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HISTORY OF CRIMINAL LAW IN INDONESIA

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Abstract: *As a public law in nature, criminal law contains provisions that determine the rules for actions that cannot be carried out accompanied by threats in the form of punishment and determine the conditions for which the criminal can be imposed. In addition to upholding human values, criminal law is intended to enforce the criminal law to impose sanctions on humans who violate it. This is because later discussion of the material of criminal law is carried out with extra care by considering the community's context in which criminal law is enforced and still upholding civilized human values. Criminal law is considered acceptable if it meets and conforms to the importance of society. Conversely, criminal law is deemed insufficient if it is outdated and not according to society's values . Because Indonesia has been colonized, especially by Europeans, the Indonesian Criminal Code (KUHP) history is very long. The research that will be used uses a juridical normative review, and the approach used in this study is statutory conceptual and an analytical approach.*

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Introduction

As a public law, criminal law finds its importance in legal discourse in Indonesia. How could it not be, the criminal law contains rules that determine actions that may not be carried out accompanied by threats in the form of punishment and determine the conditions for imposing penalties. The public nature of criminal law has a consequence that the criminal law is national. Thus, Indonesian criminal law is enforced throughout the territory of the Indonesian state. Also, considering that the material of criminal law is full of humanitarian values, criminal law is often described as a double-edged sword.

On the one hand, criminal law aims at upholding human values, but on the other hand, criminal law enforcement provides misfortune sanctions for humans who violate it. Therefore, discussion of criminal law material is carried out with extra caution, namely by paying attention to the community's context in which criminal law is enforced and still upholding civilized human values. The suitability between criminal law and the society in which the criminal law is enforced is one of the prerequisites for whether or not criminal law is good. This means that criminal law is considered acceptable if it meets and conforms to society's values . Conversely, criminal law is deemed insufficient if it is outdated and not according to society's values . To welcome the reform of Indonesia's material criminal law (RUU KUHP), this article will highlight the history of the journey of Indonesian criminal law (KUHP) from time to time. With this kind of historical focus, it is hoped that some of the problems that have arisen during the enactment of the Criminal Code can be covered and become the basis for the reform of Indonesia's material criminal law (Hamzah, 2017).

Formulation Of The Problem

This journal will discuss the history of criminal law in Indonesia. Then the following problems
will be formulated:

1. What is the History of the Enforcement of Criminal Law in Indonesia?
2. What is the history of the Indonesian Criminal Code?
3. How is the problem of the application of the Criminal Code in Indonesia?

Research purposes

1. To Know About the History of the Enforcement of Criminal Law in Indonesia
2. To Know About the History of the Criminal Code in Indonesia
3. To Know the Problems of the Application of the Criminal Code in Indonesia

Research Methods

The research that will be used uses a juridical normative review, namely study by examining various sources such as sources of library materials such as journals, literature, books, written documents, and multiple laws such as legal theories, legislation, doctrine, opinions of legal experts. The approach used in this research is statutory, a conceptual approach, and an analytical approach (Ibrahim, 2006).

Result And Discussion

A. History of the Enforcement of Criminal Law in Indonesia

1. The Pre-Dutch Colonial Period

Before the Dutch's arrival, which was started by Vasco da Gamma in 1596, Indonesians had recognized and enforced customary criminal law. The majority of these unwritten customary criminal laws are local because they only apply in some customary regions. Customary law does not recognize a sharp separation between criminal law and civil law (private). The European system, which was later developed in Indonesia, is responsible for the strict separation of private and public criminal law. Problems in indigenous peoples' daily lives are determined by rules passed down from generation to generation and mixed

together in its stipulations. In some areas, customary law is intertwined with the religion of the community's official religion or the religion of the majority. Customary criminal laws in Aceh, Palembang, and Ujung Pandang, for example, are heavily infused with traditional Islamic values. Similarly, Hindu teachings have a strong influence on Balinese customary criminal law. Aside from having contact with the religion practiced by the majority of the population, another feature of customary criminal law is that it does not exist in a written regulation. These criminal law rules have been passed down from generation to generation through stories, discussions, and, in some cases, the implementation of criminal law in the area in question. However, these preserved customary laws have been translated into written form in several customary regions of the archipelago so that they can be read. The Kuntara Raja Niti Book, for example, contains Lampung customary law, Simbur Tjahaja, which includes South Sumatra customary criminal law. Balinese customary criminal law is contained in the Adigama Book. (Harahap, 2018)

