



## History of the Implementation and Development of the Criminal Law (KUHP) of the Dutch Colonial Heritage in Indonesia

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### **Abstract**

This study uses a qualitative method with a historical approach. The purpose of this paper is to know the history of the development of the Indonesian Criminal Code, the benefit of this writing is to add insight into legal knowledge, the previous article only explained the history of the Criminal Code, while this article explains why the Dutch Criminal Code inherited from the Dutch colonial era was enacted in Indonesia, Talking about criminal law, of course we discuss about behavior that should be done and should not be done, criminal law is the whole of the regulations that determine what actions are prohibited which are included in criminal acts, as well as determine what penalties can be imposed on those who commit them, criminal law that applies in Indonesia is a Dutch colonial heritage which was formerly known as *Wetboek van Strafrecht voor Nederlands Indie*, After Indonesia's independence from the Dutch colony in 1945, Indonesia carried out the integration and codification of the Dutch Colonial heritage law into *Wetboek van Strafrecht (WvS)* which was later known as the Criminal Code, the basic reason for the enforcement of the colonial law was because Indonesia did not yet have written criminal law that is universally applicable in the country of Indonesia, the implementation of the criminal law of the Dutch colonial heritage is not something special for the Indonesian people because the criminal law is not made based on the characteristics of the Indonesian nation. , how is the problem of the Indonesian Criminal Codewhat is the problem with the Indonesian Criminal Code.

**Keywords:** *Criminal Law; History of the Indonesian Criminal Code; Problems of the Indonesian*

### **Introduction**

#### **A. Background**

Before the arrival of the Dutch, initiated by Vasco da Gamma in 1596, the Indonesians were familiar with and enforced customary criminal law. Customary criminal law, which is mostly unwritten, is local, in the sense that it is only enforced in certain customary areas, in addition to customary criminal

law having contact with the religion embraced by the majority of the population, another characteristic is that in general customary criminal law does not manifest in a written regulation. These rules regarding criminal law are guarded from generation to generation through stories, discussions, and sometimes the implementation of criminal law in the area concerned. However, in several customary areas in the archipelago, this preserved customary law has been realized in written form, so that it can be read by the general public (Febriyan, 2006).

In addition to the criminal law applicable to native Indonesians by the VOC authorities, placards containing criminal law were first imposed, in 1642, Joan Maetsuycker, former hof van justitie in Batavia, who was assigned by the Governor-General Van Dimen, completed a collection of plaques. which was given the name Statuten Van Batavi in 1650, the association was legalized by Heeren Zefentien. According to Utrecht, the applicable laws in areas controlled by the VOC were: 1. statutory law contained in the Statuten Van Batavia 2. Old Dutch law and 3. Roman legal principles (Hamjah, 2017), According to Savigny, in this world there are various nations where each nation has its own volksgeist or national spirit. The diversity of the nation's soul can be seen through the various languages, customs and social organizations of each nation. The difference in the soul of the nation also gives rise to different views on justice. Savigny has the opposite view to stream of Natural Law who views that the law is universal and eternal. He argues that the law changes according to the conditions of society from time to time, so it is impossible for a law to apply to all nations. Savigny's opinion is also contrary to legal positivism. According to him, the law does not arise because of orders from the authorities or because of habit, but because of the feeling of justice that lies in the soul of the nation. Laws are not made, but grow and develop with the community (turnady & wibowo t, 2021).

Since 1945 Indonesia became independent from the Dutch and Japanese colonies, Indonesia still applies the Criminal Code inherited from the Dutch colonial which has been codified and unified as public law because Indonesia does not yet have its own Criminal Code. and developed in Indonesia, in writing this article, the author will explain how the history of the implementation of the Criminal Code inherited from the Dutch colonial era and how problematic its application is in Indonesia.

### ***Methods/Ideas***

The research method used is descriptive qualitative research method, namely by trying to provide an overview of the actual problems at this time based on the facts that appear. Furthermore, the research method is used in accordance with the formulation of the problem that is the focus of this research. This descriptive qualitative research method opens up. This research is about the history of the development of the Indonesian Criminal Code, the importance of this research is to find out about the history of the development of the Criminal Code since the Dutch colonial occupation until Indonesia's independence, in this field of research will explain why the Dutch colonial legacy of the Criminal Code is still valid in Indonesia, the data collection technique uses a library study that will collect all discussion topics that are related to this research and data analysis techniques using narrative analysis.

