

Updating Criminal Law in Civilized Law Enforcement and Social Justice

Murshal Senjaya

Universitas Pasundan, Bandung, Indonesia

Email: murshal.sanjaya@unpas.ac.id

Abstract

In essence, criminal law reform is a process of reviewing and reforming (reorienting and reforming) criminal law in accordance with the central principles of Indonesian societies socio-political, socio-philosophical, and socio-cultural values. Law enforcers can realize justice and a civilization that is not weak. This means that the aim of the Indonesian people is justice and a culture that is not passive. It needs straightening and vigorous law enforcement in irregularities because justice must be realized in everyday life.

Keywords: Legal Reform, Law Enforcement, Civilized and Just.

----- ◆ -----

A. INTRODUCTION

The reform of Indonesian criminal law is one of the exciting themes, and it is still up to date, even though this effort has long been echoed and proclaimed by Indonesian criminal law experts (Amdayani, 2018). The Indonesian criminal law reform in the form of a penal code definition has undergone several changes since it was first made (Amiruddin & Zainal, 2004).

Criminal law reform is not identical to KUHP renewal (Barda, 2008). Criminal law reform is more comprehensive than simply changing the Criminal Code, which includes reforms in legal structure, culture and material (Andi, 2001).

Meanwhile, the reform of the Criminal Code only means updating the material of criminal law (Ballin, 2019). If viewed from the perspective of criminal law, the reform of the Criminal Code can be carried out in two ways (Barda, 2008). First, renewal in a partial way, namely by replacing part by part of the codification of criminal law. Second, renewal employing universal, total or comprehensive, namely renewal by replacing the complete codification of criminal law (Fajrin, 2019). Criminal law reform in law enforcement is always based on civilized values and social justice (Ghaelani, 2020).

Based on the description above, the problem formulations are: 1). How Realizing a Reform of the Criminal Law System?, and 2). How is Law Enforcement Done based on civilized law and social justice?.

B. LITERATURE REVIEW

1. Criminal Law Reform

Criminal law reform can be interpreted as a change to criminal law (Jian, Nai, Yu & Yang, 2020). Criminal law reform is carried out systemically with an integral and comprehensive approach (Klinkner & Davis, 2019). It should be noted that the

systemic approach does not require a total change of criminal law but still maintains what is considered good, replaces what is deemed inappropriate and adds to those that are deemed to be insufficient (Iksan & Wahyuningsih, 2020).

Reforming criminal law should be carried out by people who sit in government, but also the role of academics is needed. Criminal law experts must feel like part of the criminal law system, not only as observers but also as contributors to the making and application of criminal law (Lacey & Zedner, 2017).

The object of criminal law reform is not only micro, namely material criminal law, but the thing of criminal law reform is also macro, which includes reforms to the structure or institutions of the criminal justice system, the substance of which concerns the harmonization or synchronization of criminal law, as well as renewal of cultural aspects of society, and philosophical values of life (Marenin, 2019). Thus, the reform of criminal law is reforming material criminal law, and at a macro level it is carried out in a broader scope, including formal criminal law, even more so that it touches criminal and social policies (Masyhar, 2017).

According to Barda Nawawi Arief, the significance and essence of the reform of the criminal law are: seen from the perspective of the political approach; namely: The reform of the criminal law as part of the social policy essentially involves the efforts to resolve societal problems (including humanitarian issues) in order to achieve national objectives (McAuliffe, 2018).

Viewed from the value approach, the reform of the criminal law is basically an attempt to examine and re-orientate socio-political, socio-philosophical and socio-cultural principles which are the basis and the substance of the legal and substantive content (Moienian, Rahimi & Peyvandi, 2020), aspired to. It is not a change of criminal law because the desired value orientation is identical to the current criminal law (Palley, Bright & Afkinich, 2017). From the explanation described above, it can be inferred that the reform of criminal law leads to political changes for social, criminal and enforcement policy. Moreover, reform of criminal law must focus on aspired principles. The reform of criminal law without value guidance will not yield long-term goods (Prasetyo, 2010).

2. Criminal Law Enforcement

Law enforcement is a rational attempt to deal with crime, to achieve justice and to be efficient. Crime and non-criminal legal means can be incorporated into the overcoming of crimes by different means as reactions to criminals (Prasetyo & Handayani, 2018). If illegal means are called to combat crimes, it means that criminal law policy will be implemented, namely to conduct elections in line with circumstances and situations in time and in the future to achieve outcomes of criminal law (Ridhuan, 2009).

Indonesia (Justice State) is a rule of law, so anybody who commits an act of crime must have responsibility through legal proceedings for their acts. Enforcing the law means a felony is an act forbidden by a law when the prohibition is combined

with a threat (sanction) as a responsibility in the context of a specific crime (Sunardi, 2005).

