Political Direction of Criminal Law in Criminal Regulations Plan

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Abstract. In terms of crime countermeasures included in criminal policies/criminal policies, two policies or policies are used, namely penal policies and non-penal policies. The purpose of the law is to regulate the association of life peacefully so that public order is achieved. Peace between humans is maintained by law by protecting certain human interests, honour, independence, soul, prosperity and so on against those who harm it. In essence, humans live as individual humans and at the same time as social beings. Decency concerns humans as individuals, while laws and customs concern society. The law has two labour powers. It gives power and lays obligations. It is simultaneously normative and attributive. While decency only lays obligations, and is solely normative. A review of the direction of criminal law in the concept of the Criminal Code Bill, leads us to a discussion of legal politics (criminal law politics) that underlies the preparation of the concept of the Criminal Code Bill. What is the basis for the formulation of criminal forms of crime contained in the concept of the Criminal Code Bill? Here lies the importance of why it is necessary to consider the context of current political change as described.

Keywords: Law, Criminal, Criminal Code, Law and Politics

1. Introduction

Life in society should be orderly and orderly. Life is orderly because to do this it must be supported by the existence of order. Communities in which life is orderly and orderly are often called people of peaceful order. Those who feel peace and can work to achieve prosperity (keharjaan) thanks to order (law). To achieve community goals, Kerta Raharja's leadership is pursued through her two policies or policies, social policy or social policy and crime policy, which are also part of social policy itself. Crime prevention within criminal policy involves two policies: punitive and non-punitive. Criminal policy means policy that includes criminal policy, i.e. policy with criminal sanctions, and non-criminal policy means legal policy with civil sanctions, administrative sanctions, etc. tata in the sense of *tata tentrem kerta raharja* is the law and means the rules of conduct established by the government. However, in England, for example, it is known that laws enacted and designated by the government are statutes, and there are laws not enacted by the government, so-called common law. In addition to statute law, we are well versed in common law/customary law. There are laws outside of laws. Laws See Only Part of Laws.[1] The purpose of law is to regulate the peaceful coexistence of life in order to achieve public order. Peace between peoples is maintained by law by protecting certain human interests, honor, liberty, life, prosperity, etc from those who harm them. The order supported by the existence of this order is actually composed of different orders with different properties.

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These different properties are due to the fact that the norms supporting each order have different properties.[2] To quote the writings of Dr. Satjipto Rahardjo SH, the difference between order or norm can be seen as the difference between ideal and reality.

2. Discussion

2.1 Security system (order)

An order that produces a lasting and regular relationship between members of a society is not really a unified concept. What appears to be a command (system) actually contains a complex of commands or a complex of sub-commands (subsystem), including custom, law, and validity. Therefore, social order is supported by three subsystems. In reality, there are many more subsystems than just the three mentioned above, but we will discuss the three subsystems here. A discussion of the three subsystems reveals the difference between ideal and reality.

2.2 Habit Customary

Habit customary order consists of realistic norms, because customary rules are actually removed from reality. Habits are behaviors that follow a set course of action. What people normally do can be transformed into habitual norms that are accepted as social rules through tests of regularity, consistency, and consciousness. The difference between reality and ideal is therefore greatest in this customary order compared to the legal and moral order, therefore the establishment of common law under Apeldoorn has two requirements :[1]

1. Natural materials, durable use.
2. Psychological (group psychological, not individual psychological), belief in legal obligations (required opinion).

Because of this psychological quality, customary law can be distinguished from both custom itself and morality. It is a rule formed by acting according to a certain course of action based on the belief that it is necessary to If something continues (or the effect persists), making and regularizing among members of society is in fact Not a unified concept. What appears to be an order (system) actually contains a complex of orders or a complex of sub-orders (subsystem), including morality, law and decency. Because if something continues to be done (or applied), after the Law.

In Germany, George Frenzel, in his Law and Legal Principles, questions whether it is true that law consists of rules or norms, and the view that law consists of rules is Because they claim to be wrong and believe that the law does not follow the rules. , but statutory customs (legal customs) that lay down the law. Utrech and Hamaker thought the same thing four years ago. Even H.J. Hamaker, in his essay Het Recht en de Maatschapij, teaches that legal concepts are only summaries of our knowledge of how we and others normally behave increase. Eugen Ehrlich has a neutral view and in his opinion there are two kinds of laws, namely:

1. Decision norms, i.e. rules formed by law or practice that judges use as the basis for their decisions.
2. Common Law or Common Law Act.

