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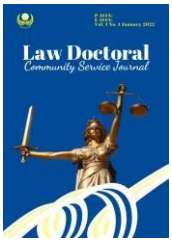

The Term "can" In General & Special Criminal Offenses Based on Principles, Theories, and Criminal Law Doctrines

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ABSTRACT

The term "can" is a legal term often used in relation to general offenses and specific offenses in criminal law. In the context of general offenses, the term "can" refer to the authority or power delegated to authorized officials to take criminal actions. The purpose of this study is to discuss the phrase "can" in general and specific offenses based on principles, theories, and doctrines of criminal law. The research method used is normative legal research, utilizing primary, secondary, and tertiary legal materials, through a legislative approach.

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1. INTRODUCTION

The term "can" (meaning "can" or "can") is a legal term commonly used in connection with general crimes and specific offenses in criminal law. In the context of general crimes, the term "can" refer to the power or authority delegated to competent officials to take criminal actions. Principles, theories, and doctrines of criminal law play a crucial role in understanding the use of the term "can" in this context.

Criminal law is part of public law which contains provisions (Chazawi, 2005). Riyanto (2011) argues that the principle of awareness is a very important aspect of criminal law. Criminal law principles, such as the principle of legality, require that every criminal act be based on clear and predictable laws. Therefore, the use of the expression "can" in criminal law must be limited and should not allow excessive interpretation to authorities. This principle safeguards individual rights from the abuse of power by the authorities.

In the theory of criminal justice, the term "can" is often associated with the concept of discretion. Discretion is the freedom granted to competent officials to decide whether to take criminal action or not. The term "can" is used to enable these officials to make decisions based on the public interest, justice, and other relevant factors in the cases they face.

Criminal law science also plays a role in interpreting the use of the term "can" in general offenses and specific offenses. Doctrines such as the Doctrine of Equal Opportunity emphasize that decisions regarding prosecution or criminal cases must be based on objective and fair reasons, without discriminating against or treating specific individuals or groups unfairly. The term "can" must be used carefully and in accordance with principles of fair and proportional criminal law.

Overall, the term "can" have significant implications for the power and authority of public authorities in general and in relation to specific crimes. Its use must be in line with criminal law principles, criminal theories, and offenses. It is essential to ensure that the use of the term "can" does not violate the principles of justice, equality, and legal certainty within the criminal justice system.

Law of the Republic of Indonesia Number 8 of 1981. Dated December 31, 1981. Effective December 31, 1983 (State Gazette of the Republic of Indonesia of 1981 Number 76. Supplement to State Gazette of the Republic of Indonesia Number 3209) Concerning Criminal Procedure Code. Article 21 paragraph (1) : An order for detention or further detention shall be carried out against a suspect or defendant who

is strongly suspected of having committed a crime based on sufficient evidence, in the event that there are circumstances which give rise to concern (subjective principle of investigators) that the suspect or defendant will run away, destroy or destroy evidence and/or repeat the crime. Paragraph (2) : Detention or further detention shall be carried out by investigators or public prosecutors against suspects or defendants by providing a detention order or a judge's decision stating the identity of the suspect or defendant and stating the reasons for the detention and a brief description of the crime case being suspected or charged and the place where he is being detained. Paragraph (3): A copy of the order for detention or further detention or the judge's decision as referred to in paragraph (2) must be given to his family. Paragraph (4): Detention "can" only be imposed on a suspect or defendant who commits a crime and/or attempt (Article 53 of the Criminal Code) or providing assistance (Article 56 of the Criminal Code) in a criminal act (objective principle) in some case:

a. Crime is punishable by imprisonment of five years or more;
b. Criminal acts as referred to in Article 282 paragraph (3), Article 296, Article 335 paragraph (1), Article 351 paragraph (2), Article 353 paragraph (1), Article 372, Article 378, Article 379 a, Article 453, Article 454, Article 455, Article 459, Article 480 and Article 506 of the Criminal Code, Article 25 and Article 26 Rechtenor donnantie (violation of the Customs and Excise Ordinance, last amended by Staatsblad of 1931 Number 471), Article 1, Article 2 and Article 4 of the Immigration Crime Act (Law Number 8 Drt. of 1955, State Gazette of 1955 Number 8), Article 36 paragraph (7), Article 41, Article 42, Article 43, Article 47 and Article 48 of Law Number 9 of 1976 concerning Narcotics (State Gazette of 1976 Number 37, Additional State Gazette Number 3086). Juncto Article 22 paragraph (1): The type of detention "can" be in the form of: a. detention at state prison; b. house arrest; c. city detention. Paragraph (2): House arrest is carried out at the residence or residence of the suspect or defendant by supervising him to prevent anything that "could" cause difficulties in the investigation, prosecution or examination at court hearings. Paragraph (3): City detention is carried out in the city where the suspect or defendant lives or lives, with the obligation for the suspect or defendant to report himself at the appointed time. Paragraph (4): The entire period of arrest and/or detention is deducted from the sentence imposed. Paragraph (5): For city detention the reduction is one-fifth (1/5) of the total length of detention time, while for house arrest one-third (1/3) of the total length of detention.

