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Law Number 1 of 2023'S Conceptual Criminal Law Triad: From Individualism-Liberalism to Monodualistic Characteristics

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Abstract

This research wants to know about the Criminal Law Triad, namely criminal acts, criminal responsibility/mistakes, and punishment in Law Number 1 of 2023. These three things are the main points of criminal law which also form the basis in determining the politics of criminal law enforcement. The research method used is normative, juridical-normative approach, namely research conducted by examining library materials (secondary data) or library law research, and will be analyzed using descriptive analytical methods. The results of this study explain that there has been a "Value Revolution" in Law Number 1 of 2023 (National Criminal Code)" from an Individualism-Liberalism character to a monodualistic character, which is clearly seen in the separation between "acts/actus reus" and "people /mens rea", and developments in the principles of criminal responsibility, including the principle of no crime without fault, Geen Straf Zonder Schuld, Absolute Liability (strict liability), Vicarious liability, Criminal Liability Against Corporations. Furthermore, the matter of sentencing is motivated by the idea of criminal individualization to maintain a balance between society, perpetrators and victims.

Keywords: *Criminal Law Triassic; Criminal Law Reform; National Criminal Code*

Introduction

If in the state of America the term trias politica is known, within the criminal law is also known the term Criminal Law Triad, Which is criminal act, criminal responsibility, and punishment. The term was introduced by a sauer referred to by H.L. Packer "the three concept" Or the three basic problems" Of offence", "guilt", and "punishment".[1] These are the underlying issues of criminal law that will also serve asa foundation in the political establishment of criminal law. The question of criminal or criminal act would determine what action should not be committed, or should be committed, accompanied by threats or penalties that would be criminal to anyone violating the ban. Criminal accountability or wrongdoing, the matter of whether the person who had performed the deed that matched the delic formula was to be

[1] H.L. Packer, 1968, Batas Sanksi Pidana, Stanford University Press, California, hlm. 17

found guilty under the criminal law and to him could be punished with a criminal offense. Criminal, in turn, would be the burden that would be imposed on a person who had been proved in the trial by the plundering of liberties, fining, revoking certain rights, or any other criminal specified in criminal legislation.

As we know that criminal laws in Indonesia are Wetboek van Strafrecht voor Nederlandsch-Indie (S.1915 Number. 732) It was the legal product of the Dutch Indian government. As an independent and sovereign state we are certainly not proud to have adopted the Dutch Indian government's law of inheritance, since the code was obviously not composed based on the basic values that apply to indonesians. As a product of the colonial government, within its chapters is the spirit of colonialization, because it is also one of the instruments to run the government in the occupied state, if not, the hateful dispersion articles. (*haatzaiartikelen*).

In addition, the values underlying the criminal code are incompatible with those of Indonesia. They are based on the value of individualism and liberalism, while indonesians are monodualists who put individual and social interests in a balanced way. Meanwhile, the original language was Dutch, while most law-enforcement officers as well as seekers of justice were no longer able to speak it. If there is an Indonesian criminal code, it is a translation. A careful consideration of the translations differs from one translation in another.

Another reason we are not proud of the criminal code is that people's need for criminal law is growing as modern societies struggle with the complexity of the present problem, and it is sometimes thought that legislation simply becomes inadequate to meet the needs of people. Regarding these matters, it would be necessary to reform the criminal law that matches the needs of today's indonesians.

Basically efforts to reform criminal law have begun since the indonesians tried to adjust *Wetboek van Strafrecht voor Nederlandsch-Indie* (S.1915 No. 732) With the condition and need of the Indonesian nation through changing, adding, and adding the law with certain legislation. Number 1 of 1946 was about criminal law (changing wvsni's name to WVS/kuhp, the law number 20 of 1946 on penalties for tubing (adding to the basic criminal type of tubing), 1951's rule number 8 on a reprieve to doctors and dentists. With this law law added a chapter, 512a on the crimes of unauthorized practice, act 73 of 1958 (adding to the crime of the doctor's practice), act number 1 of 1960 (change chapters 359, 360, and 188), act no. 16 PRP (change *vijf en twintig gulden* In some chapters up to two hundred and fifty rupiah), the law of the 18 PRP of 1960 (penalties read in rupiah and doubled fifteen times), the 1 of 1965 law (religious desecration), the 1974 number 1 law (harping up a criminal threat to gambling and making it a crime), the Number 4 of 1976 As well as law number 27 of 1999 (adding crime against state security, section 107 a-f).

