

Modernization of Indonesian Criminal Law from the Perspective of Legal Certainty and Social Utility

Muhammad Fadly Abdina¹, Abdul Rahman Maulana², Ismaidar³

Email: mhdfadly1811@gmail.com

Universitas Pembangunan Panca Budi

ABSTRACT

The modernization of Indonesian criminal law constitutes an essential part of national legal reform efforts in responding to the development of modern society, technological advancement, and the dynamics of contemporary crime. Criminal law reform is not merely aimed at replacing the colonial legal system, but also at establishing a national legal system capable of ensuring legal certainty while providing social utility for society. This study aims to analyze the modernization of Indonesian criminal law from the perspectives of legal certainty and social utility, as well as to examine the challenges of its implementation within the national criminal justice system. The research employs a normative legal research method using statutory, conceptual, and philosophical approaches. The findings indicate that the modernization of Indonesian criminal law through the enactment of the new Criminal Code (KUHP) reflects a paradigm shift toward a more adaptive, humane, and socially justice-oriented criminal law system. Nevertheless, various issues remain in its implementation, particularly concerning the balance between legal certainty and social utility. Law enforcement that is excessively formalistic often neglects aspects of social benefit and the public sense of justice, whereas an overly flexible approach may create legal uncertainty. Therefore, the modernization of Indonesian criminal law should be directed toward the establishment of a balanced and responsive legal system capable of addressing the challenges of contemporary developments without disregarding the fundamental principles of the rule of law.

Keywords: Modernization of Criminal Law, Legal Certainty, Social Utility

INTRODUCTION

The increasingly complex development of society as a consequence of globalization, technological advancement, and social transformation has significantly influenced the evolution of criminal law in Indonesia. Contemporary criminal acts are no longer confined to conventional forms of crime, but have expanded into various modern and transnational crimes, including cybercrime, money laundering, human trafficking, corporate crime, and other forms of organized criminal activities. Such developments necessitate the establishment of a criminal law system that is modern, responsive, and adaptive to the changing dynamics of society.

Fundamentally, criminal law serves as an essential instrument of social control and public protection. Within a state governed by the rule of law, criminal law functions not only to impose sanctions upon offenders but also to maintain public order, ensure legal certainty, and realize justice within society. Nevertheless, for decades Indonesia relied upon the *Wetboek van Strafrecht* inherited from the Dutch colonial era, which has increasingly been considered incapable of accommodating the legal needs and social realities of modern Indonesian society. The enactment of Law Number 1 of 2023 concerning the Criminal Code (*Kitab Undang-Undang Hukum Pidana / KUHP*) represents a significant milestone in the modernization of Indonesian criminal law. The new Criminal Code reflects a comprehensive national legal reform aimed at developing a criminal law system that is consistent with the philosophical values of

Pancasila, societal developments, and the contemporary demands for legal protection. Furthermore, the reform indicates a paradigm shift from a predominantly retributive and repressive criminal law system toward a more humane, balanced, and socially oriented legal framework.

According to *Barda Nawawi Arief*, criminal law reform constitutes an integral part of social policy and criminal policy directed toward achieving social welfare and community protection. In this regard, criminal law should not merely be perceived as an instrument of punishment, but also as a mechanism for realizing broader social objectives. Consequently, the modernization of criminal law must integrate the principles of legal certainty and social utility in a balanced manner. Legal certainty constitutes one of the fundamental principles of a constitutional state. It requires the existence of clear, consistent, and enforceable legal norms applicable equally to all members of society. In the context of criminal law, legal certainty plays a crucial role in preventing arbitrariness and abuse of power in the process of law enforcement. Gustav Radbruch emphasized that law must embody three fundamental values, namely legal certainty, justice, and utility. These values should coexist harmoniously within the legal system to ensure the realization of substantive justice.

On the other hand, criminal law must also provide social utility for society. Law enforcement practices that excessively emphasize formal legal procedures often result in substantive injustice and fail to accommodate the sense of justice prevailing within the community. In this context, the development of restorative justice within Indonesia's criminal justice system represents an important manifestation of criminal law modernization. Restorative justice emphasizes not only punishment for offenders but also the restoration of social relationships, protection of victims' rights, and the resolution of conflicts through more humane and reconciliatory approaches.

