

## **NORMATIVE TEST FOR ENFORCEMENT OF COLONIAL LAW AND MORAL JUSTICE ARTICLE OF CONTROVERS IN THE NATIONAL KUHP BILL**

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### **Abstract**

Indonesia is an independent country. In criminal law it is still colonized. At first, the implementation of the colonial Criminal Code (KUHP) was only temporary. The law has legalized the adjustment of the implementation of the colonial Criminal Code in the spirit of an independent and sovereign state. I just don't have the courage to do it. The plan to stipulate the original Indonesian Criminal Code was met with demonstrations. In this paper, the problem that will be revealed is what is the normative measure of the enforcement of the colonial Criminal Code in Indonesia and how is the moral justice of the controversial articles in the National Criminal Code Bill. This paper is sourced from normative research. The data used is secondary data. Data collection was carried out by means of a literature study, The data were analyzed qualitatively and presented in descriptive form. From the results of the research, it is known that the Act has legalized the enactment of the colonial Criminal Code in Indonesia, with exceptions. The articles in the Draft Criminal Code which are considered controversial have already accommodated moral values.

Keywords: Normative Test, Colonial Criminal Code, Controversial Articles, Criminal Code Bill

## INTRODUCTION

Dear Professor Barda, The Dutch Criminal Code was enacted in 1881, and entered into force in September 1886. I have counted 425 changes in the period September 1886- July 2016. The first change was in 1988, the next one in 1893. The last change that I could count was in July 2016. To my regret I do not have the relevant data at my disposal regarding the last three years until now. In the period June 2013-July 2016, however, there were 28 changes. My estimate for the years 2016-2019 therefore is about 30. That brings me to the total of 455 changes in the period between September 1886 and today. I apologize for not being more exact for the last three years, but hopefully, this information suffices for you. King regards from Nico Kijzer.

Although there is no direct relationship between the messages of Prof. Nico Keijzer in the Netherlands to Prof. Barda in Indonesia, with this article, at least provides information that the original Dutch Criminal Code, which is now being applied in Indonesia, has undergone changes in the Netherlands. These changes are of course not only based on the ever-changing legal politics of the Netherlands, but also on the background of the conditions of civilization the Netherlands and also the demands of the world situation require change.

## RESEARCH METHODS

This research is research using a normative approach or also called doctrinal research, or also called library research. Judging from the data used, normative research is research that uses secondary data. The secondary data used is the law that legalized the enactment of the colonial Criminal Code in Indonesia as the basis for answering the first question, in addition to several concepts from criminal law experts. To answer the second question, the data used are several articles that are considered controversial in the Draft Criminal Code and also several verses in the Qur'an. The data collected was then analyzed qualitatively and presented descriptively.

## RESEARCH RESULTS AND DISCUSSION

### **The normative test of the enactment of colonial law in Indonesia as an independent country.**

Talking about the normative test of the enactment of the Colonial Criminal Code in Indonesia as an independent country and its exceptions, there are at least three rules, namely:

- a. "All existing statutory regulations are still valid as long as new ones have not been enacted according to this Constitution". (Article 1 transitional rule of the 1945 Constitution)
- b. "All state agencies and regulations that existed until the establishment of the Republic of Indonesia on August 17, 1945, as long as new ones have not been enacted according to the Constitution are still applicable, provided it does not conflict with the Constitution/Constitution". (Article 1 Perpres/Government Regulation No. 2 Year 1945 dated October 10, 1945).
- c. "Criminal Law Regulations, which are wholly or partly unenforceable, or contradict the position of the Republic of Indonesia as an independent State, or have no meaning anymore, must be considered in whole or in part temporarily invalid" (Article 5 of Law No. 1 1946 which was promulgated on February 26, 1946 concerning the Criminal Code).

Article 1 Presidential/Government Regulation No. 2 of 1946 mandates that it is permissible for colonial heritage regulations to apply in Indonesia, as long as they do not

conflict with the 1945 Constitution. The 1945 Constitution (read Pancasila), which in the long term must be replaced by laws that are not in line with the 1945 Constitution.

In its journey, the mandate of Article 1 of Presidential/Government Regulation No. 2 of 1946 was constitutionally reaffirmed/reinforced the 1945 Constitution of the Republic of Indonesia as a result of the amendments, such as: a. State recognition of the existence of customary law and traditional rights (Article 18 paragraph (2) of the 1945 Constitution); b. The mandate for the judicial power to administer justice based on law and justice; c. Guarantee of fair legal certainty and equality before the law.

Especially in the application of criminal law, through article 5 of Law no. 1 of 1946 gave a mandate for legislators and law enforcement to think that the existing Criminal Code (KUHP) in force in Indonesia is not in accordance with the sovereignty of an independent country, so it is necessary to reform it, either by making the right one. new or reform at the time of its implementation.

