



From ‘Criminal Acts’ To ‘Crimes’ and Accountability: A Philosophical Study of The Aspects of Fault And Punishment In Law No. 1 of 2023

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Abstract: This study aims to discuss the change in the status of criminal acts to criminal offenses and a study of the accountability of aspects of errors in criminalization as stated in Law No. 1 of 2023. This research is a qualitative research. Library research is used in this normative legal research methodology. The particulars of this study include the use of descriptive analysis as the research methodology. Primary and secondary legal materials comprise the secondary data sources and kinds used in this study. The approach to data analysis is normative. According to the findings of the study, Law Number 1 of 2023 pertaining to the Criminal Code embraces neo-classical principles and strikes a balance between objective and subjective considerations. The types of penalties regulated, the acceptance of living law as a basis for sentencing, the consideration of humanitarian aspects, and the adoption of a new concept that emphasizes prevention, rehabilitation, and conflict resolution without degrading human dignity all of which are significant changes to criminal law.

Keyword: Crime, Criminal Offenses, Criminality, Accountability, Law No.1 of 2023.

INTRODUCTION

Law No. 1 of 2023 finally ratified the revised Criminal Code after a long wait. This is an important turning point for Indonesia, which has long relied on the Dutch colonial Criminal Code, which is not in line with the spirit of independence and progress. The reform of Indonesian criminal law, which includes changes in formal and material aspects as well as law enforcement based on philosophical, political, sociological, and pragmatic principles, has improved the criminal justice system. It was decided that the old Criminal Code was not in line with advances in science, technology, and society.

Criminal law struggled to deal with the realities of life because it was a punishment system that relied on imprisonment as a form of justice. Its excessive reliance on imprisonment made the settlement model unsustainable. Currently, almost all types of crime are uncontrolled and even getting worse. In fact, imprisonment serves as criminal education for perpetrators, with correctional facilities turning into criminal schools that produce more experienced perpetrators. As a result, the increase in the number of professional criminals poses a greater threat to society. By isolating offenders from society, criminal punishment also degrades their

dignity, and offenders themselves often become less ashamed, giving them the confidence to commit crimes without feeling guilty. Because incarceration has a very detrimental impact on prisoners, their families, and their dependents, incarceration is becoming less and less attractive. Economically, the operational costs of the prison system continue to increase over time, including high expenditures for clothing, food, and other necessities.²

Protecting every individual in society, the state, and the nation is a legal obligation. This includes protecting their emotional and physical health, as well as their individual rights, such as property rights, personal rights, and human rights. This also applies to prisoners serving sentences in correctional institutions. Developing knowledge and skills is one of the tasks of correctional institutions so that prisoners have practical skills to reintegrate into society.³

Punishment is only a tool used to achieve the objectives of the criminal justice system, which is a purposeful system. According to the retributive perspective, punishment is only retribution for wrongdoing based on the moral obligations of every person because it is considered a negative reward for the deviant behavior of members of society. In contrast, the relative perspective emphasizes the circumstances or conditions that punishment seeks to achieve and evaluates punishment based on its usefulness or benefits.⁴

The state's paradigm in maintaining and guaranteeing justice and the human rights of its citizens, as stated in the preamble, will be demonstrated through an understanding of the intent and purpose of punishment. However, given that the imposition of sanctions in legislation is very important and strategic for the achievement of criminal law policy objectives (penal policy), it is necessary to review the criminal provisions outlined in the Draft Book of Laws. The Criminal Code (RKUHP) to ascertain the extent to which these provisions are based on the objectives of punishment and the types of sanctions imposed. Based on this description, the researcher intends to examine the accountability for errors in punishment as stated in Law No. 1 of 2023.

METHOD

A legal-normative research approach was used in this study. This strategy utilizes laws or regulations. In addition, this study uses a legislative approach, which examines regulations relevant to the issues under study. Law Number 1 of 2023 is the regulation in question. This study also uses a conceptual approach, referring to legal doctrines and principles. Furthermore, research using this method considers the application of legal theories relevant to the issues under study. Qualitative methodology is used to examine the collected data. Deductive processing of legal documents produces findings on specific issues related to the objectives of Indonesian criminal law, starting from a general problem.

RESULTS AND DISCUSSION

Philosophical Study of Criminal Liability

Both challenges and new opportunities have emerged in criminal law studies as a result of conceptual changes made to the Criminal Code through Law No. 1 of 2023 (New Criminal Code), particularly the change in terminology from criminal acts to punishment and accountability. In the past, crime was defined as an act that violated the law and carried a criminal sanction. Due to this increasingly action-oriented focus (*actus reus*), punishment was sometimes viewed only as a formal response to legal violations. However, by placing strong emphasis on punishment and accountability, the New Criminal Code aims to change this perspective. As a result, punishment now takes into account not only unlawful acts but also the dimensions of guilt (*mens rea*), intent, and the moral relationship between the victim, the perpetrator, and society.

