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The Development of Punishment in Indonesian Criminal Law

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Abstract. *With the birth of Law No. 1 of 2023 concerning the Criminal Code, it gives great hope for the development of punishment and punishment in Indonesian Criminal Law, which in turn gives hope for the fulfillment of a sense of public justice and the establishment of criminal law that guarantees legal protection from the threat of criminal offenders who can endanger the survival of the nation and state. Efforts to fundamentally reform the Indonesian criminal law have been carried out by reforming Law No. 1 of 2023 concerning the Criminal Code. The purpose of this study is to explain in detail that the development of punishment and punishment in Indonesian criminal law has undergone a fairly long development covering the Dutch colonial period, the independence period and post-independence. In the period before independence, the development of Indonesian Criminal Law was only limited to the colonial period or the Dutch colonization period. This research uses normative juridical research method. The conclusion that can be stated is that in the period before the Dutch colonization, the development of Indonesian Criminal Law was included in the scope of the Ancient Nusantara Criminal Law contained in the Ancient Nusantara Law Books originating from the period of kingdoms in the archipelago. This research finally recommends that in addition to the ancient Indonesian criminal law originating from the period of kingdoms in the archipelago, there is also customary criminal law spread throughout Indonesia.*

Keywords: *Crime; Development; Punishment.*

1. INTRODUCTION

The Indonesian nation finally materialized with the enactment of Law No. 1 Year 2023 on the Criminal Code (KUHP). This is a milestone for the Indonesian people, after all this time the Indonesian people have used the Criminal Code inherited from the Dutch colonization which is no longer in accordance with the spirit of Indonesian independence and the times. With the birth of the 2023 Criminal Code, it gives great hope for the development of crime and punishment in Indonesian Criminal Law, which in turn provides hope for the fulfillment of a sense of public justice and the establishment of criminal law that provides a guarantee of legal protection from the threat of perpetrators of criminal acts that can endanger the survival of the nation and state. Efforts to reform Indonesian criminal law have been fundamentally carried out

by reforming the Criminal Code.[1] The draft Criminal Code was submitted to the Minister of Justice Ismail Saleh on March 17, 1993 by the "Criminal Law Bill Team" and consists of two books, namely: Book I on General Provisions and Book II on Criminal Acts.[2] The Criminal Code Drafting Team, whose chairman and members take turns involving Indonesian criminal law experts, has attempted to perfect the draft Criminal Code, until finally the draft Criminal Code after a long study was finally enacted after previously reaping the pros and cons. As a law made by humans, of course it is not perfect, but it is time for the Indonesian people to be independent and confident in the legislation products they make, not merely with colonial ideas that are no longer in accordance with the demands and developments of the times.[3]

The development of crime and punishment in the Indonesian criminal law system is a phenomenon that continues to grow along with the social, political and economic dynamics in this country. Criminal law, as one of the branches of state law, has a very important role in maintaining public order and upholding justice. In the Indonesian context, criminal law does not only regulate sanctions against criminal acts, but also aims to create a deterrent effect for criminals and provide protection for the community from criminal acts. Over time, the approach to crime and punishment continues to change to adapt to the times, including the development of theory and practice in criminal law enforcement. One aspect that has undergone significant development is the concept of punishment itself. In the beginning, the punishment system in Indonesia prioritized retributive justice, which is a punishment that aims to retaliate criminal acts in accordance with the degree of crime committed. However, over time, the punishment system began to shift towards a more rehabilitative and restorative direction. This is reflected in criminal laws, such as the Criminal Code (KUHP) and various other laws and regulations, which increasingly emphasize the objectives of rehabilitation and social reintegration for offenders, as well as efforts to restore victims of crime. Legal scholars have also paid great attention to this development.[4]

According to Simons (2005), punishment does not only serve to provide a deterrent effect, but must also consider humanitarian aspects and the restoration of social relations between the offender and society. In this perspective, punishment is not always synonymous with detention or severe punishment, but rather an effort to guide the offender back to being a productive part of society. This is in line with Schünemann's (2008) view that punishment should be oriented towards prevention and reintegration, not just revenge. Therefore, punishment in Indonesian criminal law has begun to try to balance the interests of the community to be protected from crime and the human rights of perpetrators who must also be respected. The laws governing punishment in Indonesia have undergone several changes. One of the major changes is the reform of the Criminal Code (KUHP) which has been designed to better accommodate the development of modern legal thinking, including in terms of punishment based on a rehabilitative approach. The existing articles regulate various

