REFORM OF THE CRIMINAL LAW OF ACTIONS ABOUT THE MISUSE OF FIRE WEAPONS IN INDONESIA

Debby Khoirunisa[1], Indra Yudha Koswara[2], Taun[3]
[1,2,3]Singaperbangsa University Karawang, Faculty of Law, Karawang, Indonesia
debbykptr@gmail.com

Received: December 14, 2022; **Revised**: January 12, 2023; **Published**: February 22, 2023

Abstract: Since March 8, 1946, the Criminal Code has been used as criminal law in Indonesia, although changes have been made several times in the criminal law code. It is now realized that the Criminal Code is no longer able to accommodate the aspirations of the people who are developing rapidly due to several factors. The development of crimes that occur in society is also evidence that the Criminal Code does not provide legal protection to the community. In analyzing criminal law, one must pay attention to the social norms and standards that have been established and applied by the criminal law. As a result, social norms turn into legal norms. In the context of a democratic society, congruence eventually occurs between various social norms, through social ethics and legal norms. The development of punishment raises the idea or principle of punishment, making the convict a subject rather than an object so that he views the convict as a whole human being. by the Indonesian people, which has received social attention as a result of the search for alternative punishments for other independence crimes.

Keywords *:* Criminal Code, Criminal Law, Renewal

I. INTRODUCTION

Renewal of criminal law in Indonesia is the ideal of the nation in order to create a law that is as fair as possible for society. The efforts of the Indonesian State to replace the Criminal Code, hereinafter referred to as the Criminal Code, have been implemented for a long time, even since Indonesia's independence. This reform is not only for material criminal law and formal criminal law, but also for reforming the implementation of the criminal law itself. Since March 8, 1946, the Criminal Code has been used as criminal law in Indonesia, although several changes have been made in the criminal code, such as in 1958 the Indonesian government issued Law No. 73 of 1958 which contains changes to several articles contained in the Criminal Code.

Because the Indonesian Criminal Law was made during the Dutch colonial era in Indonesia, and after Indonesia became independent on August 17, 1945, of course it is out of date and no longer in accordance with the development of society [1]. The concept of reforming the Criminal Code has been proposed several times, but it continues to receive revisions, the first time it was proposed in 1964, but until now Indonesia has not been able to make Indonesia's own Criminal Code, it still adheres to the Criminal Code until now. Fines written in the Criminal Code are also irrelevant to the current state of Indonesia, such as Article 134 of the Criminal Code concerning insulting the President and Vice President, the threat of imprisonment for 6 years or a maximum fine of Rp. 4,500 (four thousand five hundred), so many people question this fine, because it is considered too small at this time. It is now realized that the Criminal Code is no longer able to accommodate the aspirations of the people who are developing rapidly due to several factors. The development of crimes that occur in society is also evidence that the Criminal Code does not provide legal protection to the community.

It can be said that criminal law according to Mertokusumo is referred to as Ultimum remedium which means as the last instrument [2]. Therefore, the renewal of criminal law is currently a very important matter to be discussed and urgent for the future. Efforts that have been made by the Indonesian government at this time are by drafting the Criminal Code which is a renewal of Indonesian criminal law. In the Academic Paper of the Draft Criminal Code it is stated that efforts to renew the Criminal Code, in addition to being aimed at reforming and reviewing 3 (three) main problems in criminal law, namely:

1. Formulation of prohibited acts (criminal acts).
2. Formulation of criminal responsibility (criminal responsibility).
3. Formulation of sanctions both in the form of punishment (punishment) and action (treatment) [3].

The classical view argues that the purpose of criminal law is to protect individuals from state power or authorities. According to this subgenre, modern schools also argue that the purpose of criminal law is to develop investigations into crimes and perpetrators of crimes, their origins, and prevention to protect society from crime. [4].

