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ENVISIONING INDONESIAN PENAL CODE REFORM

Challenges in Reforming Criminal System and Protecting Civil Liberties

ICJR
Institute for Criminal Justice Reform

ELSAM
LEMBAGA STUDI & ADVOKASI MASYARAKAT

Aliansi Nasional
Reformasi KUHP

Envisioning Indonesian Criminal Code Reform:
Challenges in Reforming Criminal System and Protecting Civil Liberties

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FOREWORD

The discussion on the Draft Bill on Criminal Code (RKUHP) for Indonesia is one of the most crucial events in Indonesia. This is the first time when the Government and the parliament are on the same table and try to formulate the single largest legislation after the Indonesia's independence. RKUHP contains more articles than any legislation and also stipulates important materials that will govern the public.

The government and the parliament have agreed upon several things, and one of which was the 1,103 Inventory List of Issues (*Daftar Inventarisasi Masalah* – DIM), from the total of 2,394 DIMs. In other words, almost half of the RKUHP submitted by the government have been agreed by both sides.

The Institute for Criminal Justice Reform (ICJR) dan *Lembaga Studi dan Advokasi Masyarakat* (Elsam), as well as the National Alliance for Criminal Code Reform (*Aliansi Nasional Reformasi KUHP*) are maintaining the effort on the advocacy towards RKUHP discussion. Several measures have been taken, such as sending inputs to the government and the parliament, by providing another version of DIM.

In addition, the National Alliance also maintain the monitoring process to the whole process of RKUHP discussion. The results of the monitoring process are published on a dedicated website reformasikuhp.org that is available to the public.

The National Alliance views that the international community needs to be informed about the ongoing process of RKUHP discussion. With that in mind, this document is drafted as part of information dissemination regarding the current RKUHP discussion process.

Jakarta, November 2015
Institute for Criminal Justice Reform
Lembaga Studi dan Advokasi Masyarakat
Aliansi Nasional Reformasi KUHP

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I. INTRODUCTION

The development of law reform, especially the criminal code (KUHP) of Indonesia, has reached an important moment. At this time, the discussion of the Draft Bill on Criminal Code (RKUHP) has entered the discussion between the government and the parliament through the meetings of the Working Panel of Commission III of the Indonesian Parliament.

On 29 October 2015, the Working Panel of Commission III held the first official discussion meeting with the government team with the Partner, the Minister of Law and Human Rights. In the meeting, the Chair of Commission III delivered a matrix/tabulation of the Inventory List of Issues (*Daftar Inventaris Masalah* (DIM)) of the factions regarding the RKUHP, as follows:

1. Total number of DIM are 2394 DIM;
2. Number of DIM on Substantial Matters are 847 DIM;
3. Number of DIM on New Substantial Matters are 88 DIM;
4. Number of DIM on Explanation Needed are 221 DIM;
5. Number of DIM on Semantic Issues are 73 DIM;
6. Number of DIM on Notes are 62 DIM;
7. Number of DIM declared Established are 1103 DIM.

Chairman of Commission III delivered a proposal to the Government and the members of Commission III that the DIM declared Established (*Tetap*) are to be agreed, with a note that the DIM can be brought back into discussion if relations are found with other DIM. The DIM on Substance, New Substance, Requiring Explanation, and Note are discussed on the Working Panel Meeting continued on the evening in Century Park Athlete Hotel in Jakarta, beginning on 14.15 in the afternoon.

On 16 November 2015, the Working Panel held another discussion meeting on the DIM, beginning on 19.30. This meeting was held following the recess on 29 October 2015.

On 17-19 November 2015, the Working Panel has discussed the RKUHP in an open meeting in the Commission III. Up to 19 November 2015, the Working Panel and the Government has discussed up to DIM 125, or Article 33 of the RKUHP.

However, there remains a serious need to continue monitoring, as almost all DIM that have been approved are referred to the Synchronisation Team and the Substance Team for the formulation of the discussion results. The National Alliance for KUHP Reform will continue the monitoring and report the results to the society through the media or through reformasikuhp.org web site.

There are four core missions that become the backbone of the present RKUHP, which are:

1. To alter the seemingly embedded perspective of “decolonialisation” within the KUHP (KUHP), due to the fact that it was mostly derived from the Dutch, to be “recodified”;
2. To democratise KUHP, indicated by the inclusion of criminal act towards human rights and the termination of criminal act towards sowing hostility or hatred (*haatzai-artikelen*) that was a formal criminal act and has been reformulated;
3. To consolidate Indonesian criminal law. Since the Independence Day, criminal law undergoes a rapid growth both within and outside of KUHP with all of its characteristics. Therefore, it needs to be re-organised into the framework of criminal law principles; and

4. To adapt and harmonise with the developments of law, that occurred both from the development of values and standard of criminal legal science knowledge as well as norms recognized by civilised nations in international sphere.

Although carrying important missions, the drafting process of RKUHP also being criticised by many stakeholders, including National Alliance for Criminal Code Reform. These criticisms, which will be elaborated in this paper, are related to (1) the option and strategy in codifying Indonesian criminal law, (2) the application of *adat law* and its challenges with the legality principle, (3) the scope of criminal jurisdiction under RKUHP, (4) the existence of capital punishment, (5) the threat towards the freedom of expression; and (6) the provisions of human rights related offences.

II. OPTIONS AND STRATEGIES IN CODIFYING INDONESIAN CRIMINAL LAW

Efforts to codify a national KUHP began since the enactment of Law No. 1 of 1946 on the Criminal Law Regulations, which in essence declared that all criminal law provisions opposed to the position of the Republic of Indonesia were invalid, and changed several words and removed several articles in the *Wetboek van Straafrecht voor Nederlandsch-Indië* (WvS), and created new offences. The efforts to renew criminal law also continued with the formulation of new laws containing other criminal provisions. However, for the government, these efforts have been inadequate, and caused new problems in the attempt to create a solid and systematic national KUHP. These issues include:[1]

1. Creating a system of criminal law outside the general provisions of criminal law (in Book I of the KUHP) resulting in two systems of formulating of criminal law norms;
2. Creating two systems of criminalisation, namely the system in KUHP, and the system in the sectorial legislations outside KUHP;
3. The harmonisation of criminal law norms becomes difficult due to the many norms of criminal law in effect, resulting in duplication of norms;
4. The system of formulating punishment becomes not systematic, and does not reflect that the threat of punishment stipulated in the legislations or articles can be the starting point or parameters of justice in pronouncing sentences;
5. Enforcement of criminal law is faced with the problem in choosing which criminal law norm, for there is more than one norm;
6. The basic rights for the suspects/accused/convicts tend to be broken, because there is no legal certainty regarding which norm of criminal law is being violated. This will have an impact on the sentencing *per se*;
7. The existence of law enforcement agencies authorised to perform inquiry, investigation, and prosecution as well as the establishment of courts, each of which have the authority to process different criminal law violations, whereas the criminal law norms remain the same.

