

Dialectics, Legality and Urgency of Criminal Law: A Critical Review in Indonesia

Subarsyah¹
¹Universitas Pasundan
subarsyah2020@unpas.ac.id¹

Article Info	Abstract
Received: 2022-09-12 Revised: 2023-08-02 Accepted: 2023-10-20 Keywords: Criminal Law, Principle of Legality, Urgency of Punishment, Legal Reform, Substantive Justice	<i>This study critically examines the dialectics, legality, and urgency of criminal punishment within the context of Indonesian criminal law. Using a normative juridical approach and qualitative analysis method, the research explores the development of criminal law thought in Indonesia, highlighting the limitations of the principle of legality in its application, and evaluating the urgency of using punishment as a means of social reform. The findings reveal that the development of criminal law in Indonesia demonstrates a dialectical relationship between morality, justice, and formal legality. The legalistic approach emphasizes legal certainty and strict interpretation of the rules, while the contextual approach prioritizes substantive justice by taking into account social and humanitarian factors. The principle of legality remains a fundamental tenet that protects individuals from abuse of power by requiring criminal laws to be clear, firm, and non-retroactive, serving as the foundation for the protection of human rights and the rule of law. However, the dynamics of modern crime and technological advancement often cause legal regulations to lag behind, posing challenges in law enforcement and creating potential ambiguity in application. In this context, the urgency of criminal punishment lies not only in the imposition of sanctions as retribution but also as an effort toward prevention and rehabilitation to maintain order, provide a deterrent effect, and protect society. Therefore, a balance is needed between legal certainty and flexibility in the application of criminal law to effectively and fairly respond to social changes. This includes more humane law enforcement, the strengthening of customary law, and education and training for law enforcement officers to carry out their duties inclusively and adaptively in a complex and pluralistic society.</i>

A. INTRODUCTION

The Indonesian nation has undergone a long and complex historical trajectory, beginning with the era of traditional kingdoms and continuing through the periods of colonization by foreign powers such as the Portuguese, Dutch, British, and Japanese. This colonial period not only affected political and economic structures but also fundamentally shaped the legal system that remains in effect today (Sinaga & Atmoko, 2023). Colonial influence is particularly evident in the criminal law system, especially through the enactment of the *Wetboek van Strafrecht voor Nederlandsch-Indië* (Criminal Code for the Dutch East Indies), which later became known as the *Kitab Undang-Undang Hukum Pidana* (Indonesian Criminal Code). This colonial criminal code governed criminal acts and sentencing, reflecting how Indonesia's criminal law system did not originally develop from indigenous values, but rather through the transplantation of Dutch law imbued with the interests of colonial rule (Ismayawati, 2021).

Although Indonesia has been independent since 1945, the prevailing criminal law has continued to refer to the colonial criminal code. Its legal basis can be found in Article II of the Transitional Provisions of the 1945 Constitution of the Republic of Indonesia, which states that all pre-independence regulations shall remain in force as long as they do not contradict the Constitution (Hamzani, 2022). This was further reinforced by Law Number 1 of 1946, which declared the continued application of colonial criminal law throughout Indonesia. The persistence of this code for more than seven decades reflects a vacuum in the renewal of a national criminal law system aligned with evolving social values, culture, and human rights (Zaidan, 2022).

However, as of January 2, 2023, the President has ratified Law Number 1 of 2023 concerning the Criminal Code. This means that the colonial-era Criminal Code is no longer in effect. This development is a highly positive step by the Indonesian government in establishing a national criminal code based on Indonesia's own positive law, rather than a colonial legacy (Dewanto & Susanti, 2023). The birth of the 2023 Criminal Code is driven in part by the increasing pace of social change and its negative impacts, which demand a more comprehensive and complex response in the field of criminal law. If criminal law continues to rely solely on past concepts, principles, and theories to address social phenomena considered harmful in the past, then it will be deemed ineffective in delivering meaningful benefits (Mubarok, 2024).

One of the fundamental pillars of criminal law is the principle of legality (*nullum crimen sine lege, nulla poena sine lege*), which guarantees that no act can be punished without a clear legal basis established beforehand (Iskandar et al., 2024). This principle is essential to ensure legal certainty and protect citizens from arbitrary state actions. However, in practice, this principle often faces challenges when dealing with modern crimes that evolve rapidly, such as cybercrime, transnational money laundering, and

corporate crime, which are not always adequately addressed by existing legal provisions (Harahap & Rachmad, 2024).

Furthermore, the urgency of employing criminal law as a last resort (*ultimum remedium*) is frequently overlooked in both legislation and law enforcement practices in Indonesia (Pratidina, 2022). Many laws tend to use criminal punishment as the primary instrument, even for acts that should be addressed through administrative or civil mechanisms. This raises critical questions about the direction of national criminal policy and the extent to which criminal law is applied proportionally, fairly, and without being misused as a tool of power (Aji, 2024).

