

## NOT EVERY CRIME IS CRIMINAL ACT

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**Abstrak:** *Kejahatan dapat dituntut oleh negara dan diancam dengan hukum. Apakah mungkin untuk melakukan dosa dapat dihukum oleh hukum negara? Contoh sederhananya adalah kebohongan. Kebohongan dapat diancam dengan hukuman karena merupakan salah satu bentuk kejahatan (fraud). Kebohongan tidak dapat diancam serta dipidana dalam hukum pidana karena merupakan wanprestasi (wanprestasi). Padahal dalam hukum pidana, "pelaku" kebohongan bisa dipidana, apakah pantas menghukum anak yang berbohong? Untuk menjawab pertanyaan tersebut, penulis meminta persetujuan dari para pembaca untuk menjawabnya dalam hukum agama. Ketika sistem hukum di suatu negara melarang kegiatan kejahatan (dosa/kejahatan), para penjahat ini dapat mengatasinya dengan bepergian ke negara lain di mana kegiatan kejahatan tersebut legal dan bukan tindakan kriminal. Saya menyebutnya: tidak setiap kejahatan adalah tindakan kriminal.*

**Kata Kunci:** *Kejahatan, Dosa, Tindak Pidana, Sistem Hukum, Hukum Buatan Tuhan Dan Hukum Buatan Manusia.*

**Abstract:** If I say that crime is may be prosecuted by the state and is punishable by law. Is it possible to commit a sin can be punished by state law? For simple example is lie. Lies can be threatened with punishment because it is one form of crime (fraud). Lies cannot be threatened as well as punishments in criminal law because they are breach of contract (defaults). Even though within of criminal law, "perpetrators" of lies can be punishment, is it appropriate to punish children who lie? For the answer to this question, the author requested an agreement from the readers to answer it within of religious law. When legal system in a country prohibits evil activities (sin/crime), these criminals can overcome this by traveling to other country where such evil activities are legal and not criminal act. I call it: not every crime is criminal act.

**Keywords:** Crime, Sin, Criminal Act, Legal System, God-Made Law And Man-Made Law.

### A. Introduction

Crime (came from Latin, *cernere* or *crimen*), is illegal activities or an action or omission that constitutes an offense that may be prosecuted by the state and is punishable by law or an action or activity that, although not illegal, is considered to be evil, shameful, or wrong (Dictionary, 2019). Synonyms of crime is immoral act, sin, evil, evil action, wrong, wrongdoing, atrocity, abomination, enormity, disgrace, outrage, monstrosity, violation, abuse, injustice, affront, offense, unlawful act, illegal act, breach/violation/infracton of the law, misdemeanor, misdeed, wrong, felony, violation, transgression, fault, injury; malfeasance, malefaction, tort; archaic trespass, lawbreaking, delinquency, wrongdoing, transgression, misconduct, criminality, illegality, villainy, felony, corruption; informal crookedness, shadiness, and dodginess; malfeasance, malefaction; archaic navy; rare malversation (Dictionary, 2019).

If I say that crime is may be prosecuted by the state and is punishable by law. Is it possible to commit a sin can be punished by state law? For simple example is lie. Within the scope of criminal law, lies can be threatened with punishment (may be prosecuted by the state and is punishable by law) because it is one form of crime, namely fraud. Within the scope of civil law, lies cannot be threatened as well as punishments in criminal law because they are breach of contract or defaults. Even though within the scope of criminal law, "perpetrators" of lies can be threatened with criminality, is it appropriate to punish children who lie? For the answer to this question, the author requested an agreement from the readers to answer it within the

scope of religious law. Within the scope of religious law, namely hypocrite (المنافقون) the punishment for a lie is the right of God.

From the description above, the author is interested in conducting a study of contemporary crime - which is not part of a criminal act. Of course. Because there are many criminal law systems in the world today, it is inevitable that there will be differences in criminalization of crimes that are categorized as criminal acts. So, the next description is to do a discussion on this matter.

### **B. God-Made Law And Man-Made Law**

There are three kinds of law, natural, positive and divine. Natural law is the same among all peoples, at all times, and in all places. Conventional law is a law ordered by a wise man or men to suit the place and the time and the nature of the persons who are to be controlled by it ... . Divine law is one that is ordered by god through a prophet (David, 2006) ... . The purpose of natural law is to repress wrong, to promote right, in order that men may keep away from theft, robbery and murder, that society may be able to exist among men and everyone be safe from wrongdoers and oppressor ... . The purpose of the positive law is to suppress what is unbecoming and to promote what is becoming ... . [It] controls human conduct and arranges their affairs with a view to the improvement of human society ... . The purpose of divine law is to guide men to obtain true happiness, which is spiritual happiness and immortality (David, 2017, p. 183).