According to the Government, the efforts in drafting RKUHP, which is aimed as an improvement and development of criminal law, cannot be done on an ad-hoc (partial) basis but should be fundamental, comprehensive and systemic in the form of recodification which includes the three main problems of criminal law, namely the formulation of the criminal acts, criminal responsibility of

[1] Mudzakkir, "Kebijakan Kodifikasi (Total) Hukum Pidana Melalui RUU KUHP dan Antisipasi terhadap Problem Perumusan Hukum Pidana dan Penegakan Hukum Pidana di Masa Datang", Paper delivered in the Workshop on National Legal Development Planning on the Development of Criminal Law in Legislation Beyond the Penal Code and Policy on Codification of Criminal Law (3-5 November 2010) at 22.

the perpetrators in the form of natural persons or corporations (corporate criminal responsibility), and the criminal sanctions or measures applied.

With that issues in mind, the government and the drafting team of RKUHP assessed that total codification is appropriate for RKUHP. Total codification means putting the entire criminal law norms that apply nationally in one KUHP prohibiting certain acts and prevents criminal law arrangements in legislations beyond the codification, and averts the repetition of the criminal law.[2]

Although there is a strong wish to perform total codification, this intention was not implemented as in Article 218 of RKUHP there was a new change that "The provisions in Chapter I to Chapter V of Book One also apply to acts that may be liable under other legislations, unless otherwise specified according to the legislations."[3] Moreover, Article 103 of KUHP also implies another deviation from the trend of total codification, which is regarded as a way out of the problems of criminal law. Both Article 218 of RKUHP and Article 103 of KUHP can be regarded as "justification" for regulating criminal acts outside the KUHP,[4] including those that have been stipulated in, *inter alia*, Law on Corruption, Law on Human Rights, Law on Terrorism and Law on the Crime of Trafficking in Persons, where in RKUHP all these provisions are put in separate chapters.[5]

In the National Alliance for Criminal Code Reform's view, the formulation of the offences codified in RKUHP seems to be adopted at random, in contrast to the original manuscripts as stipulated in the special criminal laws. The Government simply insert the articles and pay no due regard to the relationship between the qualifications of the offense with the placement of the chapters in RKUHP.

III. *ADAT LAW* VS. LEGALITY PRINCIPLE?

Article 1 (1) of RKUHP requires that the criminal law should be determined in advance by legislation, or known as the principle of legality. Only then one can be held accountable for having committed an act. The legislations referred to in verse (1) are the regulations established by the legislators recognized by the State. In other words, it refers to the written law. Meanwhile, the laws that living in the society (customary or *adat laws*) are not formed by legislators, unwritten, has the nature of pre-existent regulations (*prae-existente regels*)[6] and not recognised as legislation that was referred to in Law No. 12 of 2011 on the Establishment of Laws and Regulations. Therefore, the latter laws contrary to Article 1 (1) of RKUHP, since there is a contradiction with each other.

Article 1 (2) of RKUHP expressly prohibits analogy. However, the living laws set forth in Article 2 (1) of RKUHP is an analogy with the nature of *gesetz analogy*. Thus, there is another conflict with the provisions of Article 1 of RKUHP. Besides, criminal law actually calls for regulation that is detailed and thorough, a legal maxim known as *lex certa*. Bearing in mind *adat law* is not a written law; therefore, it is not possible to formulate the offences set it out in detail.

The recognition of living laws in communities is the remnant of the spirit of Indonesianising criminal law. The recognition of indigenous peoples through the application of traditional criminal law does

[2] *Id*., at 25.

[3] This is an unofficial translation of Article 218 of RKUHP.

[4] Besides Article 103 of Penal Code, Article 15 (1) of Law No. 12 of 2011 is also a basis for invoking criminal sanctions outside the Penal Code.

[5] Elaboration on this aspect can be seen in Bernhard Ruben Fritz Sumigar, *Kodifikasi dalam RKUHP dan Implikasi terhadap Tatanan Hukum Pidana Indonesia*, (Jakarta: ICJR, 2015) at 9-15.

[6] Soepomo, *Bab-bab tentang Hukum Adat*, (Penerbitan Universitas, 1967) at 102.

not have a place in RKUHP, because *adat law* is not in line with the spirit of criminal law, which calls for codification and unification. In addition, accomodation of living laws in the society, enforced through the courts, can eliminate the required essence of customary law, which contains ritual and religious elements.

Seeing the conceptual contradiction between the principle of legality and the living laws in the community *supra*,[7] therefore, the provision in Article 1 of RKUHP need to be reformulated to remain consistent with the pure application of the principle of legality.

The provision of Article 2 (1) of RKUHP is not a form of extension of the principle of legality, but is a backward step and removal of the original meaning of the legality principle *per se*. Thus, the possibility of application of living laws in the society needs to be eliminated in criminal law provisions.

The inclusion of legal arrangements living in the community has been in contravention with the principle of *lex certa* under criminal law that requires a detailed formulation of the prohibited acts. The inclusion of laws living in the society can create legal uncertainty[8] and gives rise to arbitrariness in the enforcement of criminal law.

The arrangements regarding the living laws in a society in RKUHP is inappropriate. Criminal law requires codification and unification, whilethe living laws in the society are plural and dependant on the particular community. These laws should be placed in another means of law, other than criminal law. In any event, accommodating *adat law* in RKUHP causes a loss of the essence of that law itself. It should be placed in the interpretation of the elements of crimes, as have occurred in practice, instead of placing it as the basis for punishment. Let the living laws in the community grow and develop themselves in indigenous communities without having to be codified into a formal law. The public sense of justice can be stronger when enforcement is left to their own communities.

IV. THE SCOPE OF CRIMINAL JURISDICTION UNDER RKUHP

As the futuristic code of criminal laws, RKUHP claims that its validity is based on the principles of territoriality, active and passive nationality, and universal.[9] However, pursuant to Article 9 of RKUHP, these principles can be derogated by international laws. The elucidation of that article even describes:[10]

> "*In the society of a nation there are laws regulating the behaviour of the society members in order to uphold peace and order of that nation. This is also similar in international society. Indonesia as part of the international community, and thus, it is appropriate for Indonesian laws to uphold international law. This means that with regard to the provisions of Indonesian national law that run in opposition to international law recognised by Indonesia, hence Indonesian municipal laws are revocable. With Indonesia's participation in international*

[7] See also H. Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia*, Revised Edition, (Bandung: Mandar Maju, 2014) at 223 (The author contends that *adat law* did not recognise the applicability of legality principle).