In this case, it has to do with the principle of legality, in which no action can be sentenced but has been regulated in law. For anyone who violates the prohibition and the prohibition has been handled in direction, the perpetrator can be subject to sanctions or penalties; while the threat of punishment is aimed at the person who caused the incident, there is a relationship. which is close anyway.

As for law enforcement, as formulated by Abdul Kadir Muhamad, it is an effort to implement the law correctly, supervise its implementation so that there is no violation, and if there is a violation, restore the violated law so that it is re-enforced (Waite & Arar, 2020). This definition shows that law enforcement lies in the activities carried out by law enforcement officials (Wantjik, 2001). The movement of law enforcers lies in serious efforts to realize juridical norms. Learning norms means applying existing rules to ensnare or catch anyone who violates the law. Law violation is the keyword that determines the success or failure of law enforcement missions (Washington, Chapron & Piccolo, 2018).

3. Implementation of Criminal Law Enforcement

The existence of the law is to be obeyed, implemented and enforced; concerning law enforcement, the implementation of law enforcement is a phase of upholding sovereignty or in enforcing power cannot be separated from law enforcement activities because successful law enforcement is a significant factor in realizing and building dignity state and government for the sake of upholding state sovereignty.

The implementation of criminal law enforcement in society must pay attention to law enforcement in general, including: 1. Benefits and uses for society; 2. Achieving justice means that the application of the law must consider various facts and circumstances proportionately; 3. It contains the values of justice, namely values described in solid and embodied principles and the attitude of action as a reflection of the final stage of values to create, maintain, and maintain social peace.

In general, law enforcement activities, including criminal law enforcement, can be in the form of:

Preventive Actions (preventive) Preventive means all efforts or actions intended to prevent law violations, and these efforts can include: 1. Increased legal awareness for citizens themselves; 2. Patrol actions or safeguarding law enforcement policies; 3. Supervision or control continues, for example, management of belief streams; and 4. prevention of misuse and or blasphemy, research and development of law and criminal statistics.

Repressive Actions Repression refers to all efforts or actions that certain state officials must carry out following the provisions of the applicable procedural law; if there has been a violation of the law, the forms of repressive action can be: 1. Administrative action; and 2. Juridical or legal activities which include, among others: a. Investigation; b. Prosecution; c. Court examination; and c. Execution of court decisions or execution

C. METHOD

This study describes qualitative approaches and an approach to sociology (social, legal approach). The purpose of this analysis is to detail the social phenomena underlying the issue of criminal law reform in the field of civil law enforcement and social justice. It does not mean in the narrow sense that the scientific method is used to provide an overview of the current phenomena without making a hypothesis and descriptive statistical calculations.

The sociological legal approach aims to clarify and examine in reality the relationship between the legal and non-legal dimensions of the law's activity. In sociological law, first study involves secondary data, followed by research in the field or in society on primary data.

Test findings after the theory, concepts and legal norms of the topic under study are defined, built, recompiled and analyzed using qualitative process.

D. RESULT AND DISCUSSION

Essentially, penal reform is an attempting to revisit and reform criminal law (reorientation and reform) following the core principles of the Indonesian society's socio-political, social-philosophical and socio-cultural values. The principles that the Indonesian nation has to explore for the reform of Indonesian criminal law, so that Indonesian criminal law will in future comply with the Indonesian people's socio-political, socio-philosophical and socio-culture values.

In practice, the exploration of this value is based on customary law, positive criminal law (Criminal Code), religious law, criminal law in other countries, and international agreements on illicit law material. Legal reform, especially criminal law in Indonesia, is carried out in two ways, namely:

1. Making Laws whose purpose is to amend, add to and complement the current Criminal Code.
2. Preparing the Draft Criminal Code (RUU KUHP) aims to replace the current Criminal Code, a colonial legacy.

One of the main principles in criminal law is the "principle of legality". The principle of legality is stated in article 1 paragraph (1) of the Criminal Code, which means that every act referred to as an act / criminal act must be formulated in a law made beforehand, which stipulates in a precise formulation of the said acts.

Consequently, according to the public's view, an act is considered a disgraceful act. After all, it violates legal values that society cannot be condemned because it is not determined in writing in the law.

In the reform of the Criminal Code, if it is still based on the principle of formal legality, then in its implementation, of course, it is felt that it does not reflect the sense of justice of the community.

Revision of criminal law does not mean only changes or improvements to the provisions of the Criminal Code provisions as the central source of criminal law. However, more than that, the meaning and essence of reform are closely related to the background and urgency of carrying out criminal law reform, which can be reviewed

from political, philosophical and cultural aspects, or various policy aspects, namely social, criminal and law enforcement policies. Penal reform thus ultimately involves trying, in compliance with socio-political, socio-philosophical and sociocultural principles in Indonesia, to reorient and reform Penal law.