Reforms in making laws are realized by partially making Criminal Law Laws outside the Criminal Code (for lawmakers) and making breakthroughs in the implementation of the Criminal Code so that they are compatible with Indonesia (for law enforcers).

Renewal by lawmakers outside the Criminal Code is often called the formulation of criminal provisions outside the Criminal Code.<sup>1</sup> Several laws outside the Criminal Code which in their articles formulate the formulation of criminal acts, seem to be the basis for the inclusion of criminal acts in the Criminal Code. If this is the case, then it can be understood that in the Draft Criminal Code there is a codification of the Criminal Law Act outside the Criminal Code.

Several laws outside the Criminal Code that became the basis for the formulation of the Criminal Code Bill, including:<sup>2</sup>(1) Law no. 9 of 1998 concerning Freedom to Express Opinions in Public; (2) Law no. 23 of 2004 concerning Domestic Violence; (3) Law no. 21 of 2007 concerning Trafficking in Persons; (4) Law no. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination; (5) Law no. 16 of 2011 concerning Legal Aid; (6) Law no. 5 of 1990 concerning Conservation of Natural Resources; (7) Law no. 41 of 1999 concerning Forestry; (8) Law no. 7 of 2004 concerning Water Resources; (9) Law no. 32 of 2009 concerning Environmental Protection and Management; (10) Law no. 5 of 1960 concerning Agrarian Principles; (11) Law no. 20 of 2011 concerning Flats; (12) Law no. 29 of 2000 concerning the Protection of Plant Varieties; (13) Law no. 30 of 2000 concerning Trade Secrets; (14) Law no. 13 of 2000 concerning Industrial Design; (15) Law no. 32 concerning Layout Design of Integrated Circuits; (15) Law no. 14 of 2001 concerning Patents; (16) Law no. 15 of 2001 concerning Brands; (17) Law no. 28 of 2014 concerning Copyright; (18) Law no. 1/PNPS of 1965 concerning Prevention of Abuse and/or Blasphemy against religion; (19) Law no. 41 of 2004 concerning Waqf; (20) Law no. 13 of 2008 concerning the Organization of the Hajj; (21) Law no. 23 of 2001 concerning Management of Zakat; (22) Law no. 4/PNPS of 1963 concerning Security of Printed Goods whose contents disturb public order; (23) Law no. 4 of 1990 concerning Handover of Printed and Recorded Works; (24) Law no. 43 Regarding Archives; (25) Law no. 15 of 2006 concerning the Supreme Audit Agency; (26) Law no. 14 of 2008 concerning Public Information Disclosure; (27) Law no. 37 of 2008 concerning the Ombusman; (28) Law no. 24 of 2009 concerning the Language Flag, State Emblem and National Anthem; (29) Law no. 16 of 1997 concerning Statistics; (30) Law No. 12 of 2006 concerning Citizenship; (31) Law no. 23 of 2006

<sup>1</sup>(See Attachment to the Academic Draft of the Draft Law on the Criminal Code, National Legal Development Agency, Ministry of Law and Human Rights, 2015).

<sup>2</sup>(See Attachment to the Academic Draft of the Draft Law on the Criminal Code, National Legal Development Agency, Ministry of Law and Human Rights, 2015).