Hugo Sinzheimer, on the other hand, in his book De Taak der Rechtssociologie 1935, distinguished between normatiefsrecht (normative law) and srechtelijk werlijkheid (actual law). Under normal circumstances, it is very rare to have ideal elements. The ideal human being in the order of habits is the human being who is seen on a daily basis, and what is called the normative is what happens on a daily basis. Thus, the norm of practice raises to the norm only

what happens every day and what is commonly done (rechte lijk werlijkheid). Hegel [5] states that the state is the embodiment of morality. A legal norm that generally applies to contemporary national practice. Laws are made up of rules of conduct. But besides the rules of legal conduct, there are still rules of conduct. All these rules contain instructions on how people should behave.[1] Humans basically live as individuals and as social beings at the same time. Morality concerns man as an individual, while law and custom concern society. On the one hand there is a difference in purpose between law, custom and decency:

1. The purpose of law is good social order, the purpose of decency is the betterment of man, but between us There is a connection. In other words, human improvement towards perfection also contributes to a better social order.
2. These goal differences go hand in hand with other more substantive differences. Laws and customs require good social order to provide rules for the behavior of outsiders. Self-perfecting politeness first looks not at human actions, but at the attitudes of mind that caused them. However, this difference should not be taken too sharply. It is not entirely true that justice applies only to external actions and decency only to internal goodwill. On the one hand, actions also have moral value, and on the other hand, the law also pays attention to the good intentions of the performer's actions.
3. As to the origin of the rules, there is also a difference between right on the one hand and decency on the other. In law, it is the external force (the origin of the rules comes from outside) that imposes its will on us: society. We obey the law against our will and the law unconditionally binds us. Morality, on the other hand, that order/order is a requirement that people make for themselves. This means that each person must decide for himself what morality requires. Morality binds us by our own will.
4. Decency is rooted in the voice of human conscience, which arises from the inner strength inherent in man himself. There are no outside forces to enforce etiquette. The property of a moral order that must be followed voluntarily (autonomously). The only force behind decency is the force of human conscience. Rights are rooted in power, and power plays a major role. But we usually make laws voluntarily out of a sense of duty to enforce them with the voice of conscience. so that the law may have a firm grasp of decency in carrying out its decrees. This may occur due to the content of legal regulations being in line with good morals or due to the non-compliance with the content of specific legal regulations and we do not, to the best of our knowledge.
5. There is still a difference between rights and decency, and it is in their validity. There are two fields of labor in law, it have power and duty. It is both normative and attributed. Decency, on the other hand, is only mandated and normative. The customary order includes many norms and decrees that do not conform to law, from the point of view of legal order and decency, which respects a world of norms as a result of human work that guides society to conditions and human behavior according to a certain way of thinking. is included.[2]

2.3 Law and Order

There is a shift from an order that clings to everyday reality (the order of habit) to an order that is beginning to break free from its control. But in this legal order, the process of alienation and emancipation is not carefully done. For example, we know that customary law exists, but that customary law, along with its norms, still has the characteristics of a customary order to some. A distinctive feature of pure legal order is that order is created voluntarily and

consciously with the aim of maintaining some kind of order in society. The question arises as to who determines this particular order type. The answer is that it is society itself that decides. In this case, it is represented by its members through specific work mechanisms. It is the group of representative members of this society that determines what norms are created. In this way, norms born from human will also include legal norms. Human will is the central element that characterizes the legal order. Human will can either accept and adopt everyday customs as legal norms (common law norms) as a factor in decision-making, but it can also reject them. Here independence from law manifests itself in the face of this ideal and this reality. This independence is a position that allows us to take a distance between ideals and reality that are not bound by convention or decency. The legal bindings of the ideal world and the real world are reflected in the legalization of society. The law is bound by the ideal world and reality because it must ultimately be responsible for the claims of both the ideal world and the real world: the demands of philosophical ideals and the demands of sociological plausibility.