Despite these developments, the modernization of Indonesian criminal law continues to encounter various challenges. One of the principal issues concerns the tension between legal certainty and social utility in law enforcement practices. Excessively rigid enforcement may disregard the community's sense of justice, whereas overly flexible approaches may generate legal uncertainty. In addition, rapid technological advancement has created new challenges in criminal law, particularly regarding electronic evidence, personal data protection, and the prevention of cybercrime. Based on the foregoing background, the formulation of the problems in this study concerns how the modernization of Indonesian criminal law is viewed from the perspective of legal certainty, how the modernization of Indonesian criminal law is viewed from the perspective of social utility, and what challenges are encountered in achieving a balance between legal certainty and social utility within the modernization of Indonesian criminal law.

METHODS

This study employs a normative legal research method by examining primary, secondary, and tertiary legal materials related to the modernization of Indonesian criminal law. The approaches utilized in this research include statutory, conceptual, and philosophical approaches. Legal materials were collected through library research involving legislation, books, academic journals, and other relevant legal sources. Furthermore, the data were analyzed

qualitatively using a descriptive-analytical method to examine the modernization of Indonesian criminal law from the perspectives of legal certainty and social utility.

RESULTS AND DISCUSSION

Modernization of Indonesian Criminal Law from the Perspective of Legal Certainty

The modernization of Indonesian criminal law constitutes an integral part of national legal reform aimed at establishing a legal system that is more relevant to the development of modern society. This reform has been realized through the enactment of Law Number 1 of 2023 concerning the Criminal Code (*Kitab Undang-Undang Hukum Pidana / KUHP*) as a replacement for the *Wetboek van Strafrecht*, the criminal code inherited from the Dutch colonial era. The existence of the new Criminal Code demonstrates the State's effort to develop a national criminal law system that is more consistent with the values of Pancasila and the contemporary needs of Indonesian society.

From the perspective of legal certainty, the modernization of criminal law aims to provide clarity, consistency, and legal protection for society. Legal certainty constitutes an essential principle within a state governed by the rule of law because it guarantees that every act of law enforcement is carried out based on clear and non-arbitrary legal rules. According to Gustav Radbruch, legal certainty represents one of the primary objectives of law alongside justice and utility. One manifestation of criminal law modernization reflecting legal certainty is the codification of national criminal law within the new Criminal Code. Such codification is intended to establish a more systematic and integrated criminal law system in order to minimize overlaps and inconsistencies within criminal regulations. Furthermore, the principle of legality continues to be maintained as a fundamental principle of Indonesian criminal law. The principle of legality affirms that no act may be punished unless it has previously been regulated by law. This principle provides protection for society against arbitrary actions by law enforcement authorities and ensures that the law is applied fairly and consistently.

Nevertheless, the modernization of Indonesian criminal law continues to face various challenges related to legal certainty. One of these challenges concerns the recognition of *living law*, namely laws that exist and develop within society. While the recognition of customary law reflects respect for the social values of Indonesian communities, unclear regulation of such laws may result in differing interpretations and legal uncertainty. In addition, the rapid development of information technology presents further challenges in realizing legal certainty. The emergence of cybercrime, personal data theft, and various forms of digital crime requires criminal law regulations that are more modern and adaptive. Therefore, the modernization of criminal law must be carried out continuously in order to keep pace with societal and technological developments without disregarding the principle of legal certainty.

Modernization of Indonesian Criminal Law from the Perspective of Social Utility

In addition to ensuring legal certainty, the modernization of Indonesian criminal law is also directed toward creating social utility for society. Social utility refers to the ability of law to provide tangible benefits in establishing social order, protecting the community, and promoting social welfare. In this context, criminal law functions not merely as an instrument of punishment, but also as a mechanism for conflict resolution and the restoration of social

relationships. The concept of legal utility is influenced by the theory of utilitarianism proposed by Jeremy Bentham. According to Bentham, a good legal system is one that is capable of providing the greatest happiness for the greatest number of people. Therefore, the modernization of Indonesian criminal law has increasingly emphasized a more humane approach that is oriented toward social interests and public welfare. One manifestation of criminal law modernization from the perspective of social utility is the development of the concept of *restorative justice*. This approach emphasizes the restoration of relationships between offenders, victims, and society rather than merely imposing punishment upon criminal offenders. The implementation of restorative justice provides broader social benefits because it not only resolves criminal cases but also restores social harmony within the community. This approach is widely applied in cases involving minor offenses, juvenile delinquency, and certain criminal matters that allow for peaceful settlement mechanisms.