concerning Population Administration; (32) Law no. 1 of 2011 concerning Settlement and Housing; (33) Law no. 3 of 2005 concerning the Sports System; (34) Law no. 26 of 2000 concerning the Court of Human Rights; (35) Law no. 23 of 2002 concerning Child Protection; (36) Law No. 30 of 2002 concerning the Corruption Eradication Commission; (37) Law no. 13 of 2006 concerning the Protection of Witnesses and Victims; (38) Law no. 11 of 2012 concerning the Juvenile Justice System; (39) Law no. 1 of 1962 concerning Marine Quarantine; (40) Law no. 2 of 1962 concerning Air Quarantine; (41) Law no. 4 of 1984 concerning Outbreaks of Infectious Diseases; (42) Law no. 16 of 1992 concerning Animal, Fish and Plant Quarantine; (43) Law no. 5 of 1997 concerning Psychotropics; (44) Law no. 29 of 2004 concerning Medical Practice; (45) Law no. 18 of 2008 concerning Waste Management; (46) Law no. 35 of 2009 concerning Narcotics; (47) Law no. 36 of 2009 concerning Health; (47) Law no. 44 of 2009 concerning Hospitals; (48) Law no. 4 of 1997 concerning Persons with Disabilities; (49) Law no. 13 of 1998 concerning the Welfare of the Elderly; (50) Law no. 16 of 2001 concerning Foundations; (51) Law no. 24 of 2007 concerning Disaster Management; (52) Law no. 24 of 2011 concerning the Agency for the Implementation of Social Security; (53) Law no. 9 of 1961 concerning Collection of Goods or Money; (54) Law no. 2 of 1992 concerning Insurance; (55) Law no. 11 of 1992 concerning Pension Funds; (56) Law no. 8 of 1995 concerning the Capital Market; (57) Law no. 20 of 1997 concerning Non-Tax State Revenue; (58) Law no. 10 of 1998 concerning Banking; (59) Law no. 23 of 1999 concerning Bank Indonesia (60) Law no. 24 of 1999 concerning Foreign Exchange Traffic and Exchange Rate System; (61) Law no. 24 of 2002 concerning Government Securities; (62) Law no. 15 of 2004 concerning Audit of State Financial Management and Responsibility; (63) Law no. 24 of 2004 concerning the Deposit Insurance Corporation; (64) Law no. 19 of 2008 concerning Sharia Securities; (65) Law no. 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering; (66) Law no. 3 of 2011 concerning Fund Transfers; (67) Law No. 7 of 2011 concerning Currency; (68) Law no. 21 of 2011 concerning the Financial Services Authority; (69) Law no. 18 of 1999 concerning Construction Services; (70) Law no. 11 of 1980 concerning the Crime of Bribery; (71) Law no. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption; (72) Law no. 36 of 1999 concerning Telecommunications; (73) Law no. 1999 concerning the Press; (74) Law no. 32 of 2002 concerning Broadcasting; (75) Law no. 33 of 2009 concerning Film; (76) Law no. 38 of 2009 concerning Posts; (77) Law No. 12 of 1985 concerning Land and Building Tax; (78) Law no. 13 of 1985 concerning Material Duties; (79) Law no. 19 of 2000 concerning Billing by Forced Sira; (80) Law no. 17 of 2006 concerning Customs; (81) Law no. 28 of 2007 concerning General Provisions and Tax Procedures; (82) Law no. 39 of 2007 concerning Excise; (83) Law no. 28 of 2009 concerning Regional Taxes and Regional Retributions; (84) Law no. 13 of 2010 concerning Horticulture; (85) Law no. 11 of 2010 on Cultural Conservation; (86) Law no. 18 of 2002 concerning the National Research System, Development and Application of Science and Technology; (87) Law no. 20 of 2003 concerning the National Education System; (88) Law no. 31 of 2008 concerning Meteorology, Climatology and Geophysics; (89) Law no. 12 of 2012 concerning the Higher Education System; (89) Law no. 7 of 1981 concerning Mandatory Reporting of Employment in Companies; (90) Law no. 3 of 1992 concerning Social Security for workers; (91) Law no. 21 of 2000 concerning Trade Unions; (92) Law no. 13 of 2003 concerning Manpower; (93) Law no. 2 of 2004 concerning Settlement of Industrial Relations Disputes; (94) Law no. 39 of 2004 concerning the Placement and Protection of Workers; (95) Law no. 9 of 2011 concerning Pawn Receipt System; (96) Law no. 2 of 1981 concerning Legal Meteorology; (97) Law no. 3 of 1982 concerning Compulsory Company Registration; (98) Law no. 5 of 1984 concerning Industry; (99) Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Competition; (100) Law no. 8 of 1999 concerning Consumer Protection;

(101) Law no. 42 of 1999 concerning Fiduciary Guarantee; (102) Law no. 20 of 2008 concerning Micro, Small and Medium Enterprises; (103) Law no. 2 of 2009 concerning Commercial Export Financing Institutions (104) Law no. 10 of 2011 concerning Commodity Futures Trading; (104) Law no. 27 of 1997 concerning Mobilization and Demobilization; (105) Law no. 56 of 999 concerning Trained People; (106) Law no. 15 of 2003 concerning Eradication of Criminal Acts of Terrorism; (107) Law no. 17 of 2011 concerning State Intelligence; (108) Law no. 10 of 1997 on nuclear power; (109) Law no. 30 of 2009 concerning Electricity; (110) Law no. 44 of 2008 concerning Pornography; (111) Law No. 38 of 2004 concerning Roads; (112) Law no. 23 of 2007 concerning Railways; (113) Law no. 17 of 2008 concerning Shipping; (114) Law no. 1 of 2009 concerning Aviation; (115) Law no. 22 of 2009 concerning Road Traffic and Transportation.

For law enforcement officers, criminal law reform has been carried out based on the Act which is the source of criminal case proceedings. The birth of the Criminal Procedure Code (KUHAP), the Basic Law on Judicial Power, the Law on the Prosecutor's Office, the Law on the Police, the Law on Advocates, the Law on the Supreme Court, all of which gave positive contributions to reform criminal law in practice.