2.4 Order Decency

This order has the same absolute status as Custom, but a different origin. If customs derive from everyday behavior, decency arises from ideals not yet expressed in society. This order is a way of thinking that serves as a standard for judging the behavior of members of society. In other words, only such behavior can be accepted by an order of decency corresponding to human ideals. And the difference between decency and the rule of law lies in the power to decide what is accepted as normative. If in the order of law the human will factor determines what is accepted as normative, then in the order of common sense the human will factor is not at all decisive. takes place outside. In other words, moral norms are not created by human will, but are taken for granted. Unlike law, there are no elements that need to be mixed together for proper order so that the real world does not have to be taken into account. The order of decency need not apply sociologically either. However, there is a difference between law and decency. This means that if a person's outward behavior complies with the law, the law does not care whether this is driven by his good intentions (intentions). The law is pretty happy with its rule-compliant appearance. Their good intentions are often questioned only when someone commits an illegal act. That is, their actions are weighed against their good intentions (intentions), the reasons that led to the illegal act. Politeness, on the other hand, always presupposes good intentions (good intentions) and is never satisfied with appearances alone. It is not easy for law to concoct two opposite worlds, the world of habituary and the world of decency. Society cannot wait any longer to reach consensus. The need for regulation is a loophole that cannot wait. This has created a more practical requirement: the need for regulation. The existence of regulation creates legal certainty. Since the new criminal code did not come, many laws were born as Rex specialists. We want public order and justice through human rights. It is clear, however, that justice and public order, which are to be achieved by law, can only be achieved and maintained by the administration of justice in social processes. In this regard, it must be remembered that social processes themselves are dynamic phenomena. Through this social process, law enforcement earns the trust of the community. Because the community believes that law enforcement ensures (at least hopefully) public order and justice in public life. Laws, therefore, require a certain degree of credibility, which can only be achieved if judicial administration exhibits a consistent flow. Inconsistent application of the law does not lead people to trust the law as a rulebook for communal living. We call consistent control of justice legal certainty. With reference to my thoughts above, I can explain in more detail what is correct. Law is the work of man in the form of norms containing instructions on how to behave. It is a reflection of human will on how society should be pushed and where it should be headed. Laws, therefore, contain,

first of all, a record of the ideas chosen by the society in which they were created. These ideas are ideas about justice.[3] Society not only wants justice to be created in society and its interests to be served by law, but it also wants it to have rules that guarantee mutual security. In their lives, communities develop as well as their interests, so they need better protection for their livelihoods. is requesting Legislative developments must respond to existing patterns in society so as not to impede protection itself. The question then arises whether the law can answer the current situation and challenges. Nevertheless, it must be made clear that justice and public order, which are supposed to be achieved by law, can only be achieved and maintained by the administration of justice in social processes. In this context, we must remember that social processes themselves are dynamic realities. Through this social process, the administration of justice gains the public's confidence as the actual creator (or at least the promise) of justice for public order and public life. As a result, the law itself requires a certain degree of credibility, which can only be achieved if law enforcement agencies can demonstrate a consistent flow. Inconsistent enforcement of laws does not lead people to rely on the law as a rulebook for living together.

We call consistent control of justice legal certainty. This consistency is necessary as a reference for everyday human behavior when dealing with other people. This reference to behavior is necessary because humans live primarily on reason, not on natural instinct alone. However, it is not hard to imagine that consistent judicial administration is not always successful. Rawls [5] writes that even contradictory legal practices need to be consistent in their contradictions. So the subordinates at least know what is required and can try to defend themselves accordingly...." This should make everyone aware of contradictory legal situations and social systems so that everyone can protect themselves. A common question we will soon face is what legal certainty looks like to the public. Because society in general is sensitive to injustice, legal certainty must carry formal and substantive weight. In a constitutional state, laws become the rules of the game to achieve common goals as political agreements. Therefore, the state must be responsible for the management of legal order (order), legal certainty and legal continuity. As part of the social process, enforcement of legal certainty must be based on two main elements: certainty in the direction of the community and certainty in the application of the law by law enforcement agencies.

