Legal Politics Of Criminal Responsibility In Reform Policy

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Abstract
Law Number 1 of 1946 established the Criminal Code (KUHP), which was once a translation of Wetboek van Strafrecht and will remain in effect until the end of 2022 with all of its changes. The fundamental ideal that the entire Indonesian people strives for—liberation from all notions of colonialism—is carried out through the dialectical process of the Criminal Code in legislative actions for 60 (sixty) years. Therefore, the adoption of Law Number 1 of 2023 respecting the Criminal Code expresses the concepts of decolonization, recodification, democratization of criminal law, and adaptive harmonization. This study focuses on the legal politics of criminal responsibility from the standpoint of national criminal law reform. It seeks to address the following issues: (1) What is the legal politics of criminal responsibility in current positive criminal law?; and (2) What is the criminal responsibility law's political reform policy at the national level? This study compares criminal culpability under the old and new Criminal Codes using a comparative approach and a juridical-normative approach as its primary methodology. The primary focus of this study is secondary data, which encompasses both primary and secondary legal resources. Qualitative analysis techniques were used to analyze the data in the interim. The study's findings demonstrate that the fundamental tenet of criminal law reform—the principle of balance—is a fresh approach to the legal politics of criminal responsibility in the context of national criminal law reform. This approach is motivated by the Pancasila balance values, which are defined as Godly, Human, and Community values.

I. Introduction

As of right now, Indonesia's national development has advanced, not just in terms of economic growth but also in terms of improvements in every sphere of citizens' life, including the legal sector. Efforts to update the law itself are a

sign of progress in the legal field because, as one of the primary pillars supporting social order, the law is expected to be able to anticipate, meet, and overcome all needs, challenges, and barriers pertaining to infrastructure and facilities. It also needs to be flexible enough to change as society does. The law is not as dynamic as other aspects of society, despite the fact that it is frequently accurate. As a component of the law, criminal law is included in this.

One of the major issues confronting the Indonesian people is the need to reform the country's criminal code. This is particularly important when it comes to replacing the Dutch colonial legacy of the Criminal Code (WvS), which is currently in force because it is thought to no longer be in line with the demands and values emerging in society, with a New Criminal Code that is more national in nature and in line with the outlook on life that is ingrained in the social values, culture, and structure of Indonesian society. It is only a fantasy, according to J.E. Sahetapy, if the creation of national legislation is not grounded in the SOBURAL (Social, Cultural, and Structural) reality of the nation in question. This is also consistent with what Yong Ohoitimur said, which is that just laws that uphold the community's values and way of life while not only siding with the victim but also taking into account the convict's opinions, convictions, and feelings as well as the local community's social structure as the background to the crime, are necessary.

Barda Nawawi Arief said that "efforts to reform (criminal) law are basically ongoing and continuous activities without stopping" in relation to this topic. Furthermore, by examining the criminal law from socio-political, socio-philosophical, and socio-cultural perspectives, Barda Nawawi Arief clearly articulated three backdrops and the necessity for change, as follows:

The term "criminal law reform" basically refers to an endeavor to realign and modify the criminal code to the fundamental socio-political, socio-philosophical, and socio-cultural principles of Indonesian society, which form the basis of the country's social, criminal, and law enforcement policies.

In the meanwhile, Sudarto outlined three justifications for the updating of the Criminal Code: social, political, and practical. In addition, Muladi stated that the goal of efforts to reform criminal law in Indonesia is to actualize a national criminal law codification to replace the existing Dutch colonial legacy criminal law codification, specifically Wetboek van Strafrecht voor Nederlands Indie in 1915 (which is a variation of Wetboek van Strafrecht in the Netherlands in 1915). 1886).

Three primary concerns will be covered if Indonesia's criminal code is reviewed: banned activities, those who conduct prohibited acts, and the criminal punishments (sanctions) imposed on those who commit these prohibited crimes. If one were to approach criminal law from a normative dogmatic perspective, the core issue or content of the law would be what behaviors should be penalized, what requirements must be fulfilled in order to hold the offender accountable, and what criminal penalties should be placed on them. Accordingly, the three primary issues are summed up as follows: (1) the

issue of "criminal acts," (2) the issue of "mistakes," and (3) the issue of "criminals" (Barda Nawawi Arief, 1998: 111).

