy regarding vigilantism against suspected perpetrators of criminal offences can be confirmed by the provisions of Article 170 jo Article 351 of the Criminal Code. The current criminal policy regarding vigilantism against suspected perpetrators of criminal offences in a non-penal manner, can be confirmed by an appeal from the Government through the Police, especially through the Police in the Province of North Sumatra.

I. Introduction

the life of the people, with its nature, namely regulating and compelling. With the law, it is expected to create justice, legal certainty, the happiness, truth, peace, order, and prosperity in people's lives (Law is political product established by the government to regulate the life of the people, by its very nature of governing and forcing. With the law, it is expected to create justice, legal certainty, the happiness, truth, peace, order, and prosperity in people's lives)[1]. According to Marwan Mas: 'The function of law: 1. as a means of social control; 2. as a means of social engineering (changing society); 3. as a symbol; 4. as a political tool; 5. as a means of dispute resolution; 6. as a means of social control; 7. as a means of social integration."[2]

According to Joseph Raz: 'Functions of law: 1. Direct function, primary in nature, which includes 4 (four) things: a. Prevention of certain actions and encouraging certain actions; b. Provision of facilities for various private plans; c. Provision of services and redistribution of various goods; d. Settlement of disputes outside the channels of dispute resolution. Settlement of disputes outside the regular channels; 2. Indirect function, namely strengthening the tendency to appreciate certain moral values."[3]

Indonesia is a state of law.[4] The principle of the rule of law always revolves around 2 (two) main issues: 1. limitation of power; 2. protection of human rights. Thus, there are 12 (twelve) main principles that become the main pillars supporting the rule of law: 1. Supremacy of law; 2. Equality in law; 3. Principle of legality; 4. Limitation of power; 5. Independent supporting organs; 6. Free and impartial judiciary; 7. State Administrative Court (PTUN); 8. Constitutional Court (PTN); 9. Protection of human rights; 10. Democratic rule of law; 11. Serves as a means of realising the objectives of the welfare state; 12. Transparency and social control[5].

Criminal Law is one type of law, which based on its binding force is part of Public Law.'[6] According to Hartono Hadisoeprapto: "Criminal Law as a field of law is also studied as a science or made the object of a science, called "Criminal Law Science', which is a science about a special part of the law. The object is the Criminal Law rules that apply in a country, with the aim of investigating the objective understanding of the Criminal Law.

to investigate the objective understanding of Positive Criminal Law"[7]. According to Moeljatno: 'Criminal Law is part of the overall law applicable in a country, which provides various bases and rules for 3 (three) things: 1. Determining various actions that should not be done, which are prohibited, with sanctions in the form of certain punishments for people who violate; 2. Determining when and

in various matters of people who have violated the prohibition can be subject to criminal sanctions as threatened; 3. Determining how the imposition of punishment can be carried out if there are people who are suspected of violating the prohibition."[8]

Criminal Law, applies nationally, one of which is in the Province of North Sumatra (Sumut). In North Sumatra Province, there is still a phenomenon of vigilante action against suspected perpetrators of criminal offences. Various cases of vigilantism against suspected perpetrators of criminal offences that have occurred in North Sumatra Province, among others, can be seen in Table 1.

No	Inisial Tersangka Pelaku/ Korban	Akibat	Locus Delicti	Tempus Delicti
1	JFS, dan SSHS.	Maut (Meninggal).	Deli Serdang.	2019.
2	LS, dan AP.	Luka Berat.	Medan.	2020.
3	E.	Meninggal.	Binjai.	2020.
4	YAP.	Meninggal.	Simalungun.	2020.
5	S, dan GH.	Luka Berat.	Deli Serdang.	2020.
6	AS.	Luka Berat.	Medan.	2021.

Table 1. Various Cases of Vigilante Action Against Suspected Criminal Offenders in North Sumatra Province.
Source: Processed by Researcher.

