

Indonesia's New Criminal Code and Its Implication of International Treaties of Human Rights Commitment in Indonesia

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ABSTRACT

On the 6th of December 2022, the Indonesian Parliament officially signed the new Indonesian Criminal Code. Although it was signed, the problem is the new Indonesian Criminal Code is still widely rejected by some people in Indonesia one of the reasons is the new Criminal Code decreases democracy and human rights in Indonesia. Indonesia like any other nation had signed several international treaties that focused on human rights, democracy and transparency. The question is the new Indonesian New Criminal code breach Indonesia's commitment to the treaties that protect the human right that it signed? The methodology of this research uses a literature review with the object of an international treaty and uses data and information from internet network tracing which is then expert opinion. The result of the research shows that the new Indonesian criminal code had a potential breach of international commitment to human rights, especially in the freedom of speech and private life because Indonesia lawmakers argue that not all values of human rights will be suitable in Indonesia which is criticized by The United Nation because it's against the universal value of human rights which already ruled in core human rights convention, it can be said that Indonesia had partially breached its international commitment to fully implement the core convention of human rights. This paper will conclude that it's a big achievement for Indonesia because finally had the original Criminal Code made by the Indonesian but the problem with the new Criminal Code is that Indonesia did not fully integrate with the International Core Convention of Human Rights because of view that not every human right can be implemented in Indonesia although the value of human rights should universal.

Keywords: Human Rights, Indonesia's New Criminal Code, Democracy

ABSTRAK

Pada tanggal 6 Desember 2022, Parlemen Indonesia secara resmi menandatangani KUHP baru. Walau KUHP baru telah ditandatangani, masalahnya adalah KUHP baru masih banyak ditentang oleh sebagian orang di Indonesia salah satunya karena KUHP baru menurunkan demokrasi dan hak asasi manusia di Indonesia. Indonesia seperti negara lain telah menandatangani beberapa perjanjian internasional yang berfokus pada hak asasi manusia, demokrasi, dan transparansi. Pertanyaannya adalah apakah KUHP baru melanggar komitmen Indonesia terhadap perjanjian yang melindungi hak asasi manusia yang telah ditandatangani? Metodologi penelitian ini menggunakan studi literatur dengan objek kajian perjanjian internasional dan menggunakan data dan informasi dari penelusuran jaringan internet yang kemudian diambil opini dari ahli. Hasil penelitian menunjukkan bahwa KUHP baru berpotensi melanggar komitmen internasional terhadap hak asasi manusia, terutama dalam kebebasan berbicara dan kehidupan pribadi karena anggota legislatif di Indonesia mengklaim bahwa tidak semua nilai hak asasi manusia akan cocok di Indonesia, yang dikritik oleh Perserikatan Bangsa-Bangsa karena bertentangan dengan nilai universal hak asasi manusia yang sudah diatur dalam konvensi hak asasi manusia inti, dapat

dikatakan bahwa Indonesia telah melanggar sebagian komitmen internasionalnya untuk sepenuhnya menerapkan konvensi hak asasi manusia inti. Makalah ini akan menyimpulkan bahwa ini merupakan pencapaian besar bagi Indonesia karena akhirnya memiliki KUHP asli buatan Indonesia tetapi masalah dengan KUHP baru adalah bahwa Indonesia tidak sepenuhnya terintegrasi dengan Konvensi Hak Asasi Manusia Inti Internasional karena pandangan bahwa tidak setiap hak asasi manusia dapat diterapkan di Indonesia meskipun nilai hak asasi manusia harus universal.

Kata Kunci: Hak Asasi Manusia, KUHP Baru, Demokrasi

A. BACKGROUND

After Indonesia's big reformation in May 1998, Indonesia is moving forward towards democracy and transparency, its implicate by how Indonesia's constitution adds more human rights value in Indonesia's constitutions, can be seen by Indonesia adding Article 28 A until 28 J in the Second Amendment of Indonesia's constitution, besides that Indonesia create much special commission to ensure the government transparency like Commission of Corruption Eradication (Indonesian; *Komisi Pemberantasan Korupsi*) (KPK), Judicial Commission (Indonesian: *Komisi Yudisial*) (KY), National Police Commission (*Komisi Kepolisian Nasional*) (KOMPOLNAS) and the creation of Human Rights Commission. After more than 15 years of Reformation, Indonesia started gradually decreasing from being a democratic nation, this was stated by Azyumardi Azra stated that Indonesia decreased the quality of democracy toward symptoms of an authoritarian state.¹ Azyumardi Azra then stated some of the symptoms of Democratic decline are caused by the weakening of political institutions that support a democratic system in a country, such as uncompetitive elections, restrictions on participation, weak accountability of public officials, unfair law enforcement, and so on.²

