Journal of Social Research

P-ISSN: 2827-9832
E-ISSN: 2828-335x
http://ijsr.internationaljournallabs.com/index.php/ijsr

LEGAL CRITICISM OF THE CODE OF LAW THE NEW CRIMINAL LAW IS VIEWED FROM THE POINT OF VIEW PHILOSOPHICAL, SOCIOLOGICAL AND JURIDICAL

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ABSTRACT

The need for a new National Criminal Code is based on philosophical, sociological, and legal considerations, among others: "(1) the view of life, level of awareness, and legal ideals derived from Pancasila and the Preamble of the 1945 Constitution; (2) paying attention to the needs of society and the state towards the development of empirical facts of national criminal law; and (3) paying attention to pre-existing racial and ethnic inequalities." The purpose of this study is to determine the extent to which the newly passed Criminal Code (KUHP) is able to accommodate the problems of criminal acts that occur in Indonesia in particular and matters related to cross-border criminal acts. The research method used is normative research with a legal approach and conceptual approach. The results of the discussion show that the new Criminal Code is considered not to provide fair law enforcement against perpetrators of criminal acts, especially related to discrimination against minority groups and violence against women. The new Criminal Code is considered not accommodating technological developments and social progress, so it is unable to provide appropriate solutions to technology-related criminal offenses. The new Criminal Code is considered to not provide fair law enforcement against perpetrators of criminal offenses who have high power or position, such as politicians or high-ranking officials. The new Criminal Code is considered not providing the right solution to criminal offenses related to social problems, such as drugs, corruption, and domestic violence.

Keywords: Criticism of Law, Criminal, Philosophical, Sociological, Juridical.

INTRODUCTION

The Criminal Code (KUHP) is one of the five laws that form the basis of criminal law in Indonesia (Ramadhani & Barda Nawawi Arief, 2012). The Criminal Code is a law that regulates criminal acts, criminal sanctions, and criminal procedures in Indonesia. Since its publication in 1847, the Criminal Code has been amended several times, including with the issuance of a new one in 2021.

Criminal law reform is a process carried out to update or change existing criminal law. Criminal law reform is carried out with the aim of adjusting criminal law to the development of society, the community's need for fairer law enforcement, and adjustments to changes that occur in society. The reform of the criminal law is to ensure that the new criminal law is in accordance with the development of society and the needs of society for fairer law enforcement. The reform of the criminal law also aims to ensure that the new criminal law can provide the right solution to legal problems that occur in society.

Criminal law reform is an ongoing process, because society and community needs continue to develop in line with socio-cultural development and technological development. The newly passed Criminal Code is expected to provide rules governing criminal acts,

sanctions given for these crimes, and procedures for investigating, investigating, and examining criminal acts in Indonesia (Haris et al., 2023).

In addition, the newly passed Criminal Code is also expected to improve the weaknesses in the previous Criminal Code, so as to provide more effective solutions in dealing with criminal acts in Indonesia. The newly passed Criminal Code is also expected to be a reference for law enforcement officials in carrying out their duties, as well as a guideline for the public in understanding and fulfilling their obligations under the law.

The need for a new National Criminal Code is based on philosophical, sociological, and legal considerations, including: "(1) the outlook on life, level of consciousness, and legal ideals derived from Pancasila and the Preamble to the 1945 Constitution; (2) pay attention to the needs of society and the state for the development of empirical facts of national criminal law; and (3) take into account pre-existing racial and ethnic inequalities."

On the other hand, the article by article material contained in the new Criminal Code cannot be separated from the controversy of the general public and legal experts, even the outside world also commented on the newly passed Criminal Code. Some articles that are controversial according to the public and legal experts and foreign communities include: (Indrayanti & Saraswati, 2022):

1. Contrary to international law, "this is to ensure domestic law is aligned with Indonesia's international human rights law obligations, and commitment to the 2030 Agenda and Sustainable Development Goals (SDGs)," the UN statement said.
2. In the new Criminal Code, there is an article that contains the issue of violations against the president, state institutions, and the rules of protest that must be with the government. This is in the spotlight of the United Nations.
3. Threats of Gender Violence, International organizations also prohibit articles in the Criminal Code that discriminate, or have a discriminatory impact on a number of groups. Those who are vulnerable to the new Criminal Code are women, girls, boys, and sexual minorities.
4. Impacting health access, Furthermore, this regulation is considered risky to affect various sexual and reproductive health rights, as well as privacy rights.
5. Violating the right to freedom of religion, the UN also criticized that there are articles in the Criminal Code that risk violating the right to freedom of religion or belief. The article is considered to legitimize negative attitudes towards members of minority religions. That way worry about potentially causing violence against them. In addition to the above, there are still several articles that are considered not in accordance with the principles, cultural and religious norms that apply and exist in Indonesia, even one of the political parties in parliament spontaneously reacted to conduct a judicial review of the newly passed Criminal Code.