### ***Results and Discussion***

#### **A. Definition of Criminal Law**

According to the language, the word criminal law is a translation of the Dutch term strafrecht which comes from a combination of the words straf which means punishment and the word recht which means law. Thus, strafrecht literally means the law of punishment. This translation contains ambiguous

meaning, so that according to Wirjono Prodjodikoro, the word punishment is more appropriate if it is replaced with the word criminal so that the meaning of its unity becomes criminal law. (Sholihin, 2008).

However, the following authors quote several views of scholars regarding the meaning of criminal law:

According to Simons criminal law is:

- a. The entire prohibition or order that the state is threatened with misery is a crime if it is not obeyed.
- b. The whole rule that establishes the conditions for the imposition of a crime, and all the provisions that provide the basis for the imposition and application of a sentence

Meanwhile, according to Van Hamel, criminal law is the entire basis and rules adopted by the state in its obligation to enforce the law, namely by prohibiting what is contrary to the law (onrecht) and imposing a misery (suffering) on those who violate the prohibition. (tomalili, 2019).

Criminal law is part of the overall law that applies in a country, which provides the basics and rules to determine which actions have been prohibited and are accompanied by criminal threats, determine when in what cases those who have committed crimes. criminal acts can be sentenced to criminal as has been threatened, and determine in what way the imposition of the crime can be carried out if there are people who are suspected of committing a crime. So that it can be said that criminal law (Ni Putu Yulita Damar Putri & Sagung Putri ME Purwan, 2020). There are several divisions of criminal law, each of which is material law – formal criminal law; objective criminal law – subjective criminal law; criminal law based on address; general criminal law – special criminal law; and national criminal law, local criminal law and international criminal law. General material criminal law basically contains provisions regarding the applicability of a criminal law rule and also acts that qualify as criminal acts. While formal criminal law is to enforce material criminal law (Hiariej, 2021), Talking about criminal law often makes people imagine that it is evil, dirty, and full of deceit. Anyway, when people talk about criminal law, what they imagine is the crackdown on crime by the police, prosecutors, and judges. What is also imagined are criminals or criminals who generally come from weak, brutal, and marginal economic circles. Because it generally stems from the problem of poverty, criminal law basically focuses on regulating the problem of crime that occurs in the community. Criminal law is a guard so that people avoid crime. Criminal law is a guard so that people avoid crime. If the Constitutional Court is often referred to as The Guardian of Constution,(Harefa, 2019).

## **B. History of the Enforcement of the Criminal Code during the Dutch Colonial Period**

To define "History", it seems a bit difficult, because many etymological approaches can be used. These approaches produce almost the same meaning. Judging from the etymology of the origin of the word, history in Latin is "Historical". In German it is called "Geschichte" which comes from the word geschehen, meaning "something that happens". The term "History" expresses a collection of facts of human life and development. In the area of Malay-speaking people, including Indonesia, the word history is simply defined as a story from past events known as legends, chronicles, stories, saga, and so on, the truth of which is not necessarily without evidence as a result of a study.

Legal history is a method and science which is a branch of historical science (not a branch of legal science), which studies (studying), analyzing (analyzing), verifying (verifying), interpreting (interpreting), compiling arguments (setting the clause), and tendencies, draw certain conclusions (hypotheses), about every fact, concept, rule, and rule relating to the law that has ever been in force. Both chronologically and systematically, as well as causes and effects and their touch with what is happening in the present, both as contained in literature, manuscripts, and even oral speech, especially the emphasis

on the unique characteristics of these facts and norms, so that they can find symptoms, arguments, (Yoyon M. Darusman & Bambang Wiyono, 2019).