[1] Malau, P. (2023). Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) Baru 2023. Al - Manhaj Jurnal Hukum dan Pranata Sosial Islam , 5 (1), 837–844.
[2] Kadri Husin, & Budi Rizki Husin. (2022). Sistem peradilan pidana di Indonesia . Sinar Grafika.
[3] Renaldi Markus Larumpa. (t.t.). Melihat Hukum dalam Kenyataan (suatu analisis teori teori hukum) . Guepedia.
[4] Atmoko, D., & Syauket, A. (2022). Penegakan Hukum terhadap Tindak Pidana Korupsi ditinjau dari Perspektif Dampak Serta Upaya Pemberantasan. Binamulia Hukum , 11 (2), 177–191.

types of punishment that are more oriented towards the recovery of the perpetrator, such as probation, supervision, and other alternative punishments that pay more attention to the interests of the perpetrator in the process of social reintegration. In addition, Law No. 12/1995 on Corrections also pays special attention to the aspects of guidance and rehabilitation of convicts, which shows a change in direction in the Indonesian punishment system.[5]

On the other hand, there are challenges faced in this change process. One of them is the mismatch between theory and practice in the field. Although Indonesian criminal law has accommodated rehabilitative and restorative principles, in reality there are still many sentencing practices that tend to be retributive, such as long-term detention and the use of the death penalty in some cases. Therefore, despite the progress in the concept of punishment, its implementation in the field requires more serious attention and evaluation in order to achieve a balance between the protection of human rights and the need to effectively tackle crime. Overall, the development of punishment in Indonesian criminal law shows a significant paradigm shift from punishment that is solely retributive towards a punishment system that is more humane and oriented towards rehabilitation and social reintegration. Although there are still many challenges to be faced in the implementation of this concept, efforts to continue to develop and adjust criminal law with the development of society remain the main goal in the Indonesian criminal justice system. These ongoing changes are expected to create a more effective and just punishment system, while still respecting the human rights of every individual, both perpetrators and victims.[6]

The purpose of this study is to explore and analyze the development of punishment in the Indonesian criminal law system, with an emphasis on changes in the approach to punishment that have occurred in recent decades. This research aims to provide a deeper understanding of the transformation of the punishment system from a more retributive orientation to a more rehabilitative and restorative approach, in line with social and political changes and the need for a more humane justice system. The main focus of this research is to identify the extent to which the principles of rehabilitation and restoration have been applied in Indonesian criminal law and how this affects the sentencing process and the protection of human rights. One of the objectives of this research is to examine in depth the concept of punishment and punishment as reflected in the Indonesian Criminal Code (KUHP) and various other relevant laws and regulations. This research will evaluate how changes in the Indonesian criminal law system seek to adjust to the development of more modern legal thinking, which not only aims to provide punishment, but also to restore criminals through a more restorative and rehabilitative approach. As stated by Barda Nawawi Arief (2009), an effective punishment system is not only seen from the severity of the punishment, but also from the ability of the legal system to provide guidance and reintegrate offenders into society. Therefore, the purpose of this study is to assess whether these changes

[5] Simon, J. (2003). Teaching Criminal Law in an Era of Governing Through Crime. . . Louis ULJ , 48 , 1313.

[6] Flora, H. S. (2018). Keadilan Restoratif sebagai Alternatif dalam Penyelesaian Tindak Pidana dan Pengaruhnya dalam Sistem Peradilan Pidana di Indonesia. University Of Bengkulu Law Journal , 3 (2), 142–158.

have succeeded in bringing the Indonesian criminal law system closer to the principles of restorative justice that favors rehabilitation.[7]

Based on the results of the analysis, it is hoped that more effective measures can be found to improve the implementation of rehabilitation and restoration-based punishment, as well as how the Indonesian criminal law system can pay more attention to human rights in every criminal justice process. This is in line with the views expressed by John Rawls in his theory of "justice as fairness", which emphasizes the importance of balancing the interests of society and individual rights in the criminal justice system. This research will provide recommendations regarding more inclusive legal policies, as well as the role of society and state institutions in ensuring punishment that not only punishes, but also guides offenders to return to a better life in society.[8]

2. RESEARCH METHODS

The research method used in this legal research is to use normative legal research, namely research that emphasizes the study of legal principles, especially those contained in the Old Criminal Code and the New Criminal Code, where legal principles research is part of normative legal research which is philosophical research, because legal principles are ideal legal elements. The nature of the research in this study is descriptive analysis by reviewing and describing the data in a complete, detailed and systematic manner, which is then studied and analyzed using legal theory and applicable laws and regulations.

The nature of research in this study is descriptive analysis by examining and describing data in a complete, detailed and systematic manner, which is then reviewed and analyzed using legal theory and applicable laws and regulations. The approach used in this research is a statutory approach, where the old Criminal Code and the new Criminal Code are the main basis. Data collection is carried out by means of literature studies to obtain secondary data in the form of primary legal materials in the form of laws and regulations, especially the old Criminal Code and the new Criminal Code, secondary legal materials in the form of books and paper articles. Data processing is carried out qualitatively, namely by describing with words, so that a discussion or explanation is obtained in the form of sentences that are structured, easy to understand and can be accounted for.

