

# Criminal System Formulation and Sanctions in The New KUHP

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**Abstract.** The Criminal Code in Indonesia needs reform due to inconsistency with societal values and technological advancements. This study uses a statutory and conceptual approach to analyze the development of the penal system and sanctions in the new Criminal Code. Data is collected through traditional and online literature searches and analyzed qualitatively. Findings reveal that the old penal system is unsatisfactory to society, lacking purpose and guidelines for sentencing, rigid in its punishment, and out of date sociologically. The new Criminal Code introduces renewed provisions on the punishment system, emphasizing a multi-dimensional approach for repairing individual and social damage. It includes various types of punishments such as principal crimes, additional crimes, and specific crimes determined by law, with the death penalty as a last resort. Notably, the new Criminal Code introduces social work and fines as new types of punishment in Indonesia, and also regulates corporations as subjects of crime

**Keywords:** New Criminal Code, Sanctions, Penal System

## 1 Introduction

The new Criminal Code is a form of criminal law reform in Indonesia. Updates are made for philosophical, political, sociological, and practical reasons. The old Criminal Code drafted by the Dutch colonial government needed to be replaced due to a different philosophical basis. [1] Sociologically, many articles in the old Criminal Code were not in accordance with the values prevailing in society and the progress of science and technology made various arrangements for criminal acts in the old Criminal Code inadequate and out of date.

The new Criminal Code aims to rearrange the structure of the national criminal law system. This is certainly different from the making or drafting of ordinary laws that are often made so far. The difference can be identified as the drafting of an ordinary law and the drafting of a new Criminal Code. The drafting of ordinary laws is partial or fragmentary in nature which generally only regulates specific or specific offenses, is still tied to the WvS main system, is only a sub-system, does not build or reconstruct the criminal law system, while the drafting of the new Criminal Code is comprehensive or integral, includes all aspects, compiling or rearranging (reconstruction or reformulation) the design of the national and integrated criminal law system. [2]

Criminal law can function as a prevention of the occurrence of a crime or as a settlement of a crime [3]. Criminal law as a settlement for a crime that is proven guilty in court will lead to the imposition of sanctions in the form of criminal sanctions for perpetrators who are sharper in nature compared to other sanctions [4]. This criminal sanction is synonymous with negative sanctions because of its nature which causes suffering to the perpetrator. These criminal sanctions aim as an effort to maintain peace or security and better regulation (control) in society. The existence of criminal sanctions is positioned as the last stage of sanctions. [5]

Determination of sanctions in a criminal law is not merely a technical matter of legislation, but is an integral part of the substance or material of the law itself. [6] This means that the issues of penalization, depenalization, criminalization and decriminalization must be understood

comprehensively with all aspects of substance issues or statutory material at the legislative policy stage.

Regulations regarding criminal law are no longer appropriate with existing technological developments and advances as well as Indonesian society, so efforts to reform criminal law are necessary[7]. The current criminal justice system was typically antiquated and unfair, out of date and unreal, especially those parts that were imported from or derived from foreign law during the colonial era (outdated and not in accordance with reality).

Sociologically, many articles in the old Criminal Code were inconsistent with the values prevailing in society. This is because the old Criminal Code was not rooted in cultural values and was not even in accordance with the aspirations of the Indonesian people and was not responsive to today's social needs [8]. As well as advances in science and technology, various criminal offense arrangements in the old Criminal Code were inadequate and out of date.[9]

The old Criminal Code in force in Indonesia was a product of the Dutch colonial heritage which tended to be liberal. On the other hand, in the country of origin, the Criminal Code has actually undergone several changes that are adjusted to the times. Criminal law in Indonesia needs to be renewed. Efforts to realize criminal law reform began in 1963 with the drafting of a criminal law in a criminal law book or Criminal Code. The formulation of the problem in this study are:

1. How is the development of the penal system in Indonesia?
2. What is the formulation of sanctions in the new Criminal Code?

## 2 Method

This type of research is library research. The process of performing library research involves reading secondary data from the literature as the foundation for the investigation and searching for laws and other relevant books. This research uses library research since it only deals directly with sources that are already in the library or ready-to-use data, as well as secondary data. It does not deal directly with field data or through eyewitnesses in the form of events. used.

The approach used in this study is a normative approach. The normative approach is a literature-based approach, which focuses on the analysis of primary legal materials and secondary legal materials. This study uses a normative approach because this study aims to provide a detailed explanation that is systematic, corrects and clarifies a rule of law governing a particular field of law.[10]

Secondary data were the source for the research's data. Data sources that indirectly supply information to data gatherers, such as through other individuals or documents, are known as secondary data sources. Because secondary material is easily accessible in written form in books, scholarly journals, and other written sources, it is used as the primary reference in this study.