[8] Bernhard Ruben Fritz Sumigar, *Op.Cit.*, at 20.

[9] See Articles 4, 5, 6, 7 and 8 RKUHP.

[10] This is an unofficial translation from the Elucidation of Article 9 of RKUHP.

> *conventions, it means the validity of Indonesian criminal laws as mentioned in the provisions of this Article is bound by international law.*"

While the elucidation of the article shows Indonesia's explicit position as a "monist State" that placing international law above the national law,[11] the existent of the term "international law recognised by Indonesia" has caused some discussion. According to one of the factions in the Parliament, they recommended that term to be replaced with "international law ratified by Indonesia", while the Working Group suggested the phrase as "international law that has been endorsed".

Referring to these suggestions, the Alliance saw that the use of these terms causes another problems. ***First***, the term "international law recognised by Indonesia" is unknown in international law, and is in fact misleading because not all international legal norms need to be recognised by a government in order to be accepted as a norm of international law. ***Second***, this provision does not clearly spell out the time of the "recognition" or "endorsement" of international law is applied. For example, for the context of customary international law, the benchmark for the endorsement is not always clear, and does not always have to wait for a court decision. ***Third***, related to the use of the term "international laws ratified by Indonesia". This is clearly not accurate; the rationale behind this is because the sources of international law are not only international treaties, but also derived from customary international law, general principles of law recognised by civilised nations, jurisprudence and teaching from high qualified publicists,[12] whose status of enforceability is obviously not based on the status of Indonesia's ratification.[13]

Ultimately, the Alliance suggests that the placement of the phrases "international law recognised by Indonesia" along with other suggestions need to be modified into the phrase "international law binding to Indonesia" in order to prevent multiple interpretations in the future.

V. CAPITAL PUNISHMENT

The RKUHP still contains the death penalty as a form of criminal sentencing. The difference with the existing KUHP is that the death sentence is declared as a form of capital punishment that has a special nature, and is invoked as an alternative, as stipulated in Article 67 of RKUHP which reads "*The death penalty is a cardinal criminal sanction that has a special nature and is always invoked as an alternative*". This is confirmed on its Elucidation, which stated:

> "*The death penalty is included in separate articles to clarify that this form of punishment has a unique nature. Compared to other criminal sentences, the death sentence is the harshest sentence possible. Thus, it always has to be threatened as an alternative with other criminal sentences, namely life imprisonment or a maximum 20 years imprisonment.*"

The General Elucidation of RKUHP also shows the special nature of capital punishment as an acceptable sanction in the instrument, as quoted below:

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[11] Malcolm N. Shaw, *International Law*, 6th Edition, (Cambridge: Cambridge University Press, 2008) at 131-132.

[12] *Statute of the International Court of Justice*, 26 June 1945, 33 UNTS 993, Article 38(1).

[13] The ratification will only be applied to treaties (see *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 UNTS 331, Article 11 and 14).

> "*The capital punishment is not included in the list of regular punishments. It is determined in separate articles to indicate that this type of punishment has a special nature as a last resort to protect the society. The death penalty is the most severe criminal sentence, and should always be invoked as an alternative to the life imprisonment or a maximum 20 years imprisonment. The death penalty can also be imposed with a probation period, that within the period of probation the convict is expected to improve themselves, so that the death penalty does not need to be implemented, and could be substituted with a deprivation of liberty.*"

According to the Government, the effort to put the death penalty outside the list of regular punishments is a compromise between the "retentionists" and the "abolitionists". This implies that the death penalty is an exceptional punishment. The judge must give earnest and cautious consideration and caution before giving such sentence. This shift is based on the understanding of the purpose of punishment as a means to regulate, discipline and improve society. Therefore, the death penalty is placed as a last resort (*ultimum remedium*), because the death penalty is not the main means to support the objectives of the criminal prosecution.

When compared with provisions on the death penalty in the existing KUHP, the setting of the death penalty in RKUHP indeed looks more detailed and comprehensive. The fundamental change of the provision on capital punishment is that the punishment is of a special nature. This provision also contains the authority of the Ministry of Law and Human Rights to change the death sentence to a prison sentence in a given time, including the authority to change the penalty. Article 90 of RKUHP states that if the President rejected a request for clemency and the death penalty is not carried out in ten years (as long as it is not caused by escape of the convict), a Presidential Decree then can convert it into life imprisonment.[14]

However, the special nature of this selective application is still a cause for doubt because a large number of criminal acts are punishable by the capital sentence in the Draft Bill. In RKUHP, there are 15 articles that include the death penalty in the delict. This can be compared with the threat of the death penalty in the existing KUHP, where there are only 16 offences punishable by death, and about 15 offences outside KUHP.[15] The problem is that the threat of the death penalty against several criminal offences is not clear of to whether the indicator is based on the impact of crime or due to the gravity of the crimes.

Although it has been declared that the death penalty is special and is the most severe type of punishment, but it has no adequate argumentative foundation on why it should be retained in RKUHP, when apparently the spirit is to a system of punishment that provides rehabilitation to offenders and is not intended to retaliate. The only argument that can be found is the provisions of Article 89 of RKUHP that states that the death penalty is imposed as a last resort and as an alternative to protect the society. Moreover, in the explanation of Article 90 (4) of RKUHP, it states that in view of the severity of the death penalty and its impossibility to restore if a mistake is made,

[14] The elucidation of Article 92 of RKUHP states that with the same thinking as Article 87 of RKUHP, in case of judges' decision pronouncing the capital punishment has been legally binding and the motion for clemency has been rejected, but the execution has been delayed for ten years not caused by escape of the convict, the Minister of Law and Human Rights has the authority to convert the sentence into life imprisonment.

[15] The articles in the Penal Code entailing capital punishment are Articles 104, 110 (1)-(2), 111 (2), 112, 113, 123, 124 (1), 124 *bis.*, 125, 127, 129, 140 (3), 185, 340, 444, 479k (2) and 479 (2).

the implementation can only be done after the President rejects the clemency request of person concerned.[16]

The formulation of capital punishment appears to be done with some inconsistency. On one hand, a lot of offences are punishable by death, while on the other hand, there is an awareness that the death penalty is very severe and non restorable if a mistake is made – while the purpose of punishment is oriented to the development and rehabilitation of offenders; they would not be able to rehabilitate if they are sentenced to death, even though they have served a prison sentence of, for example, ten years in advance of the execution.