Of course, researching necessary amendments to the current legal system so that it can accommodate societal expectations and wants cannot be divorced from the mission of legal politics when it comes to reforming criminal law in Indonesia. P As of right now, Indonesia's national development has advanced, not just in terms of economic growth but also in terms of improvements in every sphere of citizens' life, including the legal sector. As one of the primary pillars in maintaining social order, the law is required to be able to foresee and overcome all demands, problems, and barriers pertaining to facilities and infrastructure. As such, attempts to update the law itself are indicative of progress in the legal sector.

Criminal law reforms, particularly those pertaining to material (substantive) criminal law, are essential and vital as the existing legal system, particularly that pertaining to material criminal law that dates back to colonial times, is unable to provide the legal requirements of the Indonesian people. This is in line with the legal reality that views and concepts of fundamental values (ground norms) and socio-political, socio-economic, and socio-cultural realities that exist in Indonesian society are the source of the criminal law or Criminal Code that is currently in effect. By yourself. One of the major issues confronting Indonesia is the need to reform the country's criminal code, particularly in light of the Criminal Code's (WvS) Dutch colonial history which, because it is deemed to be out of step with the expectations and values shaping society, is currently in force. Instead, a New Criminal Code, national in scope and based on the nation's outlook on life, social values, culture, and structure of Indonesian society, has replaced it. It is only a fantasy, according to J.E. Sahetapy, if the creation of national legislation is not grounded in the SOBURAL (Social, Cultural, and Structural) reality of the nation in question.

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Of course, researching necessary amendments to the current legal system so that it can accommodate societal expectations and wants cannot be divorced from the mission of legal politics when it comes to reforming criminal law in Indonesia. From "Ius Constitutum," which is based on the preexisting legal framework, to the creation of future law, or "Ius Constituendum," legal politics aims to maintain the course of the evolution of the legal system.

It is intriguing for the study team to investigate the "Legal Politics of Criminal Liability in Reform Policy" in light of the background information that was previously provided.

2. Research Method

Normative legal research is the research methodology employed. As such, primary, secondary, and tertiary legal sources are the components of normative legal study. Libraries provided the literature sources, while papers from primary and secondary legal resources were procured. The New Criminal Code (UU No. 1 of 2023) and the Old Criminal Code (UU No. 1 of 1946) are the main legal resources used. In addition, books, journals, library literature, and research findings are the sources of secondary legal documents.

The conceptual approach and the statutory approach were the research methodologies employed in this study. In order to identify notions that lead to legal knowledge, legal conceptions, and legal principles that are pertinent to legal concerns, this method looks at the theories and viewpoints that have emerged in legal science. The process of looking for legal resources involves utilizing the document study or library research method, which is gathering legal materials by researching a variety of books, papers, expert views, and articles that can clarify legal concepts in a library. Descriptive analysis is the legal material analysis approach that is employed. It relates to a specific issue that is then connected to existing literature, legal expert views, or applicable laws and regulations.

3. Results and Discussion

Criminal Responsibility in the Framework of Basic Ideas for Reforming the National Criminal Code

Legal administration is essentially nothing more than the creation of laws with the intention of updating, replacing, and modifying them in a way that involves not only content and structure but also culture, since these three factors may impact and add color to the law and how it is applied. Legal clarity and ease of finding laws governing every act can be ensured by combining criminal regulations into a single legislation. Formal criminal law, material criminal law, and the criminal law itself must all be changed as part of a comprehensive criminal law reform. These elements are essential to the reform since, without simultaneous execution, there will be challenges and the intended outcome of criminal law reform will not be completely realized.

There is no room in the Criminal Code for examining societal rules. In actuality, the law that prevailed in society long before Dutch law was introduced was customary law and religious law. The issue is whether the principles outlined in the Criminal Code (WvS), which is founded on Pancasila, are consistent with the goals of an autonomous nation. It is recognized that Pancasila strikes a balance between the principles of social justice, democracy, nationalism, divinity, and humanity. The National Criminal Code, which was created to overhaul Indonesian criminal law, is based on this fundamental principle.

Criminal law must represent the "general will" and a "value system" based on the concept of balance if it is to be referred to be a science that can detect, track, and not disregard values in the "public sphere." Barda Nawawi Arief stated that the "idea/principle of balance" is the fundamental notion he wished to materialize in a concept (RUU KUHP) that consists of, among other things:

a. The notion of a monodualistic equilibrium between the needs of the individual and the needs of society.
b. b. The notion that "social welfare" and "social defense" should be balanced.
c. The concept of balance is focused on the "victim" (victimization) and the "offender" (perpetrator; criminal individualization).
d. The notion that "legal certainty" and "fairness" should be balanced with elasticity and flexibility.
e. Equilibrium between "material" and "formal" requirements.
f. Harmony between national and international, global, and universal principles.