METHOD

This research is a normative legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced (Peter Mahmud Marzuki, 2010). Based on the subject of study and the type of problem that exists, this study will use normative research, namely research conducted by examining library materials or secondary data, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. These legal

materials are compiled systematically, reviewed and then drawn a conclusion in relation to the problem under study (Soerjono Soekanto, 2008,).

The approach method used is structural (macro) using qualitative analysis to see how the law works so that weaknesses can also be known in its application. Soetandyo's view of law is just a function in society, which therefore results in a difference between what is normed and what is in fact not visible in the number (Soetandyo Wignjosoebroto, 2013,).

This research prioritizes researching, analyzing and reviewing secondary data related to legal aspects of consumer protection that conduct e-commerce transactions, then analyzed with laws and regulations related to the object of research, in order to obtain various written materials needed and related to the problem under study.

All material obtained and collected will be analyzed using qualitative analysis, namely by describing or explaining existing theories with material obtained from data and literature studies from various sources, preceded by coding and editing data, then interpreting which is giving meaning to the analysis, explaining patterns or categories looking for relationships between various concepts. This qualitative method was used because this study did not use a measured or stated concept.

RESULTS AND DISCUSSION

A. Criticism of the new Criminal Code is reviewed from a philosophical review of the law

Indonesia's efforts to change its criminal law must be guided by the ideals of a growing and developing nation. The current Criminal Code, which originated in the colonial legal system of the Dutch East Indies, needs to be revised. The 1945 Constitution of the Republic of Indonesia, especially the fourth paragraph of the Preamble, must be adopted as a standard for changes to be made. To achieve the goal of respect and enforcement of human rights and achieve a balance based on the moral values of the Supreme Godhead, humanity, nationality, democracy, and social justice, national criminal law materials must be adjusted to legal politics, conditions, and development of national life. the Indonesian nation as a whole (Law & Indonesia, 2015).

When discussing criminal law reform, it is important to distinguish between internal and external goals. In order to protect the community and the welfare of the Indonesian people, the internal purpose of the government is to modify the criminal law (Nawawi Arief, 2009). Both of these goals are fundamental to criminal law. major changes in the criminal justice system. While getting out of here should help bring about some kind of international crime order (Вылегжанин & Скуратова, 2005). Criminal justice reform and law enforcement in the interest of community protection (social defence):

a. Protect society from destructive and dangerous antisocial behavior with the aim of punishment is to prevent and overcome crime in order to
b. Protecting society from the dangers of one's nature, if the purpose of criminal law is to reform lawbreakers into law-abiding citizens, then the purpose of punishment should be to help offenders correct their criminal behavior.
c. Protecting the public from the abuse of law enforcement sanctions and citizens, such violations are then designed to prevent arbitrary acts that would be contrary to the rule of law.

d. Protecting the community from various disturbances in the balance of interests and values due to one crime, it is the responsibility of criminal law enforcement to realize public peace by solving problems arising from criminal acts. After World War II, the protection of victims of crime became a very urgent issue in the context of community protection. Victims also include victims of "abuse of power", who must receive protection in the form of "access to justice and fair treatment, restitution, compensation and assistance" (SINAULAN et al., 2023).

The principle of legality in the Reconstruction Criminal Code of this bill also contains criticism of the principle of legality. According to the Criminal Code Bill, "National criminal law must maintain a fair balance between the public or state interest and the interests of individuals, between the protection of perpetrators and victims of criminal acts, between the protection of elements of acts and the protection of elements of thought, between legal certainty and justice, between written law and law living in society, between national values and universal values, and between human rights and national security." (Khasan, n.d.).

Justice in the context of the principle of legality of criminal law must pay attention to legal justice. If any of the prerequisites, especially monetary rewards, are met, then legal justice will be achieved. Hart's theory of compensation argues that if injury or loss has occurred and compensation is demanded, the principle of fairness applies (Dimyati, 2017). Although a crime has not been codified in the Criminal Code, victims can file civil claims for monetary damages if harmed by the perpetrator.

Sentencing in criminal law moves towards restorative justice, therefore this makes sense. Leave argues that criminal activity is motivated by a desire for a form of justice known as "restorative". What is meant by "Restorative Justice" is a way of resolving disputes in criminal law that emphasizes reparations rather than punishment by bringing together perpetrators, victims, and other interested parties to reach a mutually agreed agreement (Zulfa, 2014). As a result, this work can be a step to restore the status of the victim or to the benefit of the victim, highlighting a major flaw in the principle of legality: it does not provide protection for victims of crime.