With respect to the setting of death penalty, there are also inconsistencies in determining whether the death penalty is part of the regular penalties or not. Article 67 of RKUHP states that the death penalty is the regular sentence of a special nature, while the explanation of Article 91 of RKUHP states that the death penalty is not as one of the regular sentences, but as a special punishment.[17] These inconsistencies will have implications for the application of the provisions of Article 61, which states that if a criminal offence is punishable by an alternative regular punishment, the imposition of the lighter sentence must take precedence when it is deemed appropriate and to support the attainment of the objectives of sentencing.[18]

VI. RKUHP: THREAT TOWARDS THE FREEDOM OF EXPRESSION

In RKUHP, National Alliance for the Criminal Code Reform has observed the developments of the offences proposed by the Government, especially ideological offences and the criminal defamation (contempt of the President, humiliation against the symbols of State and Government, and the general criminal defamation).

Pursuant to the articles related to the criminal defamation distributed in RKUHP, there are at least three fundamental problems associated with offence in the RKUHP, namely: ***first***, the provisions of unconstitutional articles revived by the drafting team of the RKUHP, ***second***, the stringent penalty and ***third***, the absence of sufficient justification. In addition to these factors, the framers of the draft KUHP does not seem to look back at the provisions in international law that have been ratified by Indonesia as a basis for criminalising or decriminalising of a particular act.

[16] The elucidation also mentioned that Indonesia is bound to Economic and Social Council Resolution 1984/50 entitled "Safeguards Guaranteeing Protection on the Rights of Those Facing the Death Penalty", adopted in 25 May 1984.

[17] In the elucidation of Article 91 of RKUHP, the special nature of the sentence is shown from the fact that the capital punishment is imposed very selectively. In this connection, judges are always expected to consider whether in a case, the alternative sentence "life in prison" or "20 years imprisonment" can be imposed. In case where there are doubts about the possibility of the use of one of these alternatives to the case in question, then the provision of this article opens the possibility for the judge to impose a conditional death penalty.

[18] Note the elucidation of Article 61 of RKUHP mentioning "Although the judge has a choice when facing alternative criminal formulation alternatives; in making that choice the judge should always be oriented towards the goal of punishment, by giving precedence or priority to type of punishment that is lighter when it has fulfilled the purpose of criminal prosecution".

Some offenses found in RKUHP are actually no longer to be found in the current KUHP, such as the contempt of the President and contempt against the Government.[19] There are no special reasons why the criminal offenses were revived in RKUHP. However, the Government states that such article is used to protect and to prevent the President from contemptuous attempt made by his own citizens.[20] The reason can be found in the summary report produced by the National Legal Development Agency (*Badan Pembinaan Hukum Nasional* or BPHN) which proclaimed that the application of the defamation offence against the President is still relevant to be uphold because the President and his Vice are a reflection of the population and the country, and thus, their dignity should be protected from any arbitrary harassment of ill degrading treatment of that position.[21] In addition to reviving a norm that has been declared to be in contrary to the Constitution, the drafters of the RKUHP also aggravate the penalties.

As for the provisions of insulting the Government, there is a difference between Articles 154 and 155 of KUHP, and Articles 284 and 285 of RKUHP. The difference lies in the requirement of the impact of such humiliation, namely social disorder. However, the explanation of Articles 284 and 285 of RKUHP is unsatisfactory because they only contain a general explanation, namely to prevent acts that can be divisive to the national unity of Indonesia.[22] This explanation is congruent with the frame of mind found in the Academic Manuscript of RKUHP, which explains that the authority of the government as well as the unity and integrity of the Indonesians should not be disturbed by the behaviour inciting hatred.[23]

At the same time the government is also aware of the possibility of using these provisions to silence democratic expressions. The Government seems to realize that the provisions of Articles 154 and 155 of KUHP are used to suppress protests and opposition to the government; thus, the government perceives that this new formula in RKUHP will not be used to stifle democratic aspirations.[24]

The Constitutional Court itself even assesses that the provisions of Articles 154 and 155 can be said to be irrational, because citizens of an independent and sovereign State will not be hostile to their own State and government that is independent and sovereign, except in cases of treason (*makar*). Therefore, the Constitutional Court is of the opinion that the same provisions be included no more in RKUHP.[25]

The formulation including an element of result also still raises its own problems, when would the 'social disorder' can be considered to meet the formulation of offense in Articles 284 and 285 of RKUHP? Would a demonstration, for example, be deemed to have fulfilled the formulation of the offence?

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[19] Articles 134, 136 *bis.*, 137, 154, and 155 of the Penal Code have been declared unconstitutional by the Constitutional Court through Decisions No. 013-022/PUU-IV/2006 and No. 06/PUU-V/2007.

[20] CNN Indonesia, *Menteri Yasonna Nilai Pribadi Presiden Tak Bisa Dihina*, <http://www.cnn indonesia.com/politik/20150810170643-32-71189/menteri-yasonna-nilai-pribadi-presiden-tak-bisa-dihina/>.

[21] BPHN, *Laporan Akhir Tim Analisa dan Evaluasi Hukum tentang Delik-Delik Penghinaan terhadap Pejabat Negara dan Simbol-Simbol Negara*, <http://www.tu.bphn.go.id/substantif/Data/ISI%20KEGIATAN%20TAHUN%202005/3ae%20penghinaan%20lambang%20negara.pdf>.

[22] See the elucidation of Article 284 of RKUHP.

[23] See the Academic Manuscript of RKUHP, (2015) at 219.

[24] *Id*.

[25] See the consideration of the Constitutional Court decision No. 6/PUU-V/2007, para. 3.18.7-3.18.8.

In relation to the criminal defamation, RKUHP still uses the pattern from the existing KUHP, with sole justifying clause, that is "in the public interest and in self-defence". In the practice developed through court decisions, the Indonesian courts have started to expand justifying reasons, namely:[26]

1. In public;
2. Public interest;
3. Good faith statement;
4. Statement of truth;
5. Mere vulgar abuse; and
6. Privilege and malice (report to law enforcers, profession and code of ethics, as well as right holders in accordance with law).

Other than the stringent regulations on defamation, because there were no changes compared to the old regulations, another unique aspect of the RKUHP is the increased sanction for the criminal defamation. “Damaging reputation”, which in the KUHP carries a maximum punishment of between 9 months to 1 year and 4 months, has been raised to between 1 year to 2 years; “slander” that the KUHP carries a maximum of four years, rises to 5 years in RKUHP, while “complaint of slander” rises from 4 years to 5 years, and even “minor insult” that was only threatened with 4 months and 2 weeks in the KUHP rises to a maximum of 1 year in prison in RKUHP.