3. RESULTS AND DISCUSSION

3.1. Criminal and Punishment in the old Criminal Code and Criminal Code of 2023

The nature of punishment and punishment in criminal law is very important in reviewing and discussing punishment and punishment in the 2023 Criminal Code. The nature of crime and punishment cannot be separated from the philosophy of punishment which is the basis for imposing punishment on the perpetrators of criminal acts. Related to this, Harkristuti Harkrisnowo expressed his opinion that "Punishment

[7] Barda Nawawi Arief. (2018). Masalah penegakan hukum dan kebijakan hukum pidana dalam penanggulangan kejahatan. Prenada Media.
[8] Karjono, A., Malau, P., & Ciptono, C. (2024). Penerapan Keadilan Restoratif Justice dalam Hukum Pidana Berbasis Kearifan Lokal. Jurnal Usm Law Review , 7 (2), 1035–1050.

has always been a problematic issue, because punishment or punishment is always related to an act that if not carried out by the state based on the law, is an act that violates morality".[9] The action of the state to impose punishment raises the first question of whether the coercive action has justification. Among other things, does it take into account human rights? It is the philosophy of punishment that primarily seeks to justify the state's actions.[10] The imposition of punishment must be considered carefully, because the imposition of punishment basically causes suffering or sadness for the perpetrators of criminal acts due to committing despicable acts that harm or endanger others. The imposition of punishment is only for retaliation and deterrence, providing criticism that punishment only provides moral condemnation for the perpetrator, so that the perpetrator does not repeat the criminal act he committed. In reality, this retributive punishment model does not solve the problems in criminal law. The perpetrators of criminal acts are only faced with disgrace and moral retribution for the actions they have committed, the perpetrators do not benefit from the punishment that has been imposed. On this basis, there is a shift in punishment, from retributive punishment to utilitarian punishment which provides more benefits than retributive aspects. Retributive punishment is based on non-consequentialist theory, which is a direct reply that should be given to someone who commits a criminal offense (appropriate response) for his past actions (backward looking). The basis of the imposition of punishment is "justice", namely the crime committed must be balanced with the harm caused by the crime. Meanwhile, utilitarian punishment is based on consequentialist theory, namely its function is to prevent future criminal acts (forward looking), while the purpose of punishment is to provide maximum benefits (maximizing utility) for the community.[11]

Based on this, it can be seen that the shift of punishment from retributive to utilitarian has influenced the emergence of punishment models that do not only prioritize retribution and moral guilt, but also prioritize aspects of benefit and respect for human values, not just the crime committed. Crimes and punishments in the old Criminal Code basically refer to crimes and punishments in the Criminal Code originating from the Dutch heritage (Wet Boek van Strafrecht voor Indonesie (WvS)). Crimes and punishments in the old KUHP are more based on the philosophy of retributive punishment, where imprisonment sanctions are prioritized. The main punishment in the old KUHP is still classical in nature, which based on Article 10 of the KUHP consists of main punishment and additional punishment. The main punishments include death penalty, imprisonment, confinement, fine, and concealment. Additional punishments include deprivation of certain rights, forfeiture of certain goods, and announcement of the judge's decision.[12]

The purpose of punishment in the old Criminal Code, as stated by Remmelink, is that criminal law is intended to uphold legal order and protect the legal community. The maintenance of social order largely depends on coercion, if the norms are not obeyed,

[9] Alvi Syahrin, Anggusti, M., & Alsa, A. A. (2023). Dasar - dasar Hukum Pidana Suatu Pengantar (Buku Kesatu Undang - Undang Nomor 1 Tahun 2023 Tentang Kitab Undang - Undang Hukum Pidana). Merdeka Kreasi Group.
[10] Mulyadi, L. (2023). Bunga rampai hukum pidana umum dan khusus . Penerbit Alumni.
[11] Darmawan, I. (2015). Perkembangan dan Pergeseran Pemidanaan. Palar Pakuan Law review , 1 (2).
[12] Rahadian, D., Jalil, & Amalia, M. (2024). Hukum Pidana Landasan dan Pene rapannya di Indonesia . PT. Sonpedia Publishing Indonesia.

