

# FREEDOM IN DANGER

*The Current Development*  
Indonesian Bill of Penal Code

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## Freedom in Danger: The Current Development of Indonesian Bill of Penal Code

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## **1. Introduction**

The Penal Code of the Republic of Indonesia is inherited from the Dutch East Indies and was applied in Indonesia as regulated in the Law No.1 year 1946 on Penal Code.

In 1963, based on the resolution of National Law Seminar, the government had started the project to establish national criminal law by forming a drafting team for formulating the Bill of Penal Code. The drafting of the First Book on General Provisions had been finished in 1986 by the drafting team. In 1993, the drafting team led by Prof. Mardjono Reksodiputro finalized the Bill and presented to the Minister of Justice.

At the end of President Susilo Bambang Yudhoyono's administration in 2014, the government had delivered the Bill to the House of Representatives. However, the government drew the Bill back. On 5 June 2015, through the Presidential Letter R-35/Pres/06/2015, the government started the discussion of the Bill with the House of Representative. At the same time, ICJR together with The National Alliance for Penal Code Reform drafted and submitted the List of Issues (DIM) of the Bill to the House of Representativeary factions. The DIM compiled by ICJR and the National Alliance was largely adopted by the factions in the House of Representative which then finalized as the DIM submitted to the government.

## **2. The Development of Book I**

Book I of the Bill of Penal Code contains with General Provisions that will become the basis of the implementation of the Criminal Law in Indonesia. Book I also regulates the legal principles such as the principle of legality, criminal liability, criminal responsibility, sentencing guidelines, the objective of criminal punishment and generally on substantive law matters in Indonesia.

### **2.1. The Living Law and the Principle of Legality**

The criminal justice system applies the principle of legality. Bill of penal code introduces the concept of living law that someone can also be criminalized based on the living law even though the criminal law does not criminalize the act. The principle of legality in the national criminal justice system could be disregarded if the living law is recognized as a basis of punishment. The existence of this provision is basically to accommodate the customary/adat law that has been present in Indonesian indigenous societies.

In the development of the discussion of the Bill of Penal Code in the House of Representative, the government and the House of Representatives agreed to regulate this provision in the form of a Regional Regulation (Perda). But on 30 May 2018, the government's position has been changed. The government stated that this provision application is on the Judge's consideration, however, there is no change in the bill.

#### **2.1.1. Recommendation**

ICJR and National Alliance for the Penal Code Reform keep an eye on the discussion of this provision. The enactment of living law in Indonesian societies, in the form of a Regional Regulation, will trigger the emergence of other 548 "Local Penal Code". ICJR and the National Alliance requested that the government and the House of Representative to re-

discuss this provision carefully, redefine what is the living law, its relationship to customary / adat law and how it is enforced.

## 2.2. Death Penalty

The provision of death penalty in the Bill of Penal Code is expressed as a compromise to reflect "Indonesian way" of the death penalty. In the Bill, the death penalty is regulated separately from other punishments. The death penalty is no longer a main punishment like in the current Penal Code, but a special punishment and it is given with execution delay period. Due to the controversy of the death penalty, until 30 May 2018, the provision on death penalty as punishment became one of the issues in the list of issues (DIM) that were postponed in the final discussion of the Bill.

Chronologically, the development of the death penalty provision is as follows:

No	Change of issues	Draft 2015	Draft February 2018	Draft 9 July 2018
1.	Death Penalty Execution	Can be done only after the clemency request is rejected	Can be done only after the clemency request is rejected	Can be done only after the clemency request is rejected
2.	Execution Delay	Pregnant women, Mental illness	Pregnant women, Breastfeeding mothers, Mental illness	Pregnant women, Breastfeeding mothers, Mental illness
3.	Conditions to be met to delay an execution	Can be delayed with a 10-year probation if: Public reaction is not too massive, The position of the defendant in participation is not necessary, There's a reason to commute the sentence	Can be delayed with a 10-year probation if:  The convict showed a sense of regret and there was a hope for self-improvement, There's a reason to commute the sentence	There is an option of alternative punishment:  The execution delay was decided on the grounds that the defendant showed a sense of regret and there was hope for improvement, The postponement period must be included in the court ruling <sup>1</sup>
4.	Delay Mechanism	If the convicted person shows good behaviors, the Minister of Law and Human Rights' Decision may commute the punishment to a life sentence or 20 years of imprisonment	The commutation can only be life imprisonment	The commutation can only be life imprisonment
5.	Commutation Mechanism without	Through the Decision of the Minister of Law and Human Rights <sup>2</sup>	Through the Decision of the President, subsequent to the	Through the Decision of the President, subsequent to the

<sup>1</sup> Bill of Penal Code version 9 July, Article 111 (1a)

<sup>2</sup> Bill of Penal Code version 2015, Article 91(2)

	Clemency		Supreme Court's examination <sup>3</sup>	Supreme Court's decision <sup>4</sup>
6.	Commutation Mechanism with Clemency	President Decision <sup>5</sup>	President Decision <sup>6</sup>	President Decision <sup>7</sup>
7.	Waiting Period	In 10 years	In 10 years	In 10 years, by court ruling

### 2.2.1. Recommendations

ICJR and the National Alliance for Penal Code Reform in principle continue to reject the use of death penalty in Indonesian criminal justice system. However, we also recognize that the government and the House of Representative in principle still want to enact death penalty in the national criminal justice system.

Therefore, the ICJR and the National Alliance called the government and the House of Representatives to clearly regulate the provisions with death penalty as punishment, consistently guarantee death penalty as an alternative punishment with a shorter waiting period and enforced for all death row convicts, and not require court ruling as recommended in the last draft.<sup>8</sup>

### 2.3. Alternative to Imprisonment

One of the important issues that need to be considered in the Bill as an effort to reform the criminal justice system in Indonesia is about non-imprisonment alternative punishments. Although the drafters of the Bill in the Academic Paper agreed to reduce the destructive impact of deprivation of individual's liberty or imprisonment.<sup>9</sup> The Bill has not been able to answer the problem since non-imprisonment alternatives are not many in the Bill and impose conditions that make it difficult to be applied. In terms of numbers, the formulation of non-imprisonment alternative punishments in the Bill only regulates 3 forms, judicial supervision, social work punishment and intermittent sentence.

The explanation on the alternatives non-imprisonment punishments is as follows<sup>10</sup>:

No.	Differentiate Point	Supervision <sup>11</sup>	Social Work <sup>12</sup>	Intermittent Sentence <sup>13</sup>
1.	Classifications of Crimes	Criminal acts punishable with	Criminal acts punishable with maximum	Criminal acts punishable with maximum

<sup>3</sup> Bill of Penal Code version February 2018, Article 111(3)

<sup>4</sup> Bill of Penal Code version 9 July 2018, Article 111(3)

<sup>5</sup> Bill of Penal Code version 2015, Article 92

<sup>6</sup> Bill of Penal Code version February 2018, Article 112

<sup>7</sup> Bill of Penal Code version 9 July 2018, Article 112

<sup>8</sup> Internal government meetings on 28 May 2018 recommended to set the waiting period should be declared in court decisions

<sup>9</sup> National Board of Legal Development (BPHN), Academic Paper of the Bill of Penal Code (published 2015), page 176