Examine the historical development of the principle of legality and its relation to the theoretical framework of legal philosophy, as it relates to criminal law. As part of the investigation of the origin of the principle of legality, a philosophical study of the concept will be conducted. Law as an ideal set of values that should serve as guidelines for creating, enforcing, and modifying legal norms is the focus of philosophical inquiry (Wiwie Heryani, 2012). The ideal principle of legality requires an investigation of whether or not the basic idea has been achieved, and whether or not it provides equal protection for the perpetrator and the victim.

Rousseau's ideas of freedom and autonomy for individuals, social agreement, "volente generale", "d'interet commun", and popular sovereignty, have become a call for the French people to challenge the absolute power of the king. This thinking has underlined the need for the French people of the time to fight for the right of individuals to access justice and to be protected from the injustices that could arise from "arbitrium judicis" in criminal proceedings. These rules, found in Article 4 of the penal code of the French Penal Code, serve as the framework of the French legal system. Montesquieu and Rousseau's ideas had

a common thread which, according to Montesquieu, "The protection and guarantee of the rights of the citizen included the realization of individual liberty by limiting the absolute power of the king, and limiting the authority of judges." The division of power in one state into legislative, executive, and judicial branches limited the power of the king as well as the judiciary. Instead, Rousseau proposed limiting the power of the king and the authority of judges by upholding popular sovereignty and general volunte, all of which are stipulated in law, in order to protect and guarantee the rights of the people. citizenship (exercise of human freedom and independence). The legal foundation can be traced back to the ideas of these two people.

Because the substance was too utopian and apparently unsuitable for the situation in France at the time, the French Penal Code (1791) did not last long. A new Penal Code, formed in part by the ideas of Jeremy Bentham, was finally enacted in 1810. Jeremy Bentham's thoughts (Cahyadi & Manullang, 2021) The belief that laws should be made with human profit, pleasure, and happiness in mind gave impetus to the development of the idea of legality. This kind of reasoning is in line with the goals of French intellectuals who sought to ensure that everyone had the opportunity to access justice and be protected from unjust state demands.

French law enforcement continues to operate under the terms of the revised Penal Code. The principle of legality is defined in Article 4 of the Penal Code. The Dutch Wetboek van Strafrecht accepted Article 4 of the new Code Pénal (1810) as the principle of legality in 1881. Article 1 (1) of the Penal Code and Wetboek van Strafrecht both define the principle of legality in the same way.

The newly passed Criminal Code mandates that state provisions in imposing crimes must guarantee the autonomy of every perpetrator while upholding the dignity of everyone. As a result, for the welfare of everyone, criminals must have goals and objectives that can achieve a balance between individual rights and the needs of society. This philosophy is in line with the philosophy of Pancasila, especially the fifth precept of "social justice for all Indonesian people" is in accordance with the purpose of penal policy, which is to arrive at punishment that is inseparable from the goals of criminal politics. Pad means broadly to ensure the welfare of the community.

The existence of Pancasila as a staatsidee (idea of the state), which serves as a grondslag philosophy and a common ground or sentence of sawa among fellow citizens in the context of state life in the first agreement that implements constitutionalism, shows the nature of Pancasila as an open ideology. (Prasetyo, 2017) Since Pancasila is not a closed ideology, it allows for the development of a whole-of-society consensus on how best to realize these guiding principles.

To be effective, the new Criminal Code must codify the use of Pancasila as a basis for punishment. This concept or design uses two different types of punishment: punishment and actions that seem to have been researched based on the values of Indonesian society, with careful attention to the fact that there are victims who bear pain. Functionally or broadly, the criminal system includes the entire system (laws and regulations) that regulate how criminal law is implemented concretely to impose a person on conviction (law). In this case, the criminal law enforcement system which includes the subsystems of the Material/Substantive Criminal Law, Formil Criminal Law, and Criminal Implementation

Law is identical to the criminal justice system. The entire body of law governing crime and punishment is known as criminal law, to use substantive and limited definitions.

The purpose of criminal law policy, which includes penal system policy, is to establish appropriate criminal law for the present and future. As a result, criminal law reform includes correctional system policies. It is impossible to operationalize/enforce criminal law concretely with only one sub-system, so that together they form an integrated criminal law enforcement system or penal system. As a result, the subsystem of the Formil Criminal Law and the Criminal Implementation Law was also revised after the renewal of the Material Criminal Law. The implementation of the criminal law enforcement system/criminal system occurs at three different policy levels: legislative/formulative policy level, judicial/applicative policy level, and executive/administrative policy level.

At its core, the penal system is a system of authority/power to impose punishment, and this authority/power is developed during the legislative/formulative policy stage. Defining criminal acts can be done both in a firm and loose sense, as well as in a material or abstract sense. Strictly speaking, "criminal conviction" means the power of law enforcement officials to impose criminal sanctions (judges). In a broad/material sense, "Criminal conviction includes a chain in the process of legal action from authorized officials, through the process of investigation, prosecution, and finally criminal verdicts handed down by the court and carried out by criminal executing officials."