II. RESEARCH METHOD

This type of research is called normative juridical research. The focus is on seeing how the law is applied based on the facts that society is facing today by looking at primary data, which can be found on government agency websites or in interviews such as press

[1] Siahaan Monang, 2016, *Indonesian Criminal Law Update,* First Print. Jakarta, PT Grasindo, page 1.
[2]Sudikno Mertokusumo, 2006, *Invention of Law An Introduction* , Yogyakarta, Liberty, Pg 128.
[3]Indonesia, Draft Academic Paper of the Draft Law on the Criminal Code. p.24.
[4]Ninik Suparini, 2007, *The Existence of Fines in the Criminal and Criminal System,* Jakarta, Sinar Graphic, Pg 12.

conferences. research to seek and find solutions to problems in this study, in accordance with the formulation of the problem under study.

The data collected regarding the provisions of the legal approach (statue approach) related to Criminal Law Reform in the territory of Indonesia became the material for qualitative analysis. The data that will be processed by systematizing legal materials includes the fundamental nature of the 1945 Constitution of the Republic of Indonesia which is the source of all legal sources and Law Number 1 of 1946 concerning Criminal Law Arrangements, namely by classifying materials the law. As for the additional processed data, there are scientific works and legal research results, especially related to the restoration of economic stability, which are then interpreted using legal interpretation and legal construction and then analyzed in a qualitative juridical manner, which describes the data that produces descriptive data in achieving clarity of the problem. that will be discussed and to reveal the truth of that there .

III. RESULTS AND DISCUSSION

Concept of Criminal Law Renewal Indonesia

Criminal law is a public law that has meaning and an important role in the field of law in Indonesia. The nature of public law which is owned by criminal law, makes the threat of sanctions contained in the law apply nationally, which means that all Indonesian people get the same punishment if they commit the same crime. Because criminal law has an important role in regulating people's lives, it must be in accordance with societal developments so that it still looks good, and discussions regarding the contents of criminal law itself must also be carried out carefully, by prioritizing human values.

The criminal law currently used by the Indonesian people is still a legacy from the Netherlands, where there are several values in the criminal law that are not in accordance with the current state of the Indonesian nation, which can cause problems for enforcement in Indonesia. In order to achieve the ideals of a better criminal law and see more aspects of human rights, fundamental changes to the criminal law must be made immediately [5]. Since the 1960s, experts have discussed the material, formal, and criminal aspects of Indonesian criminal law reform. Efforts to conduct a review and reassessment in accordance with the central socio-political, social-philosophical, and socio-cultural values of the Indonesian people. What forms the basis for social policies, criminal policies and law enforcement policies in Indonesia is essentially criminal law reform [6].

From this there is the determination of the Indonesian people to realize criminal law reform and legal reform so that it remains in accordance with the norms contained in Indonesia and also in accordance with the criminal law that the Indonesian people aspire to, a law that is in accordance with the conditions of society and belongs to Indonesia itself, not heritage from the Netherlands. The substance of the Criminal Code, which is dogmatic in nature, is considered no longer appropriate to the current state of society, because it is motivated by individualism-liberalism, which is not the origin of the socio-political, socio-philosophical, and socio-cultural values of the Indonesian nation itself. In Sudarto's opinion, there are at least three main arguments for the need for criminal law reform, that is:

1. The political reason is that Indonesia's eligibility as an independent country has a national Criminal Code so that it is seen as a matter of pride as a country that has released its position from colonialism. Dutch.

[5]Sudarsono S & Surbakti N, 2017, "Criminal Law Basics of Criminal Law Based on the Criminal Code and the Draft Criminal Code". *Journal of Legal Studies.* Volume 4 Number 1. October

[6]Barda Nawawi Arief, 2010, *Anthology of Criminal Law Policy,* Second printing, Jakarta, PT Kencana Prenada Media Group, Pg 30

2. The sociological reason is that basically the Criminal Code is a reflection of a certain cultural values nation.
3. The practical reason is that in fact the original text of Wetboek van Strafrecht is a language Dutch.
4. So that the number of law enforcers who understand Dutch is increasing little [7].