2. The Period After the Arrival of Dutch Colonialism

a. Vereenigde Oost Indische Compagnie (VOC) Period 1602-1799

The period of Western criminal law implementation began after the Dutch arrived in the archipelago, as evidenced by the enactment of several criminal regulations by the VOC (Vereenigde Oost Indische Compagnie). The VOC was a Dutch trading partnership that was granted "territorial power" in the archipelago of the Dutch government. VOC privileges were in the form of the Staten General's octroi rights, which included a monopoly on shipping and trade, declaring war, making peace with the archipelago's kingdoms, and printing money. The VOC expanded its colonies in the archipelago as a result of the grant of such rights. To increase profits, the VOC imposed on the locals the rules it brought from Europe. Every VOC rule was announced in a plakaat, but the announcement was never kept on file. After it was announced, the regulation's plaque was released without being saved, making it unclear which rules were still in effect and which were no longer valid. This circumstance prompted the VOC's desire to re-collect these regulations. The Statuten van Batavia (Statute Betawi) was a collection of rules drafted in 1642. The Batavia Statute was revised in 1766, resulting in the New Batavia Statute. By having the same legal force as other regulations, the statute is valid as positive law for both natives and foreigners. Despite the fact that the rule contains a collection of rules, it cannot be called a codification of law because it has not been structured systematically. During the development of the VOC, one of its governors-general, Pieter Both, was given the authority to decide criminal cases in customary courts. The VOC intervened in customary criminal justice affairs for several reasons, including: I the system of punishment known in customary criminal law was insufficient to force its inhabitants to obey regulations; ii) the customary criminal justice system is sometimes unable to resolve criminal cases that occur due to problems with evidence; and iii) the customary criminal justice system is sometimes unable to resolve criminal cases that occur due to problems with evidence. An example is an act which according to the customary criminal law, is not considered a crime. Still, in the VOC's opinion, the action is regarded as a crime, so it needs to be punished accordingly. VOC interference in customary criminal law was the formation of the Cirebon Pepakem used by judges in customary criminal courts. The Cirebon Pepakem contains, among other things, the criminal system, such as beatings, burning stamps, chaining, and so

on. In 1750 the VOC also collected and issued the Muchtaraer Book of Law, which contained a collection of Islamic criminal laws. On December 31, 1799, the Vereenigde Oost Indische Compagnie was dissolved by the Dutch government, and the occupation of the archipelago was replaced by the British. Governor-General Raffles, who is considered the greatest governor-general in British colonies' history in the archipelago, did not change the existing law. He is even supposed to have great respect for customary law (Widnyana, 1993).

b. Besluiten Regering Period (1814-1855)

The Dutch re-occupied the archipelago after the British left in 1810. The colony's rule was left entirely to the king as absolute ruler at this time, rather than to a trading partnership as was the case during the VOC era. The king has absolute and highest power over colonies, according to Besluiten Regarding, which is based on Article 36 of the Dutch State Constitution. As a result, the Dutch used a constitutional monarchy government system at the time. The king has absolute power, but his whims are limited by a constitution. To carry it out, the king appointed a commissioner-general to carry out the government in the Netherlands Indie (Dutch East Indies). Capellen, Elout, Buyskes, and Van Dokter are their names. They continued to enforce the regulations that were in place during the British period and did not make any changes to rules until the codification of law was completed. Governor-General Du bis de Gisignes implemented agrarian politics to fill the void in the state treasury. Prisoners who were serving sentences were forced to perform forced labor (dwang arbeid). With this information, the Besluiten Regering (BR) period did not impose the new criminal law. However, several rules and regulations outside of criminal law were enacted at the same time, including the Reglement op de Rechtilijke Organisatie (RO) or Court Organization Regulations (POP), Algemene Bepalingen van Wetgeving (AB), and General Provisions Regarding Legislation. Burgerlijk Wetboek (BW) or Civil Code, Wetboek van Koopenhandel (WvK) or Commercial Law Code, and Reglement op de Burgerlijke Rechtsvordering (RV) or Civil Procedure Regulations (Rahman & Aris, 2014).