B. Criticism of the New Criminal Code Reviewed from the Sociology of Law

Sociologically, legal reform was carried out because of efforts to meet the legal needs of the community since 46 years ago. The cultural norms of an independent and sovereign nation undermine this (latency). This is especially true for countries that have been colonized and still inherit legal systems from their colonial countries, because the ideas of concordance, jurisprudence, and doctrine imposed by the colonizers are not widely understood by the new generation of the country. The restoration of the rule of law in the country is essential for the uniform application of criminal law throughout the country.

Some criminal law formulations contained in the Criminal Code can no longer be used as a legal basis in handling crime problems because the internal situation of Indonesian society is growing rapidly along with the progress that occurs internationally. A comprehensive change to criminal law that better balances the needs of society, state needs, and individual needs, between the protection of perpetrators and the protection of victims, between the elements of action and the elements of action, between legal certainty and justice, between written law and the law that lives in society, between national values and universal values, and between human rights and human obligations. (Nasional et al., 2015)

This is because the community wants to see the mission of decolonizing the Criminal Code, namely "Colonial legacy, democratization of criminal law, consolidation of criminal law, adaptation and harmonization of various legal developments that occur both as a result of the development of the field of criminal law and as a result of values, standards, and norms that live and develop in the life of the Indonesian legal community and the international world (privilege, control and responsibility)." (Intervention & Sovereignty, 2001).

The principle of legality in the Criminal Code Bill is regulated differently from the colonial legacy Criminal Code which is still in effect today. The Principle of Legality is

known in Latin as "Nullum delictum, nulla poena, sine praevia lege poenali", namely that "an act cannot be punished, except by virtue of the strength of pre-existing provisions of criminal legislation, undergoing changes in format and essence." The changes in format and essence in question can be seen in the following Article 1 and Article 2 of the New Criminal Code:

Article 1

1) "No act can be subject to criminal sanctions and/or actions, except on the strength of criminal regulations in laws and regulations that existed before the act in leucine;
2) In establishing the existence of a criminal offence, analogies are prohibited."

Article 2

1) "The provisions referred to in Article 1 paragraph (1) do not reduce the enactment of laws living in society that determine that a person should be punished even though the act is not regulated in this law;
2) The law that lives in society as referred to in paragraph (1) applies where the law lives and as long as it is not regulated in this law and in accordance with the values contained in Pancasila, the Constitution of the Republic of Indonesia Year 1945, human rights, and general law principles recognized by the community of nations;
3) Provisions regarding procedures and criteria for determining the law living in the community are regulated by Government Regulations."

In the Explanation to Article 1 (1) of the Criminal Code Bill it is stated that "This paragraph contains the principle of legality. This principle specifies that an act is only a criminal offense if it is determined to be so by or based on laws and regulations. The laws and regulations in this provision are laws and regional regulations." The notion of legality includes the basis of criminal law, consequently it is used here. Thus, there must be existing criminal laws and regulations or contain criminal threats before a criminal act can be committed. In order to prevent law enforcement officials from acting arbitrarily in trying and trying someone for a criminal act, the criminal provisions do not apply retroactively (Hairi, 2017).

In the Explanation to Article 1 paragraph (2) of the Criminal Code Bill, it is stated, "The prohibition on the use of analogous interpretation in determining the existence of criminal acts including the consequences of using the principle of legality." By applying criminal provisions in other crimes of the same type or form to acts that do not constitute the crime at the time committed, the interpretation of analogy allows for broader application of the law. Disagreements that have arisen in practice to date can be resolved by highlighting the prohibition of analogies. Meanwhile, the Explanation to Article 2 (1) states: "Living law means the law that lives in the life of the Indonesian legal community." There are various legal traditions that coexist in Indonesian legal society, namely the fact that in some parts of the country, the unwritten rule of law still exists in society and is treated as law. This is also found in criminal law, namely in the field of "customary crimes". This Criminal Code contains specific rules governing the implementation of customary criminal law, which provide a legal basis for it. Criminal provisions are usually regulated by laws and regulations, but the provisions of this paragraph include exceptions to these provisions. He

acknowledged that the ingrained sense of justice in some communities necessitated this ingrained criminal practice.

The academic paper elaborates on this by explaining how, starting with the pre-existing national legislation policy (i.e. Law No. 1/Drt/1951 and Law No. 14 of 1970, amended several times, and most recently replaced by Law No. 48 of 2009 concerning Judicial Power), the argument can be made that there is nothing really new in materially expanding the concept of legality; rather, it is simply the continuation and implementation of established policies and ideas. In fact, "constitutional policy" now even includes policies / ideas to formulate the principle of legality in article 14 paragraph (2) of the 1950 Constitution reads: "No one shall be prosecuted to be punished or punished, except because of the rules of law that already exist and apply to him." In that Article the term "rule of law (recht)" is used which is broader than just the rule of "law" (wet), because the meaning of "law" (recht) can take the form of "written law" or "unwritten law" (Pristiwati, 2014).