We are currently in the process of transforming the Penal Code, which originated in the Netherlands according to the principle of unity, into a national one. Why should Indonesian criminal law be amended? In Indonesia. In this connection, it is necessary to explain the criminal law currently in force in Indonesia. To do this, you first need to know the 1945 Constitution, Article 2 of the Interim Ordinance. It says: Constitution. To strengthen the Interim Regulations, the President issued a decree on October 10, 1945 called Decree No. 2. II with Article IV We, the President, establish the following rules:

Article 1 shall be in force unless contrary to law.

Article 2 This regulation he entered into force on 17 August 1945.

Studying and researching the history of Indonesian criminal law reveals that the criminal law in force in Indonesia has its origins in Wetboek van Strafrecht voor Indonesia. Only Law No. 1 of 1946 (State Gazette of the Republic of Indonesia II No. 9) fundamentally changed Wetboek van Strafrechts voor Indonesia (Staatsblad 1915: 732). For Java and Madura, Law No. 1 of 1946 applies, while for other areas the President enacts it later (Article 16 Law No. 1 of 1946). And the addition entered the situation of the newly declared Republic of Indonesia. Therefore, Wetboek van Strafrecht voor Indonesia was changed to Penal Code (KUHP).

CRIMINAL RULES

Law of February 26, 1946 Number 1, Republic News Indonesia II, 9.

Considering: Article 5 paragraph (1), Basic Law, Article IV Transition Rules of the Basic Law and the Presidential Regulation of the Republic of Indonesia dated October 10, 1945 Nr 2.

Article I By deviating as necessary from the Presidential Regulation of the Republic of Indonesia dated October 10, 1945 Nr. 2, stipulates that the current criminal hu-kum regulations, are criminal law regulations on March 8, 1942.

AI All criminal law regulations issued by the commander-in-chief of the Dutch East Indies army (Verordening van het Militair Gezag) were repealed.

BI. If in a criminal law regulation the words "Nederlandsch Indie" or "Nederlandsch Indisch(e)(en)" are written, then those words must be read "Indonesie" or "Indonesisch(e) (en)".

IV. A right, duty, power, or protection is deemed granted if any provision of the Criminal Code gives an officer, agency, office, etc., a right, duty, power, protection, or prohibition that does not currently exist. Sekis and bans are for officials, bodies, offices, etc. to be considered on their behalf.

V. Provisions of the Penal Code that are currently wholly or partially unenforceable, contrary to the status of the Republic of Indonesia as an independent state, or no longer relevant shall be temporarily void in whole or in part. shall be deemed to exist.

VI. (1) Changed the name of the Criminal Code “Wetboek van Strafrecht voor Nederlandsch Indie” to “Wetboek van Strafrecht”. (2) This Act is sometimes called "Penal Code".

VII. Without prejudice to the provisions of Article 3, all the words ``Nederlandschonderdaan'' in the Penal Code shall be replaced with ``Indonesian citizen''.

VIII. etc. IX. etc. X. etc. XI. etc. XII. etc. XIII. etc. XIV. etc. 15. etc. XVI. (Repealed by Law No. 73 of 1958)

Final Clause. This law came into effect for Java and Madura islands on the date of its promulgation (26 February 1946), and for other regions on a date determined by the President. Government Decree of 1946 No. 8 of 8 August 1946 (Berita Republic of Indonesia II, 20-21, p. 234) states that the Sumatra Law 1946 No. 1 came into force on 8 August 1946. Caution. Law No. 1 of 1946 does not apply:

1. Greater Jakarta.
2. Former East Sumatra.
3. Territories of former federal states of East Indonesia
4. Entire Kalimantan.

However, as a result of the 1st and 2nd Dutch military campaigns at that time, there were still areas of the Republic of Indonesia which were effectively occupied by the Dutch, and therefore the Wetboek van Penal Code (Staatsblad 1915: 732) and all its A fix has been applied. It still applies to these areas. Wetboek van Criminal Law was originally called Het Wetboek van Criminal Law voor Nederlands Indie, but after the end of World War II, and the Dutch returned to colonize Indonesia. The term "voor Nederlands Indie" was changed after the

Changed to "voor Indonesia". The Criminal Code currently in force is the main Criminal Code in force along with many other Criminal Code provisions. Thus, after independence in 1945, the dualism of criminal law was effective in Indonesia, and this situation continued until 1958 when Law No. 73 of 1958 was enacted.