c. Regering Reglement Period (1855-1926)

The Regarding Reglement period began as a result of a shift in the Dutch government system from constitutional monarchy to parliamentary monarchy. This modification occurred in 1848 as a result of a change in the Dutch Grond Wet (UUD). Because the parliament (Staten Generaal) began to intervene in the Dutch colony's government and legislation, the king's power was reduced. This important change is the addition of Article 59 paragraphs (1), (2), and (4), which state that "In this part of the world, the king has supreme authority over the colony and royal assets. The law establishes the rules governing government policies. The financial system is governed by law. Other matters concerning colonies and assets, if necessary, will be governed by law ". With these provisions, it was clear that the Dutch king's authority over Indonesia's colonies had been diminished. (Widnyana, 1993).

The regulations governing territories were not solely stipulated by the king with the Koninklijk Besluit but had to go through a legislative mechanism at the parliamentary level. The basic rule made jointly by the king and parliament to regulate the government of a colony is the Regeling Reglement (RR). This RR is in the form of law and promulgated by Staatblad No. 2 of 1855. Hereinafter RR is referred to as the Dutch Colonial Government Constitution. During the period of this Regeling Reglement, several codifications of criminal

law were successfully enacted, namely:

1. Wetboek van Strafrecht voor Europeanen, also known as the European Criminal Code, was promulgated by Staatblad No. 55 in 1866.

2. Algemene Politie Strafreglement, which is an addition to the European Criminal Code. 3. Wetboek van Strafrecht voor Inlander, or the Indigenous Criminal Code, promulgated in 1872 by Staatblad No. 85.

4. Non-Europeans are subject to the Politie Strafreglement.

5. Wetboek van Strafrecht voor Netherlands-Indie, or the Criminal Code of the Dutch East Indies, promulgated by Staatblad No. 732 in 1915 and entered into force on January 1, 1918. (Daliyo, 2001).

d. Indische Staatregeling Period (1926-1942)

Indische Staatregeling (IS) is a renewal of the Regeling Reglement (RR), which went into effect on January 1, 1926, after being promulgated in Staatblad Number 415 Year 1925. This shift was brought about by changes in the Dutch East Indies government, which began in 1922 with the Grond Wet country of the Netherlands. Grond Wet, which occurred in 1922, resulted in changes in the government of the Dutch East Indies. The Netherlands Indies' state structure will be determined by law in accordance with Article 61 paragraphs (1) and (2) IS. At this time, the legal system in Indonesia became more transparent, particularly in Article 131 jo. The division of the Indonesian population and the applicable law are stated in Article 163 IS. As a result, the Dutch penal law (Wetboek van Strafrecht voor NetherlandsIndie) continues to apply to all Indonesian residents. Since its inception on January 1, 1918, Articles 131 and 163 of the Indische Staatregeling have emphasized Dutch criminal law enforcement. (Kurniawan, 2016).

e. Japanese Occupation Period (1942-1945)

In essence, the criminal law in Indonesian territory did not change significantly during the 3.5 years of Japanese occupation. Through Osamu Seirei, the Japanese army (Dai Nippon) reinstated the old Dutch regulations based on the Gun Seirei. The Japanese military government issued Osamu Seirei Number 1 in 1942 for the first time. Article 3 of the law states that for the time being, all government agencies and their powers, laws, and laws of the former government are still legally recognized, as long as they do not conflict with the military government. On this basis, it is clear that the laws governing government and others, including criminal law, continue to be based on Dutch criminal law, which is based on Article 131 jo. Article 163 Indische Staatregeling. As a result, the criminal law that applies to all population groups is the same as stated in Article 131 Indische Staatregeling, and population groups are as stated in Article 163 Indische Staatregeling. To supplement existing criminal law in Indonesia, the Japanese military government issued Gun Seirei with a special number in 1942, Osamu Seirei Number 25 in 1944, and Gun Seirei Number 14 in 1942. General criminal law and special criminal law were covered in Gun Seirei Special Number 1942 and Osamu Seirei Number 25 of 1944.

