Journal of Law and Legal Reform (2021), **2(2)**, *pp.* 295-310.
DOI: **https://doi.org/10.15294/jllr.v2i2.46628** ISSN (Print) 2715-0941, ISSN (Online) 2715-0968

REVIEW ARTICLE

INDONESIAN PENAL REFORM: CONCEPT AND DIRECTION OF THOUGHT

Gita Nuzula 'Allamah[1]✉, Ali Masyhar[2]

[1] H. Sriyanto SH MH MM and Partners Law Office and Advocates
Perum Pejagoan Indah Blok B No. 12-13 K, Pejagoan, Kebumen, 54361, Indonesia
[2] Faculty of Law, Universitas Negeri Semarang, Indonesia
✉ gitanuzula7@gmail.com

CITED AS
Allamah, G. N., & Masyhar, A. (2021). Indonesian Penal Reform: Concept and Direction of Thought. *Journal of Law and Legal Reform, 2*(2), 295-310. https://doi.org/10.15294/jllr.v2i2.46628

Submitted: November 27, 2020 Revised: March 25, 2021 Accepted: April 30, 2021

ABSTRACT

Criminal law reform is essentially an effort to review and reform (reorientation and reform) criminal law in accordance with the development of the socio-political and socio-cultural values of Indonesian society that underlie social policies, criminal policies and law enforcement policies in Indonesia. Criminal law reforms in the context of improving the penal system are still being carried out. The reform of Indonesian law is currently directed at efforts to reorient the substance of criminal law rules which are considered no longer relevant to the life of the Indonesian people because many evil acts in the optics of society are not considered evil and are prohibited in the optics of positive law. All happened because Indonesian criminal law in general is a legacy from the Dutch, which is culturally different from the culture of Indonesian society which is Eastern style. If you place the law as a reflection of society, then the current Indonesian criminal law does not reflect this, then the reform of Indonesian criminal law currently leads to a reorientation of the substance of Indonesian criminal law according to the will of the community.

Keywords: *Penal Reform; Renewal of Criminal Law; Concept*

INTRODUCTION

Law is a description or reflection of the society in which the law applies. The law that applies in Indonesia will be effective if the law comes from the spirit of the people who created the law itself, namely the Indonesian legal community. As has been described above, that the laws that apply in our country today are no longer able to answer the challenges of the times, so a revolutionary change is needed in the sense that there is a need for a fundamental change from the existing law and legal system.

Pancasila as the root of the legal ideals of the Indonesian nation has a consequence that in the dynamics of the life of the nation and state, as a view of life adopted, it will provide coherence and direction (direction) in thoughts and actions. The idea of law is the idea, intention, creativity and thought regarding the law or the perception of the meaning of law, which in essence consists of three elements, namely justice, usability, and legal certainty. The ideals of law are formed in the minds and hearts of humans as a product of the unified view of life, religious beliefs, and social realities. In line with that, Indonesian law and law should rely on and refer to these ideals of law (Sidharta, 2010: 84-85).

Many of the laws in force in Indonesia come from the legacy of the Dutch colonial rule, for example the Criminal Code (KUHP) which was written in the early 19th century and often contradicts the social conditions of the Indonesian people in contemporary times today. This of course requires an effort to adjust to the level of progress of society, so that criminal law in Indonesia requires reform efforts. Thus, the idea of reforming and developing national criminal law is essentially inseparable from political, philosophical, sociological, and other practical considerations as reasons for reforming the national criminal law.

The consequence of the law that continues to undergo changes, changes, reforms and legal reforms will lead to progressive laws in the future, which aim to strengthen the virtues of law so that they are supposed to last a long period of time. In a repressive type of legal order, law is seen as a servant of repressive power and an order from a sovereign (bearer of political power) who has unlimited discretionary authority. In this type, law and the state and politics are not separate, so that the instrumental aspects of the law are more prominent (dominant is more prominent to the surface) than the expressive aspects. In the autonomous type of legal order, law is seen as an independent institution capable of controlling repression and protecting its own integrity. The legal order is based on the rule of law. Subordination of official decisions to law, legal integrity, and within that framework legal institutions and ways of thinking have clear boundaries. In this type is procedural justice that highly emphasized. In the responsive legal type, the law is seen as a facilitator of responses or suggestions for responses to social needs and aspirations. This view implies two things. First,

the law must be functional, pragmatic, purposeful and rational. Second, goals set the standard for criticism of what is working. In this type, the expressive aspect of law is more prominent than the other two types and substantive justice is also concerned with procedural justice. Through this responsive type of law, Satjipto Rahardjo considers it an ideal type of law (Rahardjo, 1982: 139). In the same context, Barda Nawawi Arief, the development of general regulations on the Criminal Code since the enactment of Law no. 1 of 1946 regarding the Criminal Law Regulations to date, has not undergone any fundamental changes, because basically the general principles of criminal law and punishment in the Criminal Code are still like those of the Dutch East Indies WvS (Arief, 2009: 4).

