



WORLD CLASS ISLAMIC CYBER UNIVERSITY  
**UNISSULA**  
SULTAN AGUNG ISLAMIC UNIVERSITY

**Sept 5th 2019**

# **THE 5 th INTERNATIONAL AND CALL PAPER**

## **Legal Reconstruction in Indonesia Based on Human Rights**

**Imam As Syafei Building**

**Faculty of Law, Sultan Agung Islamic University**

**Jalan Raya Kaligawe, KM.4 Semarang, Indonesia**

**UNISSULA PRESS**

# The 5<sup>th</sup> PROCEEDING

## *“Legal Reconstruction in Indonesia Based on Human Right”*

**IMAM AS SYAFEI BUILDING**

Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Diterbitkan oleh :  
UNISSULA PRESS

ISBN. 978-623-7097-23-5

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*“Legal Reconstruction in Indonesia Based on Human Right”*

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Hal I-X, 1-358

Cetakan Pertama Tahun 2019

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PO BOX 1054/SM,

Telp. (024) 6583584, Fax. (024) 6594366

**ISBN. 978-623-7097-23-5**

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## PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

## PROCEEDINGS

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# Criminal Code Draft Law And Development In Indonesia

Nany Pujianti Suwigjo

## Abstrac

*The actual draft of the Criminal Code has not yet been ratified Because there are obstacles in the discussion of the Criminal Code Bill. Besides that, there is still a polemic in the Criminal Code Bill in the community. Not all of the people Agreed on the draft Criminal Code. Therefore, until now the Penal Code Bill can not yet be passed. Even though the Criminal Code Bill actually has to replace the Criminal Code now. That is Because The Criminal Code now is not in accordance with the state of society and the Indonesian state. Ratification of the Criminal Code Bill is the best way for criminal law to be applied in Indonesia in accordance with the conditions of the Indonesian people and the state. In addition, the Criminal Code Bill IS ALSO A criminal law made by the Indonesian people. moreover,*

**Keyword : Draft Penal Code, Law, Indonesia, Development**

## A. PRELIMINARY

Indonesia is a country of law or rechtstaat. As the law states it is legal to be commander in all the ordinances of life of the state. The law must be upheld and enforced by all components of the state. By law, fairness in society could be created by law to deliver justice if enforced properly. But in reality the law is still considered not yet provide justice for all people. The condition is actually a sign of problems related to the existing law in Indonesia. Not only is there the possibility of an error of law but law enforcement is still not fit so often lead to injustice for the people.

If the state laws that apply in Indonesia still causing injustice of course it is a natural thing. Because not all of the existing law in Indonesia was made by the Indonesian state. Book of the Criminal Justice Act or the Criminal Code is one of the laws or rules of law which is a relic of the invaders. The Criminal Code that is used today is not a law or rule of law made by the Indonesian state. The consequences of the rules of law

yyang not made by the Indonesian state, it will cause the rules of law that made it incompatible with the values that exist in the country of Indonesia.

The Criminal Code made by the invaders of the Penal Code has made the values embraced by the invaders. It is certainly not in accordance with the values espoused by the Indonesian state. Given each country has its own values. In addition, the Criminal Code that is now hundreds of years old. Such conditions are not necessarily relevant to the times. Law or rules of law which is hundreds of years old is no longer necessarily correspond with the development of the current era. Therefore, based on these considerations it is necessary to revise the Criminal Code. Even when it needs to be made a new law on the draft Criminal Code or the Criminal Code (Sikumbang, 2013).

This means that need to be made a new law on the Penal Code. Until now has existed Bill Book Criminal Justice Act or the Criminal Code draft. But until now not been approved Criminal Code draft. Still there are things that need to be addressed so as to make the Criminal Code bill can not be passed. The

bill passed the Criminal Code, which has not in fact give the impression that the development of law in Indonesia is still not running fast. It can be seen from the Criminal Code has not legalization bill. Though the Criminal Code that is used today is not sesuai and require new laws. But it is precisely the new law did not appear. One of the construction of the law is teradinya pergantian changes to the law or the law. Law that is not in accordance with the changing times is replaced with the law in accordance with the changing times.

Conditions have not legalization bill related to the Criminal Code would have to be resolved quickly. This is so that the development of law in Indonesia can be run quickly. Legalization of the Criminal Code can be considered as one part of accelerating the development of law in Indonesia. Ratification of the Criminal Code draft will obviously have consequences advent of the new law, especially criminal law. In addition, the legalization of the Criminal Code can also make replacement of the Penal Code which is now used as the Penal Code which is now used is no longer relevant with the changing times. Therefore the Criminal Code draft to be early to the commencement of the development of law in Indonesia.

## **B. FORMULATION OF THE PROBLEM**

*What is the cause of the Criminal Code bill has not passed?*

*How Criminal Code draft in realizing the development of the law?*

## **C. DISCUSSION**

### **Causes of Criminal Code draft has not Ratified**

Penal Code legalization bill has not up to now certainly due to various problems. There are many actual cause of the Criminal

Code bill yet to be passed. Bambang Soesatyo as Chairman of the House of Representatives of the Republic of Indonesia stated that the Criminal Code is not legalization bill because the House of Representatives of the Republic of Indonesia having some problems. Such constraints occur when doing completion. Bambang Soesatyo also stated that the House of Representatives of the Republic of Indonesia needs to hear back on the growing aspirations of the community related to the draft Criminal Code. Even these aspirations also come from institutions such as the Corruption Eradication Commission (Fauzan, 2018).