In the meantime, Gun Seirei No. 14 of 1942 governs courts in the Dutch East Indies. Because the Dutch East Indies region was divided into two parts with military authorities who did not supervise each other, Indonesia was familiar with dualism in criminal law during

this period. The Japanese Navy, based in Makassar, was in charge of eastern Indonesian territory. The Japanese army based in Jakarta ruled the western part of Indonesia. As a result, there are differences in the regulations that apply in each region in some cases. (Kanter & Sianturi, 2002).

3. After Independence

The period of criminal law enforcement in Indonesia following the proclamation of independence on August 17, 1945, is divided into four periods as in the history of the Indonesian legal system, which is based on the enactment of the four Indonesian constitutions, namely the first period after independence with the 1945 constitution, the second period after Indonesia adopted a union state constitution, and the third period after Indonesia adopted a union state constitution.

a. 1945-1949 years

The Indonesian nation became a free and sovereign nation on August 17, 1945, when the Indonesian state declared independence. The proclamation of independence was also used as the first step in transitioning from a colonial legal system to a national legal system that reflected the spirit and personality of the Indonesian nation. The Indonesian people are free to choose their own destiny, govern their own country, and establish their own legal system. On August 18, 1945, the Constitution, which served as the foundation for state administration, was ratified. The Constitution in question is the 1945 Constitution. Realizing the ideal that the proclamation marks the beginning of the transition from a colonial legal system to a national legal system is not easy or quick. This means that establishing a national legal system necessitates a more mature discussion and takes more time than simply declaring independence. As a result, to fill the legal vacuum (Rechts vacuum) created by the lack of national law, the 1945 Constitution mandates in Article II of the Transitional Rules that all state bodies and existing regulations remain in effect immediately, as long as new ones are not made in accordance with this Constitution. This provision explains that the laws necessary to regulate state administration have existed and been in effect since Indonesia's independence. While awaiting a new national legal system, all legal regulations in place in Indonesia prior to independence were temporarily implemented. (Daliyo, 2001).

This also implies that the Indonesian nation's founding fathers enjoined their descendants to transform the colonial legal system into a national legal system. President Sukarno re-issued Presidential Regulation Number 2 of 1945, dated October 10, 1945, for the first time as president, which consisted of two articles, namely: Article 1: All state agencies and existing regulations prior to the establishment of the Republic of Indonesia on August 17, 1945, and before the establishment of a new one in accordance with the Constitution, are still valid as long as they do not contradict the said Constitution. 2nd Article On August 17, 1945, this Regulation goes into effect. At first glance, this Presidential Decree appears to be almost identical to Article II of the 1945 Constitution's Transitional Rules. However, the limitation date is explicitly stated in this Presidential Decree, namely August 17, 1945. Law Number 1 of 1946 concerning Criminal Law Regulations serves as a legal foundation for the enforcement of colonial legacy criminal law in Indonesia. Article 1 of the law expressly states: By deviating as necessary from the Presidential Regulation of the Republic of Indonesia dated October 10, 1945, Number 2 stipulates that the criminal law regulations

currently in effect are those that existed on March 8, 1942. 15 With a turning point Because of the date of the handover of Dutch control over Indonesian territory to Japan, all criminal law regulations issued by the Japanese military government and issued by the Commander-in-Chief of the Dutch East Indies Army (NICA) after March 8, 1942, are automatically null and void. Article 2 of the law also states that all criminal law regulations issued by the supreme commander of the Dutch East Indies army are revoked. Article 2 is required because the commander-in-chief of the Dutch East Indies army issued Verordeningen van het military gezag prior to March 8, 1942. The following is the full text of Article 2 of Law Number 1 of 1946. The Dutch East Indies Army's criminal law regulations (Verordeningen van het military gezag) were all repealed. (Bahiej, 2005).