In the context of drafting the Criminal Code Bill, a variety of criticisms have emerged regarding provisions considered ambiguous, potentially leading to excessive criminalization, and possibly conflicting with human rights principles (Suarni et al., 2024). This situation demonstrates that Indonesia is at a crucial stage of criminal law reform, where the dialectic between the principle of legality, the need for justice, and the urgency for legal reform must be analyzed thoroughly. This research is presented to critically examine these three aspects and offer academic perspectives that can contribute to the formulation of a more ideal criminal justice policy.

Several previous studies have emphasized the importance of legality in criminal law as the fundamental safeguard against state arbitrariness (Yuherawan, 2013; Suherman, 2020). However, recent developments have introduced critical approaches that question whether the principle of legality is sufficient to respond to the dynamics of modern crime and the need for fair legal certainty (Hairi, 2017; Harahap & Rachmad, 2024). The dialectic between legal positivism and progressive approaches has become a central theme in contemporary criminal law discourse.

In the Indonesian context, the reformulation of the Criminal Code Bill represents a critical juncture in assessing the urgency of criminal law reform. Some provisions in the draft are problematic due to their ambiguity, potential human rights violations, and conflicts with universal principles of criminal law (Institute for Criminal Justice Reform, 2022). Therefore, a critical examination of legality and the urgency of criminal justice policy is vital to evaluating the direction of national criminal law reform. Research by Izziyana & Besari (2017), for example, highlights the importance of a multidisciplinary approach in developing criminal justice policy, including considerations from sociological, criminological, and philosophical perspectives. This approach opens the door for the rational and proportional use of criminal law as a last resort mechanism, rather than merely as a repressive tool of the state.

Thus, the state of the art in research within this field indicates a shift from a legalistic paradigm toward a contextual paradigm in the study of criminal law. This shift necessitates a reassessment of the principle of legality, the limits of state intervention through criminal law, and the urgency of using criminal law as a tool for social reform.

This research aims to analyze in depth how the dialectic of criminal law thought is developing in Indonesia, reevaluate the principle of legality in the contemporary context, and examine the urgency and direction of criminal justice policy comprehensively.

A. METHOD

This research employs a normative juridical approach, which is an approach based on the study of positive legal norms, particularly those related to criminal law in Indonesia. This approach is considered relevant because the focus of the research lies in the analysis of legislation, the principle of legality, criminal law doctrines, as well as the discourse and dialectics developing within the realm of criminal justice in Indonesia (Soekamto, 2011). The specification of this research is descriptive-analytical, meaning that in addition to describing the existing criminal law system, this study also critically analyzes the accompanying dynamics, both from the perspective of social developments and relevant contemporary legal theories.

The sources of data in this research consist of primary legal materials, namely statutory regulations such as the 2023 Criminal Code of Indonesia and the Constitution of the Republic of Indonesia of the year 1945. In addition, secondary legal materials are also used, such as legal textbooks, scholarly journals, articles, previous research findings, and opinions from criminal law experts that support the theoretical analysis. Tertiary legal materials such as legal dictionaries and legal encyclopedias are used to strengthen the definitions and understanding of legal terms. Data collection is carried out through a literature study, namely by examining legal documents and relevant academic literature (Barus, 2013).

Furthermore, the analytical technique used is qualitative analysis, emphasizing systematic and logical legal reasoning without the use of statistical formulas. This analysis aims to deeply examine the relationship between legal norms, the principle of legal certainty, and the actual needs of society for fair and progressive criminal punishment. Through this approach, it is hoped that the research will contribute to the reform of the Indonesian criminal law system both theoretically and practically, particularly in the context of the implementation of the 2023 Criminal Code of Indonesia, which has officially ended the validity of the colonial legacy criminal law.

B. RESULT AND DISCUSSION

The Dialectics of Criminal Law in Indonesia

The history of criminal law in Indonesia has deep and complex roots, closely intertwined with the nation's historical journey, which can be divided into several key phases: the era of the archipelagic kingdoms, the period of Dutch colonialism, and the post-independence era. Before the arrival of colonial powers, Indonesian society had already known customary law (*hukum adat*) as a living legal system that developed

according to the cultural and social values of local communities. However, the arrival of the Dutch brought significant changes to the legal system applied in the archipelago (Mubarok, 2024). As noted by Jonkers in his book *Het Nederlandsch-Indische Strafstelsel* (1940), the Dutch, upon arriving in their colony in the Dutch East Indies, brought with them their own legal system to be applied to their group. This illustrates that from the beginning, the application of law in Indonesia was influenced by a colonial approach that was not inclusive of local legal systems.

During the Dutch colonial period, efforts to codify laws in the Dutch East Indies began in 1830 and concluded in 1840. However, in the early stages, these modifications did not yet affect criminal law. In this area, the Dutch initially implemented provisional provisions (*interimmaire strafbepalingen*), which essentially retained the existing criminal law prior to 1848, although some structural adjustments were made. Nevertheless, the colonial government continued to push for the unification and modernization of criminal law to serve colonial interests, including adopting influences from the *Code Pénal* (the French Penal Code), which was also in use in the Netherlands at the time.