<sup>10</sup> Bill of Penal Code version 9 July 2018

<sup>11</sup> Bill of Penal Code version 9 July 2018, Article 86

<sup>12</sup> Bill of Penal Code version 9 July 2018, Article 95

<sup>13</sup> Bill of Penal Code version 9 July 2018, Article 78, 79, 80

		maximum imprisonment of 5 years	imprisonment of 5 years and sentenced with maximum imprisonment of 6 months or fine with no more than 1 million rupiah	imprisonment of 5 years and sentenced with maximum imprisonment of 1 year, by the petition of the defendant
2.	Period of Time	Maximum 3 years	8 – 240 Hours  Can be done gradually for 6 months	Not more than 2 days per week, maximum 10 days per month, for the time period of 3 years
3.	Supervisor	Supervised by the Prosecutors, Mentor by the Probation Board	<i>Not regulated</i>	<i>Not regulated</i>
4.	When there is a violation committed	if the convicted committed a crime, he/she has to serve imprisonment with the same period of the supervision	- Repeats entirely / partly - Serving the entire / part of the punishment that was changed - Pay the entire/partial of the fines that were changed	Usual imprisonment

### 2.3.1. Recommendations

ICJR and The National Alliance has recommended to the Government and House of Representative to have 20 alternative forms of non-imprisonment punishment<sup>14</sup> as a comprehensive effort to reduce the overuse of imprisonment.

In addition, ICJR and National Alliance for Penal Code Reform demand the government and the House of Representatives to seriously discuss 3 important aspects of the implementation of alternatives punishments, namely related to the implementation, institutional structures, and funding mechanisms.

### 2.4. Minimum Age of Criminal Responsibility

The Bill regulated the minimum age for criminal responsibility (MACR) is 12 years old. However, imprisonment can only be applied to 14 years old children.

<sup>14</sup> Warning; Partial or total compensation for damage or loss caused by a criminal act; Payment of a sum of money which determined by the Judge to a government organization or institution engaged in the protection of victims of crime whose amount must not exceed the maximum amount of fines determined by the Law; Prohibition to contact any person or corporation directly or through a third party; Prohibition to be in a particular place or adjacent to a particular place; Obligation to be present at a certain time, at a certain place, or within a specified period of time; The obligation to report at a certain time to a particular government agency; Prohibition of the use of drugs or alcoholic beverages and the obligation to carry out urine tests for a certain period of time; Returns to parents / guardians; Obligation to attend work training organized by the government or corporation; Obligation to attend education or training organized by the government or corporation; Medical and/or social rehabilitation; Care in institutions that carry out social affairs or social institutions; Treatment in a mental hospital; Counseling; Submission to the government; Submission to someone; Revocation of a driving license; Improvement due to criminal acts either in whole or in part; Obligation to participate in a training program on behavioral intervention

### **2.4.1. Recommendations**

ICJR and The National Alliance of Criminal Code Reform has recommended the Government and the House of Representatives to raise the age limit for criminal responsibility to 14 years,<sup>15</sup> while the recommendation for the minimum age of imprisonment is 21 years.<sup>16</sup>

## **2.5. Corporate Criminal Responsibility and Its Punishment**

One novelty element that appears in the Bill is that it acknowledges the corporate position as a legal subject, not only individuals. However, the formulation of corporate criminal responsibility still reaps a variety of problems, ranging from the inclusion of corporate criminal responsibility in the Bill to the structure of its regulation.

### **2.5.1. Recommendations**

The drafters must provide Bill material on corporate criminal responsibility with the criteria that criminal acts committed by corporate entities come in 2 subjects, corporate as a body committing a criminal act, or an organ in corporate committing a criminal act for the benefit of the corporation. The Bill formulation should be able to accommodate the development of the corporate criminal responsibility theories such as vicarious liability, corporate culture and so forth. From the sentencing point of view, the Bill must carry out forms of punishments that are in accordance with the crimes committed, *e.g.* additional punishment for the environmental restoration as implemented by Law No.32 of 2009 concerning Environmental Protection and Management.

## **3. The Development of Book II**

Book II of the Bill regulates criminal acts, actions that can be punished, and elements of crimes that must be proven by law enforcement officers when they arrest someone. The provisions of Book II concerning criminal acts as in the last draft of 9 July 2018 starting from Article 206 to Article 666. There are 460 articles in total containing provisions on criminal acts in book II of the Bill, some of which still disputable.