A KUHP must reflect the cultural values of a nation in which the Criminal Code applies. Because what is considered a disgraceful act and or may not be done following the values and views of the people of the nation itself.

As stated by Sudarto, criminal law should reflect the cultural values that live in the society concerned. As a harmful system of sanctions, criminal law imposes sanctions on the community's acts that are not desired. This is related to the view of life on the moral and moral order of religion and the nation's interests.

Starting from the social reality and the views of the experts mentioned above, it is appropriate for the reform of criminal law (KUHP) to also be carried out with a value approach, namely the overall values in society today regarding what is reprehensible, which is inappropriate because of community and should be punished.

The principle of legality in Article 1 paragraph (1) of the Criminal Code requires that criminal law be determined in advance through statutory regulations (written law). This provision is following the meaning of the legality principle, which provides legal certainty for the community. With the requirements that have been previously arranged, a person can be held accountable for an act he has committed that has been expressly prohibited from being executed.

Law that lives in society as an extension of the legality principle in Article 1 paragraph (3) of the Draft Criminal Code, which is not a law established by the legislators, is an unwritten law. It is contrary to the legality principle, which requires provisions to be regulated in legislation with the *lex particularis* principle.

Article 1 paragraph (2) of the Draft Criminal Code stipulates the prohibition on analogy as a consequence of the principle of legality. However, with the expansion of the legality principle, there is a conflict because, to punish an act that is not regulated in statutory regulations, the judge will use an analogy or at least an extensive interpretation.

The legality principle requires detailed and accurate regulations (*lex certa*). Laws that live in society are not written in directions. Therefore, there is no formulation of prohibited acts. The inclusion of laws that live in society can create legal uncertainty.

From a human rights perspective, the extension of the legality principle is limited to severe human rights crimes (gross human rights violations). The provisions governing human extreme rights crimes clearly and in detail determine what is meant by brutal human rights crimes and what crimes are included in these crimes.

Along with developing criminal case problems in Indonesia, a form of resolution that prioritizes substantial justice is urgently needed. This substantial justice will guarantee the rights of the parties, as well as restore social harmony in society

Until now, the law has only a firm and not substantive theory of judicial proceedings. In this case, the tone of the law applies to procedural justice. Formal justice can be done as long as the statute is implemented. It remains to be investigated whether or not material justice for multiple parties is regarded as morally acceptable.

Restructuring justice is an alternative model for the settlement of disputes that focuses more on crimes against fellow individuals/companies than on state crimes. Restaurant justice emphasized a balanced approach to the reconstruction of the social structure in society between criminals, victimizers and community, in which mutual accountability exists among the parties.

It is necessary to make legalization regarding the settlement of certain criminal cases out of court. Every guilty person must be punished, but it also needs to be considered from a sociological aspect, meaning that legal alternatives need to be made for certain crimes so that not all cases go to court; this will undoubtedly reduce the accumulation of points in court.

During the investigation period, a peaceful settlement should have been offered, in which the perpetrator apologizes to the victim and his family and compensates for the losses suffered. If there has been peace like this, there is no need for the case to have proceeded to trial.

About the process of solving cases in court based on Pancasila. The second precept, which reads "Just and Civilized Humanity", is not only part of the basic philosophy of the state, but at the same time, it must also be used as a reference and guide in guiding the behaviour of all citizens in dealing with all situations.

The tragedies of crime cases in Indonesia have been going on for a long time, mainly because of Indonesia's weak law enforcement process. Law enforcement officers can flirt with the perpetrators of these crimes.

As a result, Indonesia, which has adopted Pancasila, is still morally unstable and unstable, so that justice and public civility often disappear, swallowed up by our failure to practice Pancasila, especially here in the form of fair law enforcement.

Especially for Law Enforcement: 1. Building Indonesian Law with character. The moral law, a law that consistently upholds the values of justice, truth and honesty; 2. It is concretely upholding human dignity, which guarantees human aspects/defending human rights (HAM); 3. Maintain integrity with moral legitimacy and social legitimacy. There is no discriminatory legal treatment between those in power and property and those who are not robust and have no property; 4. Realizing justice and a civilization that is not weak. This means that the aim of the Indonesian people is justice and a culture that is not passive. It needs straightening and vigorous law enforcement in irregularities because justice must be realized in everyday life.

E. CONCLUSION

Essentially, the reform of penal law is an attempt to study and reform (reorienting and reforming) criminal law, following the central principles of Indonesian social-political, social-philosophical and socio-cultural values. Law enforcers can realize justice and a civilization that is not weak. This means that the

aim of the Indonesian people is justice and a culture that is not passive. It needs straightening and vigorous law enforcement in irregularities because justice must be realized in everyday life. Indonesian criminal law, which is still upheld by international nations, should be aimed at the structure of criminal law that is founded on Pancasila philosophy as the ideals of life and the state that you aspire to theology. For legal certainty, criminal law reform should be based on justice and civilized humanity.