One of the main problems in criminal law is the matter of criminal liability. In general, actions that violate the law must be held accountable. Criminal liability is a consequence of the commission of a crime. Determining

whether someone is wrong or not is an important part of the ability to take responsibility. Penalty will be determined based on whether the crime committed can be held accountable before the law or not.

Criminal liability is studied in the aspect of error which specifically focuses on the person in the sense of the perpetrator of the offense. Criminal responsibility is usually always associated with the criminal law doctrine regarding the monism school which makes one thing between a criminal act and criminal responsibility, whereas the dualism school separates a criminal act from criminal responsibility.

Criminal liability in the old Criminal Code currently tends to be closer to monism. It is as if a criminal act includes the objective elements of an act which are combined with the subjective elements inherent in the perpetrator of the crime. Between the deed and the maker are united. Thus, the argument of monists is that if there is a criminal act, the perpetrator can definitely be punished. This idea of criminal responsibility is the focus of criminal law reform in the national Criminal Code.

Criminal Responsibility, which is formulated in the National Criminal Code reform policy, is a very important substance along with the issue of "Regulation of Criminal Offenses". Criminal Responsibility is the implementation of the idea of balance, including the following: The existence of the principle of "no crime without fault" (principle of culpability/principle of "geen straf zonder schuld") which is a humanitarian principle, formulated explicitly in the National Criminal Code as a partner to the principle of legality (Principle of Legality) which is a social principle.

Legal Politics of Criminal Responsibility in Criminal Law Reform Policy

Criminal law as a legal system consists of culture, legal structure and substance, while legislation is part of the legal substance. Thus, criminal law reform does not just update criminal law legislation but also updates other sectors such as criminal law science and criminal law ideas through the process of education and academic thinking. In fact, the actual scope of legal policy p idana is broader than criminal law reform. This is because criminal law policy is implemented of concretization/operationalization/functionalization of criminal law which consist of (Barda Nawawi Arief, 2010: 27):

1. Formulative/legislative policy, namely the stage of formulating/drafting criminal law;
2. Applicative/judicial policy, namely the stage of implementing criminal law;
3. Administrative/executive policies, namely the implementation stage of criminal law.

In this case, criminal law reform is more related to the stage of formulating or making criminal law or related to formulative policies. It is clear that criminal law policy cannot be separated from the criminal law system. In this case, Marc Ancel stated that every organized society has a legal system consisting of criminal law regulations and their sanctions, a criminal law procedure and a criminal implementation mechanism.

Criminal Law Politics can also be called "Criminal Law Policy" or Criminal Law Reform. Implementing Criminal Law Politics means 'efforts to create criminal laws and regulations that are appropriate to the circumstances and situations at one time and for the future'. Thus, if viewed from the aspect of 'Legal Politics', it means that 'Criminal Law Politics' means how the state seeks or makes and formulates good criminal legislation for the present and the future. In foreign literature, the term criminal law politics is often known by various terms, including 'penal policy', 'criminal law policy', or 'strafrechtspolitiek'.

Criminal liability has a broad meaning, namely it is a continuation of objective punishment in a criminal act which subjectively fulfills the requirements for convicting the act. The principle of legality is the basis for criminal acts, and the principle of guilt is the basis for punishment. Therefore, criminal responsibility is a person's responsibility for a crime committed. Strictly speaking, the person is responsible for the crimes committed by him. The conclusion is that mistakes are important in being able to convict someone, therefore there needs to be mistakes. If there is no element of error, then a person cannot be punished.

In Criminal Law, the principle of no crime without fault is the basic principle for holding responsibility for a criminal act in the National Criminal Code. However, several things actually provide the possibility of liability and are not exceptions to errors, namely:

a. Strict Criminal Liability (Strict Liability) The law has the authority to decide whether a person can be punished because they have fulfilled the elements of a criminal offense without needing to look further into the crime.
b. Vicarious Criminal Liability: In law, it is determined that a person can be responsible for the actions of another person.

