

Criminal Act Principles Policy Renewal of Criminal Act in Indonesia

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Abstract. After Indonesia's independence, some legal experts Indonesia tried to make the Criminal Code itself in accordance with the characteristics of Indonesia based on Pancasila and legal values that live and thrive in Indonesian society, but the spirit of the legal experts of the Indonesian nation was not offset by a member legislative duty during the Old Order, New Order and the Reform Era. It was only during the reign of President Joko Widodo draft Act, especially criminal Act book on a book I had been passed in 2018 this with legalized the Draft Penal Code Book I into Act by the legislative period 2014 - 2019 will automatically bill the Penal Code which has been stalled for more than 56 years, has now become a legitimate Act although not enrolled gazetted in Indonesia. This research method using normative juridical approach. The results showed that essentially the principles and foundations of the criminal Act system and the colonial criminal Act still survive with a blanket and face Indonesia. Principles of criminal Act enactment space according to Criminal Code draft concept consisting of: according to time and according to place. The meaning and nature of criminal Act reforms can be divided into two parts: from the point of policy approaches; and on the angle of approach values

Keywords: Policy of Positive Criminal Act; Criminal Act Reform.

1. Introduction

The legal system in the world divided to 4, namely Anglo Saxon (Common Act), European Continental (Civil Act), Islamic Act (Islamic Act System) and customary Act system.

Indonesia as the former Dutch colony split between Act Public (criminal) and the Act of Private (civil), but still under one roof Justice, in addition to using the criminal Act and civil Act BW from the Dutch in Indonesia also use sharia courts specifically for residents Indonesia Muslim countries, as well as the country of Malaysia in addition to using the public courts to adjudicate criminal cases but still use sharia courts to adjudicate disputes civil judge actions for citizens who are Muslims.

There are four (4) courts in Indonesia under Article 24 paragraph (2) of the 1945 Constitution, namely the General Courts (civil and criminal), environmental Religious Courts (family Act such as marriage, divorce, etc.), Environment State Administrative Court (disputes between citizens and officials of the state administration) and the Environmental military Justice (include crimes or offenses committed by the military).

Dutch colonized Indonesia region for more than 350 (three hundred and fifty) years is certainly not the only colonize areas that exist in Indonesia to take his produce, especially spices, but the Netherlands also apply a legal system that is used in the country to be applied in colonial region, with the aim to protect the interests of the Dutch people in the colonies.

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If we compare with the Criminal Code-Criminal Code of modern nations elsewhere in the world, Indonesia is still outdated, but until now the Code of Penal (Penal Code) the country still continue to use it, but Indonesia is a bit more advanced in the field of reform of criminal Act , This is proved by Draft Indonesian Criminal Code Book I of the new members of the legislative period 2014 -2019 a matchless gratitude for Indonesia if the draft Penal Code that has 54 years 'stalled' no significant progress, there is now a good faith and sublime by members of our legislature.

As is known from 1811 until 1814, Indonesia has fallen from the Dutch to the British, according to the London Convention August 13, 1814, the former Dutch colony was returned to the Netherlands. The British government handed over to the Commissioner-General sent from the Netherlands.

To avoid a legal vacuum, the rules issued on August 19, 1916, Stbl. 1816 No. 5 which says that for a time all former British government regulations is maintained. In general, they apply Betawi new Statute, and for indigenous customary Act is still recognized criminal origin is not contrary to the general principles of Act recognized and commands, as well as the Acts of the government.

Indonesian nation to apply criminal charge of forced labor on plantations that are based on Stbl. 1828 No. 16, they are divided two categories, namely: 1) convicted chain work; 2) convicted of forced labor made up by wages and unpaid.

In the practice, criminal forced labor imposed in three ways: 1) forced labor with chained and disposal;2) forced labor with chained but not removed; 3) forced labor without chain but discarded. By itself all previous regulations no longer apply.

Penal Code that apply to group *Bumiputra* also adaptations of the Criminal Code that applies to the European group, but was given a more severe sanctions to the Criminal Code of 1918 was the sentence is heavier than the Dutch Penal Code 1886.²

After Indonesia's independence, some legal experts Indonesia tried to make the Criminal Code itself in accordance with the characteristics of the nation Indonesia based on Pancasila and legal values that live and thrive in Indonesian society, but the power jurists of the Indonesian nation was not offset by a member legislative duty during the old order, the new order and the order of reform then under President Joko Widodo draft Act, especially criminal Act book on Book I was passed in 2018.