These unification efforts eventually gave rise to the *Wetboek van Strafrecht voor Nederlandsch-Indië*, or the Criminal Code of the Dutch East Indies, which initially applied only to Europeans in the colony but was gradually extended to the native population. This Criminal Code was formally enacted in 1918 and remained the principal criminal law system even after Indonesia's independence. Following Indonesia's independence in 1945, to prevent a legal vacuum, Article II of the Transitional Provisions of the 1945 Constitution stipulated that all pre-existing laws would remain valid until replaced by new legislation. As a result, colonial criminal law continued to be enforced in the early years of independence (Adinda et al., 2024).

To reinforce the national application of criminal law, the Indonesian government issued Law No. 1 of 1946, which regulated the application of criminal law in Java and Madura. Through Government Regulation No. 8 of 1946, this applicability was extended to Sumatra. Finally, with the issuance of Law No. 73 of 1958, colonial criminal law was officially established as the national criminal law system applicable throughout Indonesia, thereby eliminating the dualism in the criminal law system that had previously existed.

In line with social dynamics and the needs of the national legal system, the Criminal Code underwent several partial amendments, including Law No. 1 of 1960 on Criminal Code amendments, Law No. 16 of 1960, and Law No. 18 of 1960 concerning the maximum amount of criminal fines. Additionally, Law No. 4 of 1976 added provisions related to air piracy. These changes reflect that although Indonesia continued to use the colonial Criminal Code, adjustments and adaptations were made to address contemporary challenges and national needs (Amiruddin, 2012). This process laid the groundwork for the eventual codification of a national criminal law, which was realized with the enactment of the new Criminal Code in 2023.

Law No. 1 of 2023 on the Criminal Code officially replaced the old Criminal Code and marked the beginning of a new era in national criminal law, based on national values, social justice, and modern legal principles. The 2023 Criminal Code not only reflects the need for a more humane and contextual penal system but also symbolizes Indonesia's legal sovereignty after a long dependence on colonial legal heritage. However, challenges related to implementation, public outreach, and harmonization with other regulations remain ongoing tasks that must be addressed collectively moving forward (Muhtar et al., 2023).

The enactment of Law No. 1 of 2023 signifies a shift in Indonesian criminal law thought from a legalistic to a contextual approach. This transition marks a change in law enforcement methods—where the legalistic approach emphasizes strict interpretation of statutes and the Criminal Code, the contextual approach offers a broader perspective that considers social values, justice, and human rights. The reform of criminal law in Indonesia, as reflected in Law No. 1 of 2023, aligns with this trend by giving more weight to both subjective and objective factors and aiming for a balanced system of punishment.

The legalistic approach in criminal law prioritizes textual and literal interpretation of written legal norms, especially those found in the Criminal Code. This approach adheres to the principle of *lex stricta*, meaning that criminal law must be interpreted strictly and not extended beyond what the legislature explicitly stipulates. In practice, this approach emphasizes legal certainty and prevents the abuse of power by law enforcement officers in interpreting the law. Therefore, judges, prosecutors, and other law enforcement officials have limited discretion in imposing punishment, which helps safeguard the objectivity and integrity of the legal system.

However, the legalistic approach is often criticized for overlooking the social realities surrounding a criminal act. In a dynamic and pluralistic society like Indonesia, the same action may have different meanings and social impacts depending on cultural backgrounds, economic conditions, or specific circumstances. Law enforcement based solely on normative texts often falls short in delivering substantive justice. Consequently, a more contextual approach is needed to ensure that the law remains flexible and responsive to the complexities of modern life.

The contextual approach emerges as a response to the limitations of the legalistic method. This approach in criminal law enforcement not only examines the formal elements of a criminal offense but also considers sociological, cultural, and even psychological factors underlying a criminal event. For instance, in cases of theft committed by impoverished individuals out of desperation, a contextual approach would take into account humanitarian aspects and the possibility of applying restorative justice. The primary goal of this approach is to achieve a more holistic form of justice—one that ensures not only legal certainty but also social justice.

The transition from a legalistic to a contextual approach in criminal law represents a paradigm shift in law enforcement that prioritizes substantive justice, respect for human rights, and the social values embedded in society. The dominant legalistic approach, which has long focused on rigid legal certainty and strict application of norms, often disregards the human dimension and social context of both offenders and victims. In this context, the emergence of the contextual approach acts as a corrective to such rigidity, allowing for legal interpretations that consider factual circumstances, cultural backgrounds, and social realities surrounding a criminal event. This transformation reflects a new awareness that criminal law should not merely punish but also rehabilitate, prevent, and educate, while being capable of responding to the increasingly complex and diverse challenges of our times. As such, this transition demonstrates the advancement of criminal law thinking in Indonesia toward a more adaptive, progressive, and socially just system.

With this transition, it has implications for the development of criminal law in Indonesia. These implications include:

- More just and humane law enforcement

More just and humane law enforcement is one of the main implications of the transition in criminal law approaches from a legalistic to a contextual orientation. By no longer rigidly adhering to the written law, the application of criminal law can now better consider human aspects, substantive justice, and the socio-economic conditions of both the perpetrator and the victim. This approach allows for consideration of the background of the criminal act and its impact on society, so that the final outcome is not only repressive, but also restorative and preventive. This is in line with the spirit of respecting human rights as a foundation in a modern criminal justice system.

