

# THE EXISTENCE OF CRIMINAL LAW IN NATIONAL CRIMINAL LAW REFORM

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## ABSTRACT

*The problem of reforming criminal law is one of the most important issues that need in all its aspects in connection with efforts to reform criminal law in our country. It is said to be important and even the most important because legal experts often interpret criminal law as a double-edged sword. On the one hand, it is a law to protect society from the threat of crime, but on the other hand, there are times, there are times when human rights temporarily or permanently deprive a person of liberty. Criminal law reform has existed since 1946 with the issuance of Law Number 1 of 1946 concerning criminal law regulations. Criminal law reform as part of criminal politics is in place, and it is time to implement it. This is mainly related to the provisions of the old criminal law, which are regulated in the criminal law code as an "umbrella act" or an umbrella law of a general nature. This law will also affect the formulation of special criminal laws, following the legal needs of society in this era of independence and openness in the 21st century. Based on the description of the background, the formulation of the problem that will be presented is as follows: Why is the renewal of the national criminal law important? How is the formation of criminal law reform in the national Criminal Code Bill? Based on these problems, the discussion is as follows: The existence of the new Criminal Code has become important which is sourced, characterized, rooted, and has a national character following the contents of Pancasila and the 1945 Constitution, is now very urgent to be realized to replace the old Criminal Code which is a legacy of the Dutch colonial and is no longer compatible with developments. Social, cultural, economic, political, and technological conditions in an atmosphere of independent Indonesia and only undergoing reform in the 21st century. The establishment of the new Criminal Code is a reflection of the government's serious efforts in enforcing criminal laws that are more humane and fair for all levels of society in this reform era. . It would be strange if the Netherlands, WvS had long been revised and not enforced, would continue to apply as a colonial legacy, because of the inability of this nation to create a new national criminal law.*

**Keywords:** *Existence, Criminal Law, Legal Reform*

## 1. PRELIMINARY

The issue of criminal law reform is an important issue that needs to be reviewed in all its aspects in connection with efforts to reform criminal law in our country. It is said

to be important and can even be said to be the most important because jurists often describe criminal law as a double-edged sword. On the one hand, it is the law to protect society from the threat of crime, but

on the other hand, sometimes, it takes away human rights by depriving a person's freedom temporarily or permanently.

Criminal law is significant in Indonesian legal discourse since it is a public law. Why wouldn't it be? According to several norms in criminal law, certain behaviors are prohibited when they are accompanied by threats of punishment, and certain behaviors are subject to the imposition of criminal conditions.

The fact that criminal law is public means that it must be applied nationally. As a result, the State of Indonesia's entire territory is subject to the application of Indonesian law. In addition, because criminal law is based on human principles, the people who implement it offer their regrets to those who transgress it. Because of this, the examination of information pertaining to criminal law is conducted with special sensitivity, namely by giving consideration to the context of society where criminal law is applied while upholding civilized human values.

One of the requirements for good or bad criminal law is the degree to which it complies with and upholds the values of the community in which it is applied. Accordingly, criminal law is deemed good if it does so. Conversely, criminal law is

considered bad if it is obsolete and does not follow society's values. This means that the reform of criminal law (criminal law reform) has now become a "fixed price" for fundamental changes to achieve better and more humane criminal objectives, actions, policies and punishments in Indonesia in the future. This necessity is consistent with the great aim in this reform era to achieve a more just law enforcement against all types of criminal law violations. In all spheres of social, national, and governmental life, an age urgently needs openness, democracy, effective governance, the preservation of human rights, law enforcement, and justice or truth.

The desire to reform criminal law has existed since 1946 with the issuance of Law Number 1 of 1946 concerning criminal law regulations. Criminal law reform as part of criminal politics is in place, and it is time to implement it immediately. This is especially related to the provisions of the old criminal law, which are regulated in the criminal law code as an "umbrella act" or general umbrella law. This law will also influence the formulation of special criminal laws, following the legal needs of society in the era of independence and openness in the 21st century.

Based on that, drafting a new national

criminal law code to replace the criminal law code left by the Dutch colonial government with all changes, in the explanation, is said to be one of the efforts within the framework of national law reform. These efforts are directed and integrated so that they can support national development in various fields in accordance with development demands and the level of legal awareness and dynamics that are developing in society.