With legalized the Draft Penal Code Book I into Act by the legislative period 2014 - 2019 will automatically bill the Penal Code which has been stalled for more than 56 years, have now legally become Act, although it has not been registered in the state gazette Indonesia , The basic foundation and the reason soon became Shrimp legalization bill of the Criminal Code Act, as contained in the preamble to weigh, such as the following:

- that in order to realize the national criminal Act of the Republic of Indonesia based on Pancasila and the Constitution of the Republic of Indonesia of 1945, is necessary to develop a national criminal Act to replace the Code of Penal heritage Dutch East Indies colonial government;
- that national criminal Act must be adapted to the legal politics, the state and development of the society, nation, and state that aims to respect and uphold human rights, based on God, humanity just and civilized, the unity of Indonesia, democracy led

² Andi Hamzah SH 2014 *Asas-asas Hukum Pidana* Rineka Cipta Jakarta p 16-17

by the inner wisdom of deliberations / representatives, and social justice for all Indonesian people;

- that the matter of national criminal Act should also set the balance between the public interest or the state and the interests of individuals, the protection against criminals and victims of crime, between the elements of action and inner attitudes, between legal certainty and justice, between the written Act and the Act of life in society, between the national and universal values, as well as between human rights and human obligation;

The draft Act Indonesian Penal Code which will be passed into Act in August 2019 later, this Penal Code has different characteristics compared to the previous Penal Code. If the Dutch colonial heritage of the Criminal Code consisting of the third book that consists of: 1) the book I general rule or general provision consists of 103 chapters; 2) The second book about the crime which consists of 383 chapters, and 3) the book III of the breach consists of 186 chapters, then the new Code is only composed of II (two) books; namely 1) Book I contains the General Rules of six (VI) chapters and 205 articles, and 2) Book II of the Criminal Actions which contains 530 articles.

In the first chapter to the section 2 of the General Regulations of paragraph 1 contains the principle of territory or territorial, paragraph 2 contains the principle of the national principle of passive, paragraph 3 of the principle of universal, paragraph 4 contains an active national despair.

From the facts the author determines the formulation of the problem to be discussed in this paper are: How is the policy principle of criminal Act in the current positive criminal Act?; How to policy as well as the principle of criminal Act in the Indonesian criminal Act reform

Research Methods

Methods used are normative juridical approach. Normative research also called legal research literature is legal research done by researching library materials or secondary data, and then to apply to the research problem that the elements of the criminal Act so that the presentation stems from the principles and theories and doctrines and regulations applicable Act.³

Specifications of this research is descriptive narrative according to research problems and goals. Research by describing a number of variables related to the problems examined. In other words, this study is limited to the depiction of one or more of the juridical analysis of criminal Act and criminal Act reform in Indonesia.

2. Results And Discussion

2.1. Policy Principles of Criminal Act in Criminal Act Positive

The current Penal Code originated from WvS Nederlandsch-Indie (S.1915 732) were declared applicable in Indonesia based on the Act No. 1/1946 jo. Act 73/1958. Therefore, talk of "progress" general rule Book I of the Criminal Code can be traced Act No.1 / 1946 to now.

³Salim HS dan Erlies Septiana Nurbani 2013 *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi* Raja Grafindo Persada Jakarta p.12.

Observe development of common rules of Book I of the Penal Code since the Act No. 1/1946 until now this. It can be said that the general rule criminal system in Book I of the Criminal Code does not undergo fundamental changes. It is said that, because of the principles / common principles (general principle) criminal Act and sentencing contained in the Criminal Code still like WvS Indies. Indeed, in the development of any changes / additions / repeal of several articles in the general rules of Book I, but it is only partial changes are not fundamental and does not change the whole system of criminal prosecution.⁴

Changes / developments, for example, among others:

- Act No. 1/1946 (Article VIII): Chapter IX to delete article 94 of Book I of the Criminal Code on the definition of the term "Dutch ship" (Nederlandsche Schepen);
- Act No. 20/1946 (Article 1): Adding a new principal criminal in Article 10 sub a criminal KUGP with cover;
- Act No. 73/1958 (Article II: Adding Article 52a of the weighting criminal for committing the crime by using the national flag;
- Act No. 20/2001 (article 43 B): declare void Articles 209, 210, 387, 388, 415, 416, 417, 418, 419, 420, 423, 425, 435 of the Criminal Code

In the absence of a fundamental change of the legal principles of sentencing in the Criminal Code system as mentioned above, it is still very relevant statement of 54 years ago on the First Concept Development Team New Book I of the Criminal Code of 1964 which states in the "General Explanation" of his that:⁵ Although Act No. 1 of 1946 has been trying to match the atmosphere of freedom, but in fact the principles and foundations of the criminal Act system and criminal Act is still based on the science of criminal Act and practice of colonial criminal Act; In essence, the principles and foundations of the criminal Act system and the colonial criminal Act still survive with a blanket and face Indonesia; Principles of criminal Act enactment space according to Criminal Code draft Concept consists of:

- According to the time: the principle of legality;

Article 1

(1) No one else can act subject to criminal sanctions and / or action except on the strength of criminal Acts in the legislation that existed before the deed is done.