1. Ontological

From an ontological perspective, this shift has philosophical consequences for the definition of crime. Crime is now seen as a normative reality that encompasses interactions between the state, society, and individuals, rather than simply a term used to describe criminal acts. The definition of crime in the New Criminal Code is closely related to humans as rational and morally conscious legal actors. This ontology of criminal law asserts that punishment is not merely a repressive act of the state, but also an effort to uphold social order and protect human values.

2. Epistemology

This study emphasizes the construction of legal knowledge about fault and responsibility from an epistemological perspective. Due to changes in vocabulary, understanding criminal behavior now involves not only formal legal aspects, but also sociological and philosophical aspects. Criminal law epistemology in Law No. 1 of 2023 requires interdisciplinary knowledge: in addition to the text of the law, substantive values of justice, theories of fault, theories of the purpose of punishment, and the social context of society must be considered when analyzing criminal law. This encourages a hermeneutic approach to understanding criminal law while also providing space for criticism of legal positivism, which only emphasizes certainty.

3. Axiological

From an axiological perspective, this conceptual change is in line with the changing objectives of Indonesian criminal law. The purpose of punishment has shifted from government retribution against perpetrators to the protection of society, rehabilitation of victims, and reform of perpetrators. The principles of social justice, human rights, and Pancasila are all in line with the New Criminal Code. The dual orientation of punishment provides a deterrent effect and rebuilds social harmony, which is emphasized by criminal law axiology. Therefore, punishment serves as a tool for rehabilitation, reconciliation, and prevention of future crimes, in addition to being a repressive tool.

The Purpose of Punishment in the Context of Criminal Law Reform in Indonesia

It is impossible to separate Indonesia's legal reform initiatives from the fundamental goals of the country. The welfare and protection of society are very important for achieving these national goals. The terms social welfare and social defense can be interchanged with these two important concepts. The concept of balance in national (development) goals is exemplified by these two important components. Basically, the objectives of punishment in Indonesia cover two main aspects, consisting of, first, prisoners must first undergo rehabilitation, reduction, and resocialization so that they do not repeat or commit crimes that endanger themselves, others, or society. Second, fostering noble values rooted in Pancasila, erasing the mistakes of perpetrators, and protecting them from arbitrary and cruel punishment or retribution (criminal punishment is not intended to cause suffering or demean human dignity).

Thus, based on the above description, it can be said that if the purpose of criminal law is to protect society in order to improve social welfare, then a theory that focuses only on one side of this overall objective is in fact too biased. There are two views related to criminal law, namely

1. Monolithic View

The understanding that the definition of crime includes prohibited acts (criminal acts) and criminal liability is given by a perspective that considers all the requirements for crime to be inherent in the nature of the act. "A crime is an act against the law committed consciously or unintentionally by a person who can be held responsible for their actions and who is declared punishable by law," according to Simons' definition.

2. Dualistic View

The dualistic perspective distinguishes between criminal responsibility and criminal acts. The dualistic perspective argues that a criminal act only includes the criminal act itself and that criminal responsibility is not a component of the crime, in contrast to the monistic view, which argues that a criminal act includes both the criminal act and criminal responsibility. The dualistic perspective argues that criminal fault or culpability is necessary for a crime to occur; criminal liability alone is not sufficient.

The above explanation shows that the two perspectives differ theoretically. Both perspectives can be used theoretically to explain criminal behavior. The dualistic perspective argues that the absence of a crime does not always fulfill the conditions for punishment, while the monistic perspective argues that the occurrence of a crime fulfills the prerequisites for punishment. The dualistic perspective argues that guilt is not part of the crime; rather, guilt only reflects the nature of the behavior, namely its prohibition.

The guidelines for sentencing based on the monodualistic principle serve as a guide for judges, in particular, to achieve justice without sacrificing judicial independence and freedom. The dualistic doctrine underlying the Criminal Code has changed the model of criminal responsibility from no punishment without fault becomes no criminal liability without fault.

CONCLUSION

Based on philosophical analysis, Law Number 1 of 2023 offers a fresher, more comprehensive, and compassionate approach to criminal law. Beyond being terminological, the change from “criminal act” to “criminal offense” has ontological, epistemological, and axiological consequences for the nature of criminal law, the construction of legal science, and the goals and values to be achieved. Therefore, this study is important to understand how the concepts of guilt and punishment in the New Criminal Code can help create a criminal justice system that is more just, compassionate, and situation-specific, meeting the demands of modern Indonesian society.

While the monistic perspective argues that the occurrence of a crime is sufficient for punishment, the dualistic perspective argues that the absence of a crime is sufficient. According to the dualistic perspective, guilt only represents the nature of the behavior. Monodualistic principle-based sentencing guidelines help judges, in particular, achieve justice without sacrificing their independence and autonomy. The concept of criminal responsibility has changed from no punishment without fault to no criminal fault without fault due to the dualistic doctrine underlying the Criminal Code.

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