The enactment of Indonesian criminal law with Law Number 1 Year 1946 Concerning Criminal Law Regulations has yet to address the issue. This was due to the fact that the Indonesian people's physical struggle against Dutch colonialism had not yet been completed. De jure, Indonesia declared itself an independent nation, but de facto, Dutch colonization of Indonesia continued. The Netherlands has not completed its colonialism in Indonesia as a result of the terror acts carried out by the Dutch NICA and the puppet states that it was able to establish. Even on September 22, 1945, the Dutch issued Tijdelijke Biutengewonge Bepalingen van Strafrecht (Extraordinary Provisions Regarding Criminal Law) Staatblad Number 135 Year 1945, which went into effect on October 7, 1945. This provision regulates, among other things, the worsening of the criminal threat for criminal acts related to state administration, security, and order, the expansion of the area where certain articles of the Criminal Code are enforced, and the suspension of Article 1 of the Criminal Code so that this regulation can be retroactive. It appears that the purpose of this provision is to combat freedom fighters. Two criminal laws were enforced in Indonesia as a result of the two hostile "rulers" imposing two criminal law regulations. The existence of these two criminal laws is referred to by criminal law experts as the Criminal Code's dualism period. (Saleh & Pelengkap, 1981).

b. Years of 1949-1950

In 1949-1950, the Indonesian state became a union state due to the conditions for recognition of Independence from the Dutch state. With this change in the state's form, the 1945 Constitution is no longer valid and has been replaced by the Constitution of the Republic of the United States of Indonesia. As a transitional rule, Article 192 of the RIS Constitution states: The statutory regulations and administrative provisions that existed at the time this Constitution came into effect, remain in effect unchanged as the rules and regulations of the Republic of the United States of Indonesia itself, as long as and only those rules and provisions are not revoked, added or amended by law and administrative provisions upon the power of this Constitution. With this provision, practically, the applicable criminal law is still the same as before, namely Wetboek van Strafrecht. Based on Article 6 paragraph (2) of Law Number 1 Year 1946 can be referred to as the Criminal Code. However, the dualism of the Criminal Code that arose after the Dutch returned to Indonesia after Independence was still ongoing (Saleh & Pelengkap, 1981).

c. Years of 1950-1959

After the Indonesian state became a state in the form of a union state for seven months

and 16 days, as a political trick so that the Dutch recognized Indonesian sovereignty, on August 17, 1950, Indonesia returned to become a unitary republic. With this change, the current Constitution has changed, which is replaced by the Provisional Constitution. As a transitional regulation that continues to apply past criminal law during the present Constitution, Article 142 of the Provisional Constitution states: Laws and administrative regulations that existed on August 17, 1050, remain in effect unchanged as a rule. The Republic of Indonesia's rules and regulations, as long as and only those regulations and provisions are not revoked, added, or amended by-laws and administrative provisions upon the power of this Basic Law. With the provision of Article 142 of the Provisional Constitution, the applicable criminal law is still the same as in the previous period, namely Wetboek van Strafrecht (Criminal Code). However, the dualism issue of the Criminal Code that arose in 1945 until the end of the validity period of the Provisional Constitution was resolved by the issuance of Law Number 73 of 1958 concerning the Enactment of Law Number 1 of 1946 concerning Criminal Law Regulations for the Entire Territories of the Republic of Indonesia and Amending the Criminal Law Law. . In the explanation of the law, it is stated: "It is felt very odd that until now in Indonesia there are still two types of Criminal Code, namely the Criminal Code according to Law Number 1 Year 1946 and Wetboek Strafrecht voor Indonesia (Staatblad 1915). The number 732 is like several times changed), which is completely uncalled for. With the existence of this law, these anomalies are eliminated. Article 1 stipulates that Law Number 1 Year 1946 is declared to apply to all Republic of Indonesia regions. " Thus, the issue of the dualism of the Criminal Code imposed in Indonesia is deemed to have been resolved with the stipulation that Law Number 1 of 1946 concerning Criminal Law Regulations is declared to apply to all regions of the Republic of Indonesia (Engelbrecht & Engelbrecht, 1960).

d. Years of 1959 - now

After the issuance of a Presidential Decree on July 5, 1959, one of which contained the re-enactment of the 1945 Constitution, since then Indonesia has become a unitary state in the form of a republic with the 1945 Constitution as its Constitution. Therefore, Article II of the Transitional Rules reintroduces the old rules, including the criminal law. The enforcement of Indonesian criminal law based on Law Number 1 Year 1946 has continued until now. Thus it can be concluded that even though Indonesia has undergone four changes regarding the form of the state and the Constitution, the main source of criminal law has not changed, namely still in the Wetboek van Strafrecht (Criminal Code). However, its implementation is based on transitional provisions in each - each Constitution (Engelbrecht & Engelbrecht, 1960).