According to Zainal Abidin: Vigilante action is the act of a mob acting arbitrarily against a person who is considered guilty. Mass means that the action is carried out by a crowd of people."[9] According to J.C.T. Simorangkir et al: 'The act of vigilantism is the act of judging yourself, exercising rights according to your own will which is arbitrary, without the consent of other interested parties, so that it will cause harm."[10] According to Romli Atmasasamita: 'The phenomenon of vigilantism is a phenomenon in which the alleged perpetrator of a criminal offence in a legal event holds 2 (two) positions simultaneously, namely on the one hand as a suspected perpetrator of a criminal offence, and on the other hand has also become a victim of a criminal offence, known as a duo."[11] The perpetrators of vigilantism against suspected perpetrators of criminal offences can be divided into main actors and supporting actors (mass).

Examined from Criminal Law, vigilantism against suspected perpetrators of criminal offences is a crime of violence. Perpetrators of criminal acts who are victims of vigilantism often suffer losses in the form of damage to goods, minor injuries, serious injuries, and sometimes even lead to death before being processed and tried in accordance with applicable Criminal Law provisions.

As a citizen and subject of Criminal Law, based on the Preamble of the Fourth Paragraph, Article 28 D paragraph (1), Article 28 G paragraph (2), and Article 28 I paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), the Government is obliged to create legal certainty to protect the rights of suspected criminal offenders as legal persons from torture (specifically because of vigilantism) as part of human rights that cannot be reduced under any circumstances.

The phenomenon of vigilante action against suspected perpetrators of criminal offences that occur in the Province of North Sumatra is considered commonplace among the community, which if law enforcement is not carried out, it will cause bad precedents in the framework of Criminal Law enforcement. Related to this, it is necessary to study the current criminal policy regarding vigilantism against suspected perpetrators of criminal offences.

2. Research Method

This research is a type of normative research. The method used in this research is the normative juridical research method.[12] This research is prescriptive analysis. The data used in this research are data as commonly used in legal research in general, namely primary data, secondary data, and tertiary data.[13] All data obtained will be used to examine the problems in this research, in order to obtain answers to the questions.

3. Results and Discussion

According to W.J.S. Poerwadarminta: 'Vigilante actions are arbitrary actions against people who are considered guilty.'[14] It is affirmed that vigilante actions are arbitrary and unlawful actions of the main actors and supporting actors against people suspected of committing criminal offences. In the phenomenon of vigilantism, the main perpetrators and supporting perpetrators act as street judges who apply punishment/execution to suspected perpetrators of criminal acts in front of them, namely by committing violence which in fact is a prohibited act based on statutory regulations, namely jointly (in groups/beatings) carrying out beatings/torture against suspected perpetrators of criminal acts. In addition, sometimes they also damage the goods of suspected perpetrators of criminal offences (which are used as tools and/or means to commit criminal offences).

With the existence of vigilante actions against suspected perpetrators of criminal acts, of course the suspected perpetrators of criminal acts become victims. Criminal suspects who become victims, often suffer losses in the form of damage to goods, minor injuries, serious injuries, and sometimes even die before being processed and tried in accordance with applicable Criminal Law provisions.

The legal phenomenon of vigilantism often occurs in various parts of Indonesia. This is also the case in North Sumatra Province. Vigilante actions against suspected perpetrators of criminal offences are a manifestation of the lack of legal awareness of the main perpetrators and supporting actors of the Criminal Law, so that the law of the jungle is implemented.

Examined from Criminal Law, vigilantism against suspected perpetrators of criminal offences is a crime of violence. According to Arif Gosita: 'Violent crimes are various acts against the law, which are carried out intentionally by people against other people, whether they cause mental, physical, and social suffering."[15] The phenomenon of vigilantism against suspected perpetrators of criminal offences is a crime of violence.

The phenomenon of vigilantism against suspected perpetrators of criminal offences (especially those that occur in the Province of North Sumatra) violates various values of Pancasila, namely the value of the Second and Fifth Precepts. In addition, vigilantism against suspected perpetrators of criminal offences violates various principles, namely the principle of equality before the law, the principle of presumption of innocence, and the 3 (three) main principles that animates human rights (the principle of equality, the principle of prohibition of discrimination, the principle of positive obligations to protect certain rights).