Furthermore, the modernization of criminal law can also be observed through the development of alternative sentencing systems, such as community service punishment, supervisory sanctions, and rehabilitation programs. These developments indicate that the objective of punishment is no longer solely retributive in nature, but also aimed at reforming offenders so that they may be reintegrated into society. The modernization of criminal law has likewise provided greater attention to the protection of victims of criminal acts. Within a modern criminal justice system, victims are no longer merely positioned as instruments of evidence, but are recognized as parties entitled to protection, restitution, and rehabilitation.

Nevertheless, the implementation of social utility within criminal law must remain limited by the principle of legal certainty. Excessively flexible approaches without clear legal foundations may lead to disparities in law enforcement and create injustice within society. Therefore, a balance between legal certainty and social utility is essential in the modernization of Indonesian criminal law.

Challenges in the Modernization of Indonesian Criminal Law in Achieving a Balance between Legal Certainty and Social Utility

The modernization of Indonesian criminal law faces various challenges in achieving a balance between legal certainty and social utility. One of the primary challenges is the rapid development of information technology. Technological advancement has given rise to various new forms of crime, such as cybercrime, digital fraud, and the misuse of personal data, which in many cases have not been comprehensively regulated within the national criminal law system. Such conditions often cause criminal law to lag behind societal developments. As a consequence, law enforcement against modern crimes tends to be less effective and may create legal uncertainty. Therefore, criminal law reform must be carried out in a rapid and adaptive manner in order to respond effectively to the challenges of contemporary developments.

Another challenge concerns the persistence of formalistic law enforcement practices. In practice, law enforcement authorities frequently emphasize the textual application of legal provisions without adequately considering aspects of substantive justice and social utility. This condition causes criminal law to be perceived merely as an instrument of punishment rather than as a mechanism for resolving social conflicts. Furthermore, differences in the understanding of modern criminal law concepts among law enforcement officials also

constitute an obstacle to the implementation of criminal law modernization. The application of *restorative justice*, for instance, continues to encounter difficulties due to the absence of uniform understanding and consistent application within law enforcement practices.

The legal culture of society likewise represents an important challenge in the modernization of Indonesian criminal law. Low levels of public legal awareness may hinder the effectiveness of national criminal law reform. Consequently, efforts to improve legal education and public legal awareness are necessary to ensure that the modernization of criminal law can be implemented effectively. On the other hand, globalization has significantly influenced the development of Indonesian criminal law. Indonesia is required to harmonize its national criminal law with developments in international law, particularly in relation to the handling of transnational crimes. Nevertheless, such harmonization must continue to reflect the values of Pancasila and the characteristics of Indonesian society in order to preserve the identity of national criminal law. Therefore, the modernization of Indonesian criminal law requires comprehensive, sustainable, and balanced reform between legal certainty and social utility. Such balance is essential to ensure that criminal law is capable not only of providing legal protection for society, but also of realizing justice and social welfare.

CONCLUSION

Based on the results of the discussion, it may be concluded that the modernization of Indonesian criminal law constitutes an important aspect of national legal reform aimed at establishing a legal system that is more adaptive, humane, and consistent with the development of modern society. Such modernization has been realized through the reform of the national Criminal Code as an effort to replace the colonial legal system and to develop a criminal law system founded upon the values of Pancasila. From the perspective of legal certainty, the modernization of criminal law is directed toward the establishment of a legal system that is clear, systematic, and capable of providing legal protection to society through the implementation of the principle of legality and the codification of national criminal law.

Meanwhile, from the perspective of social utility, the modernization of criminal law is reflected in the development of *restorative justice*, alternative sanctions, and the protection of victims' rights, demonstrating that criminal law functions not merely as an instrument of punishment, but also as a means of social restoration and the promotion of social welfare. Nevertheless, the modernization of Indonesian criminal law continues to encounter various challenges, including the rapid development of information technology, the emergence of modern crimes, formalistic law enforcement practices, the relatively low level of public legal awareness, and the influence of globalization upon the national legal system. Therefore, continuous criminal law reform that maintains a balance between legal certainty and social utility is required to ensure that the Indonesian criminal law system remains capable of responding effectively and justly to the challenges of contemporary societal developments.

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