

The Role of Legal Politics in the Formulation of Law No. 1 Year 2023 on the Criminal Code

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Abstract

The Criminal Code is an important legal instrument in building the criminal justice system in Indonesia. In accordance with the times, the government enacted Law No. 1 of 2023 on the Criminal Code (National Criminal Code) as a replacement for the old Criminal Code (Law No. 1 of 1946). In the formation of Law No. 1 of 2023, there is a role of legal politics in order to create regulations that are in accordance with the conditions of the Indonesian nation. This study aims to determine the role of legal politics in the formation of Law No. 1 of 2023. The research method used in this research is normative juridical research method using statutory approach, case approach, comparative approach, conceptual approach. The results of this study show that legal politics plays an important role in the formation of Law No. 1 of 2023, where legal politics plays a role in determining the direction of policies regulated in the National Criminal Code relating to recodification of criminal law, democratization of criminal law, consolidation of criminal law, and adaptation/harmonization to changes in the punishment system.

Keywords

Criminal Code; Law; Legal Politics

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1. INTRODUCTION

The Criminal Code or KUHP for short is a regulation that regulates criminal offenses and sanctions that exist and are enforced in Indonesia. The formation of the Criminal Code was initially based on the Dutch colonial period in Indonesia. In the early 20th century, the Dutch East Indies Government felt the need for legal regulations to deal with criminal offenses so that the Criminal Code was formed in 1818 in Indonesia. The Criminal Code that was formed at that time was still influenced by Dutch legal regulations, but over time the Criminal Code continued to undergo changes in accordance with the development and context of the needs of the community (Aji et al., 2020).

The Criminal Code (KUHP) during Indonesia's independence was an important legal instrument in developing the criminal justice system. The Criminal Code has undergone various revisions and



changes in order to be better in line with developments in the political, social and economic fields of Indonesia. The Criminal Code itself aims to protect the public from criminal offenses. At the end of the 20th century there were changes in the Criminal Code where the law became more transparent, effective and in line with democratic values (Wibisono, 2022).

Technological advancement and social change have impacted the Criminal Code. Technological advancement with the development of the digital era and the internet has become a challenge in the field of criminal law which has led to many negative behaviors such as cybercrime, the spread of negative content, and also violations of privacy. This has led to changes to the Criminal Code that adapt the law to the current environment so that it can be relevant and effective in dealing with crimes committed following technological developments. The Criminal Code in the last few decades has undergone several significant changes in accordance with the development of the needs of society (Malau, 2023).

Legislation is a phase or subsystem of the legal system. Therefore, discussing the politics of legislation is essentially inseparable from discussing the politics of crime. The political term of prison is based entirely on the principle that laws and regulations are basically plans or designs of political institutions (H. L. Marzuki, 2006).

According to M. Mahfud MD, legal politics is the state's official legal policy regarding laws that will or will not be enforced (new rule makers will revoke old rules) to achieve state goals. Based on several opinions, legal politics is a collection of concepts, principles, basic policies and statements of the will of state authorities which include the politics of legal formation, the politics of establishing laws and guidelines for rule enforcers to determine the direction, structure or content of the law. Formed (Adiwibowo, 2019).

In realizing the national criminal law in the Unitary State of the Republic of Indonesia which is based on Pancasila and the 1945 Constitution, in 2023 the government established Law of the Republic of Indonesia Number 1 of 2023 which contains the Criminal Code as an adjustment to legal politics, conditions and developments. life in society, nation and state which cannot be separated from upholding human rights. This law will come into effect after 3 years from its promulgation on January 2 2023. Law no. 1 of 2023 was created as a replacement for *Wetboek van Strafrecht* or Law no. 1 of 1946 actually (Undang-Undang No. 1 Tahun 2023 : Kitab Undang-Undang Hukum Pidana, 2023).

Progress on updating Law no. 1 of 2023 refers to 4 missions, namely recodification of criminal law, democratization of criminal law, consolidation of criminal law, and adaptation/harmonization. After the promulgation of Law No.1 of 2023, there were many new polemics/discourses, especially regarding the death penalty which was full of pros and cons. Todung Mulya Lubis as a senior human rights shop believes that the death penalty does not have an impact on all sides and also does not reduce the crime

rate. Even if the death penalty is imposed, it cannot bring the convict back to life, where usually in various countries there is a lot of evidence that the convict sentenced to the death penalty is not the perpetrator of the crime (Hukum Online, 2023).