This particular criminal law reform model is obviously partial and/or fragmenter, since it regulates only certain special things, is still attached to the parent system (WVS), which is only the "sub system "of old criminal code. The renewal of criminal law carried out does not build and/or reconstruct "criminal law system" based on the values prevailing in our society. As an independent and sovereign nation, we need renewal and/or reconstruction, the restructuring of the entire Dutch Indian penal system of substantive, as it measures up to the values adopted by the people of Indonesia and the development of modern society. "Restructuring" implies "restructuring" and is very close to the meaning "reconstruction" of "rebuilding.

Attempts to reconstruction/restructuring of the cucels have been made in the year 2023 act of the penal code that follows the term national criminal code. Inside the national criminal code contained some new development of thought in the field of criminal law. The description will try to address a few issues related to the three fundamental criminal law issues in the national criminal code concept that will be used by the Indonesian front.

Formulation of the Problem

The issues that will be discussed in this study are related to how the three principal criminal law issues in the national code concept will be used by the Indonesian front?

Research Methods

That the author explains the research methods used by the normatif that base with current legal regulations and the post court ruling of the constitutional court that has lifted some of the regulations and therefore will be adjusted to existing research methods, then in this study using literature study methods, which the author then USES normatizing juridical approaches, Which is research done by researching library material (secondary data) or the law study of literature[2].

As for the research approach being used is conceptual, legislation, comparative research that focuses on rational views, critical and philosophical analyses, and concludes with conclusions aimed at generating new discoveries in answer to established subject matters, and will be analysed using analytic analyses, Which illustrates the regulations of legislation that apply to the theory of law and the practice of positive law enforcement associated with the problem.[3]

Discussion

1. Deeds

Unlike current criminal code, the compilation of national code based on criminal or 3 (3) basic problems in criminal law. Formulating actions according to national criminal code isa reflection of the dualistic view of criminal law that separates ACTS from accountability, so that "criminal conduct" is not mixed with "criminal liability."

The separation of the terms of criminal and criminal accountability aside from a dualistic reflection, is also a reflection of the idea of the balance between "deed ("*daad*/*actus reus*" As an objective factor) and "people " ("*dader*" atau "*mens rea*"/"*guilty mind*" sebagai faktor subjektif). Thus, the concept is not based solely on views of criminal law that place its emphasis on action ("*daadstrafrecht*/*taterstrafrecht*") Or the consequences (*Erfolgstrafrecht*) Which is an influence of the classical flow, but it's also orientated "people " (*daderstrafrecht/taterstrafrecht*) Or "mistakes" (*schuldstrafrecht)* that is the influence of the modern flow.[4]

Among the records that are worthy of reference to ACTS or criminal ACTS found in national penal code are grounds for wrongdoing and forms of criminal crime.

a. A Basis for Wrongdoing Deserved

As with the criminal code (WVS), the principal source of the law for the making of a criminal act is the law (written law). The establishment of an act asa act of criminal or criminal action sets out a legal principle in a formal sense. But, contrary to the legality principle set out in the current legislation, national legislation broadened the legality principle by insisting that the provisions in article 1 verse (1) did not

[2] Soerjono Soekanto, Penelitian Hukum Normatif, suatu tinjauan Singkat, (Jakarta: PT Raja Grapindo Parsada 1995) hal 12-13.
[3] Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2011, hlm. 22.
[4] Barda Nawawi Arief, Perkembangan Sistem Pemidanaan di Indonesia, (Semarang, Badan Penerbit Universitas Diponegoro, 2009). Hlm. 48

lessen the force of the living law "in society. Thus, in addition to the source of written law (the law) as the primary formal criteria, the concept of national legislation gave place to an unwritten source of law living in the community as the basis for establishing proper action.