According to Muladi, Indonesia must have its own Criminal Code, which is based on political reasons (an independent nation must have its own Criminal Code as national pride that is in line with national goals); sociological reasons that require the existence of a Criminal Code that reflects the cultural values of a nation; and practical reasons, that the fact shows that the colonized country (Indonesia) received a colonial legacy of the Criminal Code, either through concordance, jurisprudence and doctrines instilled by the colonial state that were not understood by the newly independent young generation.<sup>3</sup>

Muladi further emphasized that the renewal and development of criminal law cannot be carried out ad-hoc/partial but must be comprehensive and systemic in nature in the form of re-codification which includes 3 (three) main issues of criminal law, namely criminal acts that are against the law/criminal act. , criminal liability/criminal responsibility both natural human actors/natural person and corporate/corporate criminal responsibility and criminal as well as actions that can be applied.<sup>4</sup>

The fourth paragraph of the 1945 Constitution states: "Then from that to form a Government of the State of Indonesia which protects the entire Indonesian nation and the entire homeland of Indonesia and to promote general welfare, educate the nation's life, and participate in carrying out world order based on independence, eternal peace. and social justice....".

In the context of criminal law, the sentence above is understood by Barda Nawawi Arief, that criminal law must strive for social defense and social welfare, which must be reflected in national development goals,<sup>5</sup> in addition to the necessity to harmonize universal laws for the sake of law and order among nations in the era of multi-dimensional globalization.<sup>6</sup>

Departing from the goal of "public protection/social defense, the objectives of criminal law enforcement" according to Barda Nawawi can be distinguished:<sup>7</sup>

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<sup>3</sup>See Muadi, Conditional Criminal Institute, Alumni, Bandung, 1985, page 1 /Academic Manuscript of RU KUHP Pg. 1

<sup>4</sup>Check out Muladi and Diah Sulistyami, Corporate Criminal and Criminal Responsibility, Alumni, Bandung, 2013 /Akavemim Manuscript of the Criminal Code Bill p. 1

<sup>5</sup>Barda Nawawi Arief, Crime and Purpose of Sentencing, Diponegoro University Publishing Agency, Semarang, 2009 p. 43 /Academic Draft of the Criminal Code Bill p. 3

<sup>6</sup>Muladi, Law, Globalization and Human Rights, Lecture at PDIH UNDIP, 7 November 2014/Academic Manuscript of the Criminal Code Bill p. 3

<sup>7</sup>Barda Nawawai Arief, Op Cit, hm. 43 /Academic Draft of the Criminal Code Bill p. 4

1. Protection of the community from anti-social acts that harm and endanger the community, then the purpose of punishment is to prevent and overcome crime;
2. Protection of the community from the dangerous nature of a person, then the purpose of the punishment is to correct the perpetrator of the crime or try to change and influence his behavior so that he returns to obey the law and become a good and useful citizen;
3. Protection of the public from abuse of sanctions or reactions from law enforcement and citizens in general, then the purpose of punishment is to prevent arbitrary treatment or action outside the law;
4. Protection of the community from disturbances in the balance or harmony of various interests and values as a result of the existence of a crime, then criminal law enforcement must be able to resolve conflicts caused by criminal acts, be able to restore balance and bring a sense of security and peace in society.

The four things mentioned above seem to be accommodated in the Criminal Code Bill, in particular the article that regulates the purpose of punishment (Article 52), sentencing guidelines (Article 53), and things that need to be considered in sentencing/criminal sentences (Article 54). These articles are described as follows:

1. Article 52 of the Draft Criminal Code

- (1) Sentencing aims to:

- a. Preventing the commission of criminal acts by enforcing legal norms for the protection and protection of the community;
    - b. Socializing the convicts by conducting coaching and mentoring so that they become good and useful people;
    - c. Resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of security and peace in society; and
    - d. Cultivating a sense of remorse and freeing the guilt of the convict;

- (2) Sentencing is not meant to demean human dignity

2. Article 53 of the Draft Criminal Code

- (1) In adjudicating a criminal case, the judge is obliged to uphold the law and justice;
  - (2) If in upholding law and justice as referred to in paragraph (1) there is a conflict between legal certainty and justice, the judge must prioritize justice.