Signs, indicators, and criteria to identify which sources of written law are reliable (sources of legality), namely "as long as they are in accordance with the values of Pancasila values and / or general legal principles recognized by the nation's community". This means that the standards are based on universal principles. In accordance with national ideals (Pancasila), namely religious values, humanism, patriotism, democracy (popular knowledge / wisdom), and social justice. And it is noteworthy that the signs read "in accordance with the principles of common law recognized by the community of nations", referring to the term "the general principle of law recognized by the community of nations" in Article 15 (2) of the ICCPR (International Covenant on Civil and Political Right) (Nasional et al., 2015).

Therefore, it is clear that the motivation behind the revision of the Criminal Code Bill is the principle of legality which includes the principle of material legality including the spirit to replace the Dutch colonial legacy Criminal Code with a more legal criminal law. In accordance with Indonesian values. However, the dynamics of modern law, human rights issues, and community law all play a role in determining boundary indications with respect to the legal acceptance of society(Fathurokhman, 2008).

Moreover, when considering the origins of the principle of legality, it becomes clear that this principle is far from ideal and subject to a number of caveats. The core concept of the principle of legality has a significant influence on the practical application of the principle of legality. In this context, the principle of legality has only two purposes: to protect civilians from the arbitrariness of the power of the ruler and the authority of the court, and to limit the power and authority of the ruler and judge. Only the alleged criminals were given the role of protectors. Even if their activities cause substantial harm to individuals and/or society, perpetrators will not face criminal charges if they do not violate the law. Since the government cannot pursue a person whose actions are not expressly prohibited by the criminal law, even if that person's actions are very detrimental to the victim and society, the restrictive function serves only the interests of the perpetrator (Yuherawan, 2012).

In other words, the principle of legality can be set aside in the course of events, for example for articles such as war crimes, crimes against peace, crimes against humanity,

gross human rights violations, for and in the name of justice, the need to prevent severe damage to vulnerable populations, and so on.

It said the incorporation of the new Criminal Code on the notion of material legality into its conceptual framework would have far-reaching effects both on its law and administration (judges). The idea of material legality ensures that the laws that exist in society will be enforced as a result of the law. People in the area can finally rest assured that justice has been served. Then there will be harmony between written law and societal norms. In their role as law enforcers, judges are given a unique window into the full spectrum of legal norms and principles of society; As a result, they have an ethical and professional obligation to make a sincere effort to study and apply customary law (Pristiwati, 2014).

As legal positivism remained dominant in Indonesia, theoretical discussions arose about incorporating socially relevant "living law" into the process of updating national (criminal) laws. In addition, theoretical support is already being provided for the inclusion of community-based laws in the national (criminal) law update process. The presence of traditional values has found a place in various scientific forums today, where pluralism is a problem in the world community. Therefore, it makes sense that the study of plurality, especially legal pluralism, is already the subject of several theoretical studies.

First, Werner Menski's Triangular Concept of Law. Narrowing his research to three main categories of law: community law, state law, and ethical law, Menski came to the conclusion that "a positivistic/legalistic/formalistic view that assumes only state law as the only law that can resolve disputes in society includes insufficient and unsatisfactory views." No single legal system can stand alone (Marcella Elwina, 2010).

Kedua, Teori Cermin (Mirror Thesis) Brian Z. Tamanaha. Mengutip pendapat Vago, Tamanaha menulis bahwasanya “Every legal system stand in a close relationship to the ideas, aims and purposes of society. Law reflects the intellectual, social, economic, and political climate of its time”. (Rahardjo, 2009b) Law, according to Tamanaha essentially includes "reflections from its society. Law includes reflection on the minds, wills and desires of society" The rules governing a society often include the codification of the values, desires, and desires of its members. This means that societal ideals must also be the foundation for legislation (Rahardjo, 2009a).

Third, Paul Bohannan's concept of reintitutionalization of norms. As for the concept built "Reinstitutionalization of norms", Bohannan said, that "Society actually has its own institutions, both legal and non-legal institutions." According to him, the growth of law includes efforts in re-institutionalizing legal standards that develop in society. Bohannan's ideas prove that legal norms that exist and develop in a society include the fundamental foundation on which law is built (Ihromi, 1993).

C. Criticism of the new Criminal Code reviewed from juridical review

The Indonesian Penal Code is derived from the "Wetboek van Strafrecht voor Nederlandsch-Indië." Article II of the Transitional Rules of the 1945 Constitution became the legal basis for upholding Indonesian independence. 180 Double penal code was in force in Indonesia until 1958. Only after the promulgation of Law No. 73 of 1958 concerning "Declaring the Enactment of Law No. 1 of 1946 of the Republic of Indonesia concerning the Regulation of Criminal Law for the Entire Territory of the Republic of Indonesia and Amending the Criminal Code", realized a uniform material criminal law unity for all of

Indonesia based on the "Wetboek van Strafrecht voor Nederlandsch-Indie", hereinafter referred to as the Criminal Code.