Vigilante actions against suspected perpetrators of criminal offences also violate the provisions of the articles in the legislation, namely the provisions of Article 27 paragraph (1) juncto (jo) Article 28 A jo Article 28 D paragraph (1) jo Article 28 G paragraph (2) jo Article 28 I paragraph (1) and paragraph (2) jo Article 28 J paragraph (1) of the 1945 Constitution jo Article 3 paragraph (2) and paragraph (3) jo Article 4 jo Article 5 paragraph (1) jo Article 9 paragraph (1) jo Article 18 paragraph (1) jo Article 33 jo Article 69 paragraph (1) of Law No. 39/1999 on Human Rights. Law Number 39 of 1999 Concerning Human Rights (Law Number 39 of 1999) jo Article 8 paragraph (1) of Law Number 48 of 2009 Concerning Judicial Power (Law Number 48 of 2009). In addition, vigilantism against suspected perpetrators of criminal offences also violates public order.

It has been asserted that vigilantism against suspected offenders is a crime of violence. Based on its form, vigilantism against suspected perpetrators of criminal offences is a category of physical violence. Based on the act, vigilantism against suspected perpetrators of criminal offences is a category of collective violence. Based on the subject, vigilantism against suspected perpetrators of criminal offences is a category of direct violence. Based on the opinions of Jack D. Douglas, and Frances Chaput Waksler, vigilantism against suspected perpetrators of criminal offences is a category of overt violence.

The act of vigilantism against suspected perpetrators of criminal offences is a crime of violence that is a social problem, which must be prevented and overcome through social policy (social policy). This is also the case with the act of vigilantism against suspected perpetrators of criminal offences that occurred in North Sumatra Province. According to Mark Walsh, et.al.: 'Social policy is a plan, strategy, and approach set by the Government when deciding what to do about problems that affect social welfare. This social policy can be in the form of policies in the fields of politics, economics, law, defence, security, natural resource management, and others. This social policy is included as an effort to protect and improve the welfare of the community."[16]

According to G.P. Hoefnagels: 'Social policy is part of legislative policy, and law enforcement policy. The larger scope of law enforcement policy is called 'criminal policy'. Criminal policy is the science of crime prevention."[17] According to Muladi, and Barda Nawawi Arief: 'Criminal policy is a rational attempt to tackle crime. This is part of the politics of law enforcement in a broad sense."[18]

According to Sudarto: 'There are 3 (three) meanings of criminal policy: 1. In a narrow sense, the overall principles and methods that form the basis of the reaction to violations of the law in the form of punishment; 2. In a broad sense, is the overall function of law enforcement officials, including the workings of the judiciary and the police; 3. In the broadest sense (adopted from Jorgen Jepsen), is the overall policy, carried out through legislation and official bodies, which aims to enforce the central norms of society."[19].

Vigilante action against suspected perpetrators of criminal offences that occurred in North Sumatra Province is a crime of violence. Vigilante actions against suspected perpetrators of criminal offences are criminal acts that become social problems, which must be prevented and overcome through criminal policy. Countermeasures through criminal policy, of course, can be carried out in a penal or non-penal manner.

Regarding the current criminal policy regarding vigilantism against suspected perpetrators of criminal offences in a penal manner, it can be confirmed by the provisions of Article 170 jo Article 351 of the Criminal Code (KUHP). In Article 170 of the Criminal Code, it is determined that: '(1). Any person who openly and with joint force uses violence against persons or property, shall be punished by a maximum imprisonment of five years and six months; (2). The offender shall be punished: 1. by a maximum imprisonment of seven years, if he intentionally destroys property or if the violence used results in an injury; 2. by a maximum imprisonment of nine years, if the violence results in a serious injury; 3. by a maximum imprisonment of twelve years, if the violence results in death; (3). Article 89 shall not be applied'.

Based on the provisions of Article 170 of the Criminal Code above, in relation to the act of vigilantism against suspected perpetrators of criminal offences, it is confirmed that there are 5 (five) elements of Article 170 of the Criminal Code: 1. Whoever; 2. Openly; 3. With joint force; 4. Using violence; 5. Against persons and/or goods.