- Increased role of customary law

The increased role of customary law is also one of the outcomes of the contextual approach in criminal law. In Indonesia's multicultural society, customary law is an inseparable part of the social system that lives and evolves. By adopting a contextual approach, the national legal system can accommodate local norms that are more relevant and accepted by the local community, thereby creating a more responsive and inclusive legal framework. This enables a synthesis between national law and customary law, as long as it does not contradict the principles of the constitution and human rights.

- The importance of the role of judges and law enforcement officers

The role of judges and law enforcement officers also becomes more significant in a contextual criminal law system. Judges are no longer merely "mouthpieces of the law" but are expected to be active interpreters who can understand the social realities behind each criminal case. Likewise, prosecutors, police officers, and other law enforcement officials must be able to identify social and moral values that are developing within society, and

balance them with formal legal norms. This discretionary role demands high intellectual capacity, moral integrity, and social empathy from law enforcement personnel.

- The need for education and training

The need for education and training for law enforcement officers is a logical consequence of implementing a contextual approach. Legal education in Indonesia must reform its curriculum to emphasize not only dogmatic aspects but also sociological, philosophical, and anthropological aspects of criminal law. Continuous training for judges, prosecutors, and police officers should focus on strengthening social sensitivity, understanding legal pluralism, and developing contextual analytical skills. In this way, the quality of human resources within the criminal justice system can be significantly improved to meet contemporary challenges.

Furthermore, criminal law evolves through a dialectic (debate) between morality, justice, and formal legality. Morality plays a role in shaping society's awareness of what is considered evil behavior and worthy of punishment. Moral values can influence criminal laws, such as those addressing crimes against dignity or crimes that harm the wider community. Justice, as a central value in the judicial system, demands that criminal law be applied fairly and proportionally to each individual. Justice also drives the need for adjustments in criminal law to align with the changing times and societal needs. Formal legality, represented by statutes and criminal regulations, provides the legal framework that limits law enforcement. Adherence to formal legality ensures that the enforcement of criminal law is not arbitrary and protects the rights of suspects and defendants.

Criminal law evolves through debates and shifts among these three aspects. Debates may arise between:

- Morality and Legality

Morality and legality are often sources of debate in the development of criminal law because not all behavior considered immoral by parts of society can be categorized as a criminal act under positive law. For example, drug use, alcohol consumption, or certain sexual behaviors may be viewed as unethical or contrary to cultural or religious norms, but they may not be explicitly prohibited by criminal law.

- Justice and Legality

Justice and legality reflect the dynamics between the need to maintain legal certainty and the public's aspirations for a more responsive and empathetic legal system. Many criminal cases require special treatment based on the perpetrator's background, such as committing a crime due to economic pressure, family conflict, or social inequality. In such cases, demands for substantive justice drive the need for revisions or flexibility in the application of rigid legal rules. Therefore, criminal law is expected not only to enforce legal norms but also to balance them with the sense of justice that lives within society.

- Morality and Justice

Morality and justice can also be in conflict in the context of criminal law enforcement. When the law attempts to reflect certain dominant moral values, there is a risk that its implementation will create injustice for other groups with different values or perspectives. For example, imposing criminal sanctions on behavior deemed deviant by a particular community may sacrifice individual rights or civil liberties. On the other hand, if the law overly accommodates individual justice, this may trigger resistance from societal groups that uphold collective moral norms. In this context, criminal law must navigate between these two poles while upholding the principles of non-discrimination and the protection of human rights.

Criminal law is the result of a dynamic dialectical process between morality, justice, and formal legality. These three elements do not always align, but they influence each other and serve as the foundation for formulating and applying criminal law norms in a constantly changing society. Morality reflects the values alive within society, justice emphasizes the protection of individual and collective rights, while legality ensures legal certainty and order. The debates and tensions between these elements are what drive criminal law to continue evolving—not just as an instrument of social control, but also as a means of realizing a civilized, humane society that is responsive to contemporary challenges. Therefore, the transformation of criminal law must always be directed toward creating a legal system that balances normative values, social realities, and the need for legal certainty in order to ensure substantive justice for all citizens.

A Critical Review of the Principle of Legality and the Urgency of Criminal Law Enforcement

The principle of legality is a fundamental concept that asserts that no act can be punished without a prior provision in criminal law that regulates it (*nullum delictum, nulla poena sine praevia lege poenali*). In the context of Indonesian criminal law, this principle not only functions as a safeguard against potential abuse of power by law enforcement authorities but also serves as a constitutional guarantee of individual human rights in legal proceedings (Timoera, 2011). By establishing legislation as the sole source of criminal law, the principle of legality creates a space for fair and transparent legal certainty, enabling every citizen to understand the boundaries between permissible and prohibited actions under the law. Furthermore, this principle compels lawmakers to be meticulous and prudent in formulating criminal norms so that they align with societal developments, moral values, and justice principles prevailing within the community (Subaidi and Afrizal, 2023).