Legal reform cannot be separated from the concept of legal reform, which has a very broad scope, because legal reform does not only mean reforming laws and regulations. Legal reform includes the legal system as a whole, namely reform of the legal substance, legal structure, and legal culture. In essence, criminal law reform is an effort to review and reform (reorientation and reform) criminal law in accordance with the development of socio-political and socio-cultural values of Indonesian society. Therefore, the exploration of community values in the effort to reform Indonesian criminal law must be carried out so that the Indonesian criminal law in the future is in accordance with the current conditions of the socio-political and socio-cultural Indonesian society. In its implementation, the exploration of this value is based on positive criminal law, customary law, religious law, criminal law in other countries, as well as international agreements regarding the material of criminal law. Religious law, especially that which is adhered to by the majority, namely Islam, needs to be a source for modern and contemporary legal reform because the interpretation of religious law also follows the development of society (Maula, 2010: 10).

The reform of Indonesian criminal law aimed at accommodating the laws that live in society into the content of criminal law regulations is a form of criminal politics through efforts to criminalize acts. Such an effort is an effort to suppress crimes that occur in society, at the same time being linear with efforts to create welfare because conduciveness in the social life of the community is one of the supporting factors for the creation of community welfare. Legal pluralism is an advantage but also a problem because legal pluralism if it is not accommodated in statutory regulations can trigger the ineffectiveness of the law, because the law is not in line with the culture of society, or it means that the community does not want laws that are incompatible with society (Prasetyo, 2015: 20).

As a public law, criminal law finds its importance in legal discourse in Indonesia. In the criminal law, there are rules that determine the actions that may not be carried out accompanied by threats in the form of punishment and determine the conditions for which the penalties can be imposed. The public nature of criminal law has a consequence that the criminal law is national in nature.

Thus, Indonesian criminal law is enforced throughout the territory of the Indonesian state. In addition, 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 actually imposes sanctions on misery for humans who violate it. Therefore, discussion of the material of criminal law is carried out with extra caution, namely by paying attention to the context of the community in which criminal law is enforced and still upholding civilized human values. The issue of suitability between criminal law and the community 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 good if it meets and conforms to the values held by society. Conversely, criminal law is considered bad if it is outdated and not in accordance with the values in society (Pradityo, 2017: 137).

This paper seeks to examine the concept of reforming Indonesian criminal law as part of legal reform efforts in welcoming the reform of Indonesian criminal law. In addition, this paper also examines the direction of criminal law reform in the main points of thought or basic ideas or socio-philosophical, socio-political and socio-cultural values that underlie criminal policies and criminal law enforcement policies so far.

METHOD

This study uses a normative juridical research method, namely research with a focus on the study of norms in positive law. The approach used in this research is a conceptual approach, namely the concept/direction of reform of Indonesian criminal law. Legal materials in this study use literature legal materials from number of literatures that are relevant to the focus of this study (Ibrahim, 2006: 57).

THE CONCEPT OF INDONESIAN CRIMINAL LAW REFORM

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 it is appropriate that Indonesian criminal law is a product of the Indonesian nation itself. However, this idealism did not match the reality. Indonesian criminal law is still using the criminal law inherited from the Netherlands. Politically and sociologically, the enforcement of this colonial criminal law clearly created problems for the Indonesian nation.

In essence, criminal law reform is an effort to review and reform (reorientation and reform) criminal law in accordance with the development of socio-political and socio-cultural values of Indonesian society. Therefore, the

exploration of community values in the effort to reform Indonesian criminal law must be carried out so that the Indonesian criminal law in the future is in accordance with the current conditions of the socio-political and socio-cultural Indonesian society. In its implementation, the exploration of this value is based on customary law, positive criminal law, religious law, criminal law in other countries, as well as international agreements on the material of criminal law (Muladi, 2005: 4).