### **3.1 Provisions on Freedom of Expression**

#### **3.1.1. Criminal Defamation**

With various revisions, the drafters of the Bill included again defamation against the president/vice president and against the legitimate government. Whereas both provisions

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<sup>15</sup> General Comments No. 10 (2007) and Concluding Observation on the Combined Third and Fourth Periodic Reports of Indonesia by UN Committee on the Rights of the Child provides that 12 years is too low for MACR

<sup>16</sup> Article 37(b) Convention on the Rights of the Child states that arrest and detainment of a child can only be used as last resort. Sweden set MACR as 15 years old, but the minimum age for a person may be imposed with imprisonment sentence is 21 years (Yanna Papadodimitraki, Minimum Age of Criminal Responsibility (MACR) – Comparative Analysis International Profile – Sweden, <http://www.cycj.org.uk/wp-content/uploads/2016/03/MACR-International-Profile-Sweden.pdf>, page 2) The Philippines, non-imprisonment punishment or non-custodial is applied to children below the age of 21 years old (Penal Reform International, The minimum age of criminal responsibility [https://www.penalreform.org/wp-content/uploads/2013/05/justice-for-children-briefing-4-v6-web\\_0.pdf](https://www.penalreform.org/wp-content/uploads/2013/05/justice-for-children-briefing-4-v6-web_0.pdf), page 5)

In Germany, legal case of a person between 18 – 21 years old will be done in the Youth Court (Penal Reform International, The minimum age of criminal responsibility [https://www.penalreform.org/wp-content/uploads/2013/05/justice-for-children-briefing-4-v6-web\\_0.pdf](https://www.penalreform.org/wp-content/uploads/2013/05/justice-for-children-briefing-4-v6-web_0.pdf), page 5)

earlier had been revoked by the Constitutional Court.<sup>17</sup> The drafting team states that this article is still needed because the president is a symbol of a country and must be protected. The drafters also argue that in the explanation of this article, it distinguishes criticism from defamation.

The Bill also repeats the mistakes that occurred in the Penal Code. Article 181 of the Bill, the act of treason / *Makar* is defined as an intention to commit an act which has been realized by the beginning of the action. The origin of the term *Makar* as being used in the Bill is *Anslaag* which means attack.

The Bill still criminalizes the criminal act of spreading the teachings of communism/Marxism-Leninism,<sup>18</sup> the act of abolishing and replacing the ideology of Pancasila<sup>19</sup> and the defamation of state ideology<sup>20</sup> in Chapter I on Crimes Against State Security.

The inclusion of imprisonment as a punishment in the said articles is inconsistent with the ICCPR which states that imprisonment is not a legitimate punishment for defamation. Prison sentences will only produce a chilling effect that will threaten democracy and the establishment of a clean and authoritative government.

### **3.1.1.1. Recommendations**

Whatever the form is, the defamation of president article should be removed from the Bill. This article was intended to protect the position of the King/Queen of the Netherlands and the heirs of the Dutch royal throne which is different from the position of the President of the Republic of Indonesia. The criminal act of defamation against the legitimate government also still must be removed from the Bill, as opposed to the principle of the democratic state.<sup>21</sup>

For the provisions related to treason, the drafters of the Bill must redefine and understand that the *Makar* in the original the Penal Code uses *Anslaag* which means attack, not as the drafters understand which is “the intention” and “the beginning of the action”.

Criminal acts against state ideology should be removed from the Bill because it is no longer relevant to be used in a democratic country.<sup>22</sup>

The imprisonment as a form of punishment in the defamation provisions should be removed in order to strengthen Indonesia's commitment to protecting freedom of expression.