The introduction of an unwritten source of law living in society as the basis for establishing proper action would simply constitute the current operation of criminal law, for example, based on:[5]

1) Article 5 (3) sub b act number 1 DRT 1951 which states:
   "Discovery That a law which is alive ought to be considered a criminal act, but is peerless in the civil penal book, it is considered a threat to a law that is no more than three months in prison and/or five hundred rupiah in fine, that is, a law substituting the customary punishment. Not recognized by the condemned, when the customary law was in the mind of the judge beyond the above-indicated penalty of imprisonment or fine, the accused could be charged with a ten-year prison term of replacement, with the idea that no longer consistent with the age was such was replaced.

2) The judiciary law (act 14/1970 as was amended with act number 35 /1999 and with act number 4 in 2004, and the latter with act number 48/2009), includes principles:
   - "The court shall not refuse to examine and prosecute a case brought against the pretext that the law is not/unclear, but is obliged to examine and prosecute it."
   - “All judicial rulings must not include the reasons and fundamentals of the verdict, nor must the appropriate chapters of the rule or the unwritten source of the law."
   - "A judge of law and justice is obliged to dig in, follow and understand the value of living law."

Regarding guidelines for determining the source of material law from which materials can be designated as a source of law, within the draft draft legislation is defined as its guidelines or criteria, namely, "so long as the pancasila values and/or common law principles are recognized by the peoples of the nations." The ya ya formal legality and legality of materials can be seen in article 11 of the national criminal code with the following formula:

a) A crime is a act of doing or not doing something that the regulations of the law declare as a forbidden act and are threatened with a criminal.
b) To be convicted as a crime, in addition to the act banned and threatened with criminal rule, must also be illegal or contrary to public awareness of law.
c) Every criminal is viewed as unlawful unless there is a valid reason.

b.Criminal Qualification and Classification

If the criminal criminal code (WVS) divides the criminal into 2 (two) the forms/qualifications of "crime" (book ii) and "violation" (book iii), the national criminal act overrules that qualification and mentions only "criminal" in book ii. The overarching nature of the thinking overpasses the qualifications of crime and transgression:

1) It cannot be tolerated any longer the "rechtsdelict" and "wetsdelict" criteria that are set back to class/contrast between "crime" and "violation ";
2) The classification of the two types of criminal crimes was relevant to the competence of the dutch indian era, in which "offenses" were checked by land-gerecht and "crimes" were examined by landraad;

[5] Laporan Akhir Tim Kompendium Hukum Pidana, BPHN, 1994-1995, hlm. 12

3) A cutting-edge view of "afkoop" (section 82 of the criminal code/wvs) as the reason the purse-off prosecution does not only apply to "offenses" threatened by criminal penalties only.

While the concept of a criminal offense is no longer about the division of crime and violation asa "delik qualifications ", yet within its working pattern, the concept still classifies delik's weight, its origin:

1) delik, who was thought to be so light, "that is, only to be threatened with a single, I or II. Delik-delik here is clasped by delic-delik who used to be threatened with a prison criminal/prison under 1 (a) year or a light fine or a new delic-delic that assessed his weight under 1 (one) years in prison.
2) delik, who was viewed as "heavy," is delic-delic, which is basically worth being threatened with prison sentences over 1 (one) s/d 7 (seven) years. Delik which is classified here will always be considered more severe criminal penalties than the first group, which is ketegori III or IV.
3) Delik, who was viewed as "severe/serious," that is, delik who was threatened with penal crimes above 7 (seven) years or was threatened with heavier crimes (that is, death penalty or life imprisonment). To show the severity of the severity, the prison criminal for delik in this group was only specifically threatened or for certain delicials could be simulated by a fine V category or be given a special minimum threat.