Criminal law is part of the legal system or norm system. As a system, criminal law has the general nature of a system, namely *wholism*, has several elements, all elements are interrelated (relations) and then forms a structure. Lawrence W. Friedman divides it into three elements, namely structural elements, substance elements, and legal culture elements (Friedman, 2015: 12-18). From the description above, there is the determination of the Indonesian nation to realize a criminal law reform which can be interpreted as an attempt to reorient and reform criminal law in accordance with the central values of socio-political, socio-philosophical and socio-cultural which underlie and giving sides to the aspired normative content and substance of criminal law (Arief, 2010: 30).

Legal reform in a legal system includes four main aspects of the legal system, namely:

a. Philosophical aspects, namely the existence of values that underlie the legal system.
b. Legal principles aspects.
c. Normative aspects, namely the existence of norms or laws/regulations.
d. Sociological aspects, namely the legal community as supporters of the legal system.

These four basic aspects are arranged in a series one by one which forms a substantive system of law (national) (Ariyanti, 2019: 183). The essence of legal reform is how to renew the law in a legal system so that the four main aspects above are in one unity or have a unifying fabric. The definition of unity here is intended so that these four aspects become one for the whole or the whole (*wholism*), are interrelated (relations) and form a structure (Ariyanti, 2019: 184).

The meaning of criminal law reform for the benefit of Indonesian society refers to two functions in criminal law, the first is the primary or main function of criminal law, is to tackle crimes. Meanwhile, the secondary function is to ensure that the authorities (government) in overcoming crimes actually carry out their duties in accordance with what has been outlined by the criminal law. In its function of overcoming crime, criminal law is part of criminal politics, in addition to non-penal efforts in such countermeasures. Given this function, the formation of criminal law will not be separated from a review of the effectiveness of law enforcement. The need for criminal law reform is also related to the substance of the KUHP which is dogmatic in nature (Teguh & Aria, 2011: 8).

Efforts to reform criminal law in the formation of a national Criminal Code are a basic necessity for society in order to create fair law enforcement. Criminal

law is an effort to tackle crime through the criminal law, so that the fear of crime can be avoided through criminal law enforcement with criminal sanctions. Criminal law with the threat of criminal sanctions cannot be a legal guarantee or the main threat to human freedom in social and state life. The criminal sanctions referred to here, to restore the original situation as a result of a violation of the law committed by a person or by a group of people, require certainty and law enforcement. Such criminal sanctions will be obtained by the formation of the National Criminal Code that reflects the values, society of Indonesia (Teguh & Aria, 2011: 10). The reform of Indonesian criminal law is based on the following reasons:

a. The Criminal Code is seen as no longer in accordance with the dynamics of the development of Indonesia's national criminal law.
b. The development of Criminal Law outside the Criminal Code, both in the form of special criminal law and administrative criminal law, has shifted the existence of the criminal law system in the Criminal Code. This situation has resulted in the formation of more than one criminal law system that is applicable in the national criminal law system.
c. In several cases there have also been duplication of criminal law norms between the criminal law norms in the Criminal Code and the criminal law norms in laws outside the Criminal Code (Arief, 2010: 9).

The current Criminal Code does not regulate the concepts adopted in relation to the meaning of Criminal Acts and Criminal Liability. This situation often creates debate as well as differences in the enforcement of criminal law in Indonesia. Although basically most of the teachers of Dutch criminal law are influenced by a monistic view, which basically sees the issue of accountability as part of a criminal act. This means that in a criminal act itself includes the ability to be responsible. It has been a long time since Indonesia has developed dualistic thinking, one of which is specifically influenced by Prof. Moelyatno as conveyed in his inaugural speech as a professor at Gajah Mada University, which basically assumes that the concept that separates "*criminal acts*" from the issue of "criminal liability" is considered more in line with the way of thinking of the Indonesian people. This concept seems to have been used as one of the bases in updating the Criminal Code, as seen in the title of chapter II (book I), namely "Criminal Actions and Criminal Accountability" (Pohan, 2010).

The three pillars of criminal law reform are influenced by the use of the dualistic concept referred to above, the pillars of reforming Indonesian criminal law include:

a. Criminal Act.
b. Criminal Responsibility.
c. Criminal and Criminal (Punishment and Treatment System) (Anwar & Adang, 2008: 50).