B. History of the Indonesian Criminal Code (Wetboek van Strafrecht)

The parent of Indonesia's criminal law regulations is the Criminal Code (KUHP). This Criminal Code has the original name Wetboek van Strafrecht voor Nederlandsch Indie (WvSNI), which was enforced in Indonesia for the first time Koninklijk Besluit (Titah Raja) Number 33 October 15, 1915, and came into effect on January 1, 1918. WvSNI is a derivative of the Dutch WvS created in 1881 and enforced in the Netherlands in 1886. Although WvSNI is a derivative (copy) of the Dutch WvS, the colonial government applied the concordance principle (adjustment) to the application of WvS in its colony. Several

articles were abolished and adapted to the conditions and mission of Dutch colonialism over Indonesian territory. If traced further back, the first time the Dutch state made criminal law legislation since 1795 and passed in 1809 during Lodewijk Napoleon's reign. This first codification of national criminal law is called Crimineel Wetboek voor Het Koninkrijk Holland. However, only two years into effect, in 1811, France colonized the Netherlands. It imposed the Penal Code (codification of criminal law), which was created in 1810 when Napoleon Bonaparte became France's ruler. In 1813, France left the Netherlands. However, the Dutch state still maintained the Penal Code until 1886. After France's departure in 1813, the Netherlands made efforts to reform its criminal law (Code Penal) for approximately 68 years (until 1881). During the attempt to improve the criminal law, the Penal Code underwent several changes, especially in terms of the criminal threat. Torture and burn stamp in the Penal Code are abolished and replaced with lenient penalties. In 1881, the Netherlands passed its new criminal law under Wetboek van Strafrecht as a substitute for the Napoleon Penal Code and entered into force five years later, namely in 1886. Before the Dutch state passed Wetboek van Strafrecht as a substitute for the Napoleon Penal Code in 1886, in the region The Dutch East Indies itself has imposed Wetboek van Strafrecht voor Europeanen (European Criminal Code) with Staatblad Year 1866 Number 55 and was declared in effect since January 1, 1867. Wetboek van Strafrecht voor Inlander (Criminal Code Code) was enforced for non-European communities. Indigenous) with Staatblad Year 1872 Number 85 and declared effective January 1 73.22 Thus, it can be stated that there was also a dualism of criminal law, namely criminal law for European groups and criminal law for non-European groups. This fact was felt by Idenburg (Minister van Kolonien) as an issue that had to be eliminated. Therefore, after two years of trying, in 1915, the Koninklijk Besluit (Titah Raja) Number 33 October 15, 1915, legalized the Wetboek van Strafrecht voor Netherlands Indie, which came into effect three years later, starting January 1, 1918 (Bahiej, 2005).

C. The Problems of the Application of the Indonesian Criminal Code (Wetboek van Strafrecht)

As explained above, Indonesia's 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, it is proper that Indonesian criminal law is a product of the Indonesian government. However, this idealism turned out to be incompatible with reality. Indonesian criminal law is still using the criminal law inherited from the Netherlands. Politically and sociologically, the enforcement of this colonial criminal law created problems for the Indonesian nation. These problems include the following (Hamzah, 2017).

1. The proclamation of Indonesia's independence 59 years ago marked the beginning of the transition of colonial law into national law. However, positive criminal law (KUHP) in Indonesia is a legacy of Dutch colonialism. This causes problems for an independent nation from a political standpoint. In other words, despite its independence, Indonesian criminal law has yet to break free from colonialism. (Moeljatno, 1993).
2. Since 1918, the Wetboek van Strafrecht, or Criminal Code, has been in effect in Indonesia. This means that the Criminal Code has been in effect for more than 87 years. If the age of the Criminal Code is calculated from its inception in the

Netherlands (1881), the KUHP is more than 124 years old. As a result, even though Indonesia has changed the material of this Criminal Code several times, the KUHP can be considered outdated and very old. These changes, however, did not address the major issue of the Criminal Code. The Dutch Criminal Code has undergone significant changes at this time. (Kanter & Sianturi, 2002).

