

Criminal Law and Scope of Criminal Law

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Abstract: Unitary state The Republic of Indonesia is a country with foundations on law (*Rechts Staat*). In space its scope there is a number of one of the principles that is principle legality . Scope law criminal interests oriented general . Criminal law is knowledge basics that everyone should know and understand student law . Based on description above as for formulation problem in This research is What do you mean with law criminal and how room scope law criminal . As for goals study based on formulation the problem above is For know and analyze understanding law criminal and for know and analyze room scope law criminal . This research is of a nature descriptive , analytical and comparative , viz research that describes , describes and analyzes data as well compare data regarding law criminal and space its scope . In principle there are two different meanings on Criminal Law , the so -called with *ius poenale* and *ius puniendi* . Space principles scope enactment rule law the punishment is divided become four that is principle Territoriality (*territorialiteits beginningsel*), basic Nationality active , basic Protection (National Passive) , and principles universality (*universaliteits beginsnel*).

Keywords: Law, Crime, Scope

INTRODUCTION

Every country is independent and sovereign Certain own law Alone . Good form law written nor No written . Unitary state The Republic of Indonesia is a country with foundations on law (*Rechts Staat*). Dynamics society always development must be balanced with law For order society itself . Laws were also made For protect something interest be it the interests of the State, interests society and interests individual . interests the law exists arranged in the Criminal Code (KUHP).

Criminal law direct face to face with right basic man . Rights supreme human is right For life and punishment criminal know criminal dead , there right basic For free move , law criminal know criminal prison and system depriving detention right moving , there right For own There is criminal plunder and so on . Criminal Law in Indonesia is regulated in a way general in the Criminal Code (KUHP), which is a legacy of the Dutch colonial era . The Criminal Code is a *lex generalis* for arrangement law criminal law in Indonesia, where principles general loaded and become base for all conditions crimes regulated outside the Criminal Code.

In space its scope there is a number of one of the principles that is principle legality . Principles law The criminal penalties that exist in Indonesia are also adopted by other countries. In its application many other countries use it criminal their respective nationalities . Criminal

law is governing law about violations and crimes to interest general . Violations and crimes the threatened with punishment which is suffering or torment for those concerned . ¹Criminal Law is *ultimate remedium* . *Ultimate remedium* is term normal law used and interpreted as application penalty criminal offense which is penalty ultimate (last) in enforcement law .

Criminal law is governing law violations and crimes to interest general , characteristic force and can forced , coercion the need For maintain and organize balance circumstances deep again law criminal accompanied with penalty or what a shame as arranged in law criminal (*Strafrecht*) and loaded in the Criminal Code (*Wetboek van Strafrecht*) . Criminal law is one of very important means in frame effort control crime . All countries in the world need it existence from law criminal , though in the application There is things that don't liked by many people in particular in application the crime , so problem criminal in law criminal not enough get attention .

Scope law criminal interests oriented general . If happen violation of legal norms need efforts For straighten up law that is with take action si the perpetrator himself in accordance with applicable law . According to Moeljatno in the book of principles law criminal :²

"In general now people assume that with exists criminology on the side Criminal Law Science , knowledge about crime become more wide , because with so others get understanding Good about use the law to crime ways the restrictions , so makes it easier determination exists crime and how face For kind society and the criminals themselves ”.

Criminal law is knowledge basics that everyone should know and understand student law Because p the writer interested For discuss more carry on about law criminal and space scope law criminal . The aim of this study For know and analyze understanding law criminal and for know and analyze room scope law criminal .

Formulation Problem

Based on description background back above as for formulation problem in This research is as following:

1. What do you mean with law criminal?
2. How room scope law criminal?

RESEARCH METHODS

Method here interpreted as something method or technical implementation in the research process. Whereas research itself interpreted as effort in field knowledge implemented knowledge For obtain facts and principles with patient , careful and systematic For realize truth

¹Yulies Tiena Masriani, *Introduction to Indonesian Law* , (Jakarta: Sinar Graphics, 2006), Cet II, p.60.

²Moeljatno, *Principles of Criminal Law* . (Jakarta: PT. Rineka Cipta, 2009), p. 15.

³ In accordance with problem in this research then research used is study library (*library research*). Study References is something study with method collect data and information with help various materials available in room library . As consequence election topic problems that will studied in research object is problem law , then This research is study juridical normative that is study law that is oriented towards symptoms legal nature normative , more Lots sourced from library data collection .⁴

This research is of a nature descriptive , analytical and comparative , viz research that describes , describes and analyzes data as well compare data regarding law criminal and space its scope . Writer use approach qualitative that is fruitful research procedure analysis that does not use procedure statistics or method quantification others .⁵ Study basically qualitative is a similar investigative process with work detective , from A investigation will The main data and additional data were collected .⁶ So research with use approach qualitative so results obtained in the form of data in the form of written words .