3. Article 54 of the Draft Criminal Code

- (1) In sentencing, it is mandatory to consider:

- a. Errors of perpetrators of criminal acts;
    - b. The motive and purpose of committing a crime;
    - c. The inner attitude of the perpetrator of the crime;
    - d. The crime was committed with a planned or unplanned;
    - e. How to commit a crime;
    - f. Attitudes and actions of the perpetrator after committing a crime;
    - g. Curriculum vitae, social condition and economic condition of the perpetrator of the crime;
    - h. The effect of the crime on the future of the perpetrator of the crime;
    - i. The effect of the crime on the victim or the victim's family;
    - j. Forgiveness from the victim and/or his family; and/or;
    - k. Values of law and justice that live in society;

- (2) The lightness of the act, the personal circumstances of the perpetrator, or the circumstances at the time the crime was committed and what happened later can be

used as a basis for consideration not to impose a crime or not to impose an action taking into account the aspects of justice and humanity.

The Criminal Code Bill consists of the first book on general rules and the second book on criminal acts. The first book is a mandatory rule for the second book. Without having to look for who is "wrong" or "failed to understand" in understanding the Draft Criminal Code, everyone only thinks and talks about only the second book about not being criminal, so they only think that criminal law (read the Draft Criminal Code) is the law of "criminal sanctions". Read the full first and second book of the Criminal Code Bill. The actions contained in the second book must be interpreted that "all of us will not do prohibited acts" and we should never put ourselves as perpetrators so that we will be punished, even though we did not commit a crime. Then for anyone who commits a crime, that person will be bound by articles 52, 53, and 54 of the Criminal Code Bill.

### **Moral moral justice controversial articles in the National Criminal Code Bill**

Some examples of articles that are considered controversial in the Criminal Code Bill and their moral values are described as follows:

#### **1. Criminals over 75 years old can not be punished**

Taking into account the provisions as referred to in Article 52 and Article 54, imprisonment as far as possible should not be imposed if conditions are found, among others, the defendant is over the age of 75 (Article 70 paragraph (1) letter b of the Draft Criminal Code).

Article 52 paragraph (1) of the Draft Criminal Code confirms that sentencing aims to: a. prevent the commission of criminal acts by enforcing legal norms for the protection and protection of the community; b. socialize the convicts by conducting coaching and mentoring so that they become good and useful people; c. resolve conflicts caused by criminal acts, restore balance, and bring a sense of security and peace in society; and D. cultivate a sense of remorse and release the guilt of the convicts. Article 52 paragraph (2) of the Draft Criminal Code confirms that sentencing is not intended to undermine human dignity.

Article 54 paragraph (1) of the Draft Criminal Code confirms that punishment must consider: a. the guilt of the perpetrator of the Crime; b. the motive and purpose of committing the Crime; c. the inner attitude of the perpetrator of the crime; d. Crime is committed with a planned or unplanned; e. how to commit a Crime; f. Attitudes and actions of the perpetrator after committing a crime; g. curriculum vitae, social and economic conditions of the perpetrators of the crime; h. criminal influence on the future of the perpetrators of the crime; i. the influence of the Crime on the Victim or the Victim's family; j. Forgiveness from the Victim and/or his family; and/or; k. values of law and justice that live in society. Article 54 paragraph (2) of the Criminal Code Bill emphasizes the lightness of the act,

Based on the articles as above, it can be seen that the imposition of a crime or not being sentenced to a crime for a person does not stand alone, but will be related to the purpose of punishment and general principles that must be considered in the sentencing of a criminal. Likewise with the possibility of perpetrators who are over 75 years old. This means that criminals who are over the age of 75 are not automatically released from punishment. Everything really depends on the signs contained in article 52 and article 54 of the Criminal Code Bill. Such an explanation is very different from the language developed in the media which states "criminal offenders over the age of 75 are not punished". "The sentence as far as possible is not criminalized" is of course different in meaning from "the sentence is not punished",

Of course, it should not be said that at the age of 75, it is impossible for a person to commit a "serious" crime, both in terms of actions and consequences. The rationale of "as far as possible not being punished" for someone who is over 75 years old when committing a criminal act, is actually only a humanitarian consideration.

## 2. Criticizing the president sentenced to 3 years

Article 218 paragraph (1) of the Draft Criminal Code states that anyone who publicly attacks the honor or dignity of the President and Vice President shall be punished with imprisonment for a maximum of 3 (three) years and 6 (six) months or a fine of a maximum of Category IV (two) hundred million rupiah). Article 218 paragraph (2) of the Criminal Code Bill confirms that it is not an attack on honor or dignity as referred to in paragraph (1) if the act is carried out in the public interest or for self-defense.

Article 220 paragraph (1) of the Draft Criminal Code confirms that criminal acts as referred to in Article 218 and Article 219 are only prosecuted based on complaints. Article 220 paragraph (2) of the Criminal Code Bill confirms that the complaint as referred to in paragraph (1) can be carried out by the power of the President or Vice President.

