



Reform of Indonesian Criminal Law in The Political of Law Perspective

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Abstract. Article this have aim for knowing problem what just faced in effort revision of the Indonesian Criminal Code is reviewed from corner view political law Indonesian criminal as well how should direction renewal law appropriate Indonesian criminal law with soul law Indonesian nation. With use method study juridical normative, research this showing that there are four problems main in effort renew the Indonesian Criminal Code namely renewal about principle law criminal, concept follow criminal, concept accountability criminal and concept punishment. Study this conclude that renew law appropriate Indonesian criminal law with will Public no easy thing. Political law criminal must capable make formulations that reflect a sense of justice in Public but with no against principles law criminal that alone.

Keywords: Problem, Renewal, Criminal Code, Legal Politics

1 Introduction

Renewal of Indonesian Criminal Law should be already quick implemented considering the Criminal Code used now it's been a long time and felt not enough satisfy a sense of justice. Along the development of the times, the existence of the Criminal Code is seen already no in accordance again with dynamics development law criminal Indonesian national, as well with development law criminal outside the Criminal Code (KUHP) either form law criminal special nor law criminal administration has swipe existence system law criminal in the Criminal Code. In a number of thing also has occur duplication norm law criminal Among norm law criminal in the Criminal Code with norm law crimes outside the Criminal Code. On the other hand, development difficult crime dammed the more urge necessity renewal law Indonesian criminal law.

kindly general, reasons necessity renewal law Criminal law in Indonesia includes a number of things, among others reason political, sociological and practical. Looked at from corner politics, the Indonesian state that already independent already naturally have the Criminal Code produced alone as something symbol pride from a country that

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already is independent from confinement colonialism politics. Reason second that is reason Sociologically, the applicable Criminal Code moment this already no reflect living values in society, so contrary with Indonesian culture. Whereas reason third looked at from corner practical, remember text official in the Dutch language Criminal Code then something demands for understand Dutch so deeply its application no misinterpretation occurs mean rule in the Criminal Code. With thereby could said that the Criminal Code applies moment this no originate from values political, social and Indonesian culture. So from that in criminal law reform national expected could adapt with contained values in Public Indonesia that alone.

Effort criminal law reform actually has long enough to do, effort the started since exists recommendation of the 1st National Seminar in 1963 which called for the Draft codification of criminal law national as fast possible resolved. In 1964 discussed the first concept, respectively then draft 1968, draft 1971/1972, draft 1977, Draft Criminal Code 1979, Draft Criminal Code 1982/1983, Draft Criminal Code 1984/1985, Draft Criminal Code, Draft Criminal Code 1986/1987, Draft Criminal Code 1991/1992 revised until 1997/1998, Draft Criminal Code 1999/2000, then Published the Criminal Code Bill (2012 to 2019) as draft final in the Criminal Code Bill. Systematics of the Criminal Code Bill as well payload material draft sourced in the Criminal Code Bill from applicable WvS with adjustments and additions a number of offense new. However, until moment this government haven't got it yet enforce Draft Criminal Code results renewal the.

Still there problem law in renewal of the Indonesian Criminal Code which is seen as very fundamental and serious. Effort renewal law criminal in essence is Policy law related crimes with Policy enforcement law, policy crime and policy social. Renewal of criminal law in essence is effort rational in renew substance law in framework make effective enforcement law, overcome problems social as well as eradicate / overcome crime in framework give protection to society. In context here, update to law criminal to be very quaint and sure just difficult done.

Looked at from corner approach value, update law criminal is effort do review and assessment reorient (reorient and reevaluate) values socio-political, socio-philosophical, and socio underlying culture criminal policy and policy enforcement law. Effort renewal law must could oriented to the values contained in Pancasila so that it is formed desired law Indonesian nation during this. Here it is obstacles encountered in introduced a new Criminal Code in Indonesia. Still there many problem in formulation of the new Criminal Code the. In formulation criminal meterile for example, still many load criminal prison as punishment. Though in the Criminal Code Bill has add a number of alternative penalty criminal like criminal supervision and punishment work social however criminal alternative still in the Criminal Code Bill looked very minimal. Alternative penalty criminal load very limited conditions that is only covers follow punishable punishment under 5 years.