Article 351 of the Criminal Code, stipulates that: '(1). Maltreatment shall be punished by a maximum imprisonment of two years and eight months or a maximum fine of three hundred Rupiahs; (2). If the fact results in a serious physical injury, the offender shall be punished by a maximum imprisonment of five years; (3). If the fact results in death, the offender shall be punished by a maximum imprisonment of seven years; (4). With maltreatment shall be equated intentional damage to health; (5). Attempt to commit this crime shall not be punished'. Based on the provisions of Article 351 of the Criminal Code above which is associated with the act of vigilantism against suspected perpetrators of criminal offences, it is confirmed that there are 3 (three) elements of Article 351 of the Criminal Code: 1. whoever; 2. intentionally; 3. committing maltreatment.

Based on the provisions of Article 170 in conjunction with Article 351 of the Criminal Code, 5 (five) things are confirmed regarding the current criminal policy regarding vigilantism against suspected perpetrators of criminal offences in a penal manner: 1. Vigilante action against suspected perpetrators is a crime of violence (physical), which is equated with deliberately damaging health; 2. Supporters of vigilante action against suspected perpetrators and/or their goods (generally tools and/or means used to commit criminal offences), shall be punished with a maximum imprisonment of 5 (five) years and 6 (six) months; 3. Major perpetrators of vigilante action against suspected perpetrators and/or their goods who deliberately cause minor injuries and/or destroy the goods of suspected perpetrators, shall be punished with a maximum imprisonment of 7 (seven) years; 4. The main perpetrators of vigilante actions against suspected perpetrators of criminal offences, resulting in serious injury to suspected perpetrators of criminal offences, shall be punished with a maximum imprisonment of 9 (nine) years; 5. The main perpetrators of vigilante actions against suspected perpetrators of criminal offences, resulting in the death of suspected perpetrators of criminal offences, shall be punished with a maximum imprisonment of 12 (twelve) years.

In addition to the current criminal policy regarding vigilantism against suspected perpetrators of criminal offences in a penal manner, of course there is also a current criminal policy regarding vigilantism against suspected perpetrators of criminal offences in a non-penal manner. Regarding the current criminal policy regarding vigilantism against suspected perpetrators of criminal acts in a non-punitive manner,

it can be confirmed by the appeal of the Government through the Indonesian National Police (Polri), especially through the Police in the Province of North Sumatra, so that citizens do not take the law into their own hands against suspected perpetrators of criminal acts.

The implementation of the appeal from the Police to the people of North Sumatra Province not to take the law into their own hands against suspected perpetrators of criminal acts, is certainly a manifestation / realisation of the implementation of one of the duties of the Police (related to the main duties of the Police), namely to participate in the development of National Law. This is confirmed based on the provisions of Article 14 paragraph (1) letter d of Law Number 2 of 2002 concerning the Indonesian National Police (Law Number 2 of 2002).

3. Conclusion

Vigilante actions against suspected perpetrators of criminal offenses are a phenomenon in the Province of North Sumatra. This action is a crime of violence, which violates various values of Pancasila, various principles, various provisions of articles in laws and regulations, and also public order. The act of vigilantism against suspected criminal offenders is a crime of violence which is a social problem, which must be prevented and overcome through criminal policy. Regarding the current criminal policy regarding vigilantism against suspected perpetrators of criminal acts in a penal manner, it can be confirmed by the provisions of Article 170 jo Article 351 of the Criminal Code. Based on the provisions of Article 170 jo Article 351 of the Criminal Code, 5 (five) things are emphasized regarding the current criminal policy regarding vigilantism against suspected perpetrators of criminal acts in a penal manner.Regarding the current criminal policy regarding vigilantism against suspected perpetrators of criminal acts in a non-punitive manner, it can be emphasized by the appeal from the Government through the Police, especially through the Police in the Province of North Sumatra, so that citizens do not take the law into their own hands against suspected perpetrators of criminal acts. The implementation of this appeal is the realization of the implementation of one of the duties of the Police to participate in the development of National Law, as mandated by the provisions of Article 14 paragraph (1) letter d of Law Number 2 of 2002.

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