sanctions will arise. Andi Hamzah explained that the purpose of crime in English literature is Reformation, Restraint, Retribution, and Deterrence. Reformation means repairing or rehabilitating offenders to become good people and useful to society. Restraint means isolating lawbreakers from society, by removing lawbreakers from society, society will become safer. Retribution is retaliation against an offender for committing a crime. Deterrence means to deter or prevent, so that both the defendant as an individual and other people who have the potential to become criminals will be deterred or afraid to commit crimes.[13] The principle of legality in the Old Criminal Code is regulated in Article 1 paragraph (1) which reads: "No act shall be punishable, unless it is based on the strength of the provisions of pre-existing criminal legislation." Based on the formulation of the principle of legality, it can be stated that the principle of legality contains 4 (four) principles, namely Lex Scripta (the law must be based on written law), Lex Certa (the law must be formulated in detail and carefully, the form and severity of punishment must be clearly determined and distinguishable, Lex Praevia (prohibition of retroactivity), Lex Stricta (the law must be formulated strictly, prohibition of punishment based on analogy).[14] From this statement, it provides an understanding that the principle of legality contains several aspects, namely that no one can be convicted except based on the law, there is no analogical interpretation, cannot be convicted based on custom, the formulation of the law must be clear and unequivocal, not retroactive, no punishment or punishment except what is determined by law.[15]

The theory of punishment which is the basis of the old Criminal Code, consists of several theories, namely: Absolute Theory, Relative Theory and Combined Theory. Absolute theory was born in the classical school of criminal law, according to this theory, retaliation is the legitimacy of punishment. The state has the right to impose punishment because the perpetrators of criminal acts have attacked and raped protected legal rights and interests. The absolute theory mainly emerged at the end of the 18th century which sought the legal basis of punishment, the crime itself was seen as the basis for punishing the perpetrator. Furthermore, the absolute theory or theory of retaliation which is the basis of the classical school consists of subjective retaliation and objective retaliation. Vos states that subjective retaliation is retaliation for the offender's guilt, retaliation against the despicable offender. Objective retaliation is retaliation for the actions, deeds that have been committed by the perpetrator.[16] The relative theory views crime as an attempt or means of self-defense, in contrast to the absolute theory, in the relative theory the relationship between injustice and crime is not a relationship that is ascertained a priori. The relationship between the two is related to the goals that the perpetrator of the crime wants to achieve.[17]

From a theoretical point of view, it does not talk about what should be imposed, but only about the necessity of punishment based on the interests of law enforcement. The

[13] Eryansyah, A. M. & others. (2021). Hakikat Sistem Pemasyarakatan Sebagai Upaya Pemulihan terhadap Warga Binaan Pemasyarakatan: Perspektif Hak Asasi Manusia - Jejak Pustaka. Jejak Pustaka.
[14] Andi Sofyan & others. (2017). Hukum Acara Pidana Suatu Pengantar . Prenada Media.
[15] Rahman Amin & others. (2024). Pidana dan Pemidanaan Menurut Hukum Nasional . Deepublish.
[16] Rasiwan, I., & Urip Giyono. (2024). Prinsip - Prinsip Hukum Pidana (Uu No. 1 Tahun 2023 Tentang Kuhp) . Damera Press. Renaldi
[17] Zaidan, M. A. (2014). Norma Sanksi dan Teori Pidana Indonesia. Jurnal Yuridis, 1 (1), 107–124.

relative theory in the view of J.M. van Bemmelen contains 3 (three) aspects, namely: general prevention, special prevention, and protection function. General prevention emphasizes that the government has the authority to impose punishment to prevent people from committing criminal acts. Special prevention emphasizes that punishment functions to educate and correct. The protection function is aimed at protecting the community from crimes committed by the perpetrator if the perpetrator is free.[18] The combined theory is a combination of retaliation and prevention, some emphasize retaliation, some balance the elements of retaliation and prevention. J.M.van Bemmelen argues that crime aims to avenge wrongs and protect society. Actions are intended to secure and maintain objectives. So crimes and actions both aim to prepare the convicted person to return to society. Grotius developed a composite theory that emphasized absolute justice manifested in retribution, but which was useful to society. The basis of every crime is suffering, the severity of which corresponds to the seriousness of the act committed by the convicted person. However, the extent to which the severity of the crime and the seriousness of the act committed by the convicted person can be measured is determined by what is useful to society.[19]

The basic idea contained in Law No. 1 Year 2023 on the Criminal Code (KUHP) leads to a significant paradigmatic change in the Indonesian criminal law system. Based on Harkristuti Harkrisnowo's view, there are several important principles that must be considered in changing the approach to crime and punishment, which is reflected in this KUHP reform. This discussion will elaborate on the rationale behind these changes, as well as how their implementation is expected to reflect a "new identity" for the Indonesian people in facing more complex and contextual legal challenges. Harkristuti Harkrisnowo's view that the retributive principle or lex talionis should be abandoned in the modern criminal law system. The retributive approach, which focuses on retaliation against criminals by providing appropriate punishment, has been widely criticized for not providing space for the rehabilitation and social reintegration of criminals. In Harkristuti Harkrisnowo's view, this approach should be replaced with a punishment model that prioritizes rehabilitation and restoration, which aims to restore the state of the offender and return him to society as a better individual. This restorative approach focuses more on healing efforts for victims and society, not just on punitive punishment.[20]