This increased harshness of sentencing is not given with a clear explanation. It seems that the formulators of the RKUHP did not reflect on the trend of the court decisions related to the defamation cases. The Institute for Criminal Justice Reform (ICJR) recorded that in 2012, the average length of sentence indicted by the Prosecutor was 154 days (equal to 5 months), and the average length of sentence pronounced by the Court ranged between 108-112 days or about 3 to 4 months.[27] Besides not giving attention to this, the Government also failed to note the rise of probation sentences given by the Courts in the cases of defamation, which reached 59% of the total indictments.[28]

VII. HUMAN RIGHTS RELATED OFFENCES UNDER RKUHP

Presently, RKUHP also intended to prescribe various criminal offences related to human rights. For the purpose of this paper, the writers highlighted three particular issues, which are the offence of torture, crime of genocide and crime against humanity, and war crimes, as enunciated *infra*.

VII.1. The offence of torture

The offence of torture is a new regulation in Indonesian criminal law. The emergence of this rule is not separated from Indonesia’s obligation *ex-post* his ratification to the Convention Against Torture

[26] Supriyadi Widodo Eddyono, et al., *Analisis Situasi Penerapan Hukum Penghinaan di Indonesia*, (Jakarta: ICJR, 2012) at 73-87.

[27] *Id.*, at 91.

[28] Supriyadi Widodo Eddyono and Erasmus A.T. Napitupulu, *Penghinaan dalam Rancangan KUHP: Ancaman Lama Terhadap Kebebasan Berekspresi*, (Jakarta: ICJR, 2014) at 37.

(CAT)[29] through Law No. 5 of 1998. In RKUHP, the offence of torture is stipulated in two articles, which is in Article 669 of RKUHP,[30] which dictates:

> "*Convicted with imprisonment of 3 years at the minimum and 15 years at the maximum every officers or other persons acting in an official capacity or those whose acts were actuated or in the privity of public officers, in committing any act by which inflicts suffering or severe pains, both physical and mental against someone with the aim of obtain from that person or a third party information or a confession, dropped criminal sanction to the act that has been committed or allegedly being committed or intentionally has been committed with the aim to intimidate or force those persons on the basis of discriminatory reasoning in all shapes.*"

According to this Article, it can be elaborated the following main elements, which are:

- Every public officers (subject);
- Other persons acting in an official capacity (subject);
- Those whose acts were actuated or in the privity of public officers (subject);
- Inflicting suffering (predicate);
- Severe pains, both physical and mental against someone (predicate);
- With the aim of obtain from that person or third party:
  - Information,
  - Confession,
  - Dropped criminal sanction to the act that has been committed or allegedly being committed,
  - With the aim to intimidate,
  - To force those persons, or
  - On the basis of discriminatory reasoning in all shapes.

However, this formulation has eliminated certain crucial elements relating to torture as stipulated in Article 1 (1) of CAT. For instance, Article 669 of RKUHP is silenced to the phrases of "threat" and "consent". The last sentence in Article 1 (1) of CAT, which stipulates "*It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions*", is also not being mentioned in RKUHP. The removal of the aforementioned keywords as stipulated in CAT will indeed diminish the essence of torture itself. Thereby, it can be concluded that the regulation of torture offence in RKUHP, though has tried to adopt from international instrument, like CAT, still however not in line with that Convention wholly.

Besides, that Article only highlighted to the torture offence under Article 1 of CAT and failed to address the second form of torture offence under Article 16 (1) of CAT. Accordingly, the Draft Bill should adopt the provisions of CAT comprehensively.

The offence of torture is indeed needs to be differentiated with other ill-treatment offences. That is because there are certain criminal law obligations attached to torture, for example the application of universal jurisdiction.

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[29] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 UNTS 85.

[30] Previously in the 2012 Edition of RKUHP, the "offence of torture" is inserted in the Chapter of the "offence of human rights".

Torture and cruel, inhuman and degrading treatment (CIDT) are generally separated from the "gravity of cruelty" and its "purposes". Many opinions interpret torture as "*a form of cruel, inhuman or degrading treatment with a meanness severity*".[31] Consequently, the CIDT is being considered as less serious ill treatment that can be categorised as a torture.[32] Moreover, the degrading treatment can be classified as inhuman one, and if it has reached the most serious level, can be qualified as torture. Contrariwise to these opinions, several experts deemed that the "gravity of cruelty" and "purposes" approach is problematic and the formation of hierarchy between torture and other forms of ill treatment should be avoided.[33]

The United Nations Human Rights Committee, through the General Comment No. 20 pronounced that "*The Covenant does not contain any definition of the concepts covered by article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied*".[34]

Similar contention also reaffirmed by Sir Nigel Rodley, former UN Special Rapporteur against Torture, which puts forward three elements relating to torture, which are: (1) the relative intensity of the pain or suffering inflicted; (2) the purpose for inflicting it; and (3) the status of the perpetrator, i.e., whether he/she is acting in a public capacity.[35]

In the context of RKUHP, the insertion of other forms of ill treatment outside torture is crucial; bearing in mind the definition of torture is very limited. Henceforth, certain notes need to be addressed in conjunction to Article 669 of RKUHP.

First, if RKUHP is sees as one of the forms in implementing or as a consequence in ratifying CAT under Law No. 5 of 1998, then it no longer need to be inserted in Chapter XXXII, although this offence is amounted to an "international crime" and even "serious crime",[36] but it is better for this matter to be added or juxtaposed with the crime of persecution in order to reach public officials acting in his official capacity. This was aimed to maximize the prohibition rule of torture that is punishable in all States KUHP.[37]

Second, in order to accord with the full title of CAT, which is "*UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*", thus RKUHP needs to also

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[31] See *"The Greek case" (Danemark v. Greece)*, No. 3321/67, E.Ct.H.R. (1969); *Ireland v. United Kingdom*, E.Ct.H.R. (ser. A) No. 25 (1978) para.167.

[32] *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, GA Resolution 3452 (XXX), UN Doc. A/RES/30/3452 (1975) Article 1.

[33] Association for the Prevention of Torture, *The Definition of Torture: Proceedings of an Expert Seminar*, (Geneva: APT, 2001) at 18.

[34] *General Comment 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, UN Doc. HRI/GEN/1/Rev.1 (1992) para.4.