Criminal regulations with all modifications and additions are applicable throughout Indonesia. Law number. Re 73 of 1958, LN 1958-127 : Articles 89 and 102 of the Interim Constitution of the Republic of Indonesia.

Article I. Law No.1 of 1946 Article II The Rules on Criminal Law of the Republic of Indonesia

Article II of 1946 have been declared valid for the entire territory of the Republic of Indonesia. Article 16 of Law No. 1/1946 of the Republic of Indonesia on Rules of Criminal Law is repealed.

Article III of the Criminal Code (Staatsblad 1915 No. 732), amended several times, was last amended by the Republic of Indonesia Law No. 1 of 1946, amended as follows: Added: 1. After article 52 added article 52a

"52a. If the national flag of the Republic of Indonesia is used when a crime is committed, the punishment for that crime may be increased to one third of his"

1. After Section 142, Section 142a is added as follows: Anyone who desecrates the flag of a friendly country shall be punished with imprisonment not exceeding four years or a fine not exceeding Rs.3,000.
2. After Section 154 Section 154a is added as follows: Anyone who desecrates the flag of the Republic of Indonesia and the coat of arms of the Republic of Indonesia is subject to imprisonment of up to four years or a fine of up to Rp 3,000.

Article IV This Law shall come into force from the date of promulgation. Promulgated on September 30, 1958. Described as the Criminal Code. Wetboek van Strafrecht voor Nederlands Indie (later renamed Wetboek van Strafrecht voor Indonesia) actually came from Holland. The Netherlands' application of her Wetboek van Strafrecht to the Nederlands-Indies (Dutch East Indies) of the time, which later became criminal law, was based on the principle of coincidence or coincidence-commencement contained in Article 75 of the Dutch East Indies Regulations. It was an agreement between WvS applicable in the Netherlands. The Netherlands was once treated as the Dutch East Indies (Nederlands-Indie). Dutch WvS establishment is:

1. In 1795 Nationale Vergadering formed his five-member committee tasked with founding the Crimineel Wetboek. The Commission has not fulfilled its duties.
2. In 1798 a new commission of 12 members was formed to carry out the objectives laid down in Article 28 of the Algemene Beginselender der Staatsregeling formed in the same year. Of the 12 members, 5 were obliged to enact legal entities. The Commission was successful, but the bill introduced in 1804 had to be rejected after being examined by the Hooge National Gerechtshof in 1806.
3. In this regard, the then King of the Netherlands (1807) formed a new commission with the same duties. In 1808 any committee was able to present a desirable explanation for it. At midnight, the bill came into force as law. Het Koningrijk Holland (Criminal Code of the Kingdom of the Netherlands).

a. 4. However, the above wetbook was only valid until 1811 . This is because the Netherlands was occupied by France that year and was replaced by Code Penal (France).

4. After Holland regained her sovereignty in 1813, the Penal Code with her Souverein Besluit of 11 December 1815 continued to apply in Holland with important changes including the abolition of the death penalty by guillotine. rice field.

5. The Criminal Code is still in force, but attempts are still being made to create another Criminal Code. Commissions were formed many times, but due to disagreements over whether corporal punishment could be sustained, and disagreements over whether corporal punishment could be sustained, the commissions failed to carry out their duties. In addition to the Criminal Code, the Act of 17 September 1870 Stbld 162.
6. On May 13, 1875, this commission presented the Penal Bill to the King. Invoice on which the current WvS is based. After several amendments, the bill he became law on March 3, 1881, and the new bill he entered into force on September 17, 1886. September 17, 1886? There are several reasons for this:
    a. Since it's an extension of Celwezen, we need to create a new cell.
    b. In connection with the new WvS, several new laws should be enacted, including Gestichtenwet, Beginselenwet (Wet tot veststelling der beginelen van het gevangenis wezen).
    c. Amendments will be made to several existing laws closely related to WvS, namely Wetboek van Straf verordering and Reglement Ordonantie. Originally, the Penal Code against Indigenous Peoples of Indonesia was the Common Penal Code.