These constraints actually should soon be resolved so that the bill can be passed Penal Code. The acceleration actually experienced problems. In addition to the previously mentioned obstacles sesungguhnya there is also another constraint that is associated with the rejection of the draft Penal Code. The Corruption Eradication Commission is one of the institutions that reject the bill of the Criminal Code. Rejection conducted by the KPK because the bill passed the Penal Code would be potentially harmful to the eradication of corruption. Therefore, the Corruption Eradication Commission rejection Criminal Code draft along with the reasons (Aji, 2018).

There are ten reasons Corruption Eradication Commission to the rejection of the bill of the Criminal Code. The reasons in question is'

1. The objections of the Corruption Eradication Commission korusi their offense in the Draft Bill.
2. The potential occurrence of misuse of the rules by doing bookkeeping in the Draft Bill.
3. Corruption is an extraordinary crime that should be regulated in a separate Act
4. Settings diatur dalam corruption that separate legislation can not necessarily enter into the substance contained in

the draft Criminal Code.

5. Laws governing corruption is more comprehensive than the Criminal Code draft in the regulations related to corruption.
6. Corruption in Indonesia settings can not be equated with corruption regulation in other countries because each country has different circumstances.
7. The bill has passed the Criminal Code if it will be difficult to change. It is certainly not relevant to the crime of corruption that is fast growing and requires treatment and legal arrangements quickly.
8. Establishment of corruption in various countries have started much so that corruption emmang be addressed specifically.
9. Settings corruption in the Draft Bill can be expressed as inconsistent form in the eradication of corruption in Indonesia.
10. Does the setting of corruption in the Draft Bill has been through studies maang so that corruption is indispensable for inclusion in the Draft Bill (Aji, 2018).

Ten reasons submitted by the Corruption Eradication Commission in proving that the Criminal Code draft has not been fully accepted by all parties. The condition is so very reasonable that until now has not been legalized Criminal Code draft. The bill of the Criminal Code in addition to resistance from the Corruption Eradication Commission in also received objections from other parties

1. National Alliance for Reform of the Code of Penal reject legalization bill untu Criminal Code. National Alliance for Reform of the Code of Criminal Penal Code states that the bill to be passed still have the values and colonialism. There are seven reasons the National Alliance of Reform the Code of Penal reject legalization of the Criminal Code (Tempo.co,

2018).

### **Seven reasons for refusal are:**

1. The bill passed the Penal Code would still be pressing ssehingga potential for the occurrence of criminalization. The condition is even considered more ber-baya compared with the Criminal Code which are now applied.
2. Alignments draft Penal Code to protect women and children are still lacking
3. There are chapters that are considered to make the government work hampered
4. There is the potential of the draft Penal Code to eliminate the element of democracy
5. The existence of clauses not expressly role in the Criminal Code and the bill will rise to polemics in law enforcement
6. Inter-agency coordination can be impaired if the bill passed the Criminal Code. This is because there is the potential to undermine independent institutions.
7. Discussion draft of the Criminal Code are considered not involve all components of the nation, giving rise to polemics in the community (Tempo.co, 2018).

The aslasan reasons at least be able to describe that discussion and ratification of the Bill of the Criminal Code actually still a lot of polemics. Thus it is normal that until now has not been legalized Criminal Code draft. But over time the Criminal Code draft should be legalized so that the state of Indonesia has a new law as a legal development in Indonesia.

### **Realize Criminal Code draft Construction Law**



As was explained earlier that the ratification of the Bill of the Criminal Code is part of the development of law, especially the law in Indonesia. It is due to the legalization of the Criminal Code, there will be a new law in criminal law. The new law will have an impact on the legal system especially the criminal justice system. If during the criminal justice system that is used by using the current Penal Code. After the bill passed the Criminal Code of the criminal justice system will change and become new. No atinya perkembangan development and related sciences criminal law are included in the new penal system.

Therefore the ratification of the Bill of the Criminal Code is an obligation to be implemented as one part of the development of law in Indonesia. If the Draft Bill immediately disahkan the criminal law that is used today is a criminal law that has created hundreds of years ago. In fact, as pointed out that criminal law in the form of the Criminal Code is not in accordance with the present state of society and the era in Indonesia. Therefore the ratification of the Bill of the Criminal Code be a way to enable the development of law in Indonesia, particularly the development of criminal law in Indonesia.

Please also note that the Criminal Code draft more complete than the current Penal Code. Diatur criminal offenses in the Criminal Code is not much that is set in the Draft Bill. Although in the discussion draft of the Criminal Code to get polemic in society. But it is reasonable as part of their discussions just like the discussion of the draft Law in general.

## **D.CLOSING**

Penal Code legalization bill has not actually because there are obstacles in the discussion draft of the Criminal Code. In addition there is still a draft penal code also debated in the community. Society is not all agree on the bill related to the Criminal Code. Therefore, until now the bill of the Criminal Code can not be ratified. Though Criminal Code draft is already must replace the current Penal Code. That is because the Criminal Code is not in accordance with the present state of society and the country of Indonesia. Legalization of the Criminal Code is the best way for the criminal law applied in Indonesia in accordance with the state of society and the country of Indonesia. In addition to the Criminal Code draft also the criminal law that is made by the Indonesian nation. Moreover, the bill can be said to follow the development of the Criminal Code because dibuat to be growing even to this day there is still a discussion.

If the bill passed the Indonesian Penal Code has authorized a new criminal law. Changes in criminal law will only happen after the bill passed the Criminal Code. Konsekuensi the most fundamental is the law of development. As was explained earlier that the ratification of the Bill of the Criminal Code which makes Indonesia has the balls criminal law as well as part of the development of law in Indonesia, particularly the development of criminal law in Indonesia.

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