[35] Nigel Rodley, "The Definition(s) of Torture in International Law", in Michael Freeman, ed., *Current Legal Problems* (Oxford: Oxford University Press, 2002) at 467-493; see also Christian M. De Vos, "Mind the Gap: Purpose, Pain, and the Difference between Torture and Inhuman Treatment", 14 *Human Rights Brief* 2, (2007) at 4.

[36] *Princeton Principles on Universal Jurisdiction* (2001) Principle 2 (1) which reads *"For purposes of these principles, serious crimes under international law include: (1) piracy; (2) slavery; (3) war crimes; (4) crimes against peace; (5) crimes against humanity; (6) genocide; and (7) torture*".

[37] In the existing KUHP, the Article used for torture is Article 351.

accommodate the provisions concerning other cruel, inhuman or degrading treatment or punishment.

VII.2. Crimes of genocide and crimes against humanity

RKUHP has inserted the crimes of genocide and crimes against humanity as parts that will be regulated under RKUHP. The inclusion of these types of crimes is a big passion from the drafters of RKUHP to include all criminal acts that are incorporated in criminal categorisation within the framework of the criminal law codification efforts.

However, there are fears that the inclusion of crimes of genocide and crimes against humanity in RKUHP will weaken the gravity of the crimes due to the fact that those crimes have been known as extraordinary crimes and are international crimes that shocking the consciousness of human kind. As a consequence, these types of criminal acts that are categorised as serious, principle and doctrine of law show a different implementation of general principles to guarantee an effective punishment.

Crimes of genocide and crimes against humanity themselves are regulated in Article 400 and 401 of RKUHP which state that:

> "***Article 400***
> *(1) Convicted with capital punishment or lifetime imprisonment, or imprisonment for 5 years at the minimum and 20 years at the maximum, each person with the intent of destroying or destroy in a whole or part of national, racial, ethnic or religious groups' acts:*
> *a. killing members of the group;*
> *b. resulting in severe bodily or mentally harm to members of the group;*
> *c. creating a state of life that aims resulted in the group physically destroyed either in whole or in part;*
> *d. imposing the means that are intended to prevent births within the group; or*
> *e. forcibly transferring children of the group to another groups.*
> *(2) Each person who attempted and assisted in committing a criminal act referred to in paragraph (1), shall be punished with the same punishment.*"
>
> "***Article 401***
> *(1) Convicted with capital punishment or lifetime imprisonment, or imprisonment for 5 years at the minimum and 20 years at the maximum, each person who commits any of the following acts, which is part of widespread and systematic attack, knowing that the attack directed against the civilian population in the form of:*
> *a. murder;*
> *b. extermination;*
> *c. enslavement;*
> *d. eviction or forced transfer of population;*
> *e. deprivation of liberty or other physical freedoms arbitrarily that violates the principles or basic provisions of international law;*
> *f. torture;*
> *g. rape, sexual enslavement, enforced prostitution, forced pregnancy, sterilisation, or forced sterilisation or other forms of sexual violence that is equivalent;*

h. persecution of a particular group or association which is based on equal politic opinion, race, nationality, ethnicity, culture, religion, gender or other reasons that are universally recognised as impermissible under international law;
i. enforced disappearance;
j. crimes of apartheid; or
k. other inhumane acts of similar nature to inflict severe mental and physical suffering.

(2) Each person who attempted or assisted in committing a criminal act referred to in paragraph (1) shall be punished with the same punishment."

In the transcript of elucidation of RKUHP, the reason with regards to the inclusion of these crimes in RKUHP is explained, which stated that:

> "*As is the case of terrorism, the acts that are formulated in the stipulation of this Article have also been used as one of international criminal offences based on the Convention on the Prevention and Punishment of the Crime of Genocide (9 December 1948). Because Indonesia is a member of the United Nations, therefore through the provision of this Article, it is stipulated that "genocide" is a criminal act.*"

Incorporating crimes of genocide and crimes against humanity in RKUHP is feared that it will be a barrier to an effective prosecution because of the provisions and the general principles of the criminal law that are precisely not in line with the characteristics of the crimes of genocide and crimes against humanity. There are three reasons why putting the crimes of genocide and crimes against humanity are considered improper to be included in the codification of RKUHP:

First, the formulation is not in accordance with international law and its implication towards the effectiveness of its implementation

The formulation of the provision in RKUHP regarding crimes of genocide and crimes against humanity is precisely repeating the error in formulation in Law No. 26 of 2000 concerning Human Rights Court. The framers also did not provide the elements of crimes as an indispensable part in order to give clarity in interpreting the meaning of the crimes of genocide and crimes against humanity.

With the incomplete and strayed formulation from the 1998 Rome Statute of the International Criminal Court have weaken the gravity of those crimes. As a consequence, if the formulation with regards to crimes of genocide and crimes against humanity in RKUHP is maintained with such provisions, it will also weaken the effectivity in prosecuting these crimes.

The difference is even though Law No. 26 of 2000 did not have complete formulation, but there is a clause which states that what was meant as crimes of genocide and crimes against humanity under such Law is in accordance with the 1998 Rome Statute. This has a consequence that the Judges have the opportunity to interpret the formulation of crimes of genocide and crimes against humanity in accordance with its original intent in the 1998 Rome Statute.

Second, these crimes have distinct characteristics with the deviation from general principles of criminal law

The crimes of genocide and crimes against humanity have distinct characteristics with ordinary crimes in which therefore their principles deviate the general principles of criminal law. Crimes of genocide and crimes against humanity do not recognise the "expiry" principle[38] and nullification of criminal acts due to superior order or unlawful order.

Third, there are various prohibitions to give amnesty to crimes of genocide and crimes against humanity

The formulation of Article 152 (g) of RKUHP stipulates again the loss of authority to prosecute due to amnesty from the President. This clause gives opportunity to crimes of genocide and crimes against humanity to not be prosecuted due to amnesty. This is in contradictory with the ICCPR,[39] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, as well as Update Set of Principles to Combat Impunity[40] which regulates that in the event of genocide and crimes against humanity, each country therefore has a duty and responsibility to prosecute and punish in kind the perpetrators and not to give amnesty to the officials or state officials until they are prosecuted before the court.

Recommendation

The crimes of genocide and crimes against humanity have a very special status in international law. These crimes are the most serious crimes of international concern as a whole or the most severe crimes to international community as a whole. These crimes are categorised as violations of *jus cogens* and *erga omnes obligatio*, which is the highest norm in international law that override other norms[41] and it is a responsibility applicable towards all countries to prosecute such crimes.[42]

Therefore, placing such crimes with the current Draft Bill and forcing them into the future KUHP will give rise to weaknesses both from the drafting of the crimes or the incompleteness of the general principles that it adopted. Even, this matter has a potential to raise contradictions with the general principles of criminal law in Book One of RKUHP.