There were several attempts in the post-independence era to modify the colonial-era Criminal Code to reflect Indonesian independence and the customs of contemporary society. Some of the reforms that have been implemented to the Criminal Code are: "Law Number 1 of 1960 concerning Amendments to the Criminal Code; Law No. 16 Prp. of 1960 concerning Some Amendments in the Criminal Code; Law Number 18 Prp of 1960 concerning Changes in the Amount of Fine Punishment in the Criminal Code and in Other Criminal Provisions issued before August 17, 1945; Law Number 2 PNPS of 1964 concerning Procedures for the Implementation of the Death Penalty Imposed by Courts in the General and Military Courts; Law Number 1 PNPS Year 1965 concerning the Prevention of Abuse/or Blasphemy; Law Number 7 of 1974 concerning the Regulation of Gambling; Law Number 4 of 1976 concerning Amendments and Additions to Several Articles in the Criminal Code Related to the Expansion of the Enactment of Criminal Legislation, Aviation Crimes, and Crimes Against Aviation Facilities/Infrastructure; Law Number 27 of 1999 concerning Amendments to the Criminal Code Relating to Crimes Against State Security; Law Number 3 of 1971 which was later replaced by Law Number 31 of 1999 Jo. Law Number 20 of 2001, concerning the Eradication of Criminal Acts of Corruption." (Nasional et al., 2015).

Carefully examined, the reforms and/or changes undertaken reveal evolutionary nuances and ad hoc character. As a result, a new draft National Criminal Code was needed to replace the Wetboek van Strafrecht (KUHP), a legal product of the colonial Dutch East Indies era, in order to carry out fundamental, comprehensive, and systemic reforms and/or adjustments.

Learn the provisions and regulations of criminal law that regulate what actions can be convicted, what crimes occur, whether or not the elements of a criminal act are met, who the perpetrators can be held accountable for these crimes, and the punishments imposed on the perpetrators. perpetrator, namely the definition of judicial review according to criminal law.

With the new Penal Code, there are more punishment options. When this article is used to file charges, jail time can be replaced by fines, and fines can be replaced by supervision or social work, such as the creation of a vagrancy prevention plan. In this case, the penalty is a fine rather than a loss of autonomy. In lieu of counseling or monitoring, monetary sanctions may be imposed. The following crucial articles in the Criminal Code are still being debated:

a) Assault on the Honor or Dignity and Dignity of the President or Vice President

Assault on the dignity of the president is the crime most likely to face legal challenges under stricter sentencing guidelines of the new penal code. Attacks on the honor of the president or vice president carry a maximum penalty of three years in prison, as stipulated in Article 218. Article 219 then specifies a potential sentence of four years in prison for anyone who disseminates such information. However, this crime was committed in response to a complaint. Reports can only be made by the president and vice president. Furthermore, opinions and criticisms are excluded from this rule. The

Penal Code makes it clear that protests should not be used as evidence of an attempt to vilify the president or vice president.

b) Contempt of Government or State Institutions

The nature of this crime has not changed much from the past. Slandering the president, vice president, or members of the president's cabinet is a crime in this jurisdiction. MPR, DPR, DPD, MA, and MK are part of the state institutions in question. One year and six months is the maximum possible sentence. The criminal threat of insult that leads to riots carries a maximum of three years in prison. Meanwhile, the maximum threat of spread is a minimum of three years in prison. Just like the article insulting the president, this one includes a complaint offense. Government officials and state agencies must submit written reports for all public disclosures.

c) Criminal Contempt

Slander, as well as other forms of unlawful speech, are now governed by the new Criminal Code. Since defamation is now governed by the new Criminal Code, the relevant provisions of the previous Electronic Information and Transactions Law (ITE) were abolished. Defamation punishable by imprisonment of up to nine months in accordance with the provisions of the insult article is one form of harassment. Libel is a crime punishable by up to three years in prison. Minor insults carry a maximum penalty of six months in prison. Legal action for libel, with a maximum penalty of three years and six months in prison. Defame the dead is punishable by six months in prison, and false charges carry a maximum penalty of three years and six months in prison.

d) Demonstration Without Permission Criminally Charged

The Penal Code's section on public order disturbances includes rules for holding marches and other forms of public demonstrations. Demonstrators and demonstrators who act without permission face a maximum prison sentence of six months. Article 256 of the new Criminal Code reads "Any person who without prior notification to the authorities holds a march, rally, or demonstration on a public street or public place that causes disruption to public interest, causes trouble, or riots in society, shall be punished with a maximum imprisonment of 6 (six) months or a maximum fine of category II,."