Another research conducted by Public Virtue Research Institute (PVRI).stated that The are three aspects that are in the spotlight are the shrinking of civil society's public space by narrowing the space for criticism, the undermining of the opposition which causes the loss of the quality of political opposition, and the undermining of the general election process with integrity as a way to maintain the peak of government power.³ One of the points stated by the Public Virtue Research Institute (PVRI) Executive Miya Irawati is the existence of Article 214 of Indonesia's New Criminal Code which potentially narrows the space for criticism.⁴ Besides the things stated before many critics pointed out the Citizens of Indonesia towards the New Criminal Code. According to the Liputan6 Online portal stated that there are 10 controversial topics regarding the new Indonesia Criminal Code and they are 1. Personal assault on President and Vice President's dignity and virtue, 2. Contempt against Government and Government Bodies, 3. Personal Contempt, 4. Public Demonstration without Permit 5. Press Criminalization, 6. decency, fornication and adultery 7. sexual health rights and abortion 8. Low Corruption Punishment 9. The serious offence of Human

¹ Willa Wahyuni, "Democracy Setback, Indonesia Needs Reform Volume 2 (Indonesian: Kemunduran Demokrasi, Indonesia Perlu Reformasi Jilid 2)," September 7, 2022, <https://www.hukumonline.com/berita/a/kemunduran-demokrasi--indonesia-perlu-reformasi-jilid-2-lt631982d1304c5/?page=1>.

² Wahyuni.

³ Aryo Putranto Saptohutomo, "Activists Highlight 5 Symptoms of Declining Democracy in Indonesia," December 26, 2022, <https://nasional.kompas.com/read/2022/12/26/14120031/aktivis-soroti-5-Symptoms-of-a-setback-democracy-in-Indonesia>.

⁴ Putranto Saptohutomo.

Rights 10. Death Penalty.⁵ Although today the new Indonesian Criminal Code has already been signed it will be an entry into force in 3 Years from 2022, but the big question is are Indonesia's new criminal code is in harmony with the International Law that Indonesia signed and ratified. One of the reasons is that even the United Nations was concerned by Indonesia's new Criminal Code. The United Nations has expressed its concern about the threats to basic freedoms posed by Indonesia's new criminal code.⁶ As a member of the UN and International community, Indonesia had responsibilities to do the International commitment to International law and *Jus Cogen* or International Peremptory norms, This article will be discussing how Indonesia's Criminal Law is in harmony with International Law and Peremptory Norms or Not, so this article will be titled **Indonesia's New Criminal Code and Its Implication Of International Treaties of Human Rights Commitment in Indonesia.**

B. PROBLEM QUESTION

With the background above the problem question of this article will be:

1. Are the new Indonesian New Criminal code breach Indonesia's commitment to the treaties that protect the human right that it signed?

C. RESEARCH METHOD

This type of research in this research will be conducted in Normative legal research. The approach method used in this research is the approach juridical normative and historical approach. Beginning with an inventory of problems or cases, which are then analyzed methodologically through approaches to norm systems both legal doctrines and laws that are applied, as a fundamental activity in legal research. other than that this study will explain and explain the data found in the research objective will be the new Indonesian New Criminal code and which is related to international law.

D. RESULT AND DISCUSSION

1. The History of Indonesia's Criminal Code

Indonesia has been colonised by European power for around 350 years. One of the longest-reigning European power in Indonesia was the Netherlands. The Netherlands as the colonizer of Indonesia had shaped many aspects of Indonesia's legal aspect, the most prominent example of this is some of the old Netherlands laws still exist and use in Indonesia's legal system for example *Wetboek van Strafrech* or The Criminal Code before replacing by the New Criminal Code, *burgerlijk wetboek* or The Private Law Code, *Wetboek Van Koophandel* or Commerce Law Code, and many more. Before the signing and entry into force of The new Criminal Code, Indonesian legislators usually just created a bill to supplement or substitute some Article in The Criminal Code for example in the Old Indonesian Criminal Code terrorism is not known, if a terrorist act occurs probably it will be punished by Article 340 about the planned assassination, but after Bali Bombing Part I Indonesia then created Act no 13/2003 regarding the Stipulation of government regulation in place of law Number 1/2002 concerning Eradication of Criminal Acts of Terrorism which will give more effective law enforcement against an act of terrorism, in Indonesia this kind of law

⁵ Nanda Perdana Putra, "UU KUHP Baru Tuai Kritik Keras, Pasal Zina hingga Hina Presiden Jadi Kontroversi?," *Liputan6*, December 10, 2022, <https://www.liputan6.com/news/read/5149730/headline-uu-kuhp-baru-tuai-kritik-keras-pasal-zina-hingga-hina-presiden-jadi-kontroversi>.