In the New Criminal Code, this change can be seen in the reduction of reliance on imprisonment as the main punishment, as well as the development of alternative mechanisms that are more oriented towards recovery and crime prevention. Furthermore, the idea of local wisdom suggested by Harkristuti Harkrisnowo in the context of Indonesian criminal law is also one of the important aspects in the amendment of the KUHP. Harkristuti argues that the criminal law system implemented in Indonesia should not only adopt a more formalistic Western legal model, but should also accommodate traditional values and local culture that can play a role in solving

[18] Handoko, D. & others. (2017). Asas - asas Hukum Pidana dan Hukum Penitensier di Indonesia dilengkapi dengan Evaluasi Pembelajaran dalam Bentuk Teka - Teki Silang Hukum dan disertai dengan Humor dalam Lingkup Ilmu dan Pengetahuan tentang Hukum. Hawa dan ahwa. Kadri

[19] Van Bemmelen. (1955). Pioneers in Criminology VIII Willem Adriaan Bonger 18761940. J. Crim. L. Criminology & Police Sci. , 46 , 293. Zaidan

[20] Prahassacitta, V., & Harkrisnowo, H. (2021). Criminal disinformation in relation to the freedom of expression in Indonesia A critical study. Comparative Law Review , 27 , 135–165.

legal problems in society. Indonesia as a pluralistic country, with diverse ethnicities, cultures, and traditions, has the potential to integrate local wisdom in the dispute resolution approach. As mentioned by Soerjono Soekanto (2005), law in Indonesia must be able to reflect local cultural values that can help create peace and social harmony. Therefore, one of the things sought in this KUHP reform is to provide space for dispute resolution mechanisms based on mediation or deliberation, which better reflects the customary and cultural values that exist in the community. Research on the application of local wisdom in criminal law will be an interesting thing to be researched further, because it can potentially enrich the existing legal system.[21]

Another important shift contained in the KUHP reform is the criticism of the dominance of imprisonment as the main sanction in criminalization. Harkristuti Harkrisnowo's view asserts that imprisonment, although effective in some cases, is not always the best solution for every type of crime. Prisons are often unable to provide a deterrent effect, and often even worsen the social and psychological conditions of prisoners. Furthermore, overcrowding has become a major problem that affects the effectiveness of guidance and rehabilitation. Therefore, this Criminal Code reform carries the concept of prison alternatives, which involves various types of punishment such as social work, rehabilitation, or community-based punishment, which is more rehabilitative and restorative in nature. This is in line with the views of legal experts, such as Shidarta (2008), who stated that criminal punishment should not only be oriented towards physical impoverishment, but should provide opportunities for offenders to improve themselves. With this approach, it is expected to reduce overcrowding in correctional institutions and provide a more humane solution for offenders. In addition, an approach that prioritizes conflict resolution without punishment is also part of the reforms in the new Criminal Code. This concept reflects Harkristuti Harkrisnowo's idea that dispute resolution through mediation, restoration, or other peaceful resolution methods, is far more effective than punitive punishment. This approach is in line with John Braithwaite's (2002) theory of restorative justice, which focuses on restoring the relationship between offender and victim, as well as reintegrating the offender into society.[22]

In the New Criminal Code, there are provisions that provide space for settlement mechanisms that prioritize dialogue and peace, which are more suitable for handling cases that do not involve serious violence, and can accelerate the settlement process without increasing the burden on the criminal justice system. Equally important, is the principle of legality guaranteed in Article 1 to Article 3 of the New Criminal Code. This principle, which requires the existence of clear and unequivocal legal rules before a person can be convicted, is the main foundation in the criminal law system that guarantees legal certainty and protection of human rights. This principle of legality also ensures that no criminal offense can be charged without a clear law governing the act. This concept is in line with the opinion of Beccaria (1764) in his work "On Crimes and

[21] Rasiwan, I. (2024). Suatu Pengantar Viktimologi . PT Indonesia Delapan Kreasi Nusa.
[22] Pratama, W. A. (2019). Penegakan Hukuman Mati terhadap Pembunuhan Berencana. SIGn Jurnal Hukum, CV. Social Politic Genius (SIGn) , 1 (1), 29–41.