Therefore, these crimes are supposed to stay outside of the RKUHP. Nevertheless, a full revision of the drafting and the accommodation of special principles that will facilitate the effectivity in prosecuting the crimes of genocide and crimes against humanity can be achieved through amendment of Law No. 26 of 2000.

VII.3. War Crimes

The term of war crimes have been long known in international law, especially in international humanitarian law, which often referred to as law of war of law of armed conflict.[43] In international humanitarian law, the term of war crimes is connected with certain actions committed by

[38] See Sriwiyanti Eddyono dan Zainal Abidin, *Tindak Pidana Hak Asasi Manusia dalam RKUHP*, Position Paper No.5/2007, (Jakarta: ELSAM, 2007) at 22-23.

[39] *See General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004) para.18.

[40] *See* Principles 1, 19 and 24.

[41] VCLT, *Op.Cit.*, art.51 (this Convention has been ratified by Indonesia with Law No. 1 of 1982).

[42] *Barcelona Traction, Light and Power Co., Ltd. (Belgium v. Spain)*, Second Phase, 1970 I.C.J. 3, para.33.

[43] ICRC, *International Humanitarian Law: Answers to Your Questions*, (Geneva: ICRC, 2014) at 4-5.

combatant or party who is involved in the conflict that violate the rule of international humanitarian law. These particular actions can be categorised as grave breaches to international humanitarian law and other violations (which are not categorised as severe).

This is clearly stated in the 1949 Geneva Convention and later completed with three additional protocols. Even at the start, war crimes were always interpreted for crimes conducted in the war between States, but in the development, especially with the 1977 Additional Protocol II to the 1949 Geneva Convention, the regulation concerning war also covers war that is located within a country (non-international armed conflict). In its development, with the presence of International Criminal Court for cases in the former Yugoslavia, Rwanda, Sierra Leone, Cambodia and Lebanon, war crimes gained serious international attention.

In the recent development, with the presence of the Rome Statute, war crimes is finally recognised as an extraordinary crime, which amounted to a gross violation of human rights. Only Rome Statute that includes elements of "widespread" and "systematic" as important elements in it.[44]

Article 8 (2) of Rome Statute also categorizes war crimes as (1) grave violation that has been regulated in the 1949 Geneva Convention which is purported for people and property; (2) other grave violations to law and norms applied in international armed conflict; (3) grave violations to the 1949 Geneva Convention in connection with non-international armed conflict; and (4) other grave violations to law and norms applicable in armed conflict that is not international in nature.

Specifically, "War Crimes" can be found in Article 402 until 406 of RKUHP which covers war crimes for conflict that is international in nature, not the one that has internal nature, as regulated in Article 405. Therefore, war crimes in RKUHP raise flaws in the effort to prosecute the future war crimes perpetrator and within Indonesian context.

As a State that has acceded to the 1949 Geneva Convention, Indonesia needs to also include other violations that can be deemed as violation to that Convention. In connection with the above-mentioned points, therefore RKUHP then become ambiguous in formulating who needs to be prosecuted in war crimes. The term "each person" is different with the context of the 1949 Geneva Convention that limits it with the "parties involved in the conflict".

In the 2015 manuscript, RKUHP even eliminated all provisions of criminal acts in time of war or peace, the elimination towards all of the grave violations of the Geneva Convention and serious violation to law and norms of war, so there are a lot of protection principles to the victims of war that are being neglected by RKUHP.

A couple of formulations in the RKUHP are in contradictory with the human rights principles and liability principles in humanitarian law. For instance, RKUHP utilising "capital punishment" as its sanction, in which is in contradictory with human rights principles, even there is no sanctions regarding capital punishment in the Rome Statute.

Other than that, the uses of a couple of terms are also still considered as inappropriate. For instance, the term "prisoner" that is supposed to be "detainee", because it is clear that prisoner and detainee have different meaning. Similarly with the term "wealth" that is supposed to use "property", the

[44] See the provision in Article 8 (1) of Rome Statute that reads "*The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes*".

term “military necessity” which is more appropriate to be “military necessity principle” and the term “power of population” which is supposed to be “occupying power”.[45]

Recommendation

The formulation of war crimes provision in RKUHP is still very weak. Criminal acts are simply regulated in accordance with the Rome Statute, meanwhile war crimes in the scope of grave breaches and serious breaches, as well as other breaches of the law of armed conflict are regulated in the entirety 1949 Geneva Convention are not included. Therefore, RKUHP is supposed to also regulate other violations meanwhile the serious violations shall be regulated in special regulation considering that those crimes are extraordinary.

VIII. CONCLUSIONS

The renewal of the national KUHP is of course aimed to actualise the national law based on Pancasila and the Constitution, in which it integrates the responsibility for the advancement and protection of human rights. Further, this renewal is needed to adjust legal materials of national criminal law with all of its development in law, politics, circumstances, as well as various progresses in the life of the nation, primarily the acknowledgment of human rights as an inseparable part of the civilised Indonesia today. Thus, the renewal of the criminal law must be put in the effort to strengthen the foundation for the life of a democratic State and to protect human rights.

However, from the thorough analysis to the current RKUHP, as has been partly explained *supra*, it seems that the spirit to renew the KUHP is not fully placed under the changing such political framework, leaning towards a democratic system. Awareness or way of thinking that is derived from authoritarianism still remains strong, even colonialist in drafting. Such signal can be determined from the magnitude of the State’s desire to control the freedom of its citizens. Therefore, instead of democratise criminal law, criminal politic that are contained in RKUHP are precisely go the other way around; threatening the civil liberties and human rights.

RKUHP is more aimed to protect the political interest of the State and groups of people, instead of looking for the balance of civil liberties and individual rights. Having said that, criminal politics that underlie the drafting of RKUHP is still not purported to the democratisation of criminal law, which is to promote, maintain and protect the human rights.

The drafting of RKUHP that tries to balance various interests, theoretically is correct, but in practice will more likely to face hurdles, if not formulated with clear perspective. Such will have strong connection with the thinking ground and arguments in determining what acts shall be classified as crimes, and which are not. Acts to carelessly criminalise, responding only to the public demand will only give rise to a dangerous situation for individual protection. The danger of over-criminalisation in RKUHP is very tangible. As showed in the above, especially with regards to freedom of expression, almost all of inappropriate acts (both from religion, moral or ethics) or undesirable, qualify as criminal acts. Having read the whole draft, it is hard for us to differentiate which is a violation of manners of civility, sins, and which are criminal acts?