Although this customary criminal law is heavily influenced by Islam, much of it is still unique. With Indonesia occupied by the Dutch, the Bataviadze Act was enacted in 1842 to serve as a special criminal law for residents of European countries. Apart from the Bataviase Act, Internaire Strafbepalingen (IS) was established in 1848 and introduced, in addition to these two ordinances, other ordinances harmonized in the Oud Hollands and Romein Penal Codes. Even though the Penal Code was codified in 1866, it was still inherently dualistic. In addition to the Penal Code specifically applicable to Europeans (promulgated by Royal Decree of 10 February 1866), it entered into force on 1 May 1872 and 1 January 1873).

In addition, from 1 January 1873, the Policy Strait Regulations amended by the Decree of 15 June 1872 also entered into force, one of which applied to Europeans and one to native Indonesians. applied to The criminal law in force at that time in Indonesia was basically the same as the criminal law (at that time the Netherlands was occupied by France). As already explained, the Dutch National Penal Code did not come into force until September 1, 1886. In order to respect the principle of unity, after the introduction of domestic criminal law in the Netherlands, efforts were made to apply a new criminal law based on Dutch criminal law in the Dutch East Indies. In this connection, Royal Decree of 12 April 1898 created a new Penal Code specifically applicable to Europeans residing in the Dutch East Indies. This criminal code is the same as the Dutch Penal Code. Attempts have also been made to enact criminal laws specifically for Bumiputera. The Bumiputera penal code has not yet been enacted, but the European penal code is also not addressed as it contains the intention to carry out both penal codes simultaneously.

After the draft of the Bumiputra Penal Code was completed, a Colonial Affairs Minister (Van Colonies Minister) named Indenberg ordered the Penal Code to be deleted. This aims to eliminate dualism in criminal law and lead to standardization. A commission was set up for this purpose, but it was not until 1913 that it was able to carry out its duties. The draft he drafted on his 18th October 1915 was ratified and given legal force by a royal decree. However, the Criminal Code did not come into force until his January 1, 1918, and applied to all sections of the population. Does it apply to all population groups? Deliberate application of the criminal law to all population groups is still pending, as some areas have not yet enacted criminal laws.

This has to do with the legal system in force in the Dutch East Indies at the time. At that time in the Dutch East Indies, he had three types of judicial (without rights).

a. Government Rechtspraak - general justice for all, organized by a central government to which criminal law applies.
b. Zelfbestuurs Rechtspraak – Autonomous Court.
c. Inheemse Rechtspraak - Justice of Bumiputera.

It has been explained above that WvS applies to areas of government law. In connection with this provision, the question arises as to which criminal law applies in the area of self-harm and unlawful conduct. In this regard, the Zelfbestur Regulations of 1938 apply to Serbstbesturlechtsprague and Ordonanti in his February 18, 1932 (p.1932) to the Inhemrechtsprague area. It can be explained that local customary law applied to both areas and was determined not to be WvS, as was the case. Prior to Java's declaration of independence, the Zelvestur Rehitsuprak/Autonomous Court was held for members of the Sultanate of Yogyakarta and Mankunegoro of Solo, but was abolished after independence. Outside Java, Kalimantan, South Sulawesi, Palemban, Jambi, etc., maintained this autonomous judicial system before the decree. Above he is three court cases, what is the purpose of carrying out three court cases? Reasons are:

a. The area now known as Indonesia was once a Netherlandish Indy and was therefore very extensive. Therefore, it is considered impossible to set up state courts (Government Rechtspraak) in every region in order to save state finances.
b. From an economic point of view, that is, these areas are not important from an economic point of view.

The Government of the Republic of Unity Nation Indonesia disagreed and Emergency Law No. 1 of 1951 abolished Zelbestuur Rechtspraak (Autonomous Courts) and Imheemse Rechtspraak (Bumiputera Courts) and allowed only one type of Court. This abolition was gradual and in 1952 the Swapraja Court in Bali, South Sumatra, was abolished. The abolition of the Swapraja judicial system resulted in difficulties in dealing with judges. To overcome this, Judge Swapraja was appointed and the previously dismissed Judge Bumiputra became a district judge.