Conventional and online literature searches served as the method for gathering study data. Traditional methods of doing literature searches include searching the library's collection, buying books and journals, and participating in scientific events (seminars). A search engine is used to conduct online searches for items on the internet. Because it is important for establishing a theoretical foundation by studying and researching books, rules and regulations, papers, reports, archives, and other research findings both printed and electronic relevant to the object of study, this study uses traditional and online library search strategies.

The data analysis method used in this research is qualitative. [11] The goal of qualitative data analysis is to comprehend phenomena relating to what research subjects experience, such as behavior, perceptions, motivations, actions, and others, holistically and through verbal and linguistic descriptions, in a specific setting that is natural and with the aid of natural methods.

Because the data will be presented in a narrative-descriptive style rather than as figures or numbers, this study uses qualitative data analysis.[12]

### **3 Discussion**

#### **3.1 Development of the Penal System in Indonesia**

The system in the Big Indonesian Dictionary contains two meanings, namely a set of elements that are regularly interrelated so as to form a totality and can also be interpreted as an orderly arrangement of views, theories, principles and so on or it can also be interpreted as a system as a method. Punishment or giving or imposing a sentence comes from the term punishment in a narrow sense.[13]

Punishment is one way to achieve the objectives of criminal law in the form of criminal acts against a person or group of people who have committed a crime or an act considered contrary to existing norms [14]. One of the bases of sentencing is legal protection. In order to achieve the goals of life and livelihood together in the form of legal protection, it is carried out through sentencing for those who interfere with achieving the expected life, so that legal order can be achieved.

It should be highlighted that the idea of a financial system can be viewed in a broad or material meaning in addition to a specific or formal one. The criminal system, in a formal or restricted sense, is the power of a designated official to impose or not impose criminal sanctions in accordance with the law (judge). In a broad or material sense, the criminal justice system functions as a link in the chain of authorized authorities' legal actions, from the initial stages of inquiry and prosecution through the criminal judgment rendered by the court and implemented by the implementing apparatus.[15]

The criminal system in a broad sense is a criminal law enforcement system and is part of the crime prevention policy. The sentencing system is the laws and regulations related to criminal sanctions. The ultimate goal of criminal politics is the protection of society to achieve the main goal, namely the welfare of society. Thus the penal system, which is part of criminal politics, in essence is also an integral part of policies to achieve social welfare (social politics).

The entire body of statutory law, both in the Criminal Code and in specific laws outside of it, is effectively a single criminal code that comprises of both general and specific laws.[16]. The Criminal Code's Book I contains general regulations, whereas Books II and III, as well as individual statutes outside of the Criminal Code, contain more precise regulations. These particular rules typically define specific criminal offenses and also include exceptional rules that differ from conventional wisdom.

The old Criminal Code did not state the purpose and guidelines for sentencing so that the sentence imposed was interpreted in accordance with the views of law enforcement officials and judges, each of whom had a different interpretation. The punishment in the old Criminal Code was also rigid, in the sense that it was not possible to modify the punishment based on changes or self-development of the offender. Such a system of punishment in the old Criminal Code clearly did not give judges the freedom to choose the right punishment for the perpetrators of the crime.

Book I of the old Criminal Code, which contains general principles in the regulation of national criminal law, turns out to be unable to accommodate legal developments in Indonesia. As a result, the development of Indonesian legal principles no longer only adheres to Book I because all elements (state politics and legal politics) of the nation are developing rapidly. As a result, the development of principles tends to go beyond the old Criminal Code. The special law is said to be very wild because it regulates matters and its own principles which have no reference to the old Criminal Code which is regulated in Book II.

The old Criminal Code as a written law was always slow in responding to legal developments that occurred in society, this situation then gave birth to the idea to form a new criminal law outside the old Criminal Code. However, in the formulation of criminal law norms outside the old Criminal Code, it tended to break away from the ties of the old Criminal Code, especially Book I of the old Criminal Code which later gave birth to its own system of norms which had values and principles of criminal law that were separated from the general provisions of criminal law Book I of the old Criminal Code. , even in relation to Book II and Book II of the old Criminal Code, there is often duplication or repetition of arrangements and some of them have triple regulations, namely setting the same norms regulated in three different regulations accompanied by different criminal sanctions.

Death penalty is still listed in the old Criminal Code. For every offense that carries the death penalty, there is always an alternative to life imprisonment or a twenty-year temporary prison term, so the judge can choose between these three possibilities by looking at the form of the offense, so the death penalty is only imposed on offenses that are considered serious, in the case of death penalty imposed by the convict can apply clemency to the president. If the convict does not ask the president for clemency, it means that the president approves of the execution of the death penalty.