Punishments", which emphasizes that criminal law must be clear and understandable by the public to avoid abuse of power by law enforcement officials.[23]

In the context of the New KUHP, this principle also regulates the avoidance of arbitrary punishment, which has been a problem in the practice of Indonesian criminal law. Finally, the New Criminal Code also regulates the differentiation of treatment towards different categories of offenders, namely between adults, children, and corporations. This principle is very important to create fair treatment and in accordance with the characteristics of the perpetrator and the type of crime. Children, who are minors, have different capacities than adults in terms of criminal responsibility, and therefore, they should receive different treatment in the criminal justice system. Similarly, corporations, which are often involved in economic and environmental crimes, require a more systematic and collectively accountable approach. With these distinctions, the New Criminal Code aims to provide more equitable justice and in accordance with the principle of individualization of punishment, which is also an important aspect of modern criminal law. Overall, this reform reflects a major shift in thinking and approach to crime and punishment in Indonesia, with the aim of creating a criminal law system that is more humane, effective and responsive to the evolving needs of society. In this context, Harkristuti Harkrisnowo's views play a key role in shaping a new direction for Indonesian criminal law, emphasizing restorative justice, inclusiveness, and local values that are relevant to the socio-cultural conditions of Indonesian society.

The regulation of the principle of legality in the New Criminal Code means that there is an expansion of the principle of legality, the principle of legality does not only rely on written law as stated in Article 1 paragraph (1) of the Criminal Code which emphasizes that no act can be punished, except based on the strength of pre-existing statutory provisions. This principle is known in Latin as: "Nullum Delictum Nulla Poena Sine Praevia Lege Poenale" which means that there can be no offense, there can be no punishment, unless the act has been regulated in advance in criminal law.[24] In the New Criminal Code, there are changes and expansion of criminal law, where the principle of legality is not only based on written law, but also on the law that lives in the community (living law) which is regulated in Article 2 of the New Criminal Code. Criminal offenses and punishments in the New Criminal Code are appropriately regulated in Chapter III on Punishment, Crimes and Acts. These provisions are regulated in Articles 51 through 131. The most important thing in the regulation of criminal offense and punishment in the New Criminal Code is the regulation on the purpose of punishment (Article 51-Article 52), guidelines for punishment (Article 53-Article 56), guidelines for determining imprisonment with a single formulation and alternative formulation (Article 57), aggravation of punishment (Article 58), other provisions on punishment (Article 60-Article 63), punishment (Article 64-102), action (Article 103-111), transfer, action, and punishment for children (Article 112-117), punishment and action for corporation (Article 118-124), joint action (Article 125-Article 131). Foster a sense of remorse and relieve the defendant from guilt. Furthermore, Article 52 states that punishment is not intended to degrade human

[23] Ramadhan, N., Huda, U. N., & Kurniawan, W. (2024). Implementation of Restorative Justice in Discontinuing Prosecution of Assault Criminal Acts (A Case Study at the Public Prosecutor's Office of Garut). Sultan Jurisprudence: Jurnal Riset Ilmu Hukum , 4 (1), 41–60.
[24] Novita Angraeni, Dewi Bunga, Citranu Citranu, & Ardiyanti Aris. (2024). Hukum Pidana Teori Komprehensif . PT. Sonpedia Publishing Indonesia.

dignity. Sentencing guidelines are regulated in Article 53 of the Criminal Code, specifically Article 53 paragraph (2) which states that if there is a conflict between legal certainty and justice, the judge must prioritize justice. The meaning contained in the sentencing guidelines emphasizes that the value of justice is very high and is the essence of law. This is in line with the opinion expressed by Gustav Radbruch who said that if the conflict between the legal system and justice becomes so great that it is truly felt to be unfair, then for the sake of justice the legal system must be abandoned.[25]

3.2. Comparison of Characteristics between Indonesian Criminal Law System and Dutch Criminal Law System

The Indonesian and Dutch criminal law systems have significant similarities due to the historical roots of Indonesian law which was heavily influenced by Dutch law during colonization. However, the two legal systems also have different characteristics, both in terms of structure, philosophy, and application in criminal justice practice. In this discussion, we will identify and compare the main characteristics of the two legal systems, exploring their differences and similarities, as well as how they have adapted to the social development and legal needs of their respective countries. One of the fundamental differences between the Indonesian and Dutch criminal law systems lies in the legal sources on which the criminal law is based. The Dutch criminal law system, as part of the continental European legal tradition (civil law), relies on codification as the main source of law. The Dutch Criminal Code known as Wetboek van Strafrecht (WvS), which was first enacted in 1881, remains the main basis in determining crimes and criminal sanctions.

