

# DRAFT LAW ON CRIMINAL CODE AND LEGAL DEVELOPMENT IN INDONESIA

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## Abstract

The fact that the Criminal Code Bill has not yet been ratified is because there are obstacles in the discussion of the Criminal Code Bill. Besides that, the Criminal Code Bill also has a polemic in the community. The community has not all agreed to be related to the Criminal Code Bill. Therefore, until now the Criminal Code Draft cannot yet be ratified. The Criminal Code Bill actually has to replace the Criminal Code now. This is because the Criminal Code is now not in accordance with the conditions of the people and the state of Indonesia. Ratification of the Criminal Code Draft is the best way for criminal law to be applied in Indonesia in accordance with the conditions of the people and the state of Indonesia. In addition, the Criminal Code Bill is also a criminal law made by the Indonesian people themselves. Moreover, the Criminal Code Draft can be said to be following the development because it is developed in a way that is developed even now there is still discussion.

## A. INTRODUCTION

The State of Indonesia is a legal state or *rechtstaat*. As a rule of law, the law becomes the commander in all state life arrangements. The law must be upheld by all components of the country. By law, justice in society can be created because the law can provide justice if it is properly enforced. But in reality the law is still considered not to provide justice for the entire community. This condition actually indicates the existence of problems related to the law in Indonesia. Not only is the law a possibility of error but law enforcement is still not suitable so that it often creates injustice for the community.

The law applied in Indonesia still causes injustice, this is a natural thing. Because not all laws in Indonesia are made by the Indonesian state. The Criminal Code or the Criminal Code is one of the laws or statutory rules which are the legacy of the invaders. The Criminal Code used today is not a law or statutory regulation made by the Indonesian state. The consequence of the statutory regulations that are not made by the Indonesian state will cause

the legislation made to be not in accordance with the values that exist in the country of Indonesia.

The Criminal Code made by the invaders certainly makes the Criminal Code have values that are adopted by the invaders. This is certainly not in accordance with the values adopted by the Indonesian state. Given that each country has its own values. In addition, the existing Criminal Code has hundreds of years old. This condition is certainly not in accordance with the times. Laws or legislation that are hundreds of years old are certainly no longer in accordance with current developments. Therefore, based on these considerations, it is necessary to revise the Criminal Code. Even if necessary, a new law must be made regarding the Criminal Code or the Criminal Code (Sikumbang, 2013).

This means that a new law needs to be made about the Criminal Code. Until now there has actually been a Draft Law on the Criminal Code or the Criminal Code Bill. But until now the Criminal Code Bill has not yet been ratified. There are still things that need to be discussed so that the Criminal Code Bill cannot yet be ratified. The Criminal Code Bill which has not yet been ratified actually gives the impression that legal development in Indonesia is still not running fast. This can be seen from the lack of ratification of the Criminal Code Bill. Even though the Criminal Code currently in use does not match and requires a new law. But precisely the new law has not yet emerged. One of the existence of legal development is the occurrence of changes in law or legal regulation. Laws that are not in line with the times are replaced by laws that are in line with the times. This is so that the law applied can be in accordance with the times and able to provide justice for the community.

Conditions related to the ratification of the Criminal Code Draft must be resolved quickly. Thus, legal development in Indonesia can run quickly. Ratification of the Criminal Code Bill can be said as one part of accelerating legal development in Indonesia. Ratification of the Criminal Code Bill will clearly bring consequences to the emergence of new laws, especially criminal law. In addition, the ratification of the Criminal Code Draft can also make a substitute for the Criminal Code that is now being used because the Criminal Code currently in use is no longer in line with the times. Therefore the Criminal Code Bill became the beginning of the start of legal development in Indonesia.

## **B. PROBLEM FORMULATION**

1. What is the cause of the Criminal Code Bill that has not been ratified?
2. How is the Criminal Code Bill in realizing legal development?

## C. DISCUSSION

### **The cause of the Criminal Code Bill has not yet been ratified**

The ratification of the Criminal Code Bill until now is certainly due to various problems. There are actually many that cause the Criminal Code Bill has not yet been ratified. Bambang Soesatyo, Chairperson of the Republic of Indonesia People's Representative Council, stated that the Criminal Code Bill had not yet been passed because the Indonesian House of Representatives had several obstacles. This obstacle occurs when making a solution. Bambang Soesatyo also stated that the People's Legislative Assembly of the Republic of Indonesia needs to listen to the aspirations that have developed in the community related to the Criminal Code Bill. Even those aspirations also come from institutions such as the Corruption Eradication Commission (Fauzan, 2018).

These obstacles must actually be resolved so that the Criminal Code Bill can be ratified. The acceleration is actually experiencing obstacles. In addition to the obstacles mentioned earlier, there is also another obstacle which is related to the rejection of the Criminal Code Bill. The Corruption Eradication Commission is one of the institutions that rejected the Criminal Code Bill. The rejection made by the Corruption Eradication Commission due to the Criminal Code Bill that will be ratified can potentially endanger corruption eradication. Therefore, the Corruption Eradication Commission has rejected the Criminal Code Bill accompanied by reasons (Aji, 2018).