No one should believe that man-made law is better than the law of Allah, and to hold such a belief is Kufr (Sirajudin, 2015, p. 297). Divine law is made available to God's people (Baily, 2019). Furthermore, the divine law is obeyed by following the laws given by the king (Pollheimer, 2015). The partnership of natural and Divine law is very deep (Budziszewski, 2014, p. 6).

Religious laws pervade society, are recognised by civil law, have both a religious and temporal character, and regulate wide areas of believers' lives. A Charter of 'the principles of religious law' common to all three Abrahamic faiths (Jewish, Christian and Muslim) is proposed, to stimulate greater mutual understanding between religion and society and between the three faiths themselves (Doe, 2018). The divine law is the positive, revealed law (Costigane, 2017). Any behavior consistent with the content of the divine law is morally permissible (Sreedhar & Walsh, 2016).

In reality, however, claiming that God is the sole legislator and that human-made law has no legitimacy cannot be sustained. People today do not have direct and clear access to the will of God, particularly after the cessation of the Revelation, which occurred after the death of the Prophet (Black, Esmacili, & Hosen, 2013, p. 9). So that it is normal if there is an opinion say that human-made law is not true "law." (Yazzie, 2005, p. 42). Or, opinion say that: they disliked man-made law which, they thought, might cause more trouble in human life. However, that if any human-made law is considered necessary, it must be simple and consistent with the law of nature; and that human-made law cannot be perfect and has to be changed from time to time in order to meet the changing situation (Wang, 1956, p. 807). Furthermore, (for example, by author) in Islam the legislature is of minor importance since human-made law is superseded by the law of God (Prohl, 2004, p. 7).

The big question is "human" allowed to change the divine law from the aspect of criminalization and decriminalization from sinful act? The answer to this question will be discussed at the end of this paper. For now, the next discussion is about "man-made law" (after briefly described in the above description of "God-made law"). In St. Thomas Aquinas there were four types of law: (1) *lex divina*, the law revealed to man by God in the Scriptures; (2) *lex humana*, man's positive laws which conformed to God (3) *lex aeterna*, the law of all creation, revealing the will of God in natural phenomena and to all His creatures; and (4) *lex naturalis*, the Natural Law,

by which man's right reason can comprehend the will and reason of God (Stanlis, 2017, p. 266).

In the Chinese language, objects exist or do not exist, and this is called *li* [order in nature, things as they are, or the law of nature]. The prohibitions and decrees that a country has are called *fa* [human-made laws]. However, Western people call both of these 'law'. Westerners accordingly see order in nature and human-made laws as if they were the same (Cao, 2007, p. 1).

Undoubtedly, we must be quick to recognize that human-made law, even though we say it usually represents what the lawmaker believes ought to be the law, does not purport to be a moral code but only an ordering mechanism which is subject to political pressures, pragmatic conditions, and the imperfections of the lawmakers. The product will always fall short against any measure of perfection. Nevertheless, the adoption of laws, the practice of law, and the application and interpretation of law does contain an aspiration to that which we think is right to satisfy the human sense of justice. The law in its imperfect manifestation thus attempts continuously to move to "what ought to be." (Niemeyer, 2014, p. 1016).

Naturalism, natural law, or the law of nature as a basis of obligation emphasizes that all humanmade law is to be looked at and understood against a backdrop of principles discovered through use of human faculties, whether sensory or cerebral (Zedalis, 1993, p. 143). Particular rules of human-made law consonant with the divine will command the same degree of obedience as the divine will itself, while those that are inconsistent lack the force to bind (Zedalis, 1993, p. 163). One part of man-made law - the most unpleasant - is Criminal Law. What is the correlation between Criminal Law and Criminology? The description is known in the description below.

### **C. Criminology And Criminal Law Theory**

Criminology is the scientific study of crime and criminals (Dictionary, <https://www.google.co.uk/>, 2019). Terminology about crime has been described previously (see at the beginning of this article). So, in this section only the definition or terminology of criminal will be described. Criminal is a person who has committed a crime. Synonyms of criminal is lawbreaker, offender, villain, delinquent, malefactor, culprit, wrongdoer, transgressor, sinner; young offender, juvenile delinquent; felon, thief, robber, armed robber, burglar, housebreaker, shoplifter, mugger, rapist, fraudster, swindler, racketeer, gunman, gangster, outlaw, bandit, terrorist, bioterrorist, narco-terrorist, ecoterrorist, cyberterrorist, agroterrorist; yakuza; holdupper; informalcrook, con, jailbird, (old) lag, lifer, baddie; informalcrim; informalyardbird, yegg; informallighty; informaltief; rhyming slangtea leaf; informalcracksman; malfeasant, misfeasor, infractor; archaicmiscreant, trespasser, trusty, transport; rarepeculator, defalcator (Dictionary, <https://www.google.co.uk/>, 2019).