The Dutch first colonized Indonesia (the Dutch East Indies) and at the same time applied their WvS to the colonized countries, even though when the colonizers arrived, the archipelago was already known for criminal customary law. However, the legal politics of the colonial nation requires the implementation of WvS in the colonized country, such a situation will continue until Indonesia's independence (zaidan, 2015). The enactment of the colonial criminal law, started on February 26, 1946, then the government issued Law Number 1 of 1946 concerning the Regulation of Criminal Law. This law was later used as the legal basis for the change of *Wetboek van Strafrecht voor Nederlands Indie* to *Wetboek van Strafrecht (WvS)*, which became known as the Criminal Code. Based on the provisions of Article XVII of Law Number 1 of 1946 there is a provision which states that: This law shall come into force for the islands of Java and Madura on the day it is announced and for other regions on a day to be determined by the President. Therefore, the enactment of *Wetboek van Strafrecht voor Nederlands Indie* to *Wetboek van Strafrecht* based on Law Number 1 of 1946 concerning Criminal Law Regulations is only limited to the areas of Java and Madura. Furthermore, the implementation of the Criminal Code in all regions of the Republic of Indonesia was only carried out on September 20, 1958, with the promulgation of Law no. 73 of 1958 concerning the Enactment of Law Number 1 of 1946 of the Republic of Indonesia concerning the Criminal Law Regulations for the Entire Territory of the Republic of Indonesia and Amending the Criminal Code. As stated in Article 1 of Law no. 7 of 1958 which reads: "Law no. 1 of 1946 of the Republic of Indonesia concerning the Criminal Code is declared to be valid for the entire territory of the Republic of Indonesia. the enactment of the Criminal Code in the entire territory of the Republic of Indonesia was only carried out on September 20, 1958, with the promulgation of Law no. 73 of 1958 concerning the Enactment of Law Number 1 of 1946 of the Republic of Indonesia concerning the Criminal Law Regulations for the Entire Territory of the Republic of Indonesia and Amending the Criminal Code. As stated in Article 1 of Law no. 7 of 1958 which reads: "Law no. 1 of 1946 of the Republic of Indonesia concerning the Criminal Code is declared to be valid for the entire territory of the Republic of Indonesia. the enactment of the Criminal Code in the entire territory of the Republic of Indonesia was only carried out on September 20, 1958, with the promulgation of Law no. 73 of 1958 concerning the Enactment of Law Number 1 of 1946 of the Republic of Indonesia concerning the Criminal Law Regulations for the Entire Territory of the Republic of Indonesia and Amending the Criminal Code. As stated in Article 1 of Law no. 7 of 1958 which reads: "Law no. 1 of 1946 of the Republic of Indonesia concerning the Criminal Code is declared to be valid for the entire territory of the Republic of Indonesia. 73 of 1958 concerning the Enactment of Law Number 1 of 1946 of the Republic of Indonesia concerning the Criminal Law Regulations for the Entire Territory of the Republic of Indonesia and Amending the Criminal Code. As stated in Article 1 of Law no. 7 of 1958 which reads: "Law no. 1 of 1946 of the Republic of Indonesia concerning the Criminal Code is declared to be valid for the entire territory of the Republic of Indonesia. 73 of 1958 concerning the Enactment of Law Number 1 of 1946 of the Republic of Indonesia concerning the Criminal Law Regulations for the Entire Territory of the Republic of Indonesia and Amending the Criminal Code. As stated in Article 1 of Law no. 7 of 1958 which reads: "Law no. 1 of 1946 of the Republic of Indonesia concerning the Criminal Code is declared to be valid for the entire territory of the Republic of Indonesia. (Irawatu, 2019), With the proclamation of the Indonesian state as an independent country on August 17, 1945, the Indonesian nation became a free and sovereign nation. In addition, the proclamation of independence was used as the initial milestone in breaking the colonial legal system into a national legal system that was in accordance with the spirit and personality of the Indonesian nation. The Indonesian people are free to determine their destiny, regulate their country, and determine their legal system. The constitution that became the basis for the administration of the state was then enacted on August 18, 1945. That constitution is the 1945 Constitution. Realizing the ideals that the proclamation is the beginning of breaking the colonial legal system into a national legal system is not an easy thing and can quickly be realized. This means that establishing a national legal system requires a more mature discussion and takes a longer time than simply

proclaiming itself as an independent nation. Therefore, to fill the legal vacuum (*rechts vacuum*) because national law has not yet been realized, the 1945 Constitution mandates in Article II of the Transitional Rules that all existing state bodies and regulations continue to apply immediately, as long as new ones have not been enacted according to this Constitution. (Bahiej, 2006).