Likewise in formulation the articles of the Criminal Code Bill are still presenting sourced articles from law assessed Dutch colonialism already no relevant for Public

democracy. Like in chapter insult president and vice president as well as insult to legitimate government. On the side that there's also a problem about formulation principle extended legality so that could raises uncertainty law in its implementation.

Article this have aim for knowing problem what just faced in effort revision of the Indonesian Criminal Code is reviewed from corner view political law Indonesian criminal as well how should direction renewal law appropriate Indonesian criminal law with soul law Indonesian nation.

2 Research Methods

Study this use method study juridical normative that emphasizes and directs review References To use collect data from various related literature with issue researched law. The approach used is approach legislation (statute approach) as well approach theory (conceptual approach). In relation with method research juridical normative, then the research data used is secondary data consisting from materials law secondary consisting from ingredient law literature from a number relevant literature with focus study this.

3 Discussion

With exists development and dynamics the life that's inside society, then at least there are 4 (four) problems main in effort renew law criminal for could respond development the. The problems are:

1. Renewal to principles law criminal specifically principle legality;
2. Renewal draft follow criminal;
3. Renewal draft accountability criminal;
4. Renewal draft crime and sentencing;

In part discussion this, author try analyze problems tree the in perspective law possible punishment implemented in the future (*ius constituendum*).

3.1 Principle Legality in the Criminal Code Bill

Existing problem in renewal to principles law criminal among them to renewal principle legality. Article 1 paragraph (1) of the Criminal Code (KUHP) outlines principle legality in law Indonesian criminal with provision that something deed no could punished, unless based on strength provision legislation crime that has there. Existence principle this in Draft The 2010 draft Criminal Code (RUU) is still pending maintained remember principle legality is deep fundamentals law criminal.

Inside article 1 paragraph (1) of the Criminal Code Bill is regulated that gone anyone can convicted or imposed action, except deeds done has set as follow criminal in regulation laws in effect at the time deed that done. Next in paragraph (2) is regulated that

in set exists follow criminal prohibited use analogy. Different with the old Criminal Code, principle legality in the Criminal Code Bill expanded with stipulated conditions in Article 1 paragraph (3) is decisive that provision as referred to in paragraph (1) no reduce validity living law in decisive society that somebody proper convicted although deed the no arranged in regulation legislation. More carry on in Paragraph (4) is regulated that validity living law in Public as referred to in paragraph (3) throughout in accordance with Pancasila values and/ or principles law commonly recognized by society nations.

Expansion principle legality with enter living law in Public as part from principle legality in Article 1 paragraph (3) of the Criminal Code Bill in perspective law criminal raises masalah. living law in public no law formed by the former regulation legislation, however no law written. In other words, its existence precisely contrary with principle legality himself requires exists provision arranged in legislation.

Principle legality in law criminal will exists characteristic setting detailed and meticulous (*lex certa*). Existence provision living law in society in general no formulate about prohibited acts. So that inclusion living law in Public could raises uncertainty law in implementation law criminal in the future come.

Applicability principle legality in law criminal have two function main that is function protect society so as not to convicted except there is especially formerly base the law in Constitution criminal. Draft this is also useful for protect people from implementation power without possible limit could done government or power. Function next is instrumental function viz emphasize that no there is deed criminal which is not required by law. It means is power or government in a manner firm must demand perpetrator crime in the limits determined by law.

because two function such, existence principle legality as formulation of the Criminal Code Bill can raises problem later day. Because, inside civil law tradition, aspect first in something punishment must based on law that is law written. Constitution must determine about deed that is considered as follow criminal. So that without governing law about prohibited acts, then deed the no could said as follow criminal.

The problem is recognition on living law or law no written has also been regulated by law Number 48 of 2009 concerning Power Justice specifically Article 50 paragraph (1) and Article 5. Article 50 paragraph (1) determines: "Decision court besides must load reasons and grounds judgment, also contains chapter certain from regulation relevant legislation or source law not written made base for judge". Next in Article 5 determines "Judges and constitutional judges must explore, follow, and understand values law and a living sense of justice in society. Besides that, the Indonesian Constitution also indicates matter similar as in Article 18B (2) UUD'45 (2nd amendment): The state recognizes and respects units Public law custom along rights the traditional throughout still alive and fit with development society and the principle of the Unitary State the regulated Republic of Indonesia in law.