⁶ Sebastian Strangio, "UN Says Indonesia's Revised Penal Code to Have Sweeping Rights Impacts," *The Diplomat*, December 12, 2022, <https://thediplomat.com/2022/12/un-says-indonesias-revised-penal-code-to-have-sweeping-rights-impacts/>.

usually called as Special Criminal Bill that supplement Indonesia Criminal Code. However, under the new criminal code, Indonesia is most likely to eliminate the term “Special Criminal Law” because all Criminal Law in Indonesia is now codified in The new Criminal Code.

One of the sentiments why Indonesia created a new Criminal Code is because Indonesia’s Government thought that Indonesia should have new laws created by Indonesia for Indonesia, This statement stated by Supriansa member of The House of Representatives of the Republic of Indonesia stated that,

“the passing of the Draft Law on the Criminal Code (RUU KUHP) to become a law is a historic event for the Indonesian people for which all elements of Indonesian society should be grateful. Bearing in mind, the Criminal Code Law which was passed by Commission III of the Indonesian Parliament and the Government is a pure original product made by the nation's children replacing the previous Criminal Code Law which was a legacy of the Dutch colonial. “ Although the passing of the New Criminal Code is monumental for Indonesia, controversy still occurs among the citizen of Indonesia regarding the new criminal code and one of them is the issue of human rights in the new criminal code.

2. Integration of Internasional Human Rights Convention and Internasional law in Indonesia’s New Criminal Code

Until today there are 9 Convention that considers the core convention of human rights. They are the International Convention on the Elimination of All Forms of Racial Discrimination 1965, International Covenant on Civil and Political Rights 1966, International Covenant on Economic, Social and Cultural Rights 1966, Convention on the Elimination of All Forms of Discrimination against Women 1979, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, Convention on the Rights of the Child 1989, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990, International Convention for the Protection of All Persons from Enforced Disappearance 2006 and Convention on the Rights of Persons with Disabilities 2006. According to Indonesia's foreign minister's website Indonesia is ratified 8 of 9 core Convention of human rights and they are Civil and Political Rights; Economic, Social and Cultural Rights, Anti-Torture, Elimination of Discrimination against Women; Elimination of Race Discrimination; Children's rights; Rights of Persons with Disabilities; and Rights of Migrant Workers.⁷ Besides that Indonesia had several commitments regarding international crime like United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, United Nation United Nations Convention against Transnational Organized Crime 2000, United Nations Convention against Corruption 2003 and many more, but the question is the other law integrated to Indonesia new criminal code? Before the new criminal code, Indonesia had several integration problems regarding national law and international law.

One of the examples of this case is stated by the researcher of the Center for Anti-Corruption Studies Faculty of Law Universitas Gajah Mada Yuris Rezha Kurniawan who stated that there are many anti-corruption bill legislation that not yet to be signed like Asset forfeiture bills and amendments of Anti-Corruption Bill integrated with United Nations Convention against Corruption 2003 even there are too many regulations that gave rooms or opportunity for

⁷ Ministry of Foreign Affair Republic of Indonesia, “Indonesia and Human Rights Protection,” April 7, 2019, https://kemlu.go.id/portal/en/read/97/halaman_list_lainnya/indonesia-and-human-rights.

corruption.⁸ Those examples are just one of many examples of how Indonesia is not yet fully committed to international law commitment.

Another example of Indonesia still not fully committed to international law is the abolishment of the death penalty in Indonesia. The death penalty is always a hot topic in Indonesia, one of the most controversial death penalties is the execution of 9 drug dealers in Bali or usually called the Bali 9 in 2015. The Story is there are 9 Australian who came to Bali they are Andrew Chen, Myuran Sukumaran, Si Yi Chen, Michael Czugaj, Renae Lawrence, Tach Duc Thanh Nguyen, Matthew Norman, Scott Rush, Martin Stephens who got caught in Bali in 2005⁹, which resulted in Andrew Chen and Myuran Sukumaran as the leaders of the gang got death penalty while 7 other got jail time for 20 until lifetime imprisonment.¹⁰ This case causes an international outburst between Indonesia and Australia, which causes the Australian government and citizens hardly protest on the matter although Indonesia had signed many core Conventions of Human rights and its optional convention.¹¹

The last example of this is Indonesia's had of some of laws that limit critics of the government in the old criminal code articles 134, 136 and 137 rule about Contempt of President and vice president but the Constitutional Court of Indonesia by Verdict number No. 013-022/PUU-IV/2006