Law of the Republic of Indonesia Number 20 of 2001. November 21, 2001 (State Gazette of the Republic of Indonesia of 2001 Number 134. Supplement to State Gazette of the Republic of Indonesia Number 4150) Concerning Amendments to UU-RI No 31/1999. Dated August 16, 1999 (State Gazette of the Republic of Indonesia of 1999 Number 140. Supplement to the State Gazette of the Republic of Indonesia Number 3874) concerning the Eradication of Criminal Acts of Corruption. Chapter II. Corruption Crime. Article 2 paragraph (1) : Any person (subject of offense) who unlawfully (PMH) commits an act of enriching himself (subject of offense) or another person (ambtenaar) or a corporation (subject entity) which "can" harm state finances or the state economy, shall be punished (subject person) with life imprisonment or imprisonment for a minimum of four years and a maximum of twenty years and a minimum fine of two hundred million rupiahs and a maximum of one billion rupiahs. Paragraph (2): In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, capital punishment can be imposed. Juncto Elucidation of Article 2 paragraph (1) : What is meant by "unlawfully" in this Article includes acts against the law in the formal sense as well as in the material sense, that is, even though the act is not regulated in statutory regulations, if the act is considered disgraceful because it is not in accordance with a sense of justice or the norms of social life in society, then the act may be punished. In this provision, the word "can" before the phrase "harm the country's finances or economy" indicates that the criminal act of corruption is a formal offense, namely that the existence of a criminal act of corruption

is sufficient by fulfilling the elements of the act that have been formulated, not by causing consequences. Paragraph (2) What is meant by "certain circumstances" in this provision is intended as a burden for the perpetrators of corruption if the crime is committed when the country is in a state of danger in accordance with the applicable law, when a national natural disaster occurs, as a repetition of a criminal act of corruption, or when the country is in a state of economic and monetary crisis. And Article 3: The word "can" in this provision is interpreted the same as the Elucidation of Article 2.

Based on the explanation above, a problem arises that will be discussed in this study, namely regarding how to properly and correctly understand the meaning of the phrase "can" in the general criminal provisions and special criminal provisions (introductory chapter) mentioned above based on the Principles and Theories and Doctrine of Criminal Law. According to Simons (Lamintang 1984: 1-2) criminal law can be divided into criminal law in the subjective and objective sense. Criminal law can be said to be a system of norms that determine which actions and under what circumstances the law can be imposed, as well as what punishment can be imposed for those actions (Sumaryanto, 2019). Andi Zainal Abidin (2007: 260) says that most laws formulate error conditions negatively. Therefore, the interpretation of the law requires in-depth interpretation to avoid misinterpretation. Based on this explanation, this study examines the phrase "can" which allows for misunderstandings in the interpretation of laws and regulations. This research is also based on previous research which has studied a lot about ambiguity in legal regulations in Indonesia. For example, the research by Mustika, et al (2016) regarding ambiguity in RI Law Number 39 of 1999 concerning Human Rights. Then, reformulation of treason offenses in the 2019 draft National Criminal Law (Fajrin, 2023). Juridical Review legal remedies for review submitted by public prosecutors in criminal cases (Tarigan et al, 2022). The review was submitted because there was ambiguity in the decision.

2. RESEARCH METHOD

This research is a normative legal research, specifically examining the phrase "can" in general & special offenses based on the principles, theory, and doctrine of criminal law. Because it is normative legal research, primary, secondary and tertiary legal materials are used, using a statutory approach (Susanti, 2014). Legal material is analyzed using statutory interpretation, with a deductive thinking method.

3. RESULTS AND DISCUSSION

The meaning of the phrase "can" in the Big Indonesian Dictionary (KBBI Daring) (2023) is: able; able; Can; can; Possible. The word "can" in the Judicial Review Application Number 25/PUU-XIV/2016. Decision Wednesday, 13.56 WIB, January 25 2017. Delivered a decision in the case of reviewing Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes against the 1945 Constitution of the Republic of Indonesia. PERMOH OBJECT ONAN 1. Article 2 paragraph (1) and Article 3 of the Corruption Law specifically the phrase "or another person or a corporation" and the word "can". 2. According to the Petitioners the word "can" in Article 2 paragraph (1) and Article 3 of the Corruption Law is contrary to the 1945 Constitution, specifically Article 1 paragraph (3), Article 27 paragraph (1), Article 28G paragraph (1), Article 28D paragraph (1), Article 28I paragraph (4) and Article 28I paragraph (5) of the 1945 Constitution. The Petitioners also presented six experts: 1. Prof. H.A.S. Natabaya, S.H., LL.M. • Whereas the word “can” in Article 2 and Article 3 creates legal uncertainty, even though in a criminal act of corruption there must be certain loss to the state which in this case is determined by the Audit Board of the Republic of Indonesia; • Whereas there has been a shift in the notion of official accountability with the UUAP. Article 20 paragraph (4) of the UUAP states, "If the results of supervision of the government's internal apparatus are in the form of administrative errors that cause losses to state finances as referred to in paragraph (2) letter c, returns for state financial losses are made no later than 10 (ten) working days from the decision and issuance of the results of supervision". Article 70 paragraph (3) UUAP states, "In the event that a decision results in payment from state funds being declared invalid, the government agency and/or official is obliged to return the money to the state treasury." Thus, in the settlement of criminal