The Dutch criminal law system emphasizes clear and systematic written rules, with an emphasis on the positive law aspects that regulate criminal offenses in detail. Meanwhile, Indonesia, although heavily influenced by the Dutch legal system, has a more complex criminal law base, consisting of the Criminal Code (KUHP), as well as a number of special laws governing certain crimes, such as the Law on Corruption, the Law on Terrorism, and so on. Thus, although the Indonesian Criminal Code also adopts the principles of Dutch law, it favors a more flexible legal approach, which includes various sectoral regulations to address the growing variety of crimes. In terms of criminal law structure, both Indonesia and the Netherlands apply the basic principle of legality, which is stated in Article 1 of the Indonesian Criminal Code and in Article 1 of the Dutch Wetboek van Strafrecht. This principle requires that no one can be punished unless there is a regulation that clearly regulates it. However, the difference lies in how each country responds to the development of criminal law in the face of social dynamics. The Dutch criminal law system tends to be more structured and static, with little adjustments made to existing legal codes. On the other hand, the Indonesian criminal law system is more dynamic and responsive to social changes and legal needs, as seen from the many changes that have occurred in the law or even revisions to the Indonesian Criminal Code. For example, in Law No. 1 of 2023 on the new Criminal Code, Indonesia adopts a more restorative and rehabilitative approach, in contrast to the more punitive approach dominant in Dutch criminal law, although the Netherlands is also beginning to move towards more rehabilitative and recovery-based sentencing

[25] Febrianty, Y., Wijaya, M. M., & others. (2023). Perkembangan Teori Hukum dan Keilmuwan Hukum Serta Relevansinya dalam Mewujudkan Nilai Keadilan. Palar Pakuan Law review , 9 (2), 38–51.

alternatives. Other differences are seen in the approach to certain types of crimes, especially in terms of economic and corporate crimes.[26]

Dutch criminal law has long adopted clear and comprehensive rules regarding corporate criminal liability. In the Dutch legal system, a legal entity or company can be held criminally liable if it is proven to be involved in a criminal offense, such as in the case of environmental offenses or economic crimes. This is reflected in Article 51 of the Wetboek van Strafrecht which regulates corporate criminal liability. In contrast, although Indonesian law regulates this issue, with rules such as Article 83 of the Criminal Code which regulates corporations as subjects of criminal law, its application is still relatively limited and less than optimal. Nonetheless, in recent years, the Indonesian criminal law system has begun to introduce more regulations targeting corporate crimes, such as in Law No. 11 of 2020 on Job Creation which provides room for criminal sanctions against corporations that commit violations. In terms of criminal sanctions, the Dutch criminal law system tends to be more conservative and relies heavily on imprisonment as the main punishment for criminals.[27]

Although the Dutch legal system is starting to open up space for alternative sentences, such as conversational sentences or rehabilitation, prison remains the main option for serious crimes. This can be seen in various court decisions in the Netherlands that often impose prison sentences even for less serious crimes. In Indonesia, although imprisonment is also the main punishment, the new Criminal Code passed in 2023 emphasizes alternatives to imprisonment, such as community service, rehabilitation, and other restorative approaches, to reduce overcrowding in prisons and provide opportunities for offenders to improve themselves. This is more reflective of the thoughts of Harkristuti Harkrisnowo who urged that the punishment system in Indonesia be more based on restorative justice and rehabilitation. In terms of criminal justice, Indonesia and the Netherlands have similar systems, namely the adversarial system, where the judge acts as a neutral party in the judicial process, while the prosecutor and defense function to present arguments and evidence. However, there are differences in the aspects of freedom of trial and the rights of suspects. In the Dutch legal system, suspects' rights are more explicitly guaranteed, and there are strong social control mechanisms outside of court, such as judicial oversight bodies, that ensure suspects' rights are not violated during the investigation and trial process. Meanwhile, although Indonesia also guarantees the rights of suspects in Article 28H of the 1945 Constitution and in the KUHAP, in practice it often faces challenges in the implementation of these rights, especially in terms of prolonged detention and acts of torture that still occur in some cases. Overall, although the Indonesian and Dutch criminal law systems share a similar foundation due to the influence of colonial history, they have developed with different characteristics, reflecting the social values and legal needs of each country.[28]

The Dutch criminal legal system, which focuses more on stability and legal certainty, tends to maintain a more traditional approach to criminal sanctions, while Indonesia

[26] Ali, M. (2022). Dasar - dasar hukum pidana . Sinar Grafika.
[27] Saputra, R. (2015). Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Korupsi (Bentuk Tindak Pidana Korupsi yang merugikan Keuangan Negara Terutama Terkait dengan Pasal 2 Ayat (1) UU PTPK). Jurnal C ita Hukum , 3 (2), 95573.
[28] Adhayanto, O. (2014). Perkembangan Sistem Hukum Nasional. Jurnal Ilmu Hukum Riau , 4 (2), 9160.

seeks to create a more dynamic, adaptive and remedy-oriented legal system, with more attention to social justice and human rights. The reforms taking place in Indonesia's criminal law system, as reflected in the reform of the Criminal Code in 2023, indicate an effort to adapt the criminal law to the development of society and the new challenges faced by the Indonesian nation. Romli further explains that the Dutch constitution has mandated that general criminal law, military criminal law, administration of justice, and the justice system must be based on legislation. The author clearly observes that there are similarities between the criminal law system in Indonesia and the criminal law system in the Netherlands, where both countries base their criminal law on written law. Furthermore, as Indonesia is a former colony of the Netherlands and the Netherlands adheres to a civil law system (Romano-Germanic), it is not surprising that there are similarities between the two countries. Romli Atmasasmita states in his book that another characteristic of the Dutch legal system is the principle of legality.[29]