These massive criminalisation are in turn will lead to what is called the misuse of criminal sanction. Criminal law is no longer deemed as an *ultimum remedium*, but primarily function as pressing or vengeance instrument. Not to mention that in drafting the relationship between national criminal

[45] Sriwiyanti Eddyono dan Zainal Abidin, *Op.Cit.*, at 61.

law as positive law with the *adat law* which lives in society. This uncertainty results in the ambiguity of the legality principle as principle in criminal law, and has a potential to cause a double jeopardy to *adat law* and positive law abiding citizens.

In the context of fulfilling and protecting human rights, the drafting a criminal act as a crime must be enforced in a strict, scalable, and not carelessly derogate the rights that have been protected. Indonesia, as a party to the ICCPR, shall adjust the renewal of its criminal law in accordance with the responsibilities that are adhered to such Covenant. However, looking from a couple drafts of RKUHP, it still regulates capital punishment, which is clearly opposed by the Covenant and the Constitution. Other than that, it also regulates about the prohibition of certain teachings, giving threats to freedom of expression, criminal acts formulation which disrupt the flexible public order, excessive formulation of religious criminal acts and various forms of regulation that are most likely limit and endanger civil liberties and are not in line with principle of a modern democratic constitutional State.

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PROFILE OF ELSAM

The Institute for Policy Research and Advocacy (ELSAM), established in August 1993 in Jakarta, is a policy advocacy organisation with limited association as its legal entity. To actively participate in the efforts to develop, promote and protect civil and political rights and other human rights, as mandated by the 1945 Constitution and Universal Declaration of Human Rights (UDHR), has become ELSAM's 'driving' objective. From the outset, ELSAM has committed itself to developing a democratic political order in Indonesia by empowering civil society through advocacy and promoting human rights.

Vision
Indonesia as a democratic and just society, and country that respect for human rights.

Mision
As a non-governmental organisation, ELSAM strives for all human rights, including civil and political rights and economic, social and cultural rights.

Main Programmes
1. Policy and law research and their impacts on human rights;
2. Human rights advocacy in various forms;
3. Human rights education and training; and
4. Publication and dissemination human rights related information.

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PROFILE OF ICJR

The Institute for Criminal Justice Reform (ICJR) is an independent research institution that is focusing on criminal law reform, criminal justice system reform and Indonesian legal reform at large.

One of the crucial problems that Indonesia faced during the present transition era is in reforming criminal law and its judiciary system in a democratic way. Previously, criminal law and its judicial system are used as braces for the authoritarian regime, as well as being used for the tool of social engineering. Nowadays, the orientation and instrumentality of criminal law as a supreme power have been modified for a better of democratic political system and respect of human rights. This is the challenge that must be resolved in order to reshape the legislation and criminal justice system in Indonesia.

In responding to this challenge, it therefore requires planned and systematic methods. A grand design for the reformation of criminal justice and its legislation at large is needed. Criminal justice system, as being known, placed strategically in developing the Rule of Law framework and respect of human rights. That is because democracy will only work properly if there is an institutionalisation towards this Rule of Law concept. The reformation of criminal justice system that is oriented to human rights protection is thus a "*conditio sine qua non*" with the democratisation of the institutionalization process in this transitional era.

Measures in transforming legislations and criminal justice system into a better one is indeed on process. However, this process requires massive supports. The ICJR aimed to initiate those steps by giving support in the context of respecting the Rule of Law and at the same time build a human rights culture within the criminal justice system.

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PROFILE OF THE NATIONAL ALLIANCE FOR CRIMINAL CODE REFORM

Aliansi Nasional
Reformasi KUHP

The National Alliance for Criminal Code Reform was established in 2005 by the organisations that concerned with the reformation of Indonesian criminal law in order to response the Draft of KUHP (RKUHP) that was formulated from 1999 to 2006 by the Ministry of Law and Human Rights, particularly in relation to the issues of criminal law and human rights reform.

The main focus of the National Alliance for Criminal Code Reform is to advocate the criminal law reform policies, in this case is RKUHP. In implementing this measure, the Alliance has two main strategies: (i) urges the formulation of criminal offences with human rights perspective, and (ii) urges public participation in the discussion and formulation process of the provisions stipulated under the Draft.

RKUHP had several fundamental problems, both in the choice of its codification model and the setting of its criminal offences. There are various criminal offences, for example, crime against State and decency or religious offences could potentially violated human rights values. This potential infringement extends to the rights of women and children, civil and political rights, freedom of press, right to an environment and natural resources, as well as freedom of religion and belief.

In order to expand our network and public support, the National Alliance for Criminal Code Reform develops the advocacy in national level of Indonesia. National Alliance for Criminal Code Reform also established as a resource center for RKUHP advocacy, thus public can freely access the development of RKUHP in Parliament and to share information related to RKUHP advocacy.

Around 2006-2007, the Alliance organized numerous activities across the archipelago, *inter alia*, (1) Focus Group Discussion (FGDs) and public discussion in order to attain input from other regions in Indonesia, such as, Java, Sumatera, Batam, West Nusa Tenggara, Celebes and Papua, (2) Preparing various key documents, for example, thematic position papers (11 themes), Inventory List of Issues (*Daftar Inventaris Masalah* (DIM)), leaflet, as well as another campaign toolkits, and (3) Creating a website which contains all information related to the discussion of RKUHP, including but not limited to the Alliance activities, supported papers, position papers or other related information to RKUHP.

In 2013, the Government, again, was proposing the Draft Bill to the Parliament. The Alliance also monitoring the discussion process and has given recommendation to the Parliament over the 2012 version of the Draft of KUHP. The Alliance noted that there are problems within the RKUHP that recently discussed between the Government and Parliament. We will always oversee the discussion and give a recommendation in a hope to ensure the reformation of Indonesian criminal law.

The membership of the National Alliance for Criminal Code Reform is open to all non-governmental organisations in Indonesia. Presently, we consisted of the following members:

ELSAM, ICJR, PSHK, ICW, LeIP, AJI Indonesia, LBH Pers, Imparsial, KontraS, HuMA, Wahid Institute, LBH Jakarta, PSHK, ArusPelangi, HRWG, YLBHI, Demos, SEJUK, LBH APIK, LBH Masyarakat, KRHN, MAPPI FH UI, ILR, ILRC, ICEL, Desantara, WALHI, TURC, Jatam, YPHA, CDS, ECPAT.

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