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<sup>17</sup> Constitutional Court of Indonesia No. 013-022/PUU-IV/2006, No. 6/PUU-V/2007

<sup>18</sup> Bill of Penal Code version 9 July 2018, Article 206-207

<sup>19</sup> Bill of Penal Code version 9 July 2018, Article 208

<sup>20</sup> Bill of Penal Code version 9 July 2018, Article 209

<sup>21</sup> Because this article is enforced by the Dutch East Indies government as derived from Article 124(a) of British Indian Penal Code of 1915 which has been revoked by Indian Supreme Court and East Punjab High Court

<sup>22</sup> The UN Special Report on 20 April 2010 on The Promotion and Protection of the Right to Freedom of Opinion and Expression states that International Human Rights Law is used to protect individuals and groups of people, not something abstract or institutions that are entitled to criticism and comments. The criminal law of defamation should not be used to protect a thing that is subjective, abstract, and is a concept, such as ideology.

### **3.1.2. Contempt of Court**

The Bill of Penal Code includes provisions relating to the contempt of court,<sup>23</sup> one of which concerns the prohibition of publication that may affect impartial judiciary, this arrangement may threaten the freedom of the press in Indonesia.

This article is irrelevant to be used in Indonesia because the judiciary in Indonesia is open to the public. Contempt of court regulation comes from adversary models, which are not in accordance with the Indonesian courts. The non-adversary mode system does not recognize the existence of contempt of court rules because the judge has a very large role in the judicial process.

#### **3.1.2.1. Recommendations**

ICJR and The National Alliance for the Penal Code Reform considers that contempt of court provisions is not needed in such setting like in Indonesia. Aside from the fact that this is not recognized in the non-adversary system as adopted by Indonesia, the existence of contempt of court is not necessary since Indonesian judges has a big role in the trial proceeding

### **3.2. Contraceptives Provision**

Without evaluating the implementation of the Penal Code, the drafters of the Bill re-introduce the article on the prohibition of promotion of birth control or contraceptives in the new Bill.<sup>24</sup> This article will clearly suppress the government programs such as family planning and prevention of sexually transmitted infections (STIs) and HIV/AIDS.

#### **3.2.1. Recommendations**

It is clear that ICJR and the National Alliance for Penal Code Reform had recommended this article to be removed, there are no legal interests to criminalize any act that is intended to promote public health.

### **3.3. Provision on Abortion**

The Bill criminalizes every woman who aborts her womb,<sup>25</sup> criminalization is also applied to anyone who is referring or showing to a tool that can abort the womb.<sup>26</sup> This provision is contrary to the Health Law<sup>27</sup> and Fatwa of the Indonesian Ulema Council No. 4 of 2005 on Abortion which allows abortion for medical emergencies and for rape victims. This provision

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<sup>23</sup> In the Bill of Penal Code version 9 July 2018 as regulated in Chapter VI, Article 302 – 325, consists of regulation on the failure of court orders, defamation against judges and judicial integrity, trial by press, to impolite behavior before the court.

<sup>24</sup> Article 443 on the Birth Control and Abortion in Chapter XVI on the Criminal Acts of decency. The provisions of this article are actually derived from the current Penal Code which is regulated in Article 534. This article has been de-criminalized de Facto since the 1970s through the Attorney General's Letter dated 19 May 1978, which states that to succeed in one of the Government's programs Article 534 has to be set aside. In the moment, the BPHN also states "in the context of the family planning program, this article sociologically is "turned off" or there has been a process" of decriminalization

<sup>25</sup> Exception to criminalize only applied to doctors who carried out the abortion, not for the pregnant women

<sup>26</sup> Bill of Penal Code, Article 502(1) jo Article 444

<sup>27</sup> Law No. 36 of 2009 on Health, Article 75

is discriminatory because it is specific to women, and clearly will interfere with the government program to reduce maternal mortality and infant mortality.<sup>28</sup>

### **3.3.1 Recommendations**

ICJR and The National Alliance for the Penal Code Reform recommends that the government and the House of Representatives to exclude this article for women who have abortions because of medical emergencies and rape victims, not only for medical personnel.