This effort to realize the existence of a criminal law unit for all of Indonesia, de facto, could not be realized because there were areas occupied by the Dutch as a result of Dutch military actions I and II where for these areas, the *Wetboek van Strafrecht voor Nederlandsch Indie* (Staat Blad 1915) still applies: 732) with all the changes. Thus, it can be said that after independence in 1945, there was a dualism of criminal law in force in Indonesia, which lasted until 1958. With the promulgation of Law Number 73 of 1958. The Criminal Law Regulations apply to Indonesia with all amendments and additions (Zamili, 2022).

## 2. REVIEW REFERENCES

The goal of criminal law reform is to review, realign, and change the legislation to reflect the fundamental sociopolitical,

sociophilosophical, and cultural values of Indonesian society. The attempt to reorient and reform criminal law in accordance with the fundamental sociopolitical, sociophilosophical, and sociocultural values of Indonesian society—values that serve as the foundation for social policy, criminal policy, and law enforcement policies in Indonesia—is the essence of criminal law renewal (Arief, 2005). Furthermore, the reform of criminal law is:

1. It is part of a policy (rational effort) to renew legal substance to make law enforcement more effective
2. It is part of a policy (reasonable effort) to eradicate/overcome crime in the context of protecting society.
3. Is part of a policy (rational effort) to address social problems and humanitarian problems to achieve/support national goals (namely " *social defense* " and " *social welfare* " )
4. It is an effort to review and reevaluate ("reorientation and reevaluation") the main ideas, basic ideas, or socio-philosophical, socio-political, and sociocultural values that underlie criminal policy and criminal law (enforcement) policies so far. It is not

a renewal ("reform") of criminal law if the value orientation of the criminal law aspired to is the same as the value orientation of the old criminal law inherited from the colonialists (the old Criminal Code or WvS). (Arief, 2005)

Based on the nature of criminal law renewal above, two approaches must be taken in the framework of national criminal law reform, namely:

1. (*policy-oriented approach*).
2. (*value-oriented approach*).

### **3. IMPLEMENTATION METHOD**

The approach taken to write this essay was normative juridical, or based on the main legal material, and it involved looking at theories, concepts, and legal principles as well as relevant literature and regulations, particularly Laws Number 1 of 1946 concerning Criminal Law Regulations and Law Number 73 of 1958. The law determines that other rules and regulations linked to this research as well as Law Number 1 of 1946 concerning Criminal Law Regulations with all revisions and additions apply to all of Indonesia.

The research specifications employed in this study, which aim to present an overview of the reform of criminal Law in Indonesia,

are analytical descriptive in nature. Although the data utilized in this study were secondary, they were gathered from books, documents, literature, scientific essays, legal experts' opinions, and relevant laws and regulations, particularly those that were relevant to the investigation. And primary data through primary field studies are used as supporting data or secondary data obtained directly from the object of research by conducting interviews with respondents.

The data obtained from both the literature study and the field study are complete and then sorted, processed and arranged systematically, then presented as a description. Results and Discussion The Importance of National Criminal Law Reform

Renewal of Criminal Law has been carried out since 1964 and has discussed the concept of the Draft Law on the Basic Principles and Fundamentals of Indonesian Criminal Law and Criminal Law. This concept was then formulated as a Draft Criminal Code Draft Law. The new Criminal Code Concept was created in response to both national requirements and demands for renewal and changes/replacements to the outdated Criminal Code (Wetboek van Strafrecht) that had been handed down from the Dutch

colonial era. It therefore has a direct connection to the concept of "penal reform" (renewal of criminal law), which is in essence also a subset of a bigger concept, namely the development/renewal (system) of national Law.

Criminal law reform that is comprehensive must also address formal criminal law (criminal procedural law), substantive criminal law, and criminal law enforcement (Strafvollstreckengesetz). Together, these three criminal law categories need to be updated. If only one of the fields is updated while the others are not, implementation issues will occur and the reform's goals won't be fully met. The renewal's primary goal is to reduce crime. The three areas of law are interconnected in many ways.

Since the early days of the Republic of Indonesia's establishment, specifically when it was proclaimed on August 17, 1945 in Jakarta, efforts have been made to change the penal legislation. The 1945 Constitution has transitional rules to prevent a legal void. "All existing State agencies and regulations are still valid, so long as new ones have not been adopted in accordance with this Constitution," declares Article II of the Transitional Regulations. These provisions mean that the criminal and penal laws were

in effect then, namely during the occupation period by the Japanese or Dutch troops, before there were new legal provisions and laws.