REFERENCES

1. Amdani, Y. (2018). Implications of Criminal Law Deviation on Violence and Murder in Aceh from the Perspective of the Helsinki Memorandum of Understanding. *Padjadjaran Journal of Law*, 5(2), 331-348.
2. Amiruddin & Zainal, A. (2004). *Introduction to Legal Research Methodology*. Jakarta: Raja Grafindra Persada.
3. Andi, H. (2001). *Principles of Criminal Law*. Jakarta: Rineka Cipta.
4. Ballin, E. H. (2019). The value of international criminal justice: How much global criminal justice can the world afford?. *International criminal law review*, 19(2), 201-213.
5. Barda, N. A. (2008). *Criminal Law Policy*. Bandung: Citra Aditya Bakti
6. Barda, N. A. (2008). *The interest of Criminal Law Policy; Development of Drafting the Concept of the New Criminal Code*. Jakarta: Kencana Prenada Media Group.
7. Barda, N. A. (2008). *Several Policy Aspects of Criminal Law Enforcement and Development*. Bandung: Citra Aditya Bakti.
8. Fajrin, Y. A. (2019). Punishment Asset Forfeiture for Corruptor In Perspective of Indonesian Community Justice. *Fiat Justisia: Jurnal Ilmu Hukum*, 13(3), 209-230.
9. Ghelani, A. (2020). Deconstructing the Racialized Cannabis User: Cannabis Criminalization and Intersections with Social Work Profession. *J. Soc. & Soc. Welfare*, 47, 5.
10. Iksan, M., & Wahyuningsih, S. E. (2020). Development Of Perspective Criminal Law Indonesian Noble Values. *Legal Standing: Jurnal Ilmu Hukum*, 4(1), 178-192.
11. Jian, K., Nai, P., Yu, T., & Yang, G. (2020). The establishment of the Absichtsdelikte model of criminal law for controlling terrorist crimes: The case of China. *International journal of law, crime and justice*, 60, 100366.
12. Klinkner, M., & Davis, H. (2019). *The Right to The Truth in International Law: Victims' Rights in Human Rights and International Criminal Law*. London: Routledge.
13. Lacey, N., & Zedner, L. (2017). Criminalization: Historical, legal, and criminological perspectives. *The Oxford Handbook of Criminology*, 57-76.
14. Ladegaard, I. (2019). "I pray that we will find a way to carry on this dream": How a law enforcement crackdown united an online community. *Critical sociology*, 45(4-5), 631-646.
15. Marenin, O. (2019). The tragic core of criminal justice: Coercive social control and the loss of innocence. *International Journal of Law, Crime and Justice*, 58, 91-99.

16. Masyhar, A. (2017). Formulation Model of Retroactive In the World (Comparative Study with Indonesian Penal Code). *South-East Asia Journal of Contemporary Business, Economics and Law*, 12(4).
17. McAuliffe, P., & Schwöbel-Patel, C. (2018). Disciplinary Matchmaking: Critics of International Criminal Law Meet Critics of Liberal Peacebuilding. *Journal of International Criminal Justice*, 16(5), 985-1009.
18. Moienian, A., Rahimi, M. M., & Peyvandi, R. (2020). The Role of Iranian Criminal Laws in the Development of Tourism. *Journal of Tourism & Hospitality Research*, 7(3).
19. Palley, H. A., Bright, C. L., & Afkinich, J. (2017). DNA, Privacy, and Social Justice: The Policy-making Process in the State of Maryland. *Journal of Social Welfare and Human Rights*, 5(1), 1-14.
20. Prasetyo, T. (2010). *Criminalization in Criminal Law*. Bandung: Publisher Nusa Media.
21. Prasetyo, T., & Handayani, T. A. (2018). Theory Of Dignified Justice As A Legal Foundation Of Law Reform In Indonesia. *Surakarta Law and Society Journal*, 1(1), 46-54.
22. Ridhuan, S. (2009). *Series of Digest in Law*. Bandung: Citra Aditya Bakti.
23. Sunardi, D. T. (2005). *Abdul Wahid, Republic of "The Rats"; Reflections on Legal Powerlessness and Human Rights Enforcement*. Jakarta: Edsa Mahkota.
24. Waite, D., & Arar, K. (2020). Problematizing the Social in Social Justice Education. *Handbook on Promoting Social Justice in Education*, 169-192.
25. Wantjik, S. (2001). *Complementary to the Criminal Code: Amendments to the Criminal Code and the Criminal Law up to the End of 1980*. Jakarta: Ghalia Indonesia.
26. Washington, H., Chapron, G., Kopnina, H., Curry, P., Gray, J., & Piccolo, J. J. (2018). Foregrounding ecojustice in conservation. *Biological Conservation*, 228, 367-374.