In order for criminal law reform to be carried out, it must be known in advance what are the main problems in the criminal law, because if the main problem is not clearly known, it can also have an impact on society, because as mentioned earlier that criminal law is public law, where the sanctions contained in the criminal law apply to all Indonesian people. According to Sudarto, there are at least three reasons why it is necessary to immediately reform Indonesian criminal law, namely:

1. Political reasons. As a nation that has been independent since 1945, of course Indonesia has its own Criminal Code. The Criminal Code can also be seen as a representation of the independence and pride of a nation for its independence from foreign political colonialism. If a country's Criminal Code is made to be enforced in another country, it can be seen as a sign of colonization or a symbol of that country's power.
2. Sociological reasons, the political ideology of the nation where criminal law was developed is reflected in its regulations. This shows that social and cultural values of the nation can be incorporated into criminal law regulations. The extent to which an act is committed by a crime is determined by the morals of society. as well as religious norms and values, which have a significant impact on the formation of law, particularly criminal law.
3. Practical reasons. The official Dutch Criminal Code is the reason why the penal code is updated daily. The Criminal Code compiled by Moeljatno, R. Soesilo, R. Trisna, and others is only a translation of the texts that have been registered so far. .translations that are "personal" and not official translations that have been approved by law. Indonesians or other people must be able to speak Dutch so that we can apply the Criminal Code properly. This cannot be expected from a nation that has its own language and is already independent. This indicates that the national Criminal Code must replace the current Criminal Code. [8].

With the renewal of Indonesian criminal law, there are efforts by the Indonesian government to tackle crime in society and efforts to increase protection for the people of Indonesia. In 1999-2000 the draft Criminal Code was considered to have significant developmental value consisting of 2 books, namely general provisions and criminal acts in the Criminal Code. Also included in this plan guidelines for judge pardon, which means that judges are allowed to pardon people who are proven to have committed a crime with consideration of humanity and personal reasons from the perpetrators of the crime.

Arrangement and Renewal of the Crime of Misuse of Firearms in Indonesian .

The elements of the crime associated with the misuse of firearms are broken down into 3 parts, viz :

1. Elements of resistance law.
   Judging from Law Number 8 of 1948 concerning Registration and Granting of Permits to Use Firearms, of course the act of abusing firearms is an illegal act.

[7] Amalia M, 2014, "Death Penalty Issues in the Perspective of Criminal Law Reform in Indonesia", *Journal of Insights Yuridika,* Volume 27, Number 2,

[8]Barda Nawawi Arief, 2010, *Op.Cit* , pp. 7-8.

2. element can punished.
   Stipulated in Article 14 of Law Number 8 of 1948 concerning Registration and Granting of Permits to Use Firearms, that misuse of firearms is punishable by a maximum prison sentence of 4 years and a maximum fine of fifteen thousand rupiahs, and firearms can also be confiscated.
3. element can be held accountable.
   To obtain a permit to use firearms, of course, there are tests that must be carried out in order to obtain the permit, one of which is a psychiatric test. Therefore, the responsibility for the misuse of firearms can be held by people who are physically and spiritually healthy, not experiencing psychiatric disorders. Except for people who have mental disorders when they have obtained permission to use weapons fire.

Even so, in Law Number 8 of 1948, it is not clear regarding the conditions for actions that can be categorized as misuse of firearms and revocation of licenses to use firearms. So this can be detrimental to the permit owner, his permit may be revoked, even though he has not done anything that according to him is included in the misuse of firearms. The existence of uncertainty in the limits of acts of misuse of firearms, makes security in society also become disturbed. So the Indonesian government should have updated Law Number 8 of 1948 and regarding the misuse of firearms, this can be regulated in a separate law.