The drafting of the National Penal Code to replace the Penal Code bequeathed by the Dutch colonial government with all amendments is one of his efforts in the development of domestic law. These efforts will be carried out in a targeted and integrated manner so as to support national development in different areas, depending on development needs, level of legal awareness, and evolving dynamics in society. The enactment of criminal law in the form of codification and uniformity should be based on laws based on the Pancasila Law and national laws, and should consider the interests of the state, communities and individuals in the Republic of Indonesia, and promote justice, truth, order, and to establish and maintain legal certainty. 1945 The Constitution of the Republic of Indonesia was excavated from the earth of Pancasila and has long been drawn up in the State Law Seminar Forum, taking into account the development of the modern world. Efforts of Basarudin S.H. with Iskandar Situmorang S.H., who drafted Vol. 1 In 1971 and Vol. 2 in 1976, the Minister of Justice formed the Criminal Law Research Team (under the National Law Development Agency) and was tasked with drafting a new draft of the Penal Code.

1980-1981 Used by Basarudin S.H. and his Iskandar Situmorang S. H. On March 13, 1993, the first draft of the Penal Code was submitted to the Minister of Justice Ismail Saleh for comparison. The foundation for this initial concept was laid by Prof. R. Soedarto (Alm), Prof. Oemar Senoadji SH (Alm), Prof. Roeslan Saleh (Alm) and others. Unfortunately, this initial concept was forgotten during the tenure of Minister of Justice Oetyo Ousman and was only

reappointed during the tenure of Ministers of Justice Muladi and Youthril Iza Mahendra. At that time, the second concept (1999-2000) and the third concept (2004) were published.

Almost 23 years after the introduction of the first concept by Prof. R. Soedarto SH, a third concept is now being discussed in the DPR, which is significantly different from the first. During the 33 years of preparation, the situation and challenges of Indonesian society (and the world) were different. Therefore, it will be interesting to see if this 3rd Concept text can address the situation and challenges facing the Indonesian people in 2004 and beyond.[6] The 2004 edition of the Criminal Code is considered the most recent draft (although new legislation may exist in the interim).

We are entering an era of criminal law reform. The current code of law applying the principle of conformity was copied earlier from his Wetboek van Strafrecht in the Netherlands, who worked on the 2004 Criminal Code Draft to create the country's criminal code. This paper examines the direction of the penal law included in the draft penal code.

This review is of great importance in understanding the relevance of the concept of the Draft Penal Code in the situation and challenges currently facing Indonesian society after restructuring. The analysis here is whether the drafting of the Penal Code is positioned as an important part of the reform programme. By classifying criminal law directions in the context of reform programs, action options formulated as punishable/criminal/criminal (criminalization) and decriminalizing (decriminalization) are the objectives to be achieved. is determined by From a legal/criminal policy perspective, criminalization is essentially a policy that transforms otherwise non-criminal behavior into criminal behavior. In other words, a criminal act is originally an act called a specific or necessary act or a specific act. G.P. Hoefnagels writes that criminality is an action that is classified as a criminal act.[7] He further writes that criminal policy is a policy that classifies human behavior as is a policy that classifies human behavior as criminal (criminal determines/crime).[7] Therefore, if we want to commit crimes within the framework of legal policy, we need to look at the background and the challenges that have arisen before the policy is implemented. The previous situation and challenge (when the Criminal Code was enacted) was a transitional situation.

That is, the time interval from an authoritarian political system to a political system not yet fully formed (whether it leads to democracy or not). In this context, various new regulations are actively discussed and negotiated to build a new democratic national order. Within the framework of crime prevention/criminal policy and criminal justice policy, reference should be made to criminalization policy:

- National Policy and Global/International Policy Guide
- Policy- and value-oriented approache

One aspect of the success of the negotiations is the importance of safeguards to protect human rights. This is evidenced by the adoption of amendments to the 1945 Constitution, including the guarantee of human rights, and the enactment of Law No. 39/1999 on Human Rights:

a. International Convention on the Elimination of All Forms of Discrimination against Women.
b. International Convention Against Torture;
c. International Covenant on Civil and Political Rights.
d. International Convention on Economic, Social and Cultural Rights.

