

The Historical Development of Criminal Law: A Comparative Study of Ancient Criminal Law to Contemporary Criminal Law

Mhd. Azhali Siregar

Email: azhalisiregar@dosen.pancabudi.ac.id

Universitas Pembangunan Panca Budi

ABSTRACT

This research aims to trace and analyze the development of criminal law from ancient times to the contemporary era. Criminal law is an integral part of the legal system that has evolved along with the dynamics of human civilization. In ancient criminal law, as reflected in the Code of Hammurabi, Greek Law, and Roman Law, the approach used emphasized the principles of retribution and social order. The penal system at that time was repressive, rigid, and tended to ignore individual rights, with criminal sanctions being more symbolic and cruel in order to have a deterrent effect. Over time, thinking about criminal law has shifted. The introduction of values of justice, human rights, and modern legal philosophy has influenced the direction of change in criminal law. Contemporary criminal law no longer aims solely at punishment, but also considers aspects of rehabilitation, social reintegration, and victim protection. This development reflects changing societal views on crime, perpetrators, and the function of criminal law itself. In various countries, including Indonesia, criminal law reforms are being implemented to adapt to current challenges, such as globalization, information technology, and transnational crime. This research uses historical methods and a comparative-juridical approach to explore fundamental changes in the structure, function, and purpose of criminal law over time. The results of this study demonstrate that the development of criminal law is not stagnant, but rather continues to transform in response to social, political, and cultural dynamics. By understanding the historical roots and changes that have occurred, it is hoped that a more adaptive, humanistic, and contextual criminal law system can be created, tailored to the needs of modern society.

Keywords: Criminal Law, Legal History, Ancient Criminal Law, Modern Criminal Law, Comparative Law.

INTRODUCTION

The development of criminal law reflects the evolution of human civilization in responding to crime and regulating social life. Since ancient times, humans have established rules governing behavior in society and providing sanctions for violations. Early criminal law was shaped by collective values and belief in supernatural powers, resulting in sacred and repressive criminal sanctions. In ancient times, the concept of punishment was heavily influenced by the element of retribution. Legal systems such as the Code of Hammurabi in Babylon and the laws of ancient Roman society demonstrate that justice was understood as retribution for an act, known as the principle of "an eye for an eye, a tooth for a tooth." Corporal punishment, exile, and the death penalty were the primary forms of criminal sanctions at the time.

This suggests that criminal law was more oriented toward order and revenge than toward protecting individual rights. As civilization progressed, criminal law underwent significant transformations in its thinking and implementation. The influence of Greek philosophy, particularly through the thinking of Socrates, Plato, and Aristotle, introduced the idea that justice was not simply about retribution but also involved moral considerations and rationality.

During this period, law began to be separated from religious and mystical elements and became a rational instrument for shaping social order. During the Middle Ages, religious influence again strengthened, particularly in European legal systems influenced by the Catholic Church. Criminal law during this period re-emphasized sin and redemption, with punishments often based on religious interpretations of morality. The Inquisition and various forms of torture became primary tools of the criminal justice process. However, this period also fostered criticism of the absolute power of criminal law, which would later trigger legal reform.

Modern criminal law has evolved, emphasizing the principles of legality, legal certainty, and protection for the accused. This development is evident in the codification of criminal law, such as the Code Penal in France and the Indonesian Criminal Code. However, despite normative progress, the implementation of criminal law in various countries still faces serious challenges, particularly in terms of substantive justice, equality before the law, and the effectiveness of sentencing. In the contemporary era, challenges to criminal law are increasingly complex. Crime is no longer local, but transnational and technology-driven. Phenomena such as cybercrime, terrorism, and environmental crimes demand a renewed perspective on criminal law. In this context, criminal law must adapt to global developments and maintain a balance between state interests and citizen rights.