## **3.4. Extra Marital Relations Criminalization**

For moral reasons, the drafters of the Bill criminalize all forms of sexual relations outside marriage through the expansion of adultery articles.<sup>29</sup> In its development, the drafters regulate the criminal act as a complaint offense and can only be processed based on complaints from husband, wife, parents or children.

### **3.4.1 Recommendations**

ICJR and the National Alliance remain in a position to reject the inclusion of this article into the Bill. This article will increase the rate of underage marriage. Based on ICJR research with UNICEF in 2016 on Marriage Dispensation, it shows that 89% of child marriages in Indonesia occurred due to parents' concerns, both because of economic factors and because of assumptions that their child has committed sexual relations outside of marriage.<sup>30</sup>

## **3.5. Same-Sex Relations**

The drafting team of the Bill discriminatively regulate the criminalization of adult same-sex relations. Two factions in the Bill's Working Committee Meeting proposed the arrangement of criminalization of same-sex relations by providing an alternative formulation of Article 495 on same-sex obscene act against children (Bill of Penal Code 2015).<sup>31</sup>

In its development, at the meeting of the Drafting Team on 30 May 2018, the government recommended to remove this article and integrate the article in Article 451 on fornication. However, in the explanation, the discriminatory same-sex terminology is still found.

### **3.5.1 Recommendations**

ICJR and the National Alliance agreed with the Government's recommendation to abolish this article, it should be noted that the discrimination of same-sex elements should not be regulated even in the explanation.

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<sup>28</sup> According to the BKKBN (Update Indonesia Volume XII June 2018. The Indonesian Institute), Unwanted pregnancy accounts for 75% of maternal mortality, while pregnancy consultation data at PKBI (Association of Indonesian Family Planning) for 10 years consistently shows that 20 people per day have an unwanted pregnancy where 75% are married couples and no longer want any child for health and economic reasons

<sup>29</sup> Bill of Penal Code, Article 446

<sup>30</sup> Koalisi 18+, *Menyingkap Tabir Dispensasi Perkawinan: Penelitian Permohonan Dispensasi Perkawinan Yang Diajukan Kepada PA Di 3 Kabupaten Di Indonesia: Tuban, Bogor Dan Mamuju 2013-2015*

<sup>31</sup> There was a discussion to criminalize same sex relations which was committed under 4 conditions, violence and/or threat of violence is used, committed in public, the act is published or has a pornographic element

### **3.6. Special Crimes**

With the reason for recodification, the drafters of the Bill include several criminal acts outside the Penal Code, namely corruption, narcotics, terrorism, money laundering and criminal acts of gross human rights violations. Instead of simplifying the arrangement, these criminal acts integration with the Penal Code will cause various problems that have not been anticipated by the drafters, such as:

1. Transitional provisions which eliminate certain exceptions provided under Laws outside the Penal Code, such as Corruption Law, Narcotics Law, and Law on Human Rights Court
2. Transitional provisions which do not clearly regulate the status of the articles included in the Bill which lead to the existence of duplicate criminal acts
3. The missing administrative provisions because they are not regulated in the Bill, such as the provisions concerning the scheduling of narcotics in the Narcotics Law
4. Copy-pasted recodification without reviewing the vague regulations will not meet the standards of the criminal justice system and human rights, for example in the provision of narcotics crimes and the commission of serious human rights violations.

#### **3.6.1. Recommendations**

Basically, ICJR and the National Alliance appreciate the intention of the drafters to modify the provisions of criminal acts outside the Penal Code, but the discussion and re-formulation must be done systematically and comprehensively.<sup>32</sup> Do not let the recodification becomes something problematic and not systematic.