Without having to say that "the power of the President and Vice President is not unlimited", the President in his position as head of state and as head of government is a symbol of the state. In such a position, it is very natural that the law must provide guarantees to maintain dignity. If Indonesian citizens (WNI) are allowed to treat their President and Vice President as they please, how do other countries treat the President and Vice President of Indonesia. In fact, the Criminal Code Bill has guaranteed, has provided exceptions, that if the treatment is interpreted as "attacking the honor and dignity of the President and Vice President" in the context of "defending the public interest", it is not categorized as a criminal act. More than that, The Criminal Code Bill places the crime as a complaint offense. That is, whether or not the perpetrator is prosecuted depends on the attitude of the President or Vice President. This means, the crime is included in the private sphere between the perpetrator and the President or Vice President.

Whoever wants to advise a ruler, let him not appear openly, but let him take the hand of the ruler and he takes the hand of the ruler and is alone with him. If with that, he accepts (advice) from him then that is (what he wants) and if he does not accept maa he (who advises) has carried out his obligations (HR. Ahmad, Ibn Ashim).

Whoever comes to you, wants to break your power or divide you, if you want to be the leader, max kill (HR. Muslim). Know that the affairs of power, position and kingdom belong to Allah (Al-Imran: 26). And Allah has promised those who believe among you and do pious deeds, that He will truly make them work on the earth, as He made people before them reigned (An-Nuur: 55).

## 3. Perpetrators of witchcraft sentenced to 3 years

Article 252 paragraph (1) of the Draft Criminal Code states that anyone who claims to have supernatural powers, notifies, gives hope, offers, or provides services to others that because of his actions the data causes illness, death or mental or physical suffering, a person shall be sentenced to imprisonment for a maximum of 3 (three) years or a maximum fine of Category IV (two hundred million rupiah).

Article 252 paragraph (2) of the Draft Criminal Code, every person as referred to in paragraph (1) commits such an act to seek profit or make it a livelihood or habit, the penalty can be increased by 1/3 (one third).



Article 252 of the Criminal Code Bill is not actually intended to enter the "Unseen" area, because criminal law does not have the capacity to do so. This article only prohibits a person who claims to have the ability to make other people experience certain conditions, which means that there is an "element of fraud" which if left unchecked can damage a person's mentality. In terms of religion and Pancasila, such actions are prohibited. If both Religion and Pancasila forbid, should the Draft Criminal Code be legalized? Especially if the "fraud in shamanism" becomes a livelihood and causes losses to other parties.

Whoever comes to the fortune teller and asks him about something, his shakat will not be accepted for 40 days (HR. Imam Muslim). Whoever goes to a shaman and believes what he says, then he has disbelieved in what was revealed to Muhammad (Narrated by Abu Dawud). This khadis gives a mandate to the authorities / law enforcement to prevent the community from doing things like that.

"And they followed what was read by the demons in the time of Solomon's Kingdom. Solomon is not a disbeliever but the demons are unbelievers, they teach magic to humans and what was revealed to two angels in the land of Babylon, namely Harut and Marut. Even though they did not teach anyone anything before saying, "Indeed, we are only a trial (for you), so do not disbelieve." So they learn from them (the angels) what (can) separate a (husband) from his wife. They cannot harm someone with their magic except by Allah's permission. They learn something that is harmful and does not benefit them. And indeed, they already know, whoever buys (using magic) it will certainly not benefit in the hereafter.

#### **4. Pet chickens enter and eat in people's gardens, a fine of 10 million**

Article 278 of the RUU KUHP stipulates that anyone who lets the poultry he raises walk in the garden or land that has been sown with seeds or plants belonging to another person shall be punished with a fine of Category II (ten million rupiah).

Basically, everyone wants their interests to be undisturbed. This includes the disturbance of livestock that may eat the seeds that are being sown. Even so, whether efforts to protect the interests of seed owners should be formalized in the form of a law. Is the value of the loss of seeds eaten by the livestock commensurate with the value of the penalty imposed? However, the value of the loss is not always maximum. If the comparison between the two is still a big question, then it actually implies to be reviewed.

#### **5. Being disrespectful to the judge sentenced to 5 years**

Article 281 of the Criminal Code Bill confirms that a maximum of 1 (one) year imprisonment or a maximum fine of Category II (ten million rupiahs) shall be imposed.

- a. not complying with court orders or judges' decisions issued for the benefit of the judicial process;
- b. be disrespectful towards judges or proceedings or attack the integrity or impartiality of judges in court proceedings; or
- c. illegally record, publish directly, or allow to be published live, or allow to be published anything that can affect the impartiality of judges in court proceedings.