In Indonesia, the principle of legality is explicitly reflected in Article 1 paragraph (1) of the Indonesian Penal Code, which reads: “No act shall be punishable unless by virtue of a criminal provision in legislation that existed before the act was committed.” This provision affirms that criminal law does not apply retroactively and can only be enforced

for actions that have been established as criminal offenses under existing laws before the act occurred (Isima, 2022). This principle provides strong legal protection for citizens against arbitrary criminalization and ensures legal certainty and fairness in the criminal justice system. The principle of legality not only serves as a normative foundation in Indonesian criminal law but also reflects respect for the rule of law and human rights, whereby every individual has the right to be informed of the norms that govern their conduct before they can be held criminally accountable.

The principle of legality reflects three main sub-principles, namely:

- No crime without law (*nullum crimen sine lege*)

This is the core principle of legality, asserting that an act can only be considered a criminal offense if it has been explicitly defined in legislation prior to the commission of the act. This principle protects society from state arbitrariness in declaring someone guilty of actions not previously defined by law. It guarantees individuals the right to understand the legal boundaries in advance and encourages the state to draft criminal laws in a written and systematic manner.

- No punishment without clear legal provision (*nulla poena sine lege certa*)

This principle emphasizes the importance of clarity and precision in the formulation of criminal laws. Every criminal law provision must be written in clear language, free from ambiguity, and must not allow for multiple interpretations that could harm the accused. With clear definitions, society can understand which actions are prohibited and the corresponding penalties, and law enforcement officials have objective guidelines for interpreting and applying the law. This is crucial to ensure that law enforcement processes remain just and are not misused.

- No punishment may be applied retroactively (*nulla poena sine lege praevia*)

This means that criminal law cannot be applied to acts committed before the relevant criminal provision was enacted. This principle safeguards legal certainty and prevents the criminalization of acts that were not previously considered offenses. However, there are exceptions in certain cases, particularly involving serious violations of human rights, as regulated in Article 28I paragraph (1) of the Constitution of the Republic of Indonesia. In such contexts, for the sake of substantive justice and recognition of international legal norms, the principle of non-retroactivity may be set aside.

The application of the principle of legality offers legal protection for individuals from possible misuse of power by the state. Without this principle, law enforcement officers could arbitrarily establish criminal rules subjectively, which could harm the public. Therefore, the principle of legality demands that criminal lawmaking be conducted through a transparent and democratic legislative process.

However, in practice, the implementation of the principle of legality often faces several challenges. The following are some of the key challenges in Indonesia:

- Ambiguity in the formulation of criminal laws

One major challenge in implementing the principle of legality in Indonesia is the vagueness in criminal law provisions. Many criminal law articles use general, ambiguous, or vague terms, leading to varied interpretations among law enforcement officers. This ambiguity not only creates legal uncertainty but can also result in injustice for defendants, especially if the law is applied subjectively. In the context of the principle of legality, imprecise formulations contradict the sub-principle of *nulla poena sine lege certa*—which requires that every criminal law provision be written clearly and specifically to provide definite legal protection for citizens.

- The development of modern crimes

The evolution of modern crimes—such as cybercrime, transnational crimes, and other forms of cross-border violations—presents new challenges for applying the principle of legality. The principle requires that an act be clearly defined as a crime in existing legislation prior to its commission. However, rapid technological advances and complex international cooperation often outpace the law's ability to respond to these new types of crimes. This results in legal vacuums that hinder law enforcement from penalizing offenders, even when their actions clearly harm society. Therefore, there is a need for criminal law reform that is adaptive and responsive to global dynamics while upholding the principle of legality to maintain legal certainty and fairness.

- Technological advancement

Rapid technological progress demands continuous adaptation of the criminal legal system to ensure the principle of legality remains relevant and effective. Emerging forms of crime such as data theft, hacking, disinformation, and misuse of artificial intelligence often lack adequate legal bases in existing laws. When law lags behind technological innovation, it creates legal vacuums that obstruct fair and certain law enforcement. Thus, regulatory reform through responsive and progressive legislation is essential to ensure that any action harming society can be lawfully classified as a criminal offense in accordance with the principle of legality.

- The need for legal flexibility

The need for flexibility in the law arises as a response to evolving and often unpredictable criminal dynamics. In some cases, crimes may occur that are not specifically regulated by existing criminal provisions, requiring law enforcement to exercise interpretative discretion in the pursuit of justice. However, such flexibility must be exercised cautiously to avoid violating the principle of legality, which demands legal certainty and clarity. Therefore, balancing legal certainty with flexibility is crucial in addressing extraordinary situations while upholding the rule of law and the protection of human rights.

- Deviations from the principle of legality

Deviations from the principle of legality in criminal law are sometimes deemed necessary in exceptional situations to uphold substantive truth and justice. For instance,

in cases of serious human rights violations or extraordinary crimes such as genocide and crimes against humanity, international law may be applied retroactively, even if it conflicts with the non-retroactivity aspect of the legality principle. Such deviations are carried out to ensure that grave offenses do not escape legal accountability merely because there were no explicit laws at the time they were committed. Nonetheless, these deviations must be based on universal legal principles and enacted through legitimate processes to avoid misuse and to remain within the bounds of justice and the protection of individual rights.