e) Crimes Related to Decency

Some previously controversial clauses on decency standards are still regulated in the new Criminal Code. With some adjustments. First, the maximum penalty for adultery or copulation outside the bonds of marriage is one year. The latest version of the bill makes these violations reportable. Only spouses, immediate family members, and descendants are eligible to file complaints. Similar arguments can be made for illegal cohabitation or unmarried cohabitation. This includes complaint offenses, meaning that only spouses, parents, or children can report. The maximum penalty is six months in prison.

f) Low Corruption Penalties

Corruption is now subject to stricter regulations thanks to the new Criminal Code. The lowest prison sentence for corruption is two years, while the maximum is twenty years. In addition, the choice of life in prison is also included. Articles 603 and 604 describe the specifics of this rule.

g) Serious Human Rights Crimes

Genocide and other crimes against humanity are now codified in law. Komnas HAM has requested that this provision be removed. In particular, its laws and concepts have been criticized for contradicting unique aspects of genocide and crimes against humanity. Articles 598 and 599 outline guidelines for this situation.

h) The Death Penalty

Banyak pendukung HAM menentang memasukkan hukuman mati dalam KUHP yang baru. Alasannya yakni karena banyak negara sudah menghapus hukuman mati. Pasal 98 KUHP yang baru menguraikan penggunaan hukuman mati sebagai pencegah kegiatan kriminal.

i) Living Law

Traditional social norms are subject to the codification of the new Criminal Code. The punishment consists in performing social duties. "Any person who commits an act that according to law living in society is declared a prohibited act, shall be punished with a crime," reads article 597.

j) Prohibition of Spreading Ideas Contrary to Pancasila

The new penal code includes regulations prohibiting the promotion of communism, Marxism, and other anti-Pancasila ideologies. The maximum penalty is four years in prison. Alternative meaning phrases contrary to Pancasila are seen as political instruments used to silence dissent.

The new criminal code passed earlier this week was also attacked by the UN Representative in Indonesia, but it has not been good enough. The United Nations has issued an official statement expressing concern over some elements of the Criminal Code that are incompatible with fundamental freedoms and human rights. The UN fears some parts of the new criminal code violate Indonesia's human rights commitments under international law. The UN also noted that some articles could be used to punish journalistic efforts, which include violations of press freedom. There are further articles that will prohibit or discriminate against women, girls, boys, and other marginalized groups. The UN fears the Criminal Code could negatively impact women's reproductive rights and exacerbate the problem of gender-based violence. Violence against women and transvestites is getting worse.

Good and ideal rule-making principles should be a compass for those in charge of drafting new legislation. The goal here is to reduce the possibility of errors and shortcomings when setting standards. The principle of forming good laws and regulations according to I.C. van der Vlies in his book entitled "Handboek Wetgeving" is divided into two groups, namely: (Nasution & Febrian, 2020)

1) “Formal principles
   a) The principle of clear purpose (beginsel van duidelijke doelstelling), that is, every formation of legislation must have a clear purpose and benefit for what is made;
   b) The principle of the right organ/institution (beginsel van het juiste orgaan), namely that each type of legislation must be made by the authorized institution or organ forming the legislation; Such laws and regulations may be nullified (vernietigbaar) or null and void (van rechtswege niet eg), if made by an unauthorized institution or organ;
   c) The principle of insistence on making arrangements (het noodzakelijkheidsbeginsel);

d) The principle can be implemented (het beginsel van uitvoerbaarheid), that is, every formation of laws and regulations must be based on the calculation that the laws and regulations formed later can apply effectively in society because they have received support both philosophically, juridically, and sociologically since the drafting stage;
e) Asas consensus (the principle of consensus);

2) Material principles
   a) Asas terminologi and correct systematics (the principle of clear terminology and clear systematics);
   b) Recognizable principles (the principle of knowability);
   c) The principle of equal treatment in law (het rechtsgelijkheidsbeginsel);
   d) The principle of legal certainty (het rechtszekerheidsbeginsel);
   e) The principle of law enforcement according to individual circumstances (het beginsel van de individuele rechtsbedeling).”

In addition, Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, returns the attention of lawmakers to the principle of forming healthy laws and regulations and the principle of substance. The process of forming laws needs to embrace the notion of "good lawmaking", which includes things such as:

a) "The principle of clarity of purpose, that every Establishment of Laws and Regulations must have a clear purpose to be achieved;
b) The principle of appropriate institutional or forming officials, that every type of Legislation must be made by a state institution or an authorized Legislative Regulation Forming official, such Laws and Regulations can be canceled or null and void if made by state institutions or unauthorized officials;
c) The principle of conformity between types, hierarchies, and content materials, that in the formation of laws and regulations, they must really pay attention to the right content material in accordance with the type and hierarchy of laws and regulations;
d) The principle can be implemented, that every Formation of Laws and Regulations must take into account the effectiveness of these Laws and Regulations in society, both philosophically, sociologically, and juridically;
e) The principle of usability and usefulness, that every law is made because it is really needed and useful in regulating the life of society, nation, and state;
f) The principle of clarity of formulation, that every Legislation must meet the technical requirements of drafting Laws and Regulations, systematics, choice of words or terms, and legal language that is clear and easy to understand so as not to cause various kinds of interpretations in its implementation;
g) The principle of openness, that in the formation of laws and regulations starting from planning, drafting, discussing, ratifying or determining, and promulgation is transparent and open. Thus, all levels of society have the widest opportunity to provide input in the formation of laws and regulations."