Problems of Legal Reform Criminal

In formulating a new criminal law, the intersection of the existence of social norms is also taken into account, which the criminal law formulates and completes. Therefore, it is necessary to transform social norms into legal norms. In the context of a democratic society, in the end there is congruence between various social norms, through social ethics and legal norms. Although social norms change more easily, when contrasted with the rule of law. As a result, a place is provided for judges to be more adaptive to societal developments. This is what is called criminal procedural law (starfvorerderingsrecht) or formal criminal law, and that is how criminal law must be implemented in a criminal justice process. The Criminal Procedure Code provides a summary of his books. In the Netherlands it is stated that the judicial process or event must be carried out properly. evidence obtained against the law and the principles of good order, referred to and placed under the umbrella of provisions developed through the jurisprudence of the Dutch Supreme Court. principles of the European agreement on the protection of human rights. Therefore it is necessary to understand material and formal criminal law simultaneously [9].

Comparative studies, fundamental, conceptual, critical, and constructive are always needed for current national criminal law, such as comparative studies that are very urgent and in line with the current ideas of national legal reform, according to the characteristics of society. and sources of law in the country. Indonesia, which is more mono-dualistic than pluralistic and relies on values that live in society, namely customary law and religion, makes religious teachings a source of motivation, inspiration and creative evaluation in building legal people. with noble character. Therefore, it is necessary to develop concrete efforts in the content of national legal policies[10]. The history of criminal law is always evolving. These changes, both in terms of their essence and substance, are intended to be used to control society effectively. Is a solitary and sincere witness, and therefore, deserves a place in history. Contrary to that, Indonesian society has continued to follow criminal law since colonial times and has not

[9]Jan Remmelink, 2003, *Criminal Law "Comments on the Most Important Articles of the Dutch Criminal Code and Their Equivalents in the Indonesian Criminal Code* , Jakarta, PT Gramedia Pustaka Utama, Pg. 3-4.

[10]Barda Nawari Arief, 2011, *Criminal Law Reform in the Perspective of Comparative Studies* , Bandung, PT Citra Aditya Bakti, pp. 6-7.

received serious attention for additional work. Legal politics is too serious to build national, international, and even economic politics in the face of globalization. However, it is not serious enough to fix the criminal law space. There are too many changes to laws in the field of law enforcement to talk about the Criminal Code which has a major impact on the legal character of society.

Criminal and criminal cases in the past continue to grow. Scholars have debated its existence for centuries. Change is natural from the perspective of societal development because people always try to learn something new to make their life better in the future. The development of punishment raises the idea or principle of punishment, making the convict a subject rather than an object so that he views the convict as a whole human being. Indonesian people who receive social attention as a result of the search for alternative punishments for other crimes of independence. The process of education and the development of a sense of justice in society has been heavily influenced by the globalization of science and technology. In the end, the movement for change has the power to influence efforts to reform criminal law, which until now has continued to realize the codification of national criminal law based on the philosophy that lives in society. justice for all Indonesian people who have a high sense of social justice.

In accordance with the Indonesian people's sense of justice which is embodied in the nuances of Indonesian society which is characterized by a magical religion for the balance of life, the integralistic goal of punishing the Indonesian people is physical and mental balance in realizing social order and solving punishments that are humane, pious, national, humane, democratic, and Therefore, the spirit of Pancasila is the focus of the study of the philosophy of punishment. The formulation of the policy concept for the formation of a national legal system is based on the ideals of Pancasila as the values of national life.

This means that it is motivated by the basic idea of Pancasila which contains a balance of religious moral values (divinity), humanity (humanistic), nationality, democracy and justice. social [11]. Legal experts created a new criminal law in Indonesia, which is in line with the desire to reform Indonesia's criminal law. As a result, legal politics has become the basis for struggle and tug-of-war between interests so that modern criminal law can be implemented in developed countries. the legal system values morality above all else. Thus placing greater emphasis on the moral aspect compared to the purely legal aspect24. Public law is a family of material and formal criminal law. Thus, material criminal law (KUHP) and formal criminal law (KUHAP) cannot be separated, are closely related, and support each other.