3. According to Law Number 1 Year 1946, the original form of Indonesian criminal law is Wetboek van Strafrecht, also known as the Criminal Code. This indicates that the Criminal Code was originally written in Dutch. The KUHP on the market was translated from Dutch by several criminal law experts, including Mulyatno, Andi Hamzah, Sunarto Surodibroto, R. Susilo, and the National Law Development Agency. The Indonesian government has not issued an official translation of the Wetboek van Strafrecht. As a result, each translation may have a unique editorial. (Engelbrecht & Engelbrecht, 1960).
4. The spirit of the Dutch colonial criminal code differs from the spirit of the Indonesian nation. The Criminal Code, which was inherited from the Dutch East Indies era, is derived from the continental legal system (Civil Law System), also known as the Romano-Germanic Family, according to Rene David. Teachings that emphasize the flow of individualism and liberalism have an impact on the Romano-Germanic family (individualism, liberalism, and individual right). This is in stark contrast to the culture of the Indonesian people, which values social values. If the Criminal Code is forced to remain in effect, a clash of values and interests is not unavoidable. It will result in new crimes. (Rahman & Aris, 2014).

a. If the Criminal Code is viewed from three sides of the fundamental problems in criminal law, namely crime, criminal acts, and criminal liability, then the issues in the Criminal Code include:
b. The Criminal Code does not state the objectives and guidelines for punishment for judges or other law enforcers so that the direction of the punishment is not aimed at the same goal and pattern. Criminal law in the Criminal Code is also rigid because it is not possible to modify the crime based on the change or development of the perpetrator. The criminal system in the Criminal Code is also more rigid so that it does not allow judges to choose the right punishment for the perpetrator of the crime. For example, the types of crimes, capital punishment execution, fines, imprisonment, and child penalties (Saleh & Pelengkap, 1981).
c. Criminal action In determining the reasonable basis for the conviction of an act, the Criminal Code is positive because it must be stated by law (the principle of formal legality). Thus, the Criminal Code does not provide a place for laws that live in a society that is not written in legislation. Also, the Criminal Code adheres to Daadstrafrecht, namely action-oriented criminal law. This school has now been abandoned mainly because it only sees the aspect of action (Daad) and negates making (Dader). The Criminal Code still adheres to the distinction of crime and offense, which has now been abandoned. Criminal acts that have emerged in this modern era, such as money laundering, cybercrime, the environment, and several actions which, according to customary law, are considered criminal acts that have not

been covered in the Criminal Code. Therefore, sociologically, the Criminal Code is out of date and is often incompatible with the values that live in society (Saleh & Pelengkap, 1981).

d. Criminal liability

Several problems that arise in criminal responsibility include the principle of guilt, which is not explicitly stated in the Criminal Code but is only mentioned in Memorie van Toelichting (MvT) to explain WvS. The focus of guilt is a counterweight to the legality principle stated in Article 1 paragraph (1), which means that a person can be convicted because objectively he has indeed committed a criminal act (fulfills the formulation of the legality principle) and subjectively, there is an element of error in the perpetrator (fulfilling the principle formula). Culpability). Another problem is the problem related to the criminal responsibility of children. Children under the Criminal Code (Articles 45-47) are under 16 years of age. These articles do not regulate in detail the rules of punishment for children. Report 45 only states several alternatives that can be taken by the judge if the defendant is a child under 16 years of age. Besides, the Criminal Code does not mention corporate criminal responsibility. On the plain of reality, several criminal acts are often related to corporations, such as environmental pollution (Sudarto, 1981).

Conclusion

Considering the discussion about the history and problems of Indonesian criminal law above, reforming Indonesian criminal law is an indispensable necessity. The issues that arise related to the internal obsolescence of the Criminal Code and the development of the problems in people's lives externally add to the decisive impetus for the community to demand that the state immediately realize the codification of criminal law, which is national as a result of the efforts and thoughts of the Indonesian nation itself. Therefore, the Criminal Code Bill, which has been revised the umpteenth time, should immediately be discussed by the legislature for approval.

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