At least in one law formation, there must be material content of the content of laws and regulations that must reflect:

a) "The principle of protection, that every Material Content of Laws and Regulations must function to provide protection to create public peace;

b) Humanitarian principle, that every Material Content of Laws and Regulations must reflect the protection and respect of human rights as well as the dignity and dignity of every citizen and resident of Indonesia proportionately;
c) The principle of nationality, that every Material Content of Laws and Regulations must reflect the nature and character of the plural Indonesian nation while maintaining the principles of the Unitary State of the Republic of Indonesia;
d) The principle of nationality, that every Material Content of Laws and Regulations must reflect the nature and character of the plural Indonesian nation while maintaining the principles of the Unitary State of the Republic of Indonesia;
e) The principle of intermediary, that every Material Content of Laws and Regulations always takes into account the interests of all regions of Indonesia and the Material Content of Laws and Regulations made in the regions including part of the national legal system based on Pancasila and the Constitution of the Republic of Indonesia Year 1945;
f) The principle of unity in diversity, that the Material Content of Laws and Regulations must pay attention to the diversity of population, religion, tribe and group, special regional conditions and culture in the life of society, nation and state;
g) The principle of justice, that every Material Content of Laws and Regulations must reflect justice proportionally for every citizen;
h) The principle of equality of position in law and government, that each Material Content of Laws and Regulations must not contain things that are discriminating based on background, among others, religion, ethnicity, race, class, gender, or social status;
i) The principle of order and legal certainty, that every Material Content of Laws and Regulations must be able to realize order in society through guaranteed certainty;
j) The principle of balance, harmony, and harmony, that every Material Content of Laws and Regulations must reflect balance, harmony, and harmony, between the interests of individuals, society and the interests of the nation and state;
k) Other principles in accordance with the legal field of the relevant laws and regulations, among others: in Criminal Law, for example, the principle of legality, the principle of no punishment without guilt, the principle of prisoner formation, and the principle of presumption of innocence; in Civil Law, for example, in treaty law, inter alia, the principle of agreement, freedom of contract, and good faith."

Policymakers and legislators should use these concepts as a starting point when drafting new laws. Policymakers drafting laws and regulations, often expressed as questions at every stage, need to have all the principles mentioned above. So, for example, why is it so important to establish these rules? Why do we do this? Do we as a society benefit from it? In addition to rules and regulations, what else can be used? Is the formulation clear and does not give rise to interpretation when gathering the substance needed by policymakers?

CONCLUSION

From the presentation of criticism of the new Criminal Code, it can be concluded thatin general the new Criminal Code is considered not to provide fair law enforcement against perpetrators of criminal acts, especially related to discrimination against minority groups and violence against women. The new Criminal Code is considered not to accommodate technological developments and social progress, so it is unable to provide appropriate

solutions to crimes related to technology. The new Criminal Code is considered not to provide fair law enforcement against criminal offenders who have high power or position, such as politicians or high-ranking officials. The new Criminal Code is considered not to provide appropriate solutions to criminal acts related to social problems, such as drugs, corruption, and domestic violence. The new Criminal Code is considered not to accommodate human rights, such as the right not to be punished on the basis of discrimination, the right not to be unjustly punished, and the right to receive humane treatment. The new Criminal Code is considered not to provide appropriate solutions to criminal acts related to environmental problems, such as environmental pollution and unwise use of natural resources.

The new Criminal Code is considered not to accommodate technological developments and the progress of the times. The new Criminal Code is considered not to provide sufficient protection for consumers from dishonest actions, such as fraud through electronic media and similar frauds. The new Criminal Code is considered not to provide balanced justice for all parties involved in criminal acts, because some articles are considered too burdensome for criminal offenders. The new Criminal Code is considered not to provide sufficient guarantees for criminal offenders to get justice in accordance with the law, because some articles are considered too subjective and not objective. The new Criminal Code is considered not to provide the right solution to the problem of crime that occurs in Indonesia, because some articles are considered too weak in anticipating and tackling crime. The new Criminal Code is considered not to accommodate technological developments and societal changes that occur in Indonesia, so it is unable to provide the right solution to the problem of crime related to technology and changes in society.

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