In a critical study of the principle of legality, the application of this principle often encounters issues of inconsistency in practice. The principle of legality is indeed designed to protect individuals from arbitrary actions by the state, but in reality, not all actions deemed harmful to society can be classified as criminal acts because they are not explicitly stated in statutory regulations. This creates a disparity between the public's perception of justice and the formal boundaries within criminal law.

One of the main problems arises when criminal law is interpreted rigidly and narrowly. Law enforcement officers who strictly adhere to literal interpretations of criminal provisions often face difficulties in prosecuting acts that are morally or socially considered inappropriate but do not fulfill the elements stated in the formulation of the offense. As a result, there are harmful acts that cannot be legally prosecuted because they do not meet formal legality standards. This situation demonstrates the existence of a legal vacuum that harms society.

This problem becomes even more complex when dealing with the emergence of new forms of crime, such as digital crimes, violations of personal data, or the spread of hate speech online, which are not yet fully accommodated in the Criminal Code or other criminal regulations. In this context, the overly strict application of the principle of legality can become an obstacle to effective and responsive law enforcement in the face of social and technological developments. Therefore, a more progressive and dynamic interpretative approach by judges is needed, as well as criminal law reform that can adapt to the needs of contemporary society.

So, how is the principle of legality applied in the urgency of criminal prosecution within the criminal law system in Indonesia? The urgency of criminal prosecution in criminal law refers to the pressing need to enforce legal norms through the imposition of criminal sanctions on offenders. Criminal sentencing is necessary as an instrument to provide a deterrent effect, prevent crime, and uphold the values of justice that live within society. In this context, criminal sentencing is not only seen from the perspective of retribution for unlawful acts but also as a preventive and rehabilitative effort. The primary goal of criminal sentencing is to protect public order, ensure the community's sense of security, and correct the offender's behavior so they do not repeat their actions in the

future. Without an effective criminal justice system, criminal law loses its enforceability, and the public may lose trust in legal institutions.

In addition, criminal prosecution plays a vital role in defending the rights of victims and the broader community from the negative impacts of crime. With appropriate punishment, the state demonstrates its commitment to justice and equality before the law. A proper sentencing process also creates a psychological effect in the form of a sense of justice for victims and society, and reinforces the boundaries of acceptable behavior in social life. However, this urgency must still be balanced with the principle of legality so that arbitrariness in sentencing does not occur. This means that criminal prosecution must be based on previously established laws, clearly formulated, and applied consistently. In this way, the urgency of criminal prosecution becomes a strong foundation for realizing the function of criminal law as a tool for social control as well as the protection of human rights within a state governed by law.

The principle of legality, although a fundamental principle in criminal law, is often criticized because its overly rigid application can ignore substantive justice values and societal interests. In practice, this principle places more emphasis on formal legal certainty, namely that an act can only be punished if it has been clearly regulated in the law, without considering whether the act is morally or socially harmful or unacceptable. This creates a dilemma when there are actions that clearly violate the public's sense of justice, but cannot be prosecuted because they are not included in the applicable criminal regulations. As a result, the principle of legality in its most formal form risks sidelining dynamic and contextual material justice values and weakening the legal response to the social and moral developments occurring in society.

Therefore, in certain situations, the urgency of criminal prosecution arises, demanding that the state immediately respond to crimes or social conditions not yet specifically regulated in positive criminal law. This urgency arises because the law cannot always keep pace with the rapid changes in society and technology. Phenomena such as cybercrime, digital crime, and transnational crime are concrete examples of how legal loopholes can be exploited by perpetrators, while law enforcement officers are hampered by the absence of clear regulations. In such conditions, even though the principle of legality remains the main principle, a more adaptive and progressive legal approach is needed so that a legal vacuum that endangers public interest does not occur.

One of the main criticisms is the punitive tendency in the criminal justice system, where the state places more emphasis on punishment than on restoration. Such an approach can lead to over-criminalization, where too many behaviors are criminalized without clear urgency, potentially burdening the criminal justice system and correctional institutions. Moreover, imprisonment as the main form of sentencing is often ineffective in preventing recidivism (the repetition of criminal acts), especially when not accompanied by adequate rehabilitation programs.

The urgency of sentencing must also be examined in terms of proportionality and effectiveness. The punishment imposed must be proportional to the level of wrongdoing and the impact of the offender's actions and must be truly effective in achieving both preventive and repressive goals. In some cases, sentencing may even have counterproductive effects, such as worsening the socio-economic condition of the offender or creating stigma that hinders reintegration into society. Therefore, it is important to consider whether sentencing is the only solution, or whether there are other mechanisms more adaptive to the true needs of justice.