Thus, the sentencing system listed in the old Criminal Code recognizes two types of systems, namely the alternative sentencing system and the single sentencing system. Alternative means that the judge in deciding a case can sort out in making his decision, while the system single sentencing means that the judge in passing his decision must be in accordance with the formulation contained in the article.

The penal system which is formulated in the law, in essence is a system of authority to impose sentences; in fact, the existing criminal mechanism is considered to be unsatisfactory to society. This triggers a number of thoughts to make alternative efforts in responding to problems related to the handling of criminal acts that occur.

Criminal law renewal, in its most basic sense, refers to an effort to reorient and reform criminal law in accordance with the fundamental socio-political, socio-philosophical, and socio-cultural values of Indonesian society, which form the basis of social policy, criminal policy, and law enforcement policies in Indonesia. Legal substance, legal structure, and legal culture are all included in the renewal of criminal law in the sense of renewing it entirely and not in parts.

A multidimensional perspective that is important to the impact of criminal acts is the essence of the new Criminal Code's aim of punishment, which must first be internalized or comprehended. This approach will allow for punishment to be used to repair both individual and society harms. Punishment must also be aimed at maintaining and promoting communal unity because maintaining community solidarity is part of its goal (to maintain social cohesion intact).

If the goal of sentencing departs from the balance of the two main targets, then the terms of sentencing in the new Criminal Code also depart from the mono-dualistic balance between the interests of society and individual interests. Therefore, the terms of sentencing are based on two very fundamental pillars or principles, namely the principle of legality (which is a societal principle) and the principle of guilt or culpability (which is a human or individual principle). Departing from the idea of community protection, the new Criminal Code retains the types of serious punishment, namely death penalty (capital punishment) and life imprisonment (life sentence). In the new Criminal Code, the provisions regarding the punishment system have undergone renewal, namely the type and size of the sentence imposed.

The development of the philosophy of punishment towards a community-based or non-institutional punishment model at the implementation level has been adapted into the Indonesian legal system. As explained in Article 51 letters a and b of the new Criminal Code, it

emphasizes the importance of the role of the correctional system in the future. This article has explicitly explained that correctional is the goal of punishment in Indonesia. Punishment is not intended to humiliate human dignity.

### **3.2 Formulation of Sanctions in the New Criminal Code**

Legislation, often known as policy formulation, is the procedure that lawmakers use to enact laws and regulations (the government together with the House of Representatives). These two organizations have the power to enact laws, specifically through the process of putting legal expectations into practice. Therefore, every law that is created ought to be able to address all societal needs and events. In addition to the regulatory body, social and individual roles and influences, such as decency and custom, also influence the rule-making process.

Because a legal regulation will be created at the policy formulation or legislation stage, it is a strategically important stage in the development of criminal law policies. The legislative product known as this legislation is in the formulation stage of legal policy and has an abstract position (in the form of rules or laws), which means that this law will only have significance if it is really implemented. Therefore, in order for this law to be realized in society, it is necessary to have bodies that can carry it out. In legal science, these bodies are known as executive bodies, whereas those responsible for putting laws and regulations into effect are known as judicial bodies, or judicial bodies that are independent, neutral, and free from interference from other bodies.

Policy formulation can be in the form of criminalization or law reform by creating new rules or it can be in the form of regulations that change and add to or revise old regulations. In general, criminal law reform can be carried out for all parts of criminal law globally or in its entirety or partially or part of both criminal law and special criminal law.

The drafting of a new Criminal Code as a law that the Indonesian people aspire to (*ius constituendum*) rather than a legacy from the colonialists demonstrates Indonesia's legal renewal. This is due to the liberal, nonreligious, racial discriminatory, unrestricted respect for human rights, individualism, and rigid state absolutism values that the Dutch adopted during the colonial era. This value is obviously at odds with the identity values of the Indonesian country, which include respect for the public interest, mutual collaboration, and the divine.

The effect of a sanction is an empirical matter, because humans have different perceptions of these sanctions. Other parties consider that the main reason for the occurrence and increase in crime is the lightness of the sanctions or sentences imposed. The parties who carefully calculate the consequences of their behavior have a strong belief that light sanctions or punishments will not harm them too much, so that the risks that they will have to bear in the future will not be too heavy.

Determination of the type of crime by legislators is intended, among other things, to provide a set of tools for law enforcers in the context of tackling crime. In addition, it is also intended to limit law enforcers in using the means in the form of established punishments. They cannot use criminal means that are not previously determined by lawmakers. Thus the type of crime that is chosen and determined by legislators binds and limits other law enforcers.

Provisions regarding the punishment system in the new Criminal Code have undergone renewal, namely in terms of the type and size of the sentence imposed. The types of crimes contained in the new Criminal Code are as follows:

- a. Main crime.
- b. Additional penalty.
- c. Special crimes for certain criminal acts specified in the law.

Death penalty is at the top of the hierarchy related to the type of punishment, in other words capital punishment is the highest and most severe punishment in the Indonesian criminal law

system, there is no other type of punishment that exceeds capital punishment. Regulations regarding the formulation of death penalty policies are urgently needed by the Indonesian people, especially related to the formulation of death penalty policies in future Indonesian law in accordance with the socio-juridical and philosophical values of the Indonesian people by making efforts to reform Indonesian criminal law.

Article 67 of the new Criminal Code regulates death penalty as in Article 64 letter (c) is death penalty which is always threatened with an alternative. The provisions of Article 64 letter (c) and Article 67 of the new Criminal Code are the paths taken by the legislators so that the criminal Death is a punishment that is special in nature and is always threatened alternatively. This illustrates that in the regulation of capital punishment in the future, the Indonesian nation will take a middle way to continue to recognize the existence of capital punishment, but the death penalty must be specific and always be threatened alternatively so that the panel of judges in their considerations in deciding a case has a choice whether a person will be given a criminal sanction. dead or not.

Article 98 of the new Criminal Code states that capital punishment is threatened as an alternative as a last resort to prevent criminal acts from being committed and protect the community. Regulation of capital punishment in the Indonesian Criminal Code is an attempt to adapt capital punishment to the socio-cultural and religious values of the Indonesian nation by relying on the idea of balance, so that capital punishment is placed as a punishment that is specific in nature and is always threatened alternatively, as well as the exclusion of capital punishment from the ranks of the criminal justice system. principal punishment and death penalty is a last resort.

In addition to the types of criminal sanctions mentioned above, the new Criminal Code also contains special types of sanctions for children. This type of special sanction for children also consists of principal punishment and additional punishment. Meanwhile, Article 116 of the Criminal Code has just formulated additional types of crimes for children, which consist of:

- a. Deprivation of profits derived from criminal acts; or
- b. Fulfillment of customary obligations.

It can be seen that children are not subject to death penalty and life imprisonment. One of the new things in the new Criminal Code is a very new type of punishment in Indonesia, namely social work punishment. In addition, there is still a new concept regarding fines in this criminal law reform.

The new Criminal Code already regulates corporations as the subject of criminal acts in Articles 45 to 50. Considering that the main punishment that can be imposed on corporations is only fines, the maximum threat of fines imposed on corporations is heavier than the maximum threat of fines against people.

Indonesian criminal law currently in force does not yet regulate the types of social work punishment. Chronologically, social work punishment is the fourth generation of criminal sanctions that arise because of the notion that fines (as the third generation of punishment) are less effective when applied widely in society. The definition of social work punishment is not explained in Article 85 of the new Criminal Code.

Based on the provisions of Article 85 Paragraphs (3), (4), (5), (6), (7), (8) and (9) of the new Criminal Code, it is regulated that the implementation of social work punishment may not be commercialized. Social work punishment is carried out for a minimum of 8 (eight) hours and a maximum of two hundred and forty hours.

#### **4 Conclusion**

Based on the results of research and discussion it can be concluded as follows:

First, The existing penal system is considered unsatisfactory by society. The punishment system in the old Criminal Code did not mention the purpose and guidelines for sentencing. The punishment in the old Criminal Code was also rigid. Sociologically, the old Criminal Code was out of date and was often not in accordance with the values that lived in society. The old Criminal Code was always slow in responding to legal developments that occurred in society. This triggers the renewal of the new Criminal Code. In the new Criminal Code, the provisions regarding the punishment system have undergone renewal, namely the type and size of the sentence imposed. The new Criminal Code is motivated by various ideas which in general are called the idea of balance by using a multi-dimensional approach so that the purpose of punishment is to repair both individual and social damage.

Second, The types of punishments contained in the new Criminal Code are principal crimes, additional crimes, and crimes that are specific to certain criminal acts as determined by law. Death penalty is still formulated as the top of the hierarchy related to the type of punishment and is threatened as an alternative as a last resort. The new Criminal Code contains a special type of sanction for children which consists of the main punishment and additional punishment. One of the new things in the new Criminal Code is a very new type of punishment in Indonesia, namely social work and fines. The new Criminal Code also regulates corporations as subjects of crime.

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