According to the author's opinion, actions in the form of not complying with court orders or judges related to the judicial process, should indeed have legal consequences. You can imagine what will happen, if the court's order or the judge is not obeyed/ignored or even opposed, the legal process will be disrupted. If disturbed, then the purpose of law enforcement through formal procedures will not be achieved. With

this consideration, it is not an exaggeration if the law must ensure the continuity of the existence of formal legal institutions and their instruments (eg judges).

#### **6. Showing contraceptives to children is fined 1 million**

Everyone who openly displays, offers, broadcasts writings, or shows to be able to obtain contraceptives for children is threatened with a maximum fine of Category I. (One million rupiah) ((Article 414 of the Draft Criminal Code).

In order to respond to this article, it is necessary to prioritize the focal point on who is the object and purpose of the use of contraceptives. Contraceptive devices are intended for women or possibly married men to prevent pregnancy. This means, small children who are not yet adults are not useful when shown a contraceptive device. This article not only prohibits showing contraceptives but even prohibits obtaining them. If children already have contraceptives by understanding their functions, it is feared that they will be misused.

#### **7. Having sex with someone who is not his wife or husband is punishable by 1 year and a fine of 10 million rupiah**

Anyone who has sexual intercourse with someone who is not his wife is threatened with a criminal offense for adultery with a maximum imprisonment of 1 year or a maximum fine of Katagoti II (ten million rupiah) Article 417 paragraph (1) of the Criminal Code Bill).

This article is a development or expansion and affirmation of article 284 of the Criminal Code which defines the crime of adultery only those who are bound by one or both of them are bound by marriage, so that sexual relations between men and women who are each or both not bound by marriage do not include adultery. .

In article 417 paragraph (1) of the Criminal Code Bill, including adultery if someone who is not with his wife or husband has intimate relations. This article wants to explain that marriage is an institution that legalizes the permissibility of sexual relations between two men and women. In Islam, acts that lead to adultery are prohibited (Al-Qur'an, Al-Isra: 32). The threat for adultery in Islamic law is to be lashed a hundred times and witnessed by the general public/believers (Al-Qur'an, An-Nuur: 2). The process of proving the existence of adultery in Islam is very strict and people who accuse other people of adultery and are not proven / unable to present four witnesses, are threatened with 80 lashes (Al-Qur'an An-Nuur: 4)

#### **8. Homeless are fined 1 million rupiah**

Article 432 of the Draft Criminal Code states that every person who wanders on a public road who disturbs public order will be punished with a maximum sentence of Category I (one million rupiah). The most tiring job is not not working. Being homeless is a "disgrace" and a "shame". God's earth is very wide. Islam commands humans to always try and work. With that work, human existence becomes meaningful. It is forbidden to be homeless, especially while "disturbing public order". By working, God will provide for their daily needs. Work, then Allah will see your work (Al-Qur'an, At-Taubah: 105). Homeless people are people who do not work and do not work means a form of servant disobedience to Allah's commands.

#### **9. Husband raped wife sentenced to 12 years**

Article 480 paragraph (1) of the Draft Criminal Code states that anyone who by means of violence or threats of violence forces him to have sex with him shall be punished for committing rape with a maximum sentence of 12 (twelve) years. Including

the crime of rape and being punished as referred to in paragraph (1) includes the following actions: a, intercourse with someone with his consent, because the person believes that the person is his/her legal husband/wife (Article 480 paragraph (2) letter a of the Draft Criminal Code).

This article is quite an interesting topic. Each felt right with his position. If we look at it, the point of focus in this article is on "Violence or Threats of Violence" not on the husband and wife relationship, even though the violence or threats of violence are intended to realize a husband and wife sexual relationship. The best of wives are those who are most devoted to their husbands and the best of husbands are those who love their wives the most. Is it possible for a wife who is devoted to her husband and a husband who loves his wife in it there is "Violence or Threats of Violence" in having a husband and wife relationship?

Several verses of the Qur'an that can be guided in responding to Article 480 paragraph (1) of the Criminal Code Bill include Al-Baqarah: 233; At-Taubah: 71; An-Nisa': 21; Ar-Rum: 21 and An-Nisa': 34, as follows:

- a. Mothers must breastfeed their children for two years to complete the breastfeeding period. For the father is obliged to bear their living and clothing in a good way. A person is not burdened unless commensurate with his ability. Don't let a mother be abused because of her child, as well as a father. The heirs also have obligations like the father's obligations. If both parties want weaning with the consent and negotiation of both, this is permissible. And if you want someone else to breastfeed him, that is permissible as long as you give him something that is appropriate. Fear Allah, know that Allah is All-Seer of all that you do. (Surat al-Baqarah: 233)
- b. Believers, men and women, each help others to do good and forbid evil, establish prayer, pay zakat, obey Allah and His Messenger. Allah will have mercy on them. Indeed, Allah is Mighty and Wise (Surah Taubah: 7)
- c. And how are you going to take it back, even though you have got along with each other (as husband and wife). And they (your wives) have taken a strong covenant (marriage bond) from you. (Surah-Nisa: 21)
- d. And among the signs (of His greatness) is that He created partners for you from your own kind, so that you tend to and feel at ease with Him, And He made between you love and affection. Indeed, in that there are indeed signs (of Allah's greatness) for a people who think. (QSAr-Rum:21)
- e. Men (husbands) are protectors for women (wives), because Allah has favored some of them (men) over others (women), and because they (men) have provided a living from their wealth. So pious women are those who obey (to Allah) and take care of themselves when (husbands) are not around, because Allah has taken care of (them) women who you are afraid of nusyush, you should advise them, leave them in bed (separate beds), and (if necessary) beat them But if they obey you, then do not look for reasons to trouble them. Indeed, Allah is Most High, Most Great. (Surah Nisa: 34)

## 10. Broadcasting fake news sentenced to 6 years

Everyone who broadcasts or disseminates false news or notifications even though he knows that the news or notification is a lie which causes trouble or riots in the community shall be punished with imprisonment for a maximum of 6 (six) years or a fine of a maximum of Category V (Article 262 paragraph (1) of the Bill KUHP).

Several verses of the Qur'an that can be guided in responding to Article 262 paragraph (1) of the Draft Criminal Code include Al-Hujurat: 6, An-Nuur: 11, 12, 16, and 13, as follows:

- a. O you who believe! If someone who is wicked comes to you with news, then examine the truth, so that you do not harm a people because of ignorance (recklessness), which in the end you will regret what you did. (Surah Al-Hujurat: 6)
- b. Verily, those who bring false news are from among you (too). Don't think this news is bad for you. Every one of them will be rewarded for the sins he has committed. And whoever among them takes the largest share (of the sins he has committed), he will have a great punishment (too). (Surah Nur: 11).
- c. Why don't believers and believers be kind to themselves, when you hear the fake news and say, "This is a real lie." (Surah-Nur:12).
- d. And why don't you say when you hear it, "it's not appropriate for us to talk about this. Glory be to You, this is a big lie." (Surah-Nur:16).
- e. Why didn't they (the accusers) come with four witnesses? Because they do not bring witnesses, they are in the sight of Allah are liars. (Surah-Nur:16).

### 11. Broadcasting news that is not certain is sentenced to 2 (two) years

Everyone who broadcasts news that is uncertain, exaggerated, or incomplete, while it is known or reasonably suspected, that such news can cause trouble in the community, shall be punished with imprisonment for a maximum of 2 (two) years or a fine of at most Category III (Article III). 263 of the Criminal Code Bill).

### 12. Blasphemy against religion is punishable by 5 (five) years

Everyone in public who expresses feelings or commits acts that are hostile or blasphemy against the religion professed in Indonesia shall be punished with imprisonment for a maximum of 5 (five) years or a fine of at most Category V (Article 304 of the Draft Criminal Code).

Some of the verses of the Qur'an that can be guided in responding to Article 304 of the Criminal Code Bill include Al-Ahzab: 57-58, Al An-Am: 108, as follows:.

- a. Verily (against) those who offend Allah and His Messenger, Allah will curse them in this world and in the hereafter, and provide a humiliating punishment for them. (Surat al-Ahzab: 57)
- b. And those who offend the believing men and women, without any wrongdoing they have done, then indeed, they have shouldered a lie and a clear sin. (Surat al-Ahzab: 58)
- c. And do not curse the gods they worship besides Allah, because they will curse Allah by transgressing without any basis of knowledge. Thus, We made every people think good of their work. Then to the Lord they will return, and He will tell them what they have done. (QS Al-Anam: 108)

### 13. Defaming dead people sentenced to 6 months

Anyone who commits libel or written defamation of a dead person shall be sentenced to a maximum imprisonment of 6 (six) months or a maximum fine of Category II (Article 446 of the Draft Criminal Code).

## CONCLUSION

Normatively, the implementation of the Dutch Colonial Criminal Code (KUHP) in Indonesia as an independent country is justified. At the same time, the law also makes it legal to be set aside, even if the implementation of the Colonial Criminal Code is contrary to sovereignty as an independent country. For these two, it seems that it is not directly proportional to the courage of the Indonesian people to carry it out

Indonesia's efforts to have the Criminal Code (KUHP), have been going on for the same long. The legislative body (DPR) to stipulate the Draft Criminal Code (RUU KUHP) into the Criminal Code several years ago, was greeted with demonstrations over articles that were considered controversial. Articles that are considered controversial, actually have moral justice in them.

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