The specificity of criminal liability in the National Criminal Code only functions for crimes committed intentionally (dolus). The mere offense of culpa can be punished only if it is clearly regulated by law. Criminal liability for certain consequences of criminal acts which have increased the threat of criminal punishment by law will be imposed on the defendant only if the defendant can reasonably suspect the possibility of the consequences or at least there is negligence. So far, the Criminal Code has clearly regulated that the basis for punishment is the principle of formal legality, the regulation of which

is contained in Article 1 Paragraph (1) of the Criminal Code. In regulating the principle of legality, it is clearly emphasized that only by punishing someone's behavior according to law can that person be punished, and as a result, if it is not regulated, the behavior will not be punished, or in other words, no action can be punished without prior regulation.

The formulation of criminal liability in the National Criminal Code (UU No. 1 of 2023) is contained in Book I, Part Two concerning Criminal Responsibility, the formulation of which is regulated starting from Article 36 to Article 50. In relation to criminal liability, the reform of the National Criminal Code starts from the main mono-dualistic balance thinking, that the principle of error (principle of culpability) is a partner of the principle of legality which must be formulated explicitly by law. Explicitly "the principle of no crime without fault" (geen straf zonder schuld), which does not exist in the Criminal Code. With this principle, a person may not be punished, unless he is proven guilty of committing a criminal act, either by committing an act (active) or not committing it (passively) which is punishable by a crime in the law. A person is said to be guilty of committing a criminal act if he does it intentionally (dolus) or because alpa (culpa) of all kinds.

The criminal offense of culpa can only be punished if it is expressly determined by law, while responsibility for certain consequences of a criminal act for which the criminal threat is increased by law, is only imposed on the defendant if he or she should not have foreseen the possibility of that consequence occurring. if at least there is an error.

The National Criminal Code's definition of criminal responsibility and the topic of "Regulation of Criminal Offenses" are both crucial topics. Applying the concept of balance to criminal responsibility entails the following: The existence of the humanitarian "no crime without fault" (also known as the "principle of culpability" or "geen straf zonder schuld") principle, which is stated clearly in the National Criminal Code as a companion to the social "principle of legality"

These two guidelines or precepts are not thought of as strict prerequisites. The application of the principles of "strict liability," "vicarious liability," and "pardon or pardon by a judge" (also known as "rechterlijk pardon" or "judicial pardon") may be possible in some circumstances. The concept or core notion that underlies the existence of the "judicial pardon" principle is:

a. "safety valve" (veiligheidsklep);
b. avoiding strictness or absolutism in punishment;
c. a type of judicial correction to the legality principle (also known as a "judicial corrective to the legality principle");
d. putting into practice or integrating the Pancasila paradigm of "wisdom"; e. incorporating the "purpose of punishment" into the sentence (since the judge

must take this into account when granting pardon or forgiveness); f. Consequently, the grounds or justifications for punishment are based not only on the existence of a "criminal act" (the legality principle) and a "mistake" (the culpability principle), but also on the "purpose of punishment."

A judge's ability to provide forgiveness ("rechterlijk pardon") without enforcing criminal penalties or proceedings is counterbalanced by the application of the legal doctrine of "culpa in causa" (also known as "actio libera in causa"), which grants the court the power to punish the offender. the one who commits a criminal act, even in cases when there is a valid justification for the crime to be abolished, provided that the criminal has a legitimate claim to blame (reviled) for the circumstance that led to the abolition of the crime. Thus, the judge's power to pardon (rather than convict) is weighed against the power to uphold the conviction even in the event that the punishment should be revoked.

Apart from the criminal responsibility of natural persons, corporate criminal responsibility is also regulated in this framework based on the Identification Theory. This is because corporations are increasingly involved in criminal acts that take the form of "crime by corporation" or "corporate crime," which is advantageous to the corporation.

4. Conclusion

Criminal responsibility based on mistake, which is mostly restricted to crimes committed with purpose, is the legal politics around criminal liability included in the National Criminal Code. Only those culpa violations that are specifically specified by law may be penalized as exceptions. On the other hand, the defendant is only held accountable for certain outcomes of a criminal conduct that carry harsher criminal penalties under the law if there was carelessness or if the defendant should have known that such consequences may arise. Thus, it still leans toward the concept of mistake and does not follow the notion of pure bearing of consequences. The fundamental concept of criminal law reform, known as the principle of balance, represents a new approach in the legal politics of national criminal law reform. It is connected to criminal responsibility and draws inspiration from the Pancasila balance values, which are human, divine, and social values.

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