A historical study of the development of criminal law is crucial for understanding how the current system was formed and the values underlying it. Without a historical understanding, criminal law reform will be disoriented and vulnerable to misinterpretation of principles of justice. Therefore, a comparative analysis of ancient and contemporary criminal law can provide a strong philosophical foundation for formulating current criminal law policies. This research also aims to demonstrate that the development of criminal law is neither linear nor absolutely progressive, but rather often cyclical and full of tensions between the interests of power, morality, and humanity. Understanding these dynamics allows criminal law to become a more just and proportional instrument in resolving social conflict. Thus, this research is relevant in addressing the need for national criminal law reform. Through a historical and comparative approach, it is hoped that a comprehensive understanding of the values, principles, and practices of criminal law over time can be achieved, which can then serve as a basis for developing a criminal law system that is contextual, adaptive, and oriented toward social justice.

METHODS

This research employs normative legal research methods with a historical and comparative approach. The historical approach is used to trace the development of criminal law over time, from ancient criminal law and medieval law to modern and contemporary criminal law. Using this approach, researchers examine how social, political, cultural, and philosophical changes in law have influenced the structure and function of criminal law throughout history. This research is a normative legal study using a statutory and case approach. Data were collected through a literature review, consisting of primary legal materials (statutes, decisions), secondary (doctrines, journals, books), and tertiary (dictionaries and encyclopedias). Data analysis was conducted qualitatively and descriptively using the deductive method. Next, a comparative approach is used to compare the principles, forms, and orientations of criminal law

in each period. This study compares ancient penal systems, such as the Code of Hammurabi and Roman law, with modern penal systems reflected in legal codifications in various countries, including the Indonesian Criminal Code. This comparison aims to identify shifts in values and orientations in criminal law enforcement over time.

RESULTS AND DISCUSSION

Historical Development of Criminal Law (Ancient Criminal Law Period (±3000–500 SM)

The early period of criminal law was characterized by a system of harsh and disproportionate retribution. The oldest written law found is:

The Law of Ur-Nammu (*The Code of Ur-Nammu*)

This code originated in Sumer, and is considered the first written code in history. Historian Paul Kriwaczek, in his book *Babylon: Mesopotamia and the Rise of Civilization* (St. Martin's Griffin - 2012), says: "Although it is not a true legal code, far from comprehensive; or, some say, even introduced by Ur-Nammu but by his son Shulgi, code or not, although we have only fragments, it is enough to show that the law covered both civil and criminal matters," Kriwaczek writes. The provisions stipulated which criminal laws should be considered serious offenses, such as murder, robbery, degrading another man's wife, and adultery if committed by a woman. For other minor offenses, the penalty was a fine of silver.

The code was widely publicized during Shulgi's reign to ensure its widespread awareness. The societies under Ur-Nammu and Shulgi were said to share a common set of values and traditions, and the laws were intended to encourage appropriate behavior within established parameters.

The Law of Hammurabi (Code of Hamurabi)

The Babylonian Code of Hammurabi (circa 1754 BC) contains 282 articles covering crimes and penalties, based on the principle of *lex talionis* ("an eye for an eye"). The Code of Hammurabi is one of the oldest and most famous written legal codes in human history. Issued by King Hammurabi of Babylon, who ruled from approximately 1792 BC to 1750 BC, the code is carved on a large stone stele found in Susa (present-day Iran) and consists of 282 articles.

A. Historical Development of Criminal Law (Roman Criminal Law Period ±450 SM – 476 M)

A significant development occurred with the emergence of the Law of the Twelve Tables (*Lex Duodecim Tabularum*) in 450 SM, which became the foundation of Roman criminal and civil law. This was followed by the *Corpus Juris Civilis* compiled by Emperor Justinian in 529–534 AD during the Eastern Roman Empire (Byzantium), which became the primary reference for continental European legal systems.

The Roman Criminal Law Period (±450 SM – 476 M) was a crucial period in the history of legal development, particularly criminal law. This period was marked by the legal system that developed in Ancient Rome, which became the basis for many modern legal systems, particularly in countries with a civil law tradition.