DISCUSSION

Understanding Criminal Law

Criminal law until currently not There is general meaning about law crime itself so that formulation about understanding law criminal given by experts law criminal . Criminal law is one of the from the sub system in system existing laws in a country, what is the law criminal there are two terms that is law and crime . The term “ law ” originates from Arabic , then term criminal originate from Sanskrit which has been used in state administration Majapahit , the same thing with term civil or statecraft.⁷ Criminal Alone in a way literally means suffering , torment , sorrow . Often in the middle public mentioned term punishment criminal .

Law according to Van Kan Law is " the whole queen life which nature force For protect interest man in public ". According to Van Hamel criminal or *straf* is :

" Something nature of suffering specifically , which has imposed by the competent authority For drop criminal on country name as underwriter answer from order law general for a violators , that is simply because of that person has violate something regulation laws that must be enforced by the State.⁸

³Mardalis, *Research Methods (A Proposal Approach)* , (Jakarta: Bumi Aksara), 2009, p. 24.

⁴Johnny Ibrahim, *Normative Legal Research Theory & Methodology* , (Surabaya: Bayu Media), 2005, pp.145-146.

⁵Lexy J. Moleong, *Qualitative Research Methods Revised Edition* , (Bandung: PT Teen Rosda Karya), 2009. p. 6.

⁶Afifudin and Beni Ahmad Saebani, *Qualitative Research Methodology* , (Bandung: Pustaka Setia), 2012, p. 129.

⁷Alwan Hadiyanto and Yasmirah Mandasari Saragih, *Introduction to Criminology and Theory in Criminal Law* , (Medan: CV. Catleya Darmaya Fortuna), 2021, p. 94.

⁸Fence M. Wantu, *Criminal Law* , (Gorontalo: UNG Press), 2015, p. 2.

Criminal law can be underlined as governing law acts that are prohibited by law and result in implementation punishment for those who do it and fulfill its elements the act mentioned in Criminal Law.⁹ Criminal law is part from whole the law in force in a country, which determines principles and rules For :

- a. Determination which actions are not can carried out , what is prohibited , accompanied with threat or penalty form demands criminal certain for those who violate prohibition the.
- b. Determination when and in circumstances What to those who have violate prohibition the can worn or sentenced punishment as has been threatened .
- c. Determine How dropping criminal can held if there are people who are suspected violate prohibition the .

In principle there are two different meanings on Criminal Law , the so -called with *ius poenale* and *ius puniendi* . *Ius poenale* is objective understanding of criminal law . Criminal law in According to Mezger , this definition is , " Rules law that binds a person deed certain that fulfills terms certain something consequences in the form of criminal ”.¹⁰ By simple can stated that law criminal is governing law about acts prohibited by law along with penalty possible punishment dropped to perpetrator .¹¹

Meanwhile Hazewinkel -Suringa give more understanding broad , he said criminal law the includes :

- a. Commands and prohibitions , the top one the violation has determined threat penalty moreover formerly has determined by authorized state institutions .
- b. The rules determine How or with tool what country can give reaction to those who violate it rules the .
- c. Determining rules room scope enactment regulations that time certain areas and in certain regions of the country .¹²

Legal terms criminal meaningful plural . Simons interprets law criminal as :

“All orders and prohibitions imposed by the state and which are threatened with punishment criminal , goods whos not obey them , all the rules are decisive terms for consequence the law and all rules For drop and run criminal the .¹³ Wirjono Prodjodikoro “ Criminal Law is regulation law about criminal ” The word criminal means things that are criminalized by

⁹Yasmirah Mandasari Saragih, et al., *Introduction to Criminal Law, Transition to Criminal Law in Indonesia* . (Medan : CV. Tunga Esti), 2022, p. 2.

¹⁰Sudarto, *IA Criminal Law* , (Malang: Faculty of Law and Public Knowledge, 1974), p. 6.

¹¹Bambang Waluyo, 2004, *Crime and Punishment* , (Jakarta: Sinar Grafa), p. 6.

¹²Andi Zaenal Abidin, *Principles of Criminal Law Part One* , (Bandung: Alumni, 1987), p. 1.