Judges have a very strategic role in interpreting and applying criminal law, including the principle of legality, not only by rigidly adhering to the text of the legislation but also by considering the evolving justice values in society. In many cases, judges are faced with situations where the prevailing legal norms do not explicitly regulate a particular act, while society demands justice for the tangible impact of that act. In this context, judges are expected to balance legal certainty and substantive justice by interpreting the law wisely and progressively. Thus, the role of judges is not only as the mouthpiece of the law (*la bouche de la loi*) but also as the guardian of justice values that live and develop in society so that criminal law remains relevant and adaptive to social changes.

The public also plays a crucial role in ensuring that the criminal law system operates fairly, transparently, and effectively. Public participation can be manifested in various ways, such as providing constructive criticism of criminal law policies that are deemed unjust, monitoring the enforcement process to prevent abuse of power by law enforcement officers, and promoting legal reforms that are more responsive to evolving social needs and values. Moreover, society also contributes to creating a healthy legal culture by obeying the law and participating in public education about the importance of the principle of legality and the urgency of criminal prosecution. Therefore, active public involvement becomes an integral part of social control that strengthens the legitimacy of the criminal law system and promotes the realization of substantive justice.

Criminal law reform is a necessity in responding to the evolving challenges of the times. With the emergence of various complex new forms of crime, such as cybercrime, transnational crime, and human rights violations, the criminal law system can no longer rely solely on old, rigid, and formalistic norms. Therefore, criminal law reform must be designed with an adaptive and visionary approach to appropriately respond to social dynamics without sacrificing fundamental principles such as the principle of legality.

In formulating such reforms, it is essential to consider the real needs of society and to make justice values the primary foundation. Criminal law must not only be a repressive tool of the state but must also serve as an instrument of protection for all layers of society. Therefore, public participation in the legislative process, dialogue among stakeholders,

and substantive legal reform that is more responsive to social realities are urgently needed to create laws that are not only legally valid but also substantively just.

Ultimately, the ideal criminal law reform is one that bridges legal certainty, justice, and utility. Criminal law must continue to evolve dynamically, keeping up with developments in technology, culture, and public morality, so that it does not fall behind and remains relevant in maintaining order, justice, and the protection of individual rights. Thus, criminal law reform is not just a technical necessity but part of a collective effort to create a more humane and socially just legal system.

C. CONCLUSION

The history of criminal law in Indonesia has been greatly influenced by the nation's journey through the era of kingdoms, Dutch colonialism, and eventually independence. During the colonial period, the Dutch introduced their legal system and codified criminal law in the Criminal Code of the Dutch East Indies, which then became the basis of national criminal law after independence, although it has undergone continuous changes and adjustments. The year 2023 marked a new era with the enactment of a new Criminal Code that emphasizes national values, social justice, and modern legal principles, shifting from a rigid legalistic approach to a contextual approach that considers social, cultural, and humanitarian factors in the enforcement of criminal law.

The development of criminal law in Indonesia has evolved through a dialectic between morality, justice, and formal legality. The legalistic approach emphasizes legal certainty and strict interpretation of the rules, while the contextual approach emphasizes substantive justice by taking into account social and humanitarian factors. The implications of this shift include more humane law enforcement, increased recognition of customary law, and the need for education and training for law enforcement officers so that they can understand and apply the law in a more inclusive and adaptive manner in response to the complex and plural dynamics of society.

The principle of legality is a fundamental tenet of criminal law, stating that a person can only be punished if their act was clearly defined as a criminal offense in existing law before the act was committed. This principle aims to protect individuals from abuse of power by the state and to provide legal certainty so that every citizen knows the boundaries of prohibited conduct. In practice, the principle of legality demands criminal laws to be clear, firm, and not retroactive, serving as a foundation for the protection of human rights and the rule of law. However, the rapid development of modern crimes and technology often causes the law to lag behind, making it difficult to prosecute new forms of crime and potentially creating ambiguity or deviations in legal enforcement.

The urgency of criminal punishment lies in the need to uphold legal norms by imposing effective criminal sanctions to maintain order, deter crime, protect society, and uphold justice. Punishment serves not only as retribution but also as deterrence and

rehabilitation for offenders. While the principle of legality is crucial in preventing arbitrariness, its rigid application can sometimes neglect substantive justice and social changes. Therefore, a balance is needed between legal certainty and legal flexibility so that criminal law remains relevant and capable of responding to societal developments in a fair and effective manner, while protecting individual rights and public interests.