Based on the description above, the following are the general characteristics of Roman criminal law:

1. The nature of written law: One of the main milestones is the Law of the Twelve Tables (Lex Duodecim Tabularum) compiled around 450 BC. This was the first codification of law in Rome and is considered the forerunner of written law in the Western world.
 2. public crimes (which disturb society/the state) and private crimes (which harm individuals).
 3. public crimes (which disturb society/the state) and private crimes (which harm individuals). Evolution from private revenge to the justice system: Initially, it was the victim or the victim's family who sought revenge; over time, the state took over the role in enforcing criminal law.
- B. Historical Development of Criminal Law (Medieval ±500–1500 M)
- During the Middle Ages, especially from the 12th to 15th centuries, criminal law was heavily influenced by church (canon) law. Crimes were considered offenses against God. In 1231, Pope Gregory IX issued the Decretales, which became the basis of church criminal law. The inquisitorial system began to be widely implemented in the 13th century.
- C. Historical Development of Criminal Law (The Age of Enlightenment and Legal Reform of the 17th–18th Centuries)
- The Age of Enlightenment and Legal Reformation (17th–18th centuries) was a crucial period in European history when reason, science, and human rights began to be upheld, replacing the dominance of the church and feudal traditions. This period is also known as the Age of Reason.
- Context of Legal Reform: During this period, law began to be separated from religious influences and replaced with rational and secular law, often referred to as modern legal codification. The ideas of justice, social contracts, and equal rights became the basis of legal reform. Important figures of the Age of Enlightenment and Legal Reform such as John Locke (1632–1704) was an English philosopher, he is famous for his ideas on human rights, government based on popular consent, and individual liberty so influential that he is called the "Father of Classical Liberalism".
- Next, there is Montesquieu (1689–1755), a French philosopher and jurist. He often advocated the importance of the separation of powers (executive, legislative, and judicial) in government to prevent tyranny. Then there is Jean-Jacques Rousseau (1712–1778), a political philosopher. He put forward the concept of a social contract, an agreement between the people and the government to create a just society. Cesare Beccaria (1738–1794), an Italian jurist, was a key figure in criminal law reform. His work, *On Crimes and Punishments*, opposed torture and the death penalty, and advocated the principle of proportionality of punishment. Legal philosophy was revolutionized by rationalist thought. An important figure was Cesare Beccaria, who published *Dei delitti e delle pene* in 1764. He rejected the death penalty and torture, and championed justice, transparency, and legal certainty. Besides Beccaria, figures such as Jeremy Bentham (1748–1832) in England developed the theory of utilitarianism in criminal law, emphasizing that punishment should provide social benefits.
- D. Historical Development of Criminal Law (19th Century Codification of Criminal Law)
1. Code Pénal French (1808)

French Code Penal (1810): drafted under the influence of Napoleon Bonaparte, emphasizing legality and legal certainty. Known as the Napoleonic Code Penal. One of the earliest and most influential codifications of criminal law, it applied the principle of legality: *nullum crimen sine lege, nulla poena sine lege* (no crime without law, no punishment without law) and emphasized the role of the state in establishing and enforcing criminal law.

2. *Strafgesetzbuch (StGB) German (1871)*

It became a model for modern criminal law in Europe, including influencing the criminal code of the Dutch East Indies, which later became the Indonesian Criminal Code, drafted after German unification. It is a codification of German national criminal law that remains the basis of the country's penal system to this day, despite numerous changes. It prioritizes a logical system and a systematic structure.

3. *Codification in the Netherlands – Wetboek van Strafrecht (1881-1886)*

The Dutch criminal code, known as the Dutch Criminal Code (WvS), is a crucial piece of legal history, particularly for countries that were once Dutch colonies, including Indonesia. Prior to the WvS, Dutch criminal law was based on the French Code Penal, as the Netherlands was under French influence in the early 19th century. However, after independence, the Netherlands sought its own legal system, tailored to the values and conditions of its society. In 1881, the Dutch government finalized the drafting of the WvS. Following a legislative process, the WvS officially came into effect in 1886.

The following is a detailed explanation of the influence of the Indonesian criminal law system on colonial heritage. It contains the principle of legality and provides a clear distinction between crimes and violations.

E. *Historical Development of Criminal Law (Modern and Contemporary Criminal Law of the 20th–21st Century)*

After World War II, international criminal law emerged, marked by the Nuremberg Trials (1945–1946). The Universal Declaration of Human Rights (1948) also influenced global criminal law. In the late 20th and early 21st centuries, modern criminal law developed, focusing not only on repression but also on prevention and rehabilitation. Restorative approaches such as mediation and reconciliation began to be adopted in various legal systems.