Delic's criminalization by the weight classification as presented above, concepts in certain things also retained the characteristics of the law - based delic. For example in the concept stated: "trial or formation for a felony threatened with a penal code I, not convicted."

2. Criminal Accountability

As mentioned in advance, the separating of the terms of "criminal" and "criminal liability" isa reflection of the dualistic view, according to professor barda nawawi as well as a reflection of the idea of balance between public interests and individual interests, the balance between "deed. " ("*daad"/actus reus*", As an objective factor) and a "person" ("*dader*" atau "*mensrea*"/*guilty mind*",As a subjective factor), a balance between formal and material criteria, a legal equilibrium, flexibility/elasticity/flexibility and justice; And equilibrium of national values and global/ international/universal values.[6]

"(geen straf zonder schuld) is the basis for determining a person's accountability, so far from being formulated in the penal code/WVS is firmly formulated. With this principle in mind, a person should not be condemned, unless he or she is found guilty of a crime, either for active or for nonpassive ACTS that are threatened with criminal in the law. A person was said to be guilty of a criminal act, if he did it deliberately (dolus) or because of alpa (culpa) of all kinds.

To determine a criminal accountability to a person, the national criminal code does not view the legality principle and the culpability asa rigid and absolute requirement. In some instances formulating concepts also provides the possibility of applying the principle of "judicial deliberations "(absolute accountability), the "vicarious safeguard" (replacement accountability), and the "granting of forgiveness or forgiveness by the judge" ("rechterlijk pardon" or "judicial pardon").

The judge's authority to pardon ("rechterlijk pardon") by not imposing any criminal sanction/act, making up for the "culpa in causa" principle (or "actio libera in causa") that authoritates the judge to remain accountable for the perpetrators of the crimes even if there is a criminal deletion reason, if the perpetrator is to be held accountable (condemned) for the circumstances under which the criminal was

[6] Diambil dari Makalah Prof. Muladi, Beberapa Catatan tentang RUU KUHP, yang disampaikan pada Sosialisasi RUU KUHP yang diselenggarakan oleh Departemen Hukum dan HAM di Jakarta, 21 Juli 2004.

taken. So the magistrate's authority to forgive is balanced with the authority to remain loyal to a criminal eraser.

Furthermore, national criminal code also maintains that other than natural person accountability, corporate criminal conduct is governed on the basis of identification theory.

3. Criminal

In national criminal and criminal law there are some very significant changes in criminal and criminal behavior, such as in formulating the purpose of piracy, the reduction of capital punishment as a special criminal form, the introduction of criminal work, the inclusion of a specific minimum system in particular criminal crimes, the setting up of guidelines for criminal idomy, the setting of guidelines for criminal invidualization.

In terms of idling, if in current legislation it is not at all defined, in the national criminal code concepts the goal is clearly defined as a tool to achieve the goal of providing "community protection" and "criminal protection/development."

In regard to the purpose of such idomy, the national penal code retained the severe types of criminal sanctions of death and life imprisonment. Nevertheless, the death penalty is not included in the "principal criminal" list but is set up as a separate kind of prison.

The consideration of the national criminal code specifies the idea that from the purpose of idling and the purpose of perpetuating/the use of criminal law (as one of the means of "krminal policy 'and" social policy"), death is not in itself the main means of governing, policing and repairing society. The death penalty was an exception only, as were the means "amputation" or "operation" in the medical field which was by nature not the major means or medicine, but was only an exception as the latest means.

As to the location of the death penalty as a special criminal, there is therefore a change in the underlying criminal code. The national criminal code:

a. Prison criminal;
b. Criminal cover;
c. Criminal surveillance;
d. Criminal penalties; and
e. Criminal social work.