This includes renegotiating the Penal Code. Without considering this very important context, the drafting of criminal law has lost its relevance to current issues. It could even be said that the drafting of the Penal Code did not bring about this great project called the Reformation. That is the challenge in drafting a new criminal code. An overview of the criminal law directions

in the draft criminal law leads to a discussion of the underlying legal (criminal) policy of the draft criminal law. Which penal law policy underlies the formulation of the types of offenses included in the Penal Law Bill? Here in lies the importance of why the current context of the above political changes should be taken into account. When it comes to the question of criminalization and decriminalization, the politics of criminal law is nothing more than the choice of acts or the politics of criminalization or decriminalization. Scientifically, according to Professor Muladi, criminalization and decriminalization should be based on:

a. Criminalization should not make “over-criminalization” which in category “ the misuse of criminal santion”
b. Criminalization should not be ad hoc.
c. Criminalization must include elements of both actual and potential victims.
d. Criminalization must take into account a cost-consequence analysis (cost-benefit principle).
e. Criminalization requires public support.
f. Criminalization must produce 'enforceable' regulation.
g. Criminalization must include an element of subsociality (endangering society, even if it is very small).
h. Regarding criminalization, it should be noted that all penal provisions restrict people's freedom and offer law enforcement officers the opportunity to restrict this freedom.

In this case, the consideration in the draft penal code concept is whether an act should be formulated as a crime or not, and furthermore, what the offender's purpose is, and what is the purpose of the offender, among the various existing options. The judicial system from now on is to choose. It empowers states to formulate or determine acts that can be classified as criminals and to take repressive measures against those who violate them. This is one of the key functions of criminal law. That is, to provide justification for state repression against individuals or groups of individuals who commit prohibited or criminal acts.

According to Professor Mardjono Reksodiputro [6], the team's approach to criminalization and decriminalization in drafting the 1987-1993 version of the Penal Code drafts was based on individual rights (civil liberties) and community rights or public interests (public interests). Apart from defending the political interests of the country, of course (national politics). Professor Marjono Reksodiptro strengthens this approach in one of his books, stating that "the need to protect the interests of collectivists in modern [6] "Criminal law must be applied in a way that minimizes interference." stating: The editorial team that prepared the manuscript, This summary establishes that this is the central point of the draft from the point of view of criminal law policy. Because reconciling these three areas is obviously not easy. If the integration of these three interests (individual, societal, and state) cannot be precisely formulated, it is very likely that one of these areas will be 'over-criminalized'. And this actually seems to have been done in the Draft Criminal Code. Criminal law tends to protect only the political interests of the state (national policies) and the rights of communities and public interests (public interests), and is thought to threaten individual liberties (civil liberties).[8] As a result of excessive crime in the field of civil liberties, the Penal Code is in conflict with Law 39/1999 on Human Rights and Law 12/2005 ratifying the International Covenant on Civil and Political Rights. The threats to civil liberties mentioned above are reflected in the choice of criminal acts that are actually in the private sphere (individual rights). Criminalized acts also tend to be over-criminalized because they go too deep into a person's most personal sphere. One example is the criminalization of the choice to live together without getting married (cohabitation). Criminalization in the region has led to the resurgence of a great many victimless crimes that

many democracies have abandoned.[9] These actions are really on the level of morality and decency and should not be treated as criminals according to the principle of "ultimate redemption". If almost all acts in the private sphere are criminalized, it is no exaggeration to say that the phenomenon of "more law and less justice" will occur. Criminal law not only criminalizes in the most personal areas, but also contains the danger of criminalizing freedom of thought, one of the foundations of civilization. In particular articles regulating the criminalization of communist, Marxist and Leninist teachings. The criminalization of ideology has led the creators of criminal law to formulate something that has never been done in a democratic country. That is, criminalizing political opponents as political opponents of a state that has lost its relevance and current political context. But our new generation of criminal law experts, criminal law drafters, still upholds the political legacy of the New Order.

3. Closing

There is a growing recognition in the minds of penal law drafters that criminal law should be designed as a political instrument of the state to overcome political obstacles. Although we have ratified the International Covenant on Civil and Political Rights. An overview of the penal code directions in the draft criminal code leads to a discussion of the legal (criminal) policies that underlie the drafting of the penal code. Legal policy in penal lawmaking is a threat to civil liberties, especially freedoms of thought, expression and assembly. Finally, to the extent that criminal law contains content that endangers democracy, Ulla should be dismissed during this period.

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