In Indonesia, criminal law reform has been a continuous endeavor since the reform era. According to Prof. Barda Nawawi Arief, the direction of criminal law reform must be integral, incorporate national values, and take into account developments in modern criminal law and restorative justice.

F. *Historical Development of Criminal Law (Early 20th Century Modern Criminal Law)*

During this period, criminal law began to move away from its rigid and retributive approach, toward a more humanistic and functional system. This approach is known as the modern school or social school, which places greater emphasis on the preventive and resocialization functions of criminal justice.

a) *Main Characteristics of Modern Criminal Law:*

b) *Focus on crime prevention rather than revenge.*

c) *Recognizes the importance of rehabilitating offenders.*

- d) Considers social, economic, and psychological factors in criminal acts.
- e) The emergence of economic and corporate crimes as a result of industrialization.
- G. Historical Development of Criminal Law (Contemporary Criminal Law of the Late 20th–21st Century)

In this era, criminal law is increasingly complex. New challenges arise, such as terrorism, cybercrime, transnational crime, and human rights issues. Criminal law is no longer just national, but also international and transnational.

Main characteristics:

1. The growth of international criminal law (e.g., the International Criminal Court/ICC).
2. The development of restorative justice – restoring relationships between perpetrators, victims, and the community.
3. An emphasis on human rights in the criminal process.
4. The growth of a diversity system and decriminalization for certain cases.

Contemporary criminal expert:

- a) George P. Fletcher (United States of America)
Author of "Basic Concepts of Criminal Law", known for his approach to the theory of criminal responsibility.
- b) Mirjan Damaška (Yugoslavia–America)
Comparative criminal law expert, renowned in the field of international criminal law.
- c) Antonio Cassese (Italy)
Key figure in the formation of international criminal law and the International Court of Justice for the former Yugoslavia.

CONCLUSION

The historical development of criminal law illustrates an ongoing journey of human effort to regulate social behavior, respond to wrongdoing, and uphold justice. From the sacred and retributive laws of ancient civilizations to the codified and rational legal systems of the Enlightenment, each era reflects the prevailing values, philosophies, and socio-political structures of its time. The shift from divine vengeance to state-centered justice, and later to human rights-based criminal law, indicates a continuous evolution toward a more humane, proportional, and just legal system. This trajectory, however, has not been linear, as periods of regression and authoritarian misuse of criminal law were also evident, particularly during the Middle Ages.

In the modern and contemporary eras, criminal law has adapted to increasingly complex forms of crime, such as cybercrime, terrorism, and transnational offenses. Legal reforms have introduced principles of legality, due process, and restorative justice, marking a shift from punitive to rehabilitative models. The emergence of international criminal law and the growing emphasis on human rights underscore the need for legal systems that transcend national boundaries and prioritize global justice. Furthermore, scholars and reformers have advocated for individualized and socially responsive approaches, recognizing that crime is influenced by multifaceted socio-economic and psychological factors.

Ultimately, understanding the historical progression of criminal law is essential for formulating responsive and equitable legal policies today. A comparative-historical approach

not only reveals the philosophical underpinnings of various legal traditions but also highlights enduring challenges in achieving substantive justice. As criminal law continues to evolve amid rapid technological and societal changes, policymakers must remain anchored in the lessons of history while crafting adaptive frameworks that uphold justice, human dignity, and the rule of law.

REFERENCES

- Arief, Barda Nawawi. *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru)*. Kencana Prenada Media, 2008.
- Beccaria, Cesare. *On Crimes and Punishments*. Hackett Publishing, 1986.
- Brundage, James A. *Medieval Canon Law*. Longman, 1995.
- Hart, H.L.A. *Essays on Bentham*. Oxford University Press, 1982
- Hamzah, Andi. *Hukum Pidana Indonesia*. Sinar Grafika, 2001.
- Schulz, Fritz. *Classical Roman Law*. Clarendon Press, 1951.
- Zehr, Howard. *The Little Book of Restorative Justice*. Good Books, 2002.