Criminal procedural law is a legal regulation that regulates, organizes and maintains the existence of material criminal law provisions. Regulating how and the judge's decision-making process. Concerning the legal regulations governing the stages of implementing a judge's decision, with various principles that they adhere to, namely the principle of *equality before the law*, the principle *of legality,* the principle *of presumption of innocence*, the principle of speedy trial, the principle of legal aid. The principle of open justice, *fairnes* [12]. As for the Draft Criminal Procedure Code, which has received various inputs, there are nine fundamental changes.

Treating the existence of *Suspects right to remain silent and the presumption of innocence.* This rule gives the suspect the right to not answer investigators' questions. There is *Protect citizens' liberty and privacy interest in the area of pretrial detention.* Regarding detention. Within 5 x 24 hours the suspect must be brought before the commissioner judge, aligned with the provisions of the *international covenant civil and political rights* (ICCPR). There is *removal of the preliminary investigation stage and ensure better police/prosecutor*

[11]Barda Nawari Arief, 2011, *Op.Cit*, Pg 4.
[12]Cesare Beccaria, 2011, *Regarding Crime and Punishment,* Bandung, Nusa Media, Pg. 1-8.

cooperation. The problem of the relationship between investigation and prosecution has been established since the beginning, where the prosecutor gave instructions so that they complied condition formal and substance news program which there is.

IV. CONCLUSION

In the concept of criminal law renewal according to Mochtar Kusumaatmadja's theory in the theory of legal development and correlation in criminal law reform based on sufficiently strong reasons both political, sociological and practical reasons to form a new instrument with the Draft Criminal Code.

Enforcement of the use of firearms requires several tests and determines several threats if there is misuse of firearms. Renewal of criminal law through a series of legal politics, is aimed at a codification of Indonesian criminal law, with its novelty values, in addition to filling and adapting independence, and the era of globalization, with the challenges of dealing with increasingly modern crimes, in the most up-to-date ways.

REFERENCES

Amalia M, 2014, "Death Penalty Issues in the Perspective of Criminal Law Reform in Indonesia", *Journal of Insights Yuridika*, Volume 27, Number 2,

Barda Nawawi Arief, 2010, *Anthology of Criminal Law Policy,* Second printing, Jakarta, PT Kencana Prenada Media Group, Pg 30

Barda Nawari Arief, 2011, *Criminal Law Reform in the Perspective of Comparative Studies*, Bandung, PT Citra Aditya Bakti, pp. 6-7.

Cesare Beccaria, 2011, *Regarding Crime and Punishment,* Bandung, Nusa Media, Pg. 1-8

Fajarianto, O., Harimurti, E. R., & Harsono, Y. (2023). Character Education Learning Model for Elementary School. EDUCATIO: Journal of Education, 7(4), 203-213.

Indonesia, Draft Academic Paper of the Draft Law on the Criminal Code. p.24.

Kurniawan, C., Fajarianto, O., Novitasari, I., Wulandari, T. C., & Marlina, E. (2022). Assessing Learning Management System (LMS) for The Dairy Farmer: Obstacles to Delivering Online Learning Content. JTP-Jurnal Teknologi Pendidikan, 24(3), 341-352.

Ninik Suparini, 2007, *The Existence of Fines in the Criminal and Criminal System,* Jakarta, Sinar Graphic, Pg 12.

Jan Remmelink, 2003, *Criminal Law "Comments on the Most Important Articles of the Dutch Criminal Code and Their Equivalents in the Indonesian Criminal Code* , Jakarta, PT Gramedia Pustaka Utama, Pg. 3-4.

Siahaan Monang, 2016, *Indonesian Criminal Law Update,* First Print. Jakarta, PT Grasindo, page 1.

Sudikno Mertokusumo, 2006, *Invention of Law An Introduction* , Yogyakarta, Liberty, Pg 128.

Sudarsono S & Surbakti N, 2017, "Criminal Law Basics of Criminal Law Based on the Criminal Code and the Draft Criminal Code". *Journal of Legal Studies.* Volume 4 Number 1. October