The similarity of legal principles shows that the Indonesian criminal law system belongs to the Romano-Germanic family, because the Netherlands also adheres to the Romano-Germanic family, and the similarities between the two countries support this understanding. R. Achmad S. Soema Dipradja in his book Criminal Law in Jurisprudence states that in principle he does not agree with the formation of criminal provisions, especially those concerning things that are prohibited or that can be threatened by analogy. This, according to R. Achmad S. Soema Dipradja, would contradict the principle implied in Article 1 Paragraph 1 of the Criminal Code. This means that judges are generally prohibited from using analogies to interpret a legal provision, especially those that can be punished. From this explanation, it is clear that in the Indonesian criminal law system, judges are not allowed to use analogies to interpret a legal provision, especially those that can be punished. This is identical to the principle of legality adopted by the Dutch criminal law system, which states that legal provisions must be interpreted literally, and the court is not allowed to provide an analogical interpretation to determine an act as a criminal offense. Therefore, based on the similarity of characteristics between Article 1 Paragraph 1 of the Criminal Code and the principle of legality in the Netherlands, it can be said that the Indonesian criminal law system belongs to the Romano-Germanic Legal Family due to the similarity of characteristics between the Indonesian criminal law system and the Dutch criminal law system. The Netherlands in this case is a country with a criminal law system that is included in the Romano-Germanic Law Family.

Romli Atmasasmita in his book states that the Dutch criminal law system distinguishes between crimes (misdrijven) and offenses (overtredingen). This distinction stems from the difference between mala in se and mala prohibitiona known in Greek law. Mala in se refers to an act that is considered a crime because of its evil nature. In contrast, mala prohibitiona refers to acts that are considered crimes because they are prohibited by law. The distinction between crimes and offenses was originally based on the conceptual notions of "rechtedelict" and "westdelict". Today, the distinction between felonies and misdemeanors is determined by the severity of the punishment, with felonies receiving more severe punishment than misdemeanors. When compared to the

[29] Zaidan, M. A. (2022). Menuju pembaruan hukum pidana . Sinar Grafika.

characteristics of Indonesia's current criminal law system, there are similarities between the two countries.[30]

In Indonesia, there is also a distinction between "criminal offense" and "violation". This distinction is found in the Kitab Undang-Undang Hukum Pidana (KUHP), where criminal offenses are regulated in the second book, while violations are regulated in the third book. Furthermore, the punishment for criminal offenses is more severe than the punishment for violations, as seen in Article 362 of the Second Book of the Criminal Code on theft, where the perpetrator of theft is punishable with a maximum imprisonment of five years or a maximum fine of nine hundred rupiahs. In contrast, Article 503 of the Third Book on violations of public order states that anyone who makes noise or disturbs the peace at night shall be punished by a maximum imprisonment of three days or a maximum fine of twenty-five rupiahs. Here it is clear that the punishment for a criminal offense is more severe than the punishment for an offense. The similarity between the Indonesian and Dutch criminal law systems, in terms of the distinction between crimes and offenses, shows that the Indonesian criminal law system belongs to the Romano-Germanic family. This is due to the similarity of characteristics between the Indonesian and Dutch criminal law systems, where the Netherlands is a country that adheres to the Romano-Germanic system. These similarities can be seen from the use of written laws, the application of the principle of legality, and the distinction between crimes and offenses. Furthermore, Romli Atmasasmita in his book states that the Dutch criminal law system provides a basis for stating that a person's action is not a criminal offense, known as "rechvaardigingsgronden." Romli Atmasasmita states that written statutory conditions include general defenses and special defenses.[31]

4. CONCLUSION

The development of punishment and punishment in Indonesian Criminal Law can be seen from the application of the Criminal Code starting from the colonial era, the independence era, and the post-independence era. During the colonial era, criminal law was based on WvSNI (Wet Boek van Strafrecht voor Nederland Indie). Meanwhile, in the independence era, the WvS (Wet Boek van Strafrecht (KUHP)) was enacted, which was based on Law No. 1 of 1946 and Law No. 73 of 1958. After a long period of independence, finally on January 2, 2023, Law No. 1 of 2023 on the Criminal Code was enacted. With the enactment of Law No. 1 Year 2023 on Criminal Code, which is the National Criminal Code, a comprehensive socialization is needed to all levels of society so that there are no multiple interpretations in its application. It is necessary to adapt various criminal law books and other references related to criminal law to the New Criminal Code, so that synchronization, adaptation and contextualization with the New Criminal Code occur.

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