In primitive society "the criminal" was substantially the same as "the stranger," while in modern society "the criminal" is a person of less esteemed cultural attainments (Sutherland, 1944, p. 137). Convicted persons are nearly all criminals (Tappan, 1947). Time and the occasion count for much in the production of crime. Every Christian who listens reverently to the reading of the Ten Commandments and prays devoutly that God will incline his heart to keep them, feels, or ought to feel if he be in earnest, that he has in him the potentiality of committing every crime or sin forbidden by them (Maudsley, 1888).

Criminal law is a system of law concerned with the punishment of those who commit crimes (Dictionary, <https://www.google.co.uk/>, 2019). However, in fact: First, even though crimes have been committed by the perpetrators of crimes, there is a possibility according to the law that they are not subject to punishment. Second: not all acts of sin (as a synonyms of crime) are expressly stated in the regulations of a country as a criminal act.

A brief explanation of point 1 above is as follows: The law states that every killing of a human being, when committed by another human being, is a homicide. However, not every homicide is a crime. Until the present, the law has generally been in agreement that, if a husband discovers his wife in the act of adultery and he kills her or her paramour, the provocation is so great that the law will not punish him for murder (MDG, 1958). A brief explanation of point 2 above is as follows. Before that, let's see some the answer below this about the question (as a material for contemplation): What is the difference between crime and sin? If the two are the same, do we really have a separation between church and state?

Crime is state imposed, whereas, sin is religion imposed but both are made for the common good. Certain boundaries are required for the human beings to live peacefully and harmoniously and thus crime and sin came into existence. Crime and punishment are king made. Sin and hell are religion made. According to Dinakar Raj: in an empty highway, if one jumps signal it is a crime and not a sin; reprimanding and slightly punishing ones children is not a sin but it is a crime; divorce is the best example of sin not a crime; in a Hindu Brahmin society, if one eats non-veg food, it is a sin and it is not a crime; in a Muslim family, eating non-halal (without dedicating to God first) food is a sin but not a crime; and not helping accident victim is not a crime. In short, whichever speech or action repulsive to you and to your society is a sin and it may not be a crime. Whereas, in a given society a set of rules is framed for the common good and peaceful living, when it get violated the state intervene and punish the offender (<https://www.quora.com/>, 2014).

According to Usman Nadeem, crime is breaking manmade law while sin is disobeying God or breaking divine law. Crime is punishable by state. A crime may or may not be a sin, depending on your religion and location. Sin is punishable by God and if it is a crime too it will also be punishable by state. So there are four possible combinations for an action: Not a crime and not a sin. e.g. breathing, walking etc; Sin but not a crime. e.g. Eating pork for an Muslim living in USA; Sin and a crime. e.g. committing murder; Crime but not a sin. e.g. if praying is illegal then if someone prays it would be a crime but not a sin. Every crime would be a sin as well even if it is not specifically a sin the religion e.g. Illegal possession of firearm. An exception would be if it is illegal to do something that god has commanded, as in the above example of praying (<https://www.quora.com/>, 2014).

### **C. I Will Tell To You About The Crime, But It's Not The Criminal Act**

The relationship between age and crime is one of the most robust relationships in all of criminology. This relationship shows that crime increases in early adolescence, around the age of 14, peaks in the early to mid 20s, and then declines thereafter (Rocque, Posick, & Hoyle, 2016, p. 1). Human history has witnessed many types and intensities of responses to crime. Essentially during Pre-Enlightenment (before about 1650) until Colonial Period (1600 CE - 1800), sin and crime were one and the same (Campagna, 2016, p. 692). How do these two relations relate today? The answer certainly requires specific, comprehensive research. So, the answers to those questions are not given in this article.

Linked back to the previous discussion, regarding not all acts of sin (as a crime) are expressly stated in the regulations of a country as a criminal act, described as follows. There is a bewildering variety of legal systems in the world (Friedman & Hayden, 2017, p. 13). Every country has its own legal system (Kiyavitskaya, Krausová, & Zannone, 2008; Das, 2005, p. 193; van Renssen, 2016, p. 655; Paul, 2016, p. 154; Tan, 2003, p. 12) in place to keep order (Hailu, 2010, p. 106), its own system of legal thought, its own method of laws-making, and its own process of judicial determination of disputes (Shumba, 2015, p. 135) – different courts, judges, advocates and procedures, but the law that they apply is another matter (Wright, 2004, p. 5). Although every country has its own legal system in different historical stages, it is not necessarily a country of the

rule of law. Even if there exists a legal system, a country cannot be the one of the rule of law (Gungwu & Yong-nian, 2000, p. 143).