The meaning and essence of criminal law reform can be pursued in two ways as follows:

a. Viewed from a policy approach point of view.
   1) As part of social policy, criminal law reform is essentially part of an effort to overcome social problems in order to achieve / support national goals (community welfare).
   2) As part of the criminal policy, criminal law reform is essentially a part of public protection efforts (particularly efforts to combat crime).
   3) As part of law enforcement policies, criminal law reform is essentially part of an effort to renew the substance of the law in order to make law enforcement more effective.
b. Seen from the point of view of the value approach that the reform of criminal law is essentially part of an effort to review and reassess the socio-political, socio-philosophical and socio-cultural values that underlie and provide content to the aspired normative & substantive content of criminal law (Arief, 2010: 29-30).

Reforming criminal law has become an urgent need for fundamental changes in order to achieve the goals of a better and more humane crime. This need is in line with the strong desire to be able to realize a law enforcement that is more just for every form of criminal law violation in this reform era. An era that urgently needs openness, democracy, protection of human rights, law enforcement and justice/truth in all aspects of the life of society, nation and state.

In this reform era, there are 3 factors of criminal law order that are very urgent and must be renewed immediately. First, positive criminal law to regulate aspects of community life is no longer in accordance with the times. Some of the positive criminal law arrangements are legacy products of colonial law such as the Criminal Code, where the provisions in the Criminal Code lack social relevance to the conditions it regulates. Second, some of the provisions of positive criminal law are no longer in line with the spirit of reform which upholds the values of freedom, justice, independence, human rights and democracy. Third, the application of positive criminal law provisions creates injustice to the people, especially political activists, human rights and democratic life in this country (Arief, 2010: 8-9).

In reforming criminal law in Indonesia, it must first be known about the main problems in criminal law. This is so important, because the criminal law that applies nationally, as Sudarto said, is also a reflection of a society that reflects the values that are the basis of that society. If these values change, then the criminal law must also change (Abidin, 1993: 3).

THE MAIN THOUGHT OF CRIMINAL LAW RENEWAL

Efforts to reform criminal law, in essence, include the field of criminal law policy which is part of and closely related to law enforcement policies, criminal policies

and social policies. Therefore, the reform of criminal law is in principle part of a policy (rational effort) to renew the substance of the law in order to make law enforcement more effective, tackle crimes in the framework of protecting society, and overcome social problems and humanitarian problems in order to achieve national goals, namely social protection and social welfare (Arief, 2011: 3).

In addition, criminal law reform is also part of an effort to review and reassess basic thoughts or ideas or socio-philosophical, socio-political and socio-cultural values that underlie criminal policies and criminal law enforcement policies so far. It is not a criminal law reform if the idealized value orientation of the criminal law is the same as the value orientation of the old criminal law inherited from the colonizers (KUHP WvS). Thus, criminal law reform must be formulated with a policy-oriented approach, as well as a value-oriented approach. Therefore, criminal law reform should be based on the basic ideas of Pancasila, which is the basis for the values of national life that are aspired to and explored for the Indonesian nation. The basic ideas of Pancasila contain a balance of values/ideas in it. The following is the balance of ideas/values in question:

1. Religious.
2. Humanistic.
3. Nationalism.
4. Democracy.
5. Social justice (Arief, 2011: 4).

If the balance of the five ideas is difficult to explore and implement, then it can be compressed into three balances, namely:

1. Religious.
2. Socio-democracy (unification of the ideas of democracy and social justice).
3. Socio-nationalism (union between humanistic ideas and nationalism).

And if the three condensed ideas are still deemed difficult to explore and implement, one idea is sufficient, namely gotong royong (gotong royong), which includes all the previously formulated ideas. If it is related to the concept of criminal law reform (the material criminal law system and its principles) which is currently being fought for, it must be based on the main ideas mentioned above. In principle, the idea is simply called the idea of balance. This balance idea includes several things, namely:

1. Monodualistic balance between public interest and individual interest.
2. Balance between protection/interests of criminal offenders (the idea of criminal individualization) and victims of criminal acts.
3. The balance between the objective (action/outer) and subjective (person/mental attitude) factors is commonly called the *daad-dader strafrecht* idea.
4. Balance between formal and material criteria.
5. Balance between legal certainty, flexibility and justice.
6. Balance of national values and universal values (Arief, 2011: 7).