Since these fundamental socio-political, socio-philosophical, and sociocultural values of Indonesian society serve as the basis for social policy, criminal policy, and law enforcement policies in Indonesia, an effort to reorient and reform the law in line with these values is essentially what criminal law reform refers to. Enacting criminal law reform, it could be argued, necessitates both a policy- and value-oriented approach.

Criminal law reform must be carried out with a policy approach, because in essence it is only part of a policy or policy measure (namely part of legal/law enforcement politics, criminal law politics, criminal politics, and social politics). With the description above, it can be concluded the meaning and essence of criminal law reform as follows:

1. Viewed from the point of view of the policy approach:
  - a. Penal law reform is primarily an endeavor to address social issues (including humanity) in order to accomplish or promote national

objectives (people's welfare, etc.) as part of social policy.

- b. As part of criminal policy, criminal law reform is essentially part of efforts to protect society (especially efforts to combat crime).
- c. As part of law enforcement policy, criminal law reform is essentially an effort to update legal substance to make law enforcement more effective.

2. Viewed from the point of view of the value approach:

Criminal law reform is fundamentally an endeavor to review and rethink (reorient and reevaluate) the sociopolitical, socio-philosophical, and sociocultural norms that support and serve as the foundation for the normative content and substance of the desired criminal code. If the desired criminal legislation, such as the new Criminal Code, has the same value orientation as the previous criminal code that was passed down from colonialists, then it is not a reform (reform) of criminal law (the old Criminal Code WvS).

Three elements of a good criminal law system are urgently needed in this reform

era and must be reinforced right away. First, it is no longer suitable in the modern world to use positive criminal law to regulate various parts of people's life. As a positive criminal law order, it is a legal product of the Dutch colonial legacy. For example, in material criminal law such as the Criminal Code. The provisions of this law lack social relevance to the social situations and conditions it regulates. This is because social change in Indonesia today is a radical change covering people's lives. Second, certain elements of positive criminal law no longer adhere to the spirit of reform, which respects the principles of liberty, justice, independence, respect for human rights, and democracy. Third, enforcing positive criminal law provisions leads to unfairness toward the populace, particularly political activists, as well as toward human rights and the country's democratic system.

Criminal law reform must be able to refer to criminal law policies to synergize with law enforcement's interests. This policy covers anything that can be criminalized in the broad criminal law. The criminal law will be implemented by the government and law enforcement officials.

### **Formation of Updates in the National Criminal Code Bill**

Due to the fact that laws will shape,

govern, and/or control society, the creation of laws is a social and political process that is crucial and has a significant impact. Laws by the authorities are used to achieve and realize the goals following what is aspired to.

Efforts to reform criminal law in forming a Draft Law on the National Criminal Code (RUU KUHP) are a basic need for society to create good and fair law enforcement for all citizens without distinction. Security under the auspices of the law is coveted by every member of the public who experiences "fear of crime" so that there are efforts to tackle crime through criminal legislation as part of a policy measure, due to increased quality, quantity and identity of law violations. All of this can be done through criminal law enforcement.

The formation of a National Criminal Code can achieve this effort. That is, the existence of an effort to overcome crime through making a criminal law is essentially an integral or integrated part of efforts to protect society (social welfare). This policy or criminal law is also an integral part of social policy or policy, namely all reasonable efforts to achieve social welfare and at the same time cover the protection of society against various violations of the law.

Starting with the ideas presented above, it follows that the development of the New Criminal Code concept is inextricably linked to the concept and strategy of creating a National Legal System based on Pancasila, the ideals of our society. This indicates that the revision of the National Criminal Law should also be based on and sourced/oriented to the fundamental concepts of Pancasila, which contain a balance of values, ideas, and paradigms, including nationalism, democracy, social justice, and religious morality (divinity).

Apart from starting from the idea of Pancasila balance, the reform of criminal Law in Indonesia (especially the drafting of the New Criminal Code), is motivated by the idea that has been repeatedly stated in various national and international seminar forums that:

Criminal law reform and enforcement should be carried out by exploring and studying unwritten sources of law and legal values that live in society, including in religious Law and customary Law.