REFERENCES

- Adinda, D., Salam, A., Ramadhan, A., Narendra, A., Anasti, M., & Yanto, J. (2024). Politik Hukum Dalam Pembaharuan Hukum Pidana di Indonesia. *Wathan: Jurnal Ilmu Sosial Dan Humaniora*, 1(1), 12-25.
- Aji, A. D. (2024). Analisis Yuridis Hukum Pidana dan Hukum Administrasi Dalam Perkara Tindak Pidana Korupsi Perspektif Critical Legal Studies. *Lex Renaissance*, 9(2), 309-332.
- Amiruddin, A. (2012). Keabsahan Perubahan dan Penambahan Peraturan Hukum Pidana melalui Perppu dan Perma. *Arena Hukum*, 5(3), 155-162.
- Barus, Z. (2013). Analisis filosofis tentang peta konseptual penelitian hukum normatif dan penelitian hukum sosiologis. *Jurnal Dinamika Hukum*, 13(2), 307-318.
- Dewanto, D. R., & Susanti, R. (2023). Hukuman Mati Menurut Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana Dalam Perspektif Hak Asasi Manusia. *Wijayakusuma Law Review*, 5(1), 64-70.
- Hairi, P. J. (2017). Kontradiksi Pengaturan “Hukum Yang Hidup Di Masyarakat” Sebagai Bagian dari Asas Legalitas Hukum Pidana Indonesia). *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 7(1), 89-110.
- Hamzani, A. I. (2022). *Urgensi Percepatan Pembangunan Hukum Nasional*. Penerbit NEM.
- Harahap, D. F. R., & Rachmad, A. (2024). Perluasan Asas Legalitas Dalam Pembaharuan Hukum Pidana. *Meukuta Alam: Jurnal Ilmiah Mahasiswa*, 6(1 Juni), 116-133.
- Harahap, D. F. R., & Rachmad, A. (2024). Perluasan Asas Legalitas Dalam Pembaharuan Hukum Pidana. *Meukuta Alam: Jurnal Ilmiah Mahasiswa*, 6(1 Juni), 116-133.
- ICJR, P. (2022). Tantangan Penerapan Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia, Jakarta. *Institute for Criminal Justice Reform*.
- Isima, N. (2022). Urgensi Pengakuan Hukum Yang Hidup Pada Masyarakat Dalam Asas Legalitas Ditinjau Dari Perspektif Sosiologi Hukum. *Jurnal JINNSA (Jurnal Interdipliner Sosiologi Agama)*, 2(1), 29-36.
- Iskandar, D., Zulfaidah, W. N., Almanda, A., Abdinur, I., Putra, D. Y., Andriani, C. Y., & Zulfazrul, Z. (2024). Perkembangan Teori dan Penerapan Asas Legalitas dalam Hukum Pidana Indonesia. *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin*, 1(3), 293-305.

- Ismayawati, A. (2021). Pendekatan dan Politik Hukum dalam Pembangunan Hukum Pidana di Indonesia. *Yudisia: jurnal pemikiran hukum dan hukum islam*, 12(1), 109.
- Jonkers, E. J. (1940). Het nederlandsch-indische strafstelsel. (*No Title*).
- Mubarok, N. (2024). Sejarah Perkembangan Hukum Pidana di Indonesia: Menyongsong Kehadiran KUHP 2023 dengan Memahami dari Aspek Kesejarahan. *Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam*, 27(1), 15-31.
- Mubarok, N. (2024). Sejarah Perkembangan Hukum Pidana di Indonesia: Menyongsong Kehadiran KUHP 2023 dengan Memahami dari Aspek Kesejarahan. *Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam*, 27(1), 15-31.
- Muhtar, M. H., Tribakti, I., Salim, A., Tuhumury, H. A., Ubaidillah, M. H., Imran, S. Y., ... & Churniawan, E. (2023). Konsep Hukum Indonesia. *Global Eksekutif Teknologi*, 35.
- Pratidina, P. (2022). *Penerapan Ultimum Remedium Dalam Tindak Pidana Korupsi Melalui Pendekatan Keadilan Restorative Justice* (Master's thesis, Universitas Islam Sultan Agung (Indonesia)).
- Sinaga, N. A., & Atmoko, D. (2023). Kesiapan Sistem Hukum Indonesia Dalam Transformasi Masyarakat Dari 4.0 Menuju 5.0. *Krtha Bhayangkara*, 17(1), 119-126.
- Soekamto, S. (2011). Penelitian hukum normatif.
- Suarni, S., Antoni, H., Asmarani, N., Wahyuni, S., & Amalia, M. (2024). *Buku Referensi Hukum Pidana: Teori komprehensif*. PT. Sonpedia Publishing Indonesia.
- Subaidi, J., & Afrizal, T. Y. (2023). Kedudukan Asas Legalitas dalam Pembaharuan Hukum Pidana di Indonesia. *Cendekia: Jurnal Hukum, Sosial dan Humaniora*, 1(1), 65-77.
- Suherman, A. (2020). Esensi asas legalitas dalam penegakan hukum pidana lingkungan. *Bina Hukum Lingkungan*, 5(1), 133-152.
- Timoera, D. A. (2011). Asas Legalitas Dalam Doktrin Hukum Indonesia: Prinsip Dan Penerapan. *Jurnal Ilmiah Mimbar Demokrasi*, 10(02).
- Vivid Izziyana, W., & Anom Besari, A. (2017). Pengintegrasian Pidana Kerja Sosial Dalam Sistem Hukum Nasional. *Justitia Jurnal Hukum*, 1(2), 172-190.
- Yuherawan, D. S. (2013). Ketiadaan Fungsi Asas Legalitas Dalam Hukum Pidana Untuk Melindungi Kepentingan Korban. *Arena Hukum*, 6(1), 22-36.
- Zaidan, M. A. (2022). *Menuju pembaruan hukum pidana*. Sinar Grafika.