In areas of crime and criminal act, specifically on victimless crime, there are differences in the legal systems of each country. Victimless crime is important thing to know. The reason is that it is not appropriate for someone who does not harm others. In this case, it is not appropriate to have a potential "criminal". The equation is related to the regulation of prohibiting illegal drug users. For example, in Indonesia, who apply Civil Law and Saudi Arabia that apply Islamic Law, express prohibits on every citizen to play gambling, both in the real world and in cyberspace. Whereas in Malaysia, which applies a dual legal system, gambling is a limited legal act. What is that? And how is the comparison in prostitution and narcotics users? The answer can be known from this article.

According to my research – Comparison of the Legal System about *Victimless Crime* in Asian – the conclusions obtained are as follows: 1) The equality of the Civil Law, Common Law, and Islamic Law systems related to the regulation of non-victim crimes in Asian within the scope of this research is only from the aspect of prohibiting illegal drug users; and 2) The difference between the Civil Law, Common Law, and Islamic Law legal systems related to the regulation of crime without victims in Asian within the scope of this research is:

- a. In the context of gambling players:
  - a) Indonesia, which implements the legal system of Civil Law and Saudi Arabia that implements the Islamic Law legal system, expressly prohibits every citizen to become a gambling player, both of these actions are carried out in the real world and in cyberspace (although the rules in cyberspace in Indonesia and Saudi Arabia does not contain criminal provisions for gambling players). While Malaysia, which applies a dual legal system (Islamic Law and Common Law), does not expressly prohibit any of its citizens from becoming gambling players because in this country gambling is a limited legal act. Limited legal action means that the centralization of gambling locations in Genting Highland is not justified as a "chancy event" for Muslim citizens. At the time of this research, Malaysia did not have legal rules for gambling activities carried out in cyberspace.
  - b) Indonesia as a country with a majority of Muslim population, Malaysia which has the pattern of Islamic empire, and Saudi Arabia which makes the Al-Qur'an and Al-Hadist as the main basis of Islam in criminal law enforcement, has sentenced gambling players. Especially in Malaysia, penalties for gambling players are not given if the act is carried out in a place that has been specially prepared by the government and the gambler is a Malaysian citizen who is not Muslim.
  - c) In Saudi Arabia, gambling is illegal and there is no permit for gambling activities.
  - d) In Saudi Arabia, the pattern of punishment for gamblers is not codified or becomes absolute authority by judges who have the authority to accept, examine, and adjudicate, and decide cases.
- b. In the context of prostitution:
  - a) Prostitution / prostitution is illegal in Saudi Arabia with the threat of capital punishment for those who violate it (providers / connoisseurs of prostitution are married people). However, prostitution is a legal act in Indonesia and limited legal acts in Malaysia.
  - b) Legal acts in Indonesia mean that there are no criminal threats to female and male prostitutes. Whereas limited legal actions in Malaysia mean that Muslim citizens are illegally prostituting themselves.
- c. In the context of narcotics users:
  - a) Indonesia does not explicitly require drug users to undergo medical rehabilitation. This is different from Malaysia, which makes imprisonment a punishment if medical rehabilitation for narcotics users is unable to change its dependence. Or in other words, narcotics users in Malaysia are subject to imprisonment if they still use narcotics after first getting medical rehabilitation.
  - b) Narcotics users in Indonesia and Saudi Arabia are not liable to imprisonment if they report their actions to relevant agencies. However, if it does

not report itself, narcotics users in Saudi Arabia are threatened with imprisonment of at least 2 years and a maximum of 5 years accompanied by lashes for a maximum of fifty times and a maximum fine of 100 million rupiah. Unlike in Indonesia and Malaysia, Saudi Arabia regulates the provision of someone arrested visiting a place intended for narcotics use and knowing narcotics used at the place, subject to a prison sentence of not more than three months or whipping not more than fifty lashes. Therefore, in Saudi Arabia, imprisonment does not only apply to narcotics users but also applies to people who "approach" the place where the act violates the law.

#### D. Conclusion

Finally, when legal system in a country prohibits or restricts evil activities (sin/crime), these criminals can overcome this by traveling to other country where such evil activities are legal and not criminal act. I call it: not every crime is criminal act.

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