In political law punishment in the future come, trouble living law in Public should not made as part from draft principle legality. this remember living law in Public or law

criminal custom in particular, is no sure. nature of terms always open for all incident or possible deed happened. it of course very different with draft principle required legality closed rules. In the most important reform of the Criminal Code is made law custom as one size is a sense of justice according to awareness law Public in accordance with development circumstances, time and place.

For the more confirm confession on living law in society, then Policy criminalization pursued by the former law need formulate follow criminal adat (disgraceful actions, actions that are not preferred, or harmful acts). Specific as deed criminal in law positive so you can realize certainty law and at the same time future justice come.

3.2 Draft Follow Criminal

current Indonesian Criminal Code this apply no arrange about draft what is adhered to related with understanding follow Criminal and Accountability Criminal. Problem this often generates debates and differences in practice enforcement law crime in Indonesia. Though true experts law Dutch criminal law is influenced by views that are monistic. View this in essence look the issue of "accountability" as part from "act criminal". With thereby means that in an "act criminal" with itself has includes abilities for responsible.

Political law Indonesian criminal law through the reform of the Criminal Code has try resolve matter it. Related draft follow crime, the Criminal Code Bill has formulate follow Criminal as "deeds." do or no do something by the rules legislation stated as prohibited and punishable acts criminal". However, formulation the not yet covers understanding follow criminal in offense material, like case in follow criminal murder.

Of course, there is difference expert opinion in interpret follow criminal or strafbaarfeit. Moeljatno use term deed crime, namely: " an act that is prohibited by a rule law, prohibition where accompanied threat sanctions in the form of criminal particular, for goods who broke ban the." Meanwhile, Van Hamel interprets follow criminal as " the behavior of people who are formulated in Law, is oppose proper law convicted and committed with error".

Next something deed could stated as follow criminal, that is something threatened act punishment by law legislation must also be oppose law or contrary with living law in society. Resistance law is element absolute must there is from something follow criminal, so could said that although deed somebody has Fulfill elements formula delict, no as well as immediately that person could sentenced criminal. it still depending on conditions is deed it ' against law ' or no. If deeds that have Fulfill formula offense but no characteristic oppose law, then maker no could convicted because there is reason justification. As for example, apparatus shooting police dead when face to face with villain. Deeds apparatus the clear Fulfill formula offense murder, namely "with on purpose deprive other people 's lives." However, because deed apparatus that in framework carry out provision law, then character oppose the law Becomes no there is so that there is reason eraser criminal form reason justification. because that could concluded that

every follow criminal always looked at characteristic oppose law except there is reason justification.

On point this, politics law the criminal took step renewal draft follow criminal already could said right and can resolve problem law frequent crimes arise in in practice.

Next, The Criminal Code Bill does not again share follow criminal be a "crime" and a "offence", because it's the Criminal Code Bill only consists of 2 books, ie Book I about Provision General and Book II about follow Criminal.

Political law criminal only classify follow Criminal based on weight follow criminal namely: Very Light, Heavy, and "Very Serious /Very Serious" as stated in the Criminal Code Bill. Classification step this too has remove category follow criminal as "Act Criminal Outside Ordinary" or "Extra Ordinary Crimes". Disappearance category follow Criminal Outside Normal this on one side is good move so as not to there is impression distinction to one follow criminal with follow criminal other, because distinction the of course have consequence to method handling from follow criminal it.

But on the other hand, moreover when look closely in a manner more in-depth, the Criminal Code Bill is also still put a number of follow criminal certain as follow the punishment received treatment special, like follow treason crime, act criminal Terrorism, and acts criminal Narcotics. Unfortunately, act criminal corruption no including in specialization the.

In the future, politics law criminal permanent need enter follow criminal inside corruption category follow the punishment received treatment special. Because corruption is crime that has level same with terrorism and treason.

3.3 Draft Accountability Criminal

In principle, the Criminal Code Bill requires "intentional" as form accountability criminal. Seen only to matter certain just Constitution in a manner firm state that something follow criminal could convicted though only done with " failure ".

In draft This is accountability criminal this leave from a very fundamental principle, that is geen straf zonder schuld or 'none criminal without error'. According to the Criminal Code Bill, no nobody did follow criminal could be held accountable without exists something error.