¹³Simons, *Book of Criminal Law Lessons (Original Title: Leerboek van Het Nederlandse Strafrecht)* translated by PAF Lamintang, (Bandung: Pioner Jaya), 1992, p. 72.

the authority in power , are delegated to a person as things that don't nice felt and also constituted things that don't daily delegated .

Likewise with Muljatno say , law criminal give basics and rules For :

- a. Determine which actions are not can done , which is prohibited with accompanied threat or penalty form criminal certain for goods Who violate prohibition the .
- b. Determine when and in things What to those who have violate the ban is possible worn or sentenced criminal asman has threatened .
- c. Determine with method How imposition it can be punished held if there are people who are suspected has violate prohibition the .¹⁴

Criminal law according to Prof. Mr LJ Van Apeldoorn in Bambang Poernomo SH's book is also shared into 2 (two) and given the meaning, namely :

- a. Material criminal law that shows the action criminal and that due to the action is possible convicted , where deed criminal (*strafbare feiten*) has two parts , namely:
 - i. Objective part is something deed or conflicting attitudes (*nalaten*). with law positive, so nature oppose the law that causes it demands law with threat criminal on violation.
 - ii. Subjective part constitute something error , which points to si maker (*dader*) for accountable according to law .
- b. Criminal law governing formal method law criminal material can held .¹⁵

Criminal law material or often called Criminal Law Substantive , often only called with term law criminal just is actions that are not can carried out , which is prohibited and threatened with criminal for goods who violated it prohibition the . In Indonesia, the source of criminal law is in the Criminal Code and laws outside the Criminal Code which regulate it about follow criminal specifically , such as Law no. 31 of 1999 Jo. UU no. 20 of 2001 concerning Eradication Act Criminal Corruption , Law no. 15 of 2003 concerning Eradication Act Criminal Terrorism , Law No.8. 2010 about Prevention and Eradication follow criminal Money Laundering , Law no. 35 of 2009 concerning Narcotics .

Criminal law formal / Criminal Procedure Law , is governing rules about how is the country with intermediary his tools (police , prosecutors , judges) carry it out his rights For wearing Criminal as has threatened . Source the law is Law no. 8 of 1981 concerning the Criminal Procedure Code (KUHP), Law no. 18 of 2003 concerning Advocate , Law no. 13 of 2006 concerning Witness and victim protection , Law no. 16 of 2011 concerning Legal Aid , Law no. 17 of 2011 concerning State Intelligence , Law No.11 of 2012

¹⁴Mulyatno, *Principles of Criminal Law* , (Yogyakarta: Gajah Mada University Press, 1980), p. 1.

¹⁵Bambang Poernomo, 1983 , *Principles of Criminal Law* , (Jakarta: Galia Indonesia), p. 20.

concerning System Juvenile Justice , and in regulations spread in various provision Constitution about follow criminal special .

Scope of Criminal Law

Rule law criminal applies for everyone does it follow criminal in accordance principle room scope enactment of the Criminal Code . Space principles scope enactment rule law the punishment is divided become four .

a. The Principle of Territoriality (*Territorialiteits Beginsel*)

This principle is also regulated in the Criminal Code (KUHP) , namely in Article 2 of the Criminal Code which states : " Provisions criminal in Indonesian legislation is applied for everyone who does something follow criminal law in Indonesia".

b. Principle of Nationality active

If Indonesian citizens commit crimes although happen outside Indonesia, the perpetrator can worn law Indonesian criminal law , if perpetrator just a crime can worn law Indonesian criminal law meanwhile deed crime committed Indonesian citizens in foreign countries who have delete punishment dead , then punishment dead No can imposed on the perpetrator the crime , it is regulated in article 6 of the Criminal Code.

c. Principle of Protection (National Passive)

Reject the base thinking from principle protection is that every sovereign country must protect interest the law or interest national . The main characteristics is The subject form everyone does n't limited to citizens only , other than that no depending on the place , he is actions that are felt to be very detrimental interest national Indonesia which therefore must be protected . Interest national the are :

- i. Safety head /representative of the Republic of Indonesia, the integrity and security of the state as well as legitimate government , security submission goods , forces RI war at that time war , security dignity head of state.
- ii. Security state ideology , Pancasila and state policy .
- iii. Security economy .
- iv. Security of State money, values from letters issued Republic of Indonesia.
- v. Security shipping and aviation to piracy .

d. The principle of universality (*Universaliteits Beginsel*)

The universal principle is stated principle everyone who does deed criminal can sued Constitution law Indonesian criminal offenses outside the territory of the State for interest law for the whole world. This principle sees law criminal applies general , beyond the boundaries of territorial space and people, which are protected here is world interests .