### C. Problems with the Indonesian Criminal Code

After Indonesia's independence, the codification of the law was passed into Law Number 1 of 1946 to avoid different interpretations in its application. Nevertheless, the areas still controlled by the Dutch are still trying to maintain the original Criminal Code with adjustments that are certainly different from those that have been legalized. That's why there is a dualism of criminal law in the territory of Indonesia. To respond to this, the government issued Law Number 73 of 1958 which contained Law Number 1 of 1946 for the entire territory of the Unitary State of the Republic of Indonesia. (Ulfah, 2016).

In this regard, through the Ministry of Justice, the Government of the Republic of Indonesia established a National Legal Institution (LHN) which later in the New Order era developed into a National Legal Development Agency (BPHN) with the authority and task of compiling a codification of the National Criminal Law in accordance with the awareness and legal needs of the Indonesian nation, which is independent, as well as a substitute for the Criminal Code of the Dutch colonial heritage which is no longer in accordance with the legal spirit of the independent Indonesian nation. (PustikaSukma, 2021).

As explained above, Indonesian criminal law is a legacy of colonial law when the Dutch colonized Indonesia. If Indonesia declares itself as an independent nation since August 17, 1945, then Indonesia's criminal law should be a product of the Indonesian nation itself. However, this idealism is not in accordance with the reality. Indonesian criminal law until now still uses the criminal law inherited from the Netherlands. Politically and sociologically, the enactment of this colonial criminal law clearly creates its own problems for the Indonesian people. These problems include the following: (bahiej, 2006)

1. Indonesia's independence, which was proclaimed 59 years ago, was the beginning of breaking colonial law into a national law. But in reality, Indonesia's positive criminal law (KUHP) is a legacy of the Dutch colonial era. Politically this creates problems for an independent nation. In other words, although Indonesia is an independent country, Indonesia's criminal law has not been able to escape colonialism.
2. *Wetboek van Strafrecht* can be called the Criminal Code has been enforced in Indonesia since 1918. This means that the Criminal Code is more than 87 years old. If the age of the Criminal Code is calculated since it was first made in the Netherlands (1881), then the Criminal Code is more than 124 years old. Therefore, the Criminal Code can be considered obsolete and very old, even though Indonesia itself has changed the material of this Criminal Code several times. However, this change does not address the substantial problems of the Criminal Code. The Dutch Criminal Code itself at this time has undergone many developments.
3. The written criminal law that is in force to this day is not formed based on the character, culture and habits of the Indonesian nation,
4. The original form of Indonesian criminal law is *Wetboek van Strafrecht* which according to Law Number 1 of 1946 can be called the Criminal Code. This indicates that the original form of the Criminal Code is in Dutch. The Criminal Code circulating in the market is the Criminal Code which was translated from Dutch by several criminal law experts, such as the translation of Mulyatno, Andi Hamzah, Sunarto Surodibroto, R. Susilo, and the National Legal Development Agency. There is no official text of the *Wetboek van Strafrecht* translation issued by the Indonesian state. Therefore, it is very possible that each translation has a different editor.

So with the above, the renewal of Indonesian criminal law is a necessity that cannot be negotiable in the form of any reason. The problems that arise related to the obsolescence of the Criminal Code internally and the development of problems that arise in the midst of people's lives externally add a very strong urge from the community to demand the state to immediately realize the codification of national criminal law as a result of hard work and thought. Indonesian nation itself (Ni Putu Yulita Damar Putri & Sagung Putri ME Purwan, 2020).

As a large country with a large population and increasing number of crimes, all of this proves that the Dutch colonial-inherited Criminal Code is no longer able to provide a snaring effect in making people aware, therefore Indonesia is obliged to form its own Criminal Code based on the characteristics of the Indonesian nation.

## ***Closing***

### 1. Conclusion

The Indonesian Criminal Code is a Dutch colonial legacy which is still valid and applied in Indonesia, in terms of the application of the Dutch Criminal Code which is not in accordance with the development of Indonesian law today, therefore the Indonesian state has shown its ability to make a Criminal Code based on values and values. characteristics of the Indonesian nation.

### 2. Suggestion

Binding to the development of technology and the progress of the times, crime also develops, therefore it is necessary for Indonesia as a big country to make its own Criminal Code to deal with crimes that are developing in Indonesia and to abolish the Criminal Code inherited from the Dutch colonial era.

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