(2) In determining the existence of Crime, forbidden to use an analogy.

Section 2

(1) The provisions referred to in Article 1 (1) Without prejudice to the Act of life in society which determines that a person should be convicted even if such actions are not regulated in the legislation.

(2) The Act of life in society as referred to in paragraph (1) shall apply in the testimony of life and as far as not stipulated in this Act and in accordance with the values of

⁴ Barda Nawawi Arief 2017 *Perkembangan Sistem Pemidanaan di Indonesia* Pustaka Magister Semarang p 5-6

⁵ See Moeljanto Atas Dasar atau Asas-asas Apakah Hendaknya Hukum Pidana Kita Dibangun? (Surabaya Prasaran Kongres Persahi II 15-19 Juli 1964) p 2-3; Barda Nawawi Arief 1998 *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana* PT Citra Aditya Bakti Bandung p 101

Pancasila, the Constitution of the Republic of Indonesia of 1945, human rights, and general legal principle recognized civilized society.⁶

- According to the place: the principle of territorial, national principle active (personal), passive national principle (principle of protection), and universal principles.

Paragraph 1

The principle Territory or Territories

Article 4

Criminal provisions in the Act of the Republic of Indonesia applies for Everyone doing:

- a. Crime in the territory of the Republic of Indonesia;
- b. Follow-the crime in Vessel or aircraft flagged Indonesia; or
- c. The criminal in information technology or other Crime consequently experienced or occurring in the territory of the Republic of Indonesia or Ships and aircraft in the Indonesian flag.

Paragraph 2

National Principles Passive

Article 5

Criminal provisions in the Act of the Republic of Indonesia applies for Everyone outside the territory of the Republic of Indonesia who do Crime against the interests of the Republic of Indonesia relating to:

- a. state security or the process of constitutional life;
- b. the dignity of the President, Vice President, and / or the Indonesian authorities abroad;
- c. currency, seals, state seal, seal, securities, or credit card;
- d. economy, trade, banking and Indonesia;
- e. safety or security of shipping and aviation;
- f. safety or security of the building, equipment, and national assets or the state of Indonesia;
- g. safety or security of the electronic communication system;
- h. Indonesia's national interest as defined in the Act; or
- i. Indonesian citizens by international agreements with the country where the Crime.

Paragraph 3

Universal Principles

Article 6

Criminal provisions in the Act of the Republic of Indonesia applies to every person who is outside the territory of the Republic of Indonesia who do Crime under international Act which has been designated as Crime in the Act of the Republic of Indonesia.

Article 7

Criminal provisions in the Act of the Republic of Indonesia applies for Everyone doing Crime outside Indonesia were prosecutions taken over by the Government of Indonesia on the basis of an international agreement which grants the Government of Indonesia to conduct criminal prosecutions.

Paragraph 4

⁶ RUU KUHP Book I p 2

National Active Principle

Article 8

- (1) Criminal provisions in the Act of the Republic of Indonesia applies to all Indonesian citizens who do Crime outside the territory of the Republic of Indonesia.
- (2) The provisions referred to in paragraph (1) applies if the act was also a Crime in countries where follow.
- (3) The provisions referred to in paragraph (1) shall not apply to Crime which is only imposed with a fine of Category I or Category II criminal penalties.
- (4) Prosecution against Crime as referred to in paragraph (1) shall be conducted even if the suspect to be a citizen of Indonesia, after the Crime of these actions are carried out throughout the country where the Crime of the Crime do.
- (5) Indonesian citizens outside the territory of the Republic of Indonesia who do Crime referred to in paragraph (1) shall be sentenced to death if the Criminal Act under state Act where the Crime was committed is not punishable by death.⁷

So basically, the principles of criminal Act enactment space according to the concept is not much different with the existing Criminal Code. But there are also differences, and development, as follows:

- In addition to organizing space entry into force of the criminal Act in time and in place, the concept also set the "time of occurrence of crime" (tempus delicti / time of the act / time of commission of an offense / time of perpetration of a crime) and "the scene of the criminal offense "(locus delicti / place of the act / place of commission of an offense / place of perpetration of a crime); these two things are not regulated in the Criminal Code now in effect.
- Regarding the entry into force of the criminal Act of space by time (principle of legality), Concept retains the formal legality principle as in the Criminal Code, but extended also to the principle of legality material;
- Regarding the entry into force of the criminal Act chamber according to the place (principle of territorial, personal, passive national, and universal), initially (ie until the concept of 2002) is not much different arrangements with the Criminal Code.⁸ But in 2012-2018 the concept has been changed into Article 4, Article 5, Article 6, Article 7, Article 8, as mentioned above.