The formation of criminal laws should cover the three areas of law to achieve justice, which is also related to problems within the Indonesian criminal law system. According to Sudarto, these problems are:

- a) Criminalization and discriminalization,
- b) criminal award,
- c) Implementation of criminal Law, and
- d) To what extent is the urgency of the national criminal code

All of the above problems will be answered by the presence of criminal law. According to Barda Nawawi Arief, that:

**The criminal law policy of criminal law will go through three stages, namely:**

- 1) The stage of law enforcement in abstracto by the legislature which is called the legislature is the stage of law formulation;
- 2) The stage of law enforcement in concreto in the application of criminal law by law enforcement officials from the police to the courts is called the judicial policy as the stage of law application; and
- 3) The stage of law enforcement in concreto in implementing imprisonment by criminal / prison officers is called executive policy as the administrative stage of law execution. The three stages can be

applied sequentially, starting with forming the Criminal Code.

The formation of the new Criminal Code Bill is still in its first stage, namely the formulation of criminal law. At this stage, all legal aspects and types of criminal sanctions can be given by members of the public as input to the government (cq the department of law and human rights) and the people's representative council for the sake of realizing the perfection of the new Criminal Code Draft Bill which can fulfill the sense of justice of the Indonesian people and nation. Input from the community is still wide open before the enactment and enactment of a National Criminal Code.

The formation of the new Criminal Code is expected to accommodate various problems in criminal law which so far have not been accommodated in the old Criminal Code and injustice has always arisen in society and judicial practice. Besides that, the substance of the new Criminal Code must also be able to anticipate the development of various new offenses in the process of changing society in the reform era, such as the issue of hostage-taking, makers, terrorism, offenses against communication via satellite, contempt of court, offenses -delicts related to computers, information technology and space, offenses



against environmental pollution, economic and business crimes which are growing rapidly with advances in science and technology.

These new crimes that have developed have implications for all aspects of the life of the nation and state. The formation of the National Criminal Code is a mandate from the People's Consultative Assembly of the Republic of Indonesia (MPR RI) with the principle of an archipelago perspective, namely that there is only one national law that applies throughout Indonesia as a unitary state. The logical consequence of this principle is that only one national criminal law applies in this country. The politics of criminal law to be pursued is the politics of unification of criminal law. A natural thing in a unitary state like Indonesia is that only one law applies to all groups of the population as a demand and legal requirement in a modern legal state which is increasingly complex with various legal problems.

Another aspect of this legal politics is that national criminal law must be able to be codified in the context of legal certainty. All provisions of criminal law are written punishments collected in one system which must be open in nature to respond to various changes due to scientific and technological

developments that are taking place very quickly in people's lives. The codification adopted by the government is sectoral in that all principles, principles and provisions that apply generally to all criminal fields are compiled as one system unit in one law book, namely the National Criminal Code.

The Criminal Code Bill must be promulgated immediately, to complement the Criminal Procedure Code and laws for law enforcement officials that already existed in the country. For Indonesia, which has been independent for more than 60 years, the success in forming a National Criminal Code is a matter of pride which will complement the masterpiece of criminal law in this country after the promulgation of the Criminal Procedure Code in 1981. The problem now is, when will the government be able to promulgate this Criminal Code Bill in the State Gazette to become the National Criminal Code which the people have long coveted?

The enactment of the New Criminal Code in the framework of law enforcement is a benchmark to which criminal law sanctions have a special meaning with Indonesian characteristics in changing the nation's behavior following the law. The New Criminal Code is the work of the nation in the field of criminal law which was

formed to welcome the new millennium era in the 21st century.

#### 4. CONCLUSION

The existence of a new Criminal Code is important which has its origins, characteristics, roots and national character following the contents of Pancasila and the 1945 Constitution, now it is very urgent to be realized to replace the old Dutch colonial Criminal Code and is no longer compatible with social, cultural, economic, political developments. and technology in an atmosphere of independent Indonesia and has just undergone reforms in the 21st century.

The formation of the new Criminal Code reflects the government's serious efforts to enforce a more humane and just criminal law for all levels of society in this reformation era. It would be strange if the Netherlands, the WvS had long been revised and was not enforced, would still apply as a colonial legacy, due to the nation's inability to create a new national criminal law.

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