Then, this idea of balance is also manifested in three main problems of criminal law, namely in matters of criminal acts, problems of criminal error/liability, as well as problems of crime and conviction. Briefly and take only one example each, the following is a brief description of the implementation of the idea of balance into the three main problems of criminal law.

1. Crime Issue (Legal Source / Legal Basis)

   Legal sources or legality bases to declare an act as a criminal act, are not only based on the principle of formal legality (based on law), but also based on the principle of material legality, namely by giving place to living law or unwritten law in society. Therefore, it is necessary to expand the legality principle based on:

   a. The basis of national legislative policy after independence.
   b. The foundation of scientific agreement, through national seminars, for example.
   c. Sociological foundation.
   d. Universal and comparative basis (comparison).

2. Error Issue (Criminal Liability).

   The principle of no punishment without error (the principle of culpability) which is the principle of humanity, is explicitly formulated in the concept as a pair of the legality principle which is the principle of society. The concept of renewal also does not view the two principles as rigid and absolute conditions. In certain cases, the concept provides the possibility to apply the principle of strict liability, the principle of vicarious liability and the principle of forgiveness or forgiveness by judges (*rechterlijk pardon* or judicial pardon). In the principle of forgiveness or forgiveness by judges, there are several points of thought, including to avoid the rigidity or absolutism of punishment, as well as a form of judicial correction of the legality principle. This is solely so that judges in enforcing the law are not only for the law itself (Soedarto, 2010: 100).

3. Criminal and Criminal Matters.

   The idea of balance implemented in criminal and criminal matters is as follows:

   a. Purpose of Criminalization.

      Starting from the idea that the criminal law system is a unitary system that aim and the criminal is only a means to achieve the goal, the concept of formulating the objectives of punishment is based on the balance of two main objectives, namely protection of the community and protection / fostering of individuals. In another sense, the way criminal law works must face social realities.

   b. Terms of Criminalization.

      Starting from these two main objectives, the terms of punishment according to the concept also depart from a mono-dualistic balance,

between the interests of society and the interests of individuals. Therefore, the conditions for punishment are based on two very fundamental principles, namely the principle of legality (the principle of society) and the principle of fault/culpability (the principle of humanity/individual).

c. Problem Criminal.

Another aspect of community protection is the protection of victims and restoration of the balance of values that have been disturbed in society. To fulfill this aspect, the concept of providing additional sanctions in the form of compensation payments and fulfillment of customary obligations. So, in addition to the perpetrator of a criminal act receiving criminal sanctions, the victim or the community also gets attention and compensation in the criminal system.

d. Criminal Guidelines / Rules Issues.

The idea of a balance between certainty (rigidity) and flexibility (flexibility) is also implemented in the guidelines and rules of punishment, one of which is that, even though there is a conviction that has permanent strength, it is still possible to change or review (the principle of modification of sanction) to the decision. This happens when there is a change in the laws and regulations, as well as a change in the improvement of the convicted person. However, in certain cases if there is a conflict between legal certainty and justice, the concept provides guidance so that in considering the law to be applied, the judge should prioritize justice over legal certainty as far as possible (Saleh, 1983: 22).

DIRECTION OF CRIMINAL LAW REFORM IN INDONESIA

Development in the field of law, especially the development or reform of criminal law, not only building legal institutions, but also must include the development of legal products that are the result of a legal system in the form of criminal law regulation and which are cultural in nature, namely attitudes. and values that influence the enforcement of the legal system (Rahardjo, 1980: 84-86). Reform and development of criminal law cannot be carried out ad-hoc (partial) but must be fundamental, comprehensive and systemic in the form of recodification which includes 3 (three) main problems of criminal law, namely the formulation of criminal acts, criminal liability (criminal responsibility) both from actors in the form of natural people (natural person) and corporations (corporate criminal responsibility) and crimes and actions that can be applied (Muladi & Sulistyani, 2013: 89).

In the Criminal Code, criminal acts are divided into two, namely crimes and violations. However, in general, criminal acts can be divided as follows:

1. Crime and offense.

2. Formal offenses and material offenses.
3. Delik Dolus and Delik Culpa.
4. Offense commissionis, offense ommossionis and offense commissionis perommissinis commissa.
5. Single offense and multiple offense.
6. *Aflopenda* delicten and voortdurende delicten.
7. Complaint offense and regular offense.
8. Simple offense and offense with justification (Lamintang, 1990: 213).