acts of corruption, prevention is emphasized; • Whereas the existence of Supreme Court Regulation Number 4 of 2015 only applies internally, namely how to settle cases within the Supreme Court. Article 2 paragraph (1) which states that the court has the authority to receive, examine and decide on requests for judgment and there is no abuse of authority in decisions and/or actions of government officials prior to criminal proceedings, as if it were an implementing regulation of the UUAP. Therefore, a Supreme Court Regulation may not limit a person's right to file an application for abuse of authority and become a problem because it can only be tested in the Supreme Court; • Whereas the approach of the United Nations Convention Against Corruption (2003) is different from the Corruption Crime Law which has more offenses regarding office, in other words moving articles from the Criminal Code. Even though the United Nations Convention on Corruption has been ratified, it has not been followed up on, so it is necessary to amend the law on corruption by referring to the ratification; • Whereas if the criminal act of corruption is a formal offense then there is no need to use the word "can", whereas now it is a material offense so there must be an element of loss to the state.

In connection with the phrase "can" that in the UU-TIPIKOR it does give rise to three legal certainty regarding the legal system as a whole. Even though the settlement provisions are in the Treasury Law and the AP-AP Law. The word "can" also does not give rise to guarantees of legal protection for officials and/or a legal entity with good intentions who are considered to be detrimental to the state for their negligence and are not intentional in the form of threats, bribes or deception to receive something illegally. • If there is an assessment of abuse of authority, the settlement will be carried out by APIP first by assessing the three assessments. There is an administrative error, or there is an administrative error that is detrimental to state finances. So, the essence is that administrative settlement is in accordance with the Contrarius Actus Principle, so administrative law is given the opportunity to complete it first. • Legal remedies if law enforcement officials or government agencies object to the APIP assessment, then a review can be carried out at the State Administrative Court (PTUN). This has been regulated by the Supreme Court Regulation-RI Number 5 of 2015. Government agencies and/or officials who feel that their interests have been harmed by the results of supervision can also apply to the State Administrative Court (PTUN). • The current development of abuse of authority in administrative law has already been identified. So that the abuse of authority as referred to in UU-AP has been strictly regulated and resolved according to the provisions in Article 20 UU-AP. • One example is that, for example, when there is no budget allocation for goods procurement but the need exists and is needed right away, can you buy the goods for what is needed at that time, then in fact, if the word "can" is still used, it is likely that people will not be able to make purchases for fear of being accused of causing losses to state finances. In fact, this provision is contained in Article 27 of the State Finance Law. That money can be issued in advance and then if the situation is urgent or unforeseen which is then included in the APBN for additional changes and/or budget realization reports. • This is true, of course if the word "can" can be expanded because according to the provisions of the norm itself. The latter, in essence, is what happens in practice as a result of the application of the "can" norm. That is, a system for determining state losses should begin with a financial audit to prove that there is a real and certain lack of money. After that, if the actual and definite amount is known, then proceed with the performance examiner to conclude, whether the deficiency is due to administrative malfeasance, then it returns to Article 20 UU-AP, or is mens rea the fulfillment of someone's malicious intent, bribery, deception, or threats, then it is carried out with a criminal settlement. • In the current practice that occurs from direct financial audits to statements concluding acts against criminal law, the existence of such arbitrariness or the potential for such arbitrariness, in essence is of course as a result of the application of these norms, directly or indirectly which will harm the guarantee of legal protection for citizens and also legal certainty itself.

4. CONCLUSION

Based on the explanation above, it can be concluded that; In general offenses, the phrase "can" refer to an individual's ability to commit an act that violates criminal law. The principle of legality or "nullum crimen, nulla poena sine lege" (no crime, no punishment without law) is an important principle here. A person can only be punished if his actions are clearly stated as criminal acts in the applicable laws. In special offenses, the phrase “can” refer to certain

conditions that must be met for an action to be considered a criminal act. For example, an act of theft can be considered a crime if it is proven that the perpetrator "could" intentionally take someone else's property without permission and with the intention of taking possession of it permanently. In criminal law theory, the phrase "could" denote a subjective element in the judgment of a crime. Some theories of criminal law, such as the theory of subjective guilt, recognize that an offender must have certain knowledge or awareness of the unlawful nature of his or her actions. In this case, the perpetrator "could" knowingly or with knowledge commit a criminal act. The criminal law doctrine that is relevant to the phrase "can" is the doctrine of individual responsibility. This doctrine holds that each individual is personally responsible for his or her actions, whether they violate the law or not. In other words, a person "can" be prosecuted and punished based on his own actions, regardless of other factors that may influence his actions. This conclusion illustrates how the phrase "can" in the context of general and special offenses can be related to the principle of legality, the theory of subjective guilt, and the doctrine of individual responsibility in criminal law. It is important to note that these conclusions are based on knowledge up to September 2021 and do not cover recent developments or changes in criminal law.

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