In his introspection a new type of criminal surveillance and criminal social work is another alternative to the short prison prison measures that have been deemed inconducive to a convict. With an alternative, judges can help free themselves from guilt or stigmatization of bullying or avoid the negative effects of criminal deprivation of liberty to convicted criminals. Similarly, communities also remain able to interact and actively participate in helping a criminal to live his or her social life in a natural way by doing good things.

The death penalty is not found in the principal criminal order. The death penalty is specified in individual sections to indicate that this type of criminal is really a special one asa last resort to protecting people. The death penalty is the most severe criminal and should always be threatened alternative to a lifelong criminal or jail crime 20 (twenty) years at most. The death penalty could also be brought up on parole, by granting probation, so that in due time the convict was supposed to be able to improve so that the death penalty would not need to be executed, and could be replaced by a criminal deprived of freedom.

The national criminal code was set up ona specific minimum penal threat which was previously also known in criminal legislation outside of the book of criminal law. The setting of the new idling system is based on consideration:

1) To avoid criminal disparity that is particularly high for similar or more qualitative crimes;
2) To further tax the impact of public prevension, especially on criminals viewed as harmful and troubling to society
3) If in some ways the maximum criminal can be aggravated, then analog is taken into account that even the minimum of a criminal in some things can be increased.

In principle a special minimum criminal is an exception only to certain crimes deemed extremely harmful, harmful, or disturbing to society and to crimes that are qualified or aggravated by the results.

As this implies that idling is out of balance between society, the perpetrator and the victim, and that in order to provide protection to the community and victims of criminal ACTS, the national criminal code also provides the penalty of "payment for damages" and "compliance for duty." Both types of sanctions are included as additional criminal types, for it is often revealed, that the formal juicalling of the problem by handing down basic criminal sanctions on the defendant has not been felt by the citizen asa complete solution of the problem.

Further, that idling must also be oriented toward the "person" factor, and the idea of "criminal individualization" is followed by the general rule of idomy, as mentioned in the national criminal code. Among other things, this idea or principle of "criminal individualization" is reflected in the national code of law:

a) It states the principle of "no crime without error."
b) He determined irresponsible and criminal liability problems for children under 12 years of age.
c) In the "idleness guide" a judge is obliged to consider several factors: the maker's motives, inner attitudes and faults, the era of the maker committing criminal ACTS, his history and socioeconomic circumstances and how a criminal influence is on the maker's future.
d) In the guidelines, there is a possible "gift of forgiveness" by the judge because of the personal circumstances of the maker and human considerations.
e) There is a provision for "criminal mitigation and commission" in the light of several factors, among other things:

    1) Did the accused surrender to the authorities;
    2) Is there any contest in which the accused compensates or corrects any damage;
    3) Is there a very strong tremor of the soul;
    4) Was the perpetrator a young pregnant woman;
    5) Is there a liability;
    6) Was the perpetrator a civil servant who violated the duty of his office using his power;
    7) Does he abuse his professional skills;
    8) Was he a hardened criminal.

f) It is possible to make "alterations/alterations/review of the fixed decision decision" based on consideration on the basis of the "alterations/development/improvement on the convict himself.

Thus in the concept of idling, felons must be adjusted not only to individual considerations, but also deposed criminals must always be modifiable to the changes and development of the individual (the convict).

Conclusion

Contrary to the change of criminal law that adopted the development of criminal law thinking on the three fundamental problems of the penal law above, there will be a substantial change in the development of criminal law. According to our saving, implementation of criminal ideas individualized, as well as application of other principles such as rechterlijke pardon principles must be supported by formal criminal law. In this regard, it may also be of interest to the law-forming padara, as in the renewal of criminal law must pay attention to new thoughts on the concept of criminal law.

Borrowing friedman's theory, the prevailing criminal law system is determined on legal substance, legal structure, and legal culture, so the success of criminal law reform is not only measured by the application of a criminal law that replaces the WVS, but it also has to be followed by the law-enforcement thinking patterns of the value system based on stelcells and the degradation of the new cell phone.

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