Initially legal experts divide the types of criminal acts into what is called *rechtdelicten* and *wetsdelicten*. *Rechtdelicten* are offenses that are contrary to unwritten law, while *wetsdelicten* are offenses which are deemed appropriate to be punished, because they are stated in that way which deserves to be punished (Soedarto, 1990: 28).

Responding to the condition of Indonesian law which still has a western culture due to the application of the Dutch state co-conditions principle to its colonies, legal reform is needed in relation to the original Indonesian law. According to Sudarto, legal reform, especially criminal law, is felt to have a high level of urgency because it involves the first three things, political reasons, namely that an independent country must have its own national law, for the sake of national pride. Second, sociological reasons are reasons that require laws to reflect the culture of a nation. Third, the practical reason for wanting the applicable law in a country is the law in the country's native language, not a translation of the law from which it originates (Muladi, 1985: 85).

Criminal law reform is part of a broad legal reform. According to Barda Nawawi Arief, criminal law reform is essentially part of a rational effort to make law enforcement effective through improving legal substance, rational efforts to tackle crime (evil deeds both by law and by society), national efforts to overcome social problems that can be resolved through law. . Criminal law reform according to the author can be interpreted as legal politics in the sense of post factum or legal politics implemented when concrete situations have occurred in society (Arief, 1999: 89).

Sudarto gave an opinion regarding the criminal law policy in relation to criminalization, the following points must be considered:

1. Must pay attention to the national development goals, which data make a just and prosperous society based on Pancasila.
2. Actions that would be prohibited by the Criminal law must be actions that are not desired by the community (Soedarto, 1990: 39).

Starting from the national goal of Soedarto and Barda Nawawi Arief argues that criminal law reform must be shown to:

1. Protection of the community from harmful and harmful asocial actions / actions.
2. Improvement of perpetrators of asocial acts / actions as a form of community protection from dangerous traits.

3. Law enforcement that resolves conflicts by restoring the balance lost due to criminal acts (Hiariej, 2016: 108).

The reform of the criminal law as mentioned above relates to criminalization which is related to acts that are against the law. An act against the law in the realm of criminal law should be final, namely an act that is contrary to written law as a consequence of the application of the *lex certa* principle, this can be interpreted as an unlawful nature. However, the doctrine is known to be against material law, namely actions that are contrary to the appropriateness or values of justice in society. Violating formal and material laws sometimes contradicts the result of the incompleteness of the law. For example, the *overspelling* of a young couple who are not in a marriage bond is not considered a formal act of violating the law,

The direction of reforming Indonesian criminal law is in a position of how to accommodate laws that live in society into positive law within the framework of national goals oriented to Pancasila as well as alternatives that can be used to address pluralism of law in Indonesia in order to avoid conflicts between one law and the law. other. Accommodating laws that live in society is an effort to review a number of prohibitions that are immoral in nature but are not regulated in positive law.

According to Devlin, the policy of increasing immoral acts as a criminal act, morality is a reflection of the existence of society. control of immoral acts by law can be justified, so that criminalization based on acts deemed immoral can be justified. In line with Devlin's opinion, according to Sudarto, the reform of Indonesian criminal law is currently directed at the reorientation of main ideas, basic ideas, or socio-philosophical, socio-cultural and socio-political values of Indonesian criminal law in accordance with national objectives that reside in ideology of nation (Soedarto, 1990: 39).

Paying attention to the direction of reforming Indonesian criminal law, is how to align it with national goals through accommodating laws that live in society into positive law. Reforming criminal law, especially material criminal law, is directly related to the criminalization of acts. According to Soerjono Soekanto, criminalization is an act or determination by the authorities regarding certain actions which the community or community groups consider as actions that can be convicted of being a criminal act or make an act a criminal act and therefore can be punished by the government by working on his name (Soekanto, Liklikuwata & Kusumah, 1981: 74-76).

The act of criminalization by the state is a form of legislation which has limitations aimed at protecting the community (citizens) as subjects which it regulates so that their freedom is not limited. Criminalization has a relationship with changes that occur in society. Social change does not only mean changes in the structure and function of society, but also includes changes in the values, attitudes and behavior patterns of the community. If you pay attention to criminalization, it is closely related to the condition of the social structure,

meaning that the social structure affects an act that is categorized as a criminal act when the act is against the law in a material sense (mala in perse). Criminalization of actions that are considered contrary to the values that live in society cannot be separated from Eugent Erlich's opinion regarding living law. According to the author, criminalization of bandage is obligatory for the will in the social structure through agreed principles as the main door for criminalization.