There are ten reasons for the Corruption Eradication Commission to reject the Criminal Code Bill. The reasons referred to are:

1. There was an objection from the Corruption Eradication Commission with the existence of a corruption offense in the Criminal Code Bill.
2. Potential for the occurrence of misappropriation of rules by doing bookkeeping in the Criminal Code Bill.
3. Corruption is an extraordinary crime so it should be regulated in separate laws
4. The regulation of criminal acts of corruption regulated in separate laws cannot immediately be included in the content material contained in the Criminal Code Bill.
5. The law that regulates corruption is more comprehensive when compared to the Criminal Code Bill in a regulation related to corruption.
6. Regulations for Corruption in Indonesia cannot be equated with the regulation of corruption in other countries because each country has different circumstances.

7. The Criminal Code Bill if it has been ratified will be difficult to change. This is certainly not relevant to criminal acts of corruption that are fast-developing and require rapid handling and legal arrangements.
8. The formation of corruption institutions in various countries has begun to multiply so that corruption of the government must be dealt with specifically.
9. The regulation of corruption in the Criminal Code Bill can be stated as a form of inconsistency in combating corruption in Indonesia.
10. The regulation of corruption in the Criminal Code Bill been through a robust study so that criminal acts of corruption are needed to be included in the Criminal Code Bill (Aji, 2018).

Ten reasons presented by the Corruption Eradication Commission prove that the Criminal Code Bill has not been fully accepted by all parties. This condition makes it very natural that until now the Criminal Code Bill has not yet been ratified. The Criminal Code Bill in addition to being rejected by the Corruption Eradication Commission also received rejection from other parties. The National Alliance for Reform of the Criminal Code refused to ratify the Criminal Code Bill. The National Alliance for Reform of the Criminal Code states that the Criminal Code Bill that will be ratified still has colonialism values. There are seven reasons for the National Alliance for Reform of the Criminal Code to reject the ratification of the Criminal Code Bill (Tempo.co, 2018).

The seven reasons for the refusal are:

1. The Criminal Code Bill that will be ratified is still suppressing so that it has the potential for criminalization. This condition is even considered to be more benevolent compared to the current Criminal Code.
2. The alignment of the Criminal Code Bill on the protection of women and children is still lacking
3. There are articles which are considered to be able to make government work hampered
4. There is the potential of the Criminal Code Bill to eliminate elements of democracy
5. There are unclear articles in the Criminal Code Bill and will create a polemic in law enforcement
6. Coordination between institutions can be disrupted if the Criminal Code Bill is passed. This is because there is the potential to damage independent institutions.
7. The discussion of the Criminal Code Bill is deemed not to involve all components of the nation, giving rise to polemic in society (Tempo.co, 2018).

The reasons can at least illustrate that the discussion and ratification of the Criminal Code Bill actually has a lot of polemics. Thus, it is very reasonable if until now the Criminal Code Bill has not yet been ratified. But in the course of time the Criminal Code Bill must be ratified immediately so that the Indonesian state has a new law as one of the legal developments in the country of Indonesia.

### **The Criminal Code Bill in Realizing Legal Development**

As previously explained, the ratification of the Criminal Code Bill is part of the development of law, especially law in Indonesia. This is due to the ratification of the Criminal Code Bill, there will be a new law in criminal law. The new law will certainly have an impact on the legal system, especially the criminal law system. So far the criminal law system has been used using the Criminal Code now. After the Criminal Code Bill was passed, the criminal law system will change and become new. It means that there is development related to the criminal law which is included in the new criminal law system.

Therefore, the ratification of the Criminal Code Draft is an obligation to be implemented as one of the legal development parts in Indonesia. If the Criminal Code Bill is not immediately passed, then the criminal law used today is a criminal law that was made hundreds of years ago. Whereas as stated that the criminal law in the form of the Criminal Code is now not in accordance with the conditions of society and the era in Indonesia. Therefore the ratification of the Criminal Code Draft is a way for legal development to occur in Indonesia, especially the development of criminal law in Indonesia.

Need to note that the Criminal Code Bill is more complete when compared to the current Criminal Code. Crimes that have not been covered in the Criminal Code are many that have been regulated in the Criminal Code Bill. In this discussion, the Criminal Code Bill got polemic in the community. But this is reasonable as part of a discussion like the discussion of the draft law in general.

### **D. CONCLUSION**

The fact that the Criminal Code Bill has not yet been ratified is because there are obstacles in the discussion of the Criminal Code Bill. Besides that, the Criminal Code Bill also has a polemic in the community. The community has not all agreed to be related to the Criminal Code Bill. Therefore, until now the Criminal Code Draft cannot yet be ratified. In

fact, the Criminal Code Bill has to replace the Criminal Code now. This is because the Criminal Code is now not in accordance with the conditions of the people and the state of Indonesia. Ratification of the Criminal Code Draft is the best way for criminal law to be applied in Indonesia in accordance with the conditions of the people and the state of Indonesia. In addition, the Criminal Code Bill is also a criminal law made by the Indonesian people themselves. Moreover, the Criminal Code Draft can be said to be following the development because it is developed in a way that is developed even now there is still discussion.

If the Criminal Code Bill is passed, then Indonesia officially has a new criminal law. Changes to the new criminal law will occur after the Criminal Code Bill is passed. The most basic consequence is legal development. As previously explained, the ratification of the Criminal Code Bill has made Indonesia have new criminal law as part of legal development in Indonesia, especially the development of criminal law in Indonesia.

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