Types of crimes listed criminal according to This principle is very dangerous No only seen from Indonesia's interests but also the interests of the world. Universally this evil is necessary prevented and eradicated .

Principles of Criminal Law According to time (Legality Principle): Legally, the principle of legality contained in Article 1 paragraph (1) of the Criminal Code: "There is nothing deed can be punished , except on strength rule criminal in existing legislation there , before deed done ". In Language Latin: " *Nullum delictum nulla poena sine praevia legion poenali* ", which can interpreted literally in Indonesian with : " Nothing offense , no There is criminal without provision the criminal offense that preceded it ". Also used often Latin term: " *Nullum. " crimen sine lege stricta* , which can interpreted with : " Nothing offense without strict provisions " .

According to Sudarto Criminal Law own function general and function special:

- a. Function General Criminal Law is For arrange life society and implementing internal governance public . Whereas according to Omar Senoadji Law is tool For Go to *policy* in field economy . Social and cultural.
- b. Function specifically Criminal Law is For protect interest law to desired action raped her , with sanctions in the form of criminal nature more sharp from penalty other laws . Interest law includes people, groups of people (society , country, etc

HLA Hart said that law criminal own task main For protect public to crime resulting from each violation Constitution . According to Hart's law the crime is not just aim For repair perpetrator crime so as not to do Again crime , but also for prevent public For do crime .¹⁶Wilkins said that objective main law criminal is zoom out possibility perpetrator crime repeat his actions.

CONCLUSION

1. Criminal law is one of the from the sub system in system existing laws in a country, what is the law criminal there are two terms that is law and crime . In principle there are two different meanings on Criminal Law , the so -called with *ius poenale* and *ius puniendi* . Criminal law can underlined as governing law acts that are prohibited by law and result in implementation punishment for those who do it and fulfill it elements the act mentioned in Criminal Law
2. Space principles scope enactment rule law the punishment is divided become four that is principle Territoriality (*territorialiteits beginningsel*), basic Nationality active , basic

¹⁶Bemmelen, *Criminal Law I* , (Jakarta: Binabuat, 1984), p.37.

Protection (National Passive), and principles universality (*universaliteits beginssel*). Principles of Criminal Law According to time (Legality Principle): Legally, the principle of legality contained in Article 1 paragraph (1) of the Criminal Code: "There is nothing deed can be punished , except on strength rule criminal in existing legislation there , before deed done ".

BIBLIOGRAPHY

- Abidin, Andi Zaenal . 1987. *Principles of Criminal Law Part One* . Bandung: Alumni.
- Afifudin and Beni Ahmad Saebani . 2012. *Methodology Study Qualitative* . Bandung: Faithful Library.
- Bemmelen . 1984. *Criminal Law I*. Jakarta : Binakreatif .
- Hadiyanto, Alwan and Yasmirah Mandasari Saragih . 2021. *Introduction to Criminology and Theory in Criminal Law* , (Medan: CV. Catleya Darmaya Fortuna).
- Ibrahim, Johnny. 2005. *Theory & Methodology Normative Legal Research* . Surabaya: Bayu Media.
- Masriani , Yulies Tiena. 2006. *Introduction to Indonesian Law* . Jakarta : Ray Graphics , Cet II.
- Mardalis . 2009. *Research Methods (An Proposal Approach)* . Jakarta : Earth of Letters.
- Moeljatno . 2009. *Principles of Criminal Law* . Jakarta : PT. Rineka Cipta.
- Moleong , Lexy J. 2009. *Research Methods Qualitative Revised Edition* . Bandung: PT Teen Rosda Work .
- Mulyatno . 1980. *Principles of Criminal Law* . Yogyakarta : Gajah Mada University Press.
- Poernomo, Bambang. 1983. *Principles of Criminal Law* . Jakarta : Galia Indonesia.
- Saragih , Yasmirah Mandasari , et al . 2022. *Introduction to Criminal Law Criminal Law Transition In Indonesia* . Medan: CV. Tungga Esti.
- Simons. 1992. *Criminal Law Textbook* (Title Original : *Leerboek van Het Nederlandse Strafrecht*) translated by PAF Lamintang . Bandung: Pioneers of glory .
- Sudarto . 1974. *IA Criminal Law* . Malang: Faculty of Law and Public Knowledge .
- Waluyo, Bambang. 2004. *Crime and Punishment* . Jakarta : Ray Graphics .
- Wantu , Fence M. 2015. *Criminal Law* . Gorontalo: UNG Press.