Paying attention to this in the context of criminalization is an elaboration of bringing up positive law with laws that live in a society that is often in conflict. The living law view of law shows another side of law that is not just a law in its formal (formal legalistic) sense. Law is born in the realm of everyday experience, formed through habits that eventually become an effective order in society. An order that prohibits an act is usually considered to be contrary to appropriateness in social life.

According to Suteki, in relation to living law, it states that the law does not fall from the sky but processes in the dynamics of society and creates certain constellations. One of the standards for criminalizing acts that are against the law in society is customary law. The nature of customary law in viewing violations is restoration, meaning that there are customary actions that must be taken. The concrete recovery measures include the payment of customary fines.

Hilman Hadikusuma further stated that the characteristics of customary criminal law are the interconnectedness between the real and the unreal, the human power and the unseen power which results in disruption of the harmony that is built in the intended link. These characteristics lead to the consequence of resolving conflicts that occur in the realm of customary crimes in the form of the implementation of a number of rituals to restore the damaged harmony caused by customary offenses. The current issue of criminalization is emphasizing acts that are prohibited but not followed by sanctions in a customary style whose goal is to restore which is reflected through traditional rituals. The types of sanctions in the current criminalization process are more inclined to apply criminal sanctions as referred to in article 10 of the Criminal Code (Pradityo, 2017: 139).

The draft of the Criminal Code as an *ius contituendum* has a futuristic direction where the types of sanctions are more varied than the current Criminal Code which is a Dutch heritage with a different cultural pattern. The current Criminal Code with its western style is oriented towards justice, certainty, and benefit. Meanwhile, Indonesia as an eastern country is oriented towards peace as a legal goal. The philosophy (goal) of the Indonesian nation is a philosophy extracted from the culture and life of the Indonesian nation that has existed for hundreds of years. According to Soediman Kartohadiprojo, the philosophy of the Indonesian nation is not a free individual but an individual who is bound in the sense of kinship. Amendments to the Draft Criminal Code are in the form of additional penalties for the fulfillment of local customary obligations or legal

obligations that live in the community. This formulation shows the eastern-oriented goal of law in the form of peace.

The author's argument is based on the fact in indigenous peoples that violations (criminal acts) are seen as disturbances of balance (*evenwichtstoring*), harmony, and harmony in community life which results in individual and community damage. Criminalization is a public reaction that aims to restore the damaged balance, harmony and harmony as a result of an offense (a criminal act). Damage to balance, harmony, and harmony as a disorder (not peaceful) is countered by implementing customary provisions aimed at restoring the damaged balance, harmony, and harmony so that they become peaceful again is the goal of eastern-oriented law.

The development of the Draft Criminal Code which has begun to lead to eastern-style legal objectives is seen as accommodating the values that live in society as well as efforts to elaborate the existing legal system in Indonesia, is how to reconcile modern law through legal formalism with values that live in society as a source. the value. However, it would be more comprehensive if the provisions on customary payments were placed as the main crime not as an additional punishment, so that it became the main (primary) crime, but the criminal act crystallized from the customary provisions or customary crimes which were then regulated in positive law which was automatically followed by a system of sanctions so as not to eliminate the characteristics of customary law as well as the embodiment of the oriental style, namely the presence of peace (Pradityo, 2017: 140-141).

CONCLUSION

Criminal law reform is essentially an effort to review and reform (reorientation and reform) criminal law in accordance with the development of socio-political and socio-cultural values of Indonesian society that underlie social policies, criminal policies and law enforcement policies in Indonesia. Criminal law reforms in the context of improving the penal system are still being carried out. The reform of Indonesian law is currently directed at efforts to reorient the substance of criminal law rules which are considered no longer relevant to the life of the Indonesian people because many evil acts in the people's optics are not considered evil and are prohibited in the optics of positive law. All happened because Indonesian criminal law in general is a legacy from the Dutch, which is culturally different from the culture of Indonesian society which is Eastern style. If you place the law as a reflection of society, then the current Indonesian criminal law does not reflect this, then the reform of Indonesian criminal law currently leads to a reorientation of the substance of Indonesian criminal law in accordance with the will of the community. Therefore, it is suggested that the law must reflect on society, thus Indonesia's current criminal law does not reflect this, so the current reform of Indonesian criminal law leads to a reorientation of the

substance of Indonesian criminal law in accordance with the will of the community. In addition, criminal law must be carried out extra cautiously, namely by taking into account the context of society because criminal law is a basic need for society in order to create fair law enforcement.