Simon argued that error is exists circumstances psychic specific to the person doing it deed crime and existence connection Among circumstances the with such acts shape so that person could reproached because his deeds. For exists something guilt, accused must do deed criminal (nature oppose law); above age certain and capable responsible answer; have something form error in the form intentional or negligence; no there is reason sorry.

Though so, there is development Very dynamic society, of course principle error this no again could maintained as the only one principle in matter accountability criminal, because In addition , the Criminal Code Bill also provides possibility existence of '

strict accountability ' (strict liability) and ' responsibility replacement (vicarious liabilities).

It as formulated in Article 38 Paragraph (1) and Paragraph (2). Provision the arrange as following:

a. For follow criminal particular, Act could determine that somebody could convicted solely because has fulfilled elements follow criminal the without notice exists error;

b. In matter determined by law, everyone can be held accountable on follow crimes committed by others.

Based on two above concept, look political law criminal even brave take draft accountability law real crime originate from system law common law. such step is break-through good for introduced into the New Criminal Code considering the modus operandi that developed the more rapidly in the future come.

3.4 Draft Criminal and Punishment

kindly general, settings about crime and punishment in the Criminal Code Bill has experience progress where aim punishment and guidelines punishment already formulated in a manner clear and detailed as part for determine limit punishment (the limit of sentencing) and determination weight punishment (the level of sentencing).

Barda Nawawi Arief formulate about aim punishment is as following:

1) in effect Constitution is something system purpose law. formulated laws and regulations punishment in law in essence only is means for reach purpose. because that need formulated aim sentencing;

2) seen in a manner functional and operational, sentencing is something a series of concrete processes and policies on purpose planned through the ' formulation ' stage by the manufacturer law, the stage of ' application by the authorized body/apparatus, and the stage of ' execution ' by officials / agencies executor criminal. So that there is connectedness and coherence Among third Step the as one unity system punishment is required formulation about goals and guidelines sentencing;

3) system departed punishment from understand individualization criminal no means give freedom fully to judges and officials other without guidelines or control / control. Formulation goals and guidelines punishment intended as ' function controller / control ' and at the same time give base philosophical, basic rationality, and mortality clear and directed punishment.

as stated above, purpose prescribed sentence in the KIHP Bill next emphasized again with determination types sanctions that give alternative for court for determine proper sanctions for perpetrator based on level crime, condition actors and circumstances other so that no there is leveling (indiscriminately) on drop criminal.

Next, existence criminal prison or repeal independence in the Criminal Code Bill, though still difficult abolished, also started Becomes type deep sanction its application more selective. However still he arranged punishment die, which is a lot spread in a number of delict, be more part threaten aim convictions that have formulated though stated as one penalty special punishment. Temporary that penalty form action, set more proceed or more good from Settings about various penalty current action this arranged in law positive Indonesia, good in the Criminal Code as well Constitution other.

Beside problem another, author highlight determination punishment dead in the Criminal Code Bill as a problem. Though placed as criminal nature special and deep its application done in a manner selective, punishment dead permanent is criminal which is not in accordance with aim punishment as base for set penalty criminal. this seen from still many follow punishable punishment with punishment dead in the new Criminal Code Bill. A number of provision about implementation punishment dead, incl exists awareness that punishment dead is very severe punishment and no will could do correct if occur fallacy, show that there is hesitation for apply punishment dead in political law Indonesian criminal law.

Writer argue that political law Indonesian criminal law accordingly abolish punishment dead of the Criminal Code Bill because type punishment dead this no in accordance with aim punishment. Criminal Code Bill itself looks more many emphasize aim punishment on how return perpetrator Becomes party that doesn't will repeat follow criminal as well as other communities so as not to do follow criminal. Aim intended punishment for rehabilitate perpetrator this strengthened with provision that aim punishment no intended for suffer or condescending dignity human. because it, still he arranged punishment dead in the Criminal Code Bill of course Becomes obstacle alone in enforceability later because no in accordance with the goal self and sense of justice in society.

4 Conclusion

Renew law appropriate Indonesian criminal law with will Public no easy thing. Political law criminal must capable make formulations that reflect a sense of justice in Public but with no against principles law criminal that alone. There is four problem main in effort renew the Indonesian Criminal Code namely renewal about principle law criminal, concept follow criminal, concept accountability criminal and concept one punishment side truly can realize aim law and can satisfy a sense of justice in society on the side other.

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