2.2.Principle Policy Criminal Act in Indonesia's Criminal Act Reform

Marc Ancel has said, that "the modern criminal science" consists of three components "criminology", "criminal Act", and "penal policy". Given by him, that "penal policy" is a science and an art, which in turn has a practical purpose to allow the rules of positive Act formulated better and to give not only to legislators, but also to the court to apply the Act and also the organizers or implementing the judgment.⁹

⁷ RUU KUHP Book I p 2-3

⁸ Barda Nawawi Arief 2017 *RUU KUHP Baru; Sebuah Restrukturisasi/Rekonstruksi Sistem Hukum Pidana Indonesia* Pustaka Magister Semarang p 65-66

⁹ Barda Nawawi Arief 2016 *Bunga Rampai Kebijakan Hukum Pidana; Perkembangan Penyusunan Konsep KUHP Baru* Prenadamedia Group Jakarta p 23

With this affirmation mean criminal policy problems including one of the areas that should be the center of attention in criminology. Moreover, it is "criminal" as a form of reaction or response to crime, is one of the objects of study criminology.¹⁰

The term "policy" is derived from the term "policy" (English) or "politiek" (Netherlands). Starting from the second term of this foreign, hence the term "criminal Act policies" can also be referred to as "the politics of criminal Act". In foreign literature the term "politics of criminal Act" is often known by various terms, such as "penal policy", "criminal Act policy" or "strafrechts politiek".

Definition of "policy" or "political criminal Act" can be seen from the politics of Act and criminal politics. According to Prof. Sudarto, "political Act" is:

- Efforts to bring the regulations according to the condition and situation at any time;
- The policy of the state through the competent bodies to adopt legislation expected desired can be used to express what is contained in the community and to achieve what is aspired.¹¹

Based on the notion that, "political criminal Act" means holding elections to achieve criminal Act the most good in the sense of qualifies justice and efficiency.¹²

From the foregoing, we conclude the meaning and nature of criminal Act reforms are as follows:

- Viewed from the angle of policy approaches;
 - As part of a social policy, criminal Act reform are actually a part of efforts to address social problems (including problems of humanity) in order to achieve / support the national objectives (social welfare and so on);
 - As part of the criminal policy, criminal Act reform are actually a part of efforts to protect the public (especially the crime prevention efforts);
 - As part of the policy of Act enforcement, criminal Act reform are actually a part of the efforts to renew the substantive Act (legal substance) in order to further streamline the legal applied.
- Viewed from the angle of approach values
Criminal Act reform was essentially an effort to review and reappraisal ("reorientation and reevaluation") values of sociopolitical, sociophilosof and underlying sociocultural and give substance to the charge of normative and substantive criminal Act aspired. Not an update ("reform") if the criminal Act of criminal Act value orientation is aspired (eg New Penal Code the same as the value orientation of the old criminal Act heritage invaders (the old Penal Code or WvS).

3. Closing

3.1. Conclusion

- In essence, the principles and foundations of the criminal Act system and the colonial criminal Act still survive with a blanket and face Indonesia. Principles of criminal Act enactment space according to Criminal Code draft Concept consists of: According to the time: the principle of legality; According to the place: the principle of territorial, national

¹⁰ *Ibid* p.24

¹¹ Sudarto 1983 *Hukum Pidana dan Perkembangan Masyarakat* Sinar Baru Bandung p 20

¹² Sudarto 1981 *Hukum dan Hukum Pidana* Alumni Bandung p 161

principle active (personal), passive national principle (principle of protection), and universal principles. So basically, the principles of criminal Act enactment space according to the concept is not much different with the existing Criminal Code. But there are also differences and development,

- The meaning and nature of criminal Act reforms can be divided into two parts, namely:
 - 1) Viewed from the angle of policy approaches: a) Social policy; is part of efforts to tackle social problems (including problems of humanity) in order to achieve / support the national objectives (social welfare and so on); b) Criminal policy; is part of efforts to protect the public (especially the crime prevention efforts); c) Act enforcement policies, is part of an effort to update the substantive Act (legal substance) in order to further streamline the legal applied; 2) Viewed from the angle of approach values. Criminal Act reform is an attempt to review and reappraisal ("reorientation and reevaluation") values of sociopolitical, sociophilosof and underlying sociocultural and give substance to the charge of normative and substantive criminal Act aspired. Not an update ("reform") if the criminal Act of criminal Act value orientation is aspired (eg New Penal Code the same as the value orientation of the old criminal Act heritage invaders (the old Penal Code or WvS).

3.2. Suggestion

Based on the description of the above discussion, the authors suggested that the government and the legislature soon ratify the new Penal Code bill into Act.

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