REFERENCES

Abidin. A. Z. (1993). *Bunga Rampai Hukum Pidana*. Jakarta: Pradnya Paramita.

Anwar, Y., & Adang, A. (2008). *Pembaharuan Hukum Pidana*. Jakarta: Grasindo.

Arief, B. N. (1996). *Bunga Rampai Kebijakan Hukum Pidana*. Jakarta: Citra Aditya Bakti.

Arief, B. N. (2009). *RUU KUHP Baru Sebuah Resrukturisasi/Rekonstruksi Sistem Hukum Pidana Indonesia.* Semarang: Badan Penerbit Universitas Diponegoro.

Arief, B. N. (2010). *Bunga Rampai Kebijakan Hukum Pidana*. Cetakan Kedua. Jakarta: PT. Kencana Prenada Media Group.

Arief, B. N. (2011). *Pembaharuan Hukum Pidana dalam Perspektif Kajian Perbandingan*. Bandung: PT. Citra Aditya Bakti.

Ariyanti, V. (2019). Pembaharuan Hukum Pidana di Indonesia yang Berkeadilan Gender dalam Ranah Kebijakan Formulasi, Aplikasi, dan Eksekusi. *Halu Oleo Law Review*, *3*(2), 178-195.

Friedman, L. M. (2015). *Sistem Hukum Perspektif Ilmu Sosial*. Cet. 7. Translated by M. Khozim, 2015, Bandung: Nusamedia.

Hiariej, E. O. S. (2016). *Prinsip-Prinsip Hukum Pidana*. Jakarta: Cahaya Atma Pustaka.

Ibrahim, J. (2006). *Teori dan Metodologi Penelitian Hukum*. Malang: Bayu Media Publishing.

Lamintang, P. A. F, (1990). *Dasar-Dasar Hukum Pidana Indonesia*. Bandung: Sinar Baru.

Maula, B. S. (2010). *Sosiologi Hukum Islam di Indonesia: Studi tentang Realitas Hukum Islam dalam Konfigurasi Sosial dan* Politik. Malang: Aditya Media Publishing.

Muladi, M. (1985). *Lembaga Pidana Bersyarat*. Jakarta: Alumni.

Muladi, M. (2005). *Lembaga Pidana Bersyarat*. Cetakan Ketiga. Bandung: Alumni.

Muladi, M., & Sulistyani, D. (2013). *Pertanggungjawaban Pidana Korporasi*. Bandung: PT. Alumni.

Pradityo, R. (2018). Menuju Pembaharuan Hukum Pidana Indonesia: Suatu Tinjauan Singkat. *Jurnal Legislasi Indonesia*, *14*(2), 137-143..

Prasetyo, T. (2015). *Keadilan Bermartabat: Perspektif Teori Hukum*. Jakarta: Nusa Media.

Rahardjo, S. (1980). *Hukum dan Masyarakat*. Bandung: Angkasa.

Rahardjo, S. (1982). *Ilmu Hukum*. Bandung: Alumni.
Saleh, R. (1983). *Suatu Reorientasi dalam Hukum Pidana.* Jakarta: Aksara Baru.
Sidharta, A. B. (2010). *Ilmu Hukum Indonesia*. Bandung: FH Unika Parahyangan.
Soedarto, S. (1990). *Hukum Pidana 1 A dan 1 B*. Purwokerto: Fakultas Hukum Universitas Jenderal Soedirman.
Soedarto, S. (2010). *Kapita Selekta Hukum Pidana*. Bandung: PT. Alumni.
Soekanto, S., Liklikuwata, H., & Kusumah, M. W. (1981). *Kriminologi: Suatu Pengantar.* Bandung: Ghalia Indonesia.
Teguh, T., & Aria, A. (2011). Hukum Pidana Horizon Baru Pasca Reformasi. Jakarta: Raja Grafindo Persada.