### **4. General Recommendations on Indonesia Criminal Law Reform**

ICJR and the National Alliance for Penal Code Reform observed carefully and thoroughly the process of Indonesia's national criminal law reform because it will have a serious impact on civil and political freedoms as well as Indonesia's commitment to international obligations. The reform process that has taken place at this time may disrupt the sustainable development goals (SDGs) that the Indonesian government wants to achieve.

ICJR and the National Alliance for the Penal Code Reform still consider that the process of law reform can be carried out in other ways and models that will not interfere civil and political freedoms and the SDGs that Indonesia wants to achieve.

ICJR and the National Alliance for the Penal Code Reform view that the efforts to reform criminal law system can be carried out by a gradual amendment model and not by completely replacing the structure of criminal law that has been in place for more than a century.

ICJR and the National Alliance for Penal Code Reform call the government to:

1. Create a roadmap of national criminal law reform and national legislation program for criminal law reform as well as to announce transition period to impose new criminal provisions

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<sup>32</sup> Start from the formulation of the provisions, the administrative provisions towards some criminal acts, until the need to evaluate the existing provisions

2. Make an official translation of the current Penal Code and declare the validity of the official translation
3. Establish a criminal law reform evaluation team to assess all criminal provisions contained in the Penal Code and outside the Penal Code.
4. Undertake a gradual legal amendment by prioritizing the protection of civil and political freedoms
5. Encourage public participation in all planned amendments to the current Penal Code.

## Profile of Authors

**Anggara**, is a Senior Researcher Associate as well as an Executive Director at the Institute for Criminal Justice Reform (ICJR), an organization focusing on criminal law and criminal justice reform in Indonesia and has become an important partner for the House of Representative and the Government of Indonesia for the law reform process, specifically related to the criminal law. He is also seat as Secretary of the Human Rights Department of the National Executive Board of the Indonesia Advocate Association (PERADI). He has worked and has been involved in several NGOs for more than 14 years. He also has multifarious experiences in litigation, law reform, and human rights advocacy in Indonesia.

**Maidina Rahmawati**, an abolitionist researcher at ICJR, law graduate from University of Indonesia, have been involving in criminal law reform in Indonesia such as bill of penal code, narcotics law, victim protection and measure to eradicate sexual violence.

**Genoveva Alicia K.S. Maya**, is currently working as a researcher in ICJR. She graduated from Faculty of Law, Universitas Gadjah Mada and was a volunteer in the division of legal assistance, Rifka Annisa Women's Crisis Center Yogyakarta.

## Profile of Institute for Criminal Justice Reform

***Institute for Criminal Justice Reform*** or ***ICJR***, is an independent research institution on criminal law reform, criminal justice reform, and general law reform in Indonesia.

One of the crucial challenges that Indonesia has to encounter during its transition era is reforming the law and criminal justice in line with the democratic direction of the nation. In the past, criminal law and criminal justice had been the supporting tools of authoritarian rule, and also utilized in the interest of social engineering. Now, it is time to change the orientation and instrument of criminal law as tools of authoritarian power, to supporting tools for the democratic political system and for the protection of fundamental human rights. These are the challenges in reforming the criminal law and criminal justice during the current transition stage.

Therefore, to respond to the aforementioned challenges, Indonesia needs well-planned and systematic reform efforts. A grand design of reform in criminal justice and law in general should be initiated. The criminal justice system has been a strategic key point in establishing the Rule of Law framework and respect for human rights. Furthermore, to have a proper functioning democracy, the concept of the Rule of Law must be institutionalized. Thus, the reform of criminal justice system to orient it towards human rights protection is the “*conditio sine quo non*” along with the process of institutionalized democratic reform of the transition era.

Steps in transforming law and criminal justice system to be more effective is currently in progress. However, such measure must be supported with wider involvement. ***Institute for Criminal Justice Reform*** (ICJR) is taking the initiative to support those measures. Provide support to establish a recognition towards Rule of Law and simultaneously preserve the human rights culture within the criminal justice system. These are the reason of existence of ICJR.

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