This research is different from previous studies, where there are several studies that the author can describe as a comparison of this research. Among them is a study conducted by Any Ismayawati entitled *Approaches and Legal Politics in the Development of Criminal Law in Indonesia*, where the discussion in this study is that legal politics is the direction of legal development or the making and selection of laws based on state policies to make and determine laws and regulations in order to achieve the ideals and goals of the state as contained in paragraph IV of the Preamble of the 1945 Constitution of the Republic of Indonesia, with the basis used to determine the direction of legal development is the values that live in society crystallized in the precepts of Pancasila. Then the research conducted by Vivi Arfiani Siregar, Indra Mukhlis Adnan, and Muannif Ridwan with the research title *Legal Politics in the Implementation of the Juvenile Criminal Justice System in Indonesia*. This research discusses the ideal legal politics in regulating diversion to realize restorative justice in the juvenile criminal justice system. Whereas in this study, the topic under study is related to the role of legal politics in the formation of Law No. 1 of 2023 concerning the Criminal Code (National Criminal Code).

In order to create fair and relevant rules, of course there are laws and regulations that can be used as references or guidelines in upholding justice. In the formation of Law No. 1 of 2023, there is a role of legal politics in creating regulations that can represent all existing cases and are relevant to current community life. This study aims to determine the role of legal politics in the formation of Law No. 1 of 2023. This research is important to study in relation to knowing the influence of legal politics in the formation of Law No. 1 of 2023.

2. METODE

This writing uses normative juridical research methods through an approach based on the main legal material by examining theories, concepts, legal principles and legislation (Soemitro, 1994). Research using normative juridical methods is legal research conducted through research on library materials or secondary data as the main research material by conducting a search for regulations and literature related to the subject matter under study (Soekanto & Mamudji, 2001). In this research, a normative juridical approach method is used where secondary sources of material are examined in the form of theories, regulations and legal rules using a statutory approach, case approach, comparative approach, conceptual approach (P. M. Marzuki, 2009). The data source used in writing this scientific article is a secondary data source. Secondary data sources are data obtained or obtained from library materials or literature related to the object of research (Ishaq, 2016). This research is presented

qualitatively using descriptive analysis method, namely by describing the data to explain the problems obtained in the form of explanations based on laws and regulations, legal theories and the practice of implementing positive law and ending with certain conclusions.

3. HASIL DAN PEMBAHASAN

The Criminal Code is an important criminal law instrument in upholding justice during Indonesia's independence. To make the Criminal Code better in accordance with the times, the Criminal Code often undergoes changes and revisions in accordance with social, political and economic developments in Indonesia. The Criminal Code has the main purpose of protecting the public from criminal acts and maintaining public security and order. In the 20th century, legal reforms took place to become more transparent, effective, and in line with democratic values (Kristhy & Satrio, 2022).

Technological developments and social changes also affect changes in the Criminal Code. In this digital and internet era, new challenges are created, such as cybercrime, the spread of negative content, and privacy violations. Thus, it is necessary to adjust the law to make it more relevant and effective. Over the past few decades, the Criminal Code has been significantly revised to suit the needs of modern society. Some of the changes made were to discriminatory articles, increase sanctions for serious crimes, protect the rights of victims, protect children, and adapt to technological developments. These changes to the Criminal Code have also created pros and cons (Habibi & Liviani, 2020). Many criticize that the revised Criminal Code still does not provide adequate protection for human rights and freedom of expression. These changes are considered vulnerable to abuse of power by the legal apparatus. There are several articles that have drawn pros and cons related to blasphemy, defamation, and adultery. Despite the challenges and controversies, the amendment to the Criminal Code is an important part of building a fair and equitable legal system in Indonesia. The process of amending the Criminal Code must involve public participation and legal experts, academics, activists, and civil society, to ensure that all interests are well accommodated (Malau, 2023).

The Criminal Code is no longer relevant and effective in Indonesia, so a new Criminal Code is needed which is the work of the Indonesian people, not the legacy of the Colonial nation. Due to technological advances and social changes, in the current era, all forms of actions are still related to digitalization, whether in work, daily life, education or even criminal acts, it is necessary to reform the criminal law with justice. In this case, it is very necessary to adapt the law to be relevant to the current state of society. With various considerations and looking at the current conditions of society, the government and related institutions work together to create, improve or update the Criminal Code to suit the needs and conditions of today's society (Malau, 2023). The purpose of the new Criminal Code is to create a relevant and effective criminal law system.

In shaping all policies in Indonesia, law and policy-making institutions must not ignore philosophical elements because they characterize and characterize laws and policies in shaping a legal society in accordance with the ideology of the Indonesian nation (Wijaya et al., 2020). In the formation of a legislation, it is inseparable from the existence of legal politics that influences it.

The politics of law is a policy as a basis for organizing the state, especially in the field of law regarding laws that will run, are running and have been in effect which are taken from the values that grow and live and apply in society to achieve state goals as stated in the Preamble of the 1945 Constitution in the 4th paragraph. Based on article II of the Transitional Rules of the 1945 Constitution, which has been changed to article I of the Transitional Rules of the 1945 Constitution, provides a signal to the legislators in Indonesia to be able to realize the ideals of national law. To be able to fulfill these legal ideals, legal development and legal guidance are needed. In formulating and determining the legal politics that have been and will be carried out, legal politics delegate the authority of legislation to state administrators, but by still paying attention to the values prevailing in society (Fitriana, 2018).

Legal politics is a state policy that has the authority to determine the direction, form, and content of the law to be formed so that it can become a benchmark for punishment of a case (Hasan & Faralita, 2023). In this case, the government and related institutions have the authority to regulate a new Criminal Code that has been adjusted to the current needs and conditions of society.

As we know, legal products in Indonesia are political products. The House of Representatives holds the power to form laws and every draft law is discussed by the House of Representatives and the President to obtain joint approval. So that ratification of a Draft Legislative Regulation into Law is a form of mutual agreement between the President (Executive) and the House of Representatives (Legislature). This is the current legal politics as mandated by the Constitution.

The politics of law in the Draft Criminal Code is also called the politics of criminal law, which is basically a form of policy that responds to the development of human thinking about crime. The politics of criminal law must be able to encourage and fill all elements in the criminal law system to work in accordance with the ideals of the nation, the objectives of the State, the ideals of law, and the guiding principles of law in the Republic of Indonesia as contained in the preamble of the 1945 Constitution. Moh. Mahfud MD stated that national legal politics must be based on the following basic framework (Mahfud MD, 2011);

- a. The politics of national law must always lead to the ideals of the nation, namely a just and prosperous society based on Pancasila.
- b. The politics of national law must be aimed at achieving the objectives of the State, namely;
 - Protect the whole nation and the entire Indonesian blood sphere
 - Advancing the general welfare

- To educate the nation's life
 - Implementing world order based on independence, lasting peace and social justice.
- c. The politics of national law must be guided by the values of Pancasila as the basis of the State, namely;
- Based on religious morals
 - Respect and protect human rights without discrimination
 - Uniting all elements of the nation with all its primordial ties
 - Putting power under the power of the people
 - Building social justice
- d. The politics of national law must be guided by the need to;
- Protect all elements of the nation for the sake of national integration or integrity which includes ideology and territory
 - Realizing social justice in the economy and society
 - Realizing democracy and nomocracy
 - Creating tolerance of religious life based on civilization and humanity.
- e. To achieve the ideals and goals with the landansan and guidelines, the national legal system that must be built is the Pancasila legal system, which is a legal system that takes or combines various values of interests, social values, and concepts of justice into one prismatic legal bond by taking its good elements.

The ratification of Law No. 1 of 2023 on the Criminal Code (KUHP), often referred to as the National Criminal Code, on January 2, 2023 by the President replaced the *Wetboek van Strafrecht* or Criminal Code which was previously regulated in Law No. 1 of 1946 on Criminal Law Regulations which has undergone several amendments. The National Criminal Code will go through a transition period of 3 years before finally being used effectively (Sukamariko et al., 2023)

The birth of the National Criminal Code was a form of response to public unrest which thought that the old Criminal Code was no longer relevant to current societal conditions. The addition of new types of crime that are relevant to today's society, such as cyber crime and human trafficking or terrorism, will provide a clear and appropriate legal basis for handling criminal cases that arise in the modern era.

In addition, changes also occur in the proposed legal system. If in the old Criminal Code, the legal system was only directed at punishment and rehabilitation, then in the new Criminal Code, cases can be resolved with a restorative justice approach. Restorative justice approach is a peaceful settlement of cases. This kind of case settlement is expected to provide justice for victims. The restorative justice approach itself is a rule that certainly also comes from the agenda of the Indonesian state, namely

Pancasila, which is the source of Indonesian law. Various forms of changes and new rules in Law No. 1 of 2023 are a clear manifestation of the role of legal politics in the formation of this law. Legal politics has a significant influence and role in changing the content of the regulation of the National Criminal Code.

4. CONCLUSION

The ratification of Law No. 1 of 2023 on the National Criminal Code, on January 2, 2023, is to replace the *Wetboek van Strafrecht* or the Criminal Code (KUHP). The existence of this new Criminal Code, which contains matters that are relevant to the current life of the Indonesian people and brings noble values that have long existed and become the identity of the Indonesian people, is proof that the government and related institutions are always trying to make justice in Indonesia fairer and better. The formation of this law is closely related to the role of legal politics. The politics of law in the Draft Criminal Code is also called the politics of criminal law, which is basically a form of policy that responds to the development of human thinking about crime. The influence of legal politics plays a role in determining the content of the National Criminal Code, such as the addition of new types of criminal offenses that are relevant to society, to changes in the criminal law system in Indonesia.

REFERENCES

- Adiwibowo, M. (2019). *Politik Hukum Dalam Pembentukan Peraturan Daerah. Biro Hukum dan HAM.*
- Aji, R. N. B., Sumarno, & Hermawan, E. S. (2020). *Sejarah Pergerakan Nasional Indonesia 1900-1945: Dalam Perspektif Penguatan Nasion dan Nasionalisme.* Unesa University Press.
- Fitriana, M. K. (2018). Peranan Politik Hukum dalam Pembentukan Peraturan Perundang-Undangan di Indonesia sebagai Sarana Mewujudkan Tujuan Negara (Laws And Regulations In Indonesia As The Means Of Realizing The Country'S Goal). *Jurnal Legislasi Indonesia*, 12(2).
- Habibi, M. R., & Liviani, I. (2020). Kejahatan Teknologi Informasi (Cyber Crime) dan Penanggulangannya dalam Sistem Hukum Indonesia. *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam*, 23(2), 400–426.
- Hasan, A., & Faralita, E. (2023). Politik Hukum Dalam Perancangan Peraturan Daerah. *Jentera Hukum Borneo*, 6(2), 54–70.
- Hukum Online. (2023). Todung Mulya Lubis: Ada Kekosongan Hukum dalam Implementasi Pidana Mati. *Hukum Online*. <https://www.hukumonline.com/berita/a/todung-mulya-lubis--ada-kekosongan-hukum-dalam-implementasi-pidana-mati-lt649ac15402953/>
- Ishaq. (2016). *Dasar-dasar ilmu hukum edisi revisi.* Sinar Grafika.
- Undang-Undang No. 1 Tahun 2023 : Kitab Undang-Undang Hukum Pidana, (2023).
- Kristhy, M. E., & Satrio, H. (2022). Analisis Peran Hukum Dalam Pembangunan Ekonomi Nasional

- Menghadapi Era Revolusi Industri 4.0. *Jurnal Pendidikan Kewarganegaraan Undiksha*, 10(2), 244–249.
- Mahfud MD, M. (2011). *Membangun Politik Hukum, Menegakkan Konstitusi* (2 ed.). Rajawali Press.
- Malau, P. (2023). Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) Baru 2023. *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam*, 5(1), 837–844.
- Marzuki, H. L. (2006). Kekuatan Mengikat Putusan Mahkamah Konstitusi Terhadap Undang-Undang. *Jurnal Legislasi*, 3(1).
- Marzuki, P. M. (2009). *Pengantar Ilmu Hukum*. Kencana Prenanda Media Group.
- Soekanto, S., & Mamudji, S. (2001). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Rajawali.
- Soemitro, R. H. (1994). *Metodologi Penelitian Hukum dan Jurimetri*. Ghalia Indonesia.
- Sukamariko, A., Muqsith, M. H., Fahrudin, A., Al Farisi, A., & Meliana, N. (2023). Penyuluhan Hukum Mengenal Dan Memahami Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana Kepada Masyarakat Kampung Paluh Kecamatan Mempura Kabupaten Siak. *Jurnal Visi Pengabdian Kepada Masyarakat*, 4(2).
<https://doi.org/https://doi.org/10.51622/pengabdian.v4i2.1358>
- Wibisono, D. P. P. (2022). Upaya Polri Dalam Menanggulangi Tindak Pidana Pencurian Dengan Kekerasan Berdasarkan Pasal 365 Kitab Undang-Undang Hukum Pidana (KUHP). *JURNAL HUKUM MEDIA JUSTITIA NUSANTARA*, 12(1), 146–188.
- Wijaya, N. R., Perwira, T. H., & Rusman, R. S. (2020). PERANAN POLITIK HUKUM DALAM PEMBENTUKAN UNDANG-UNDANG NOMOR 18 TAHUN 2019 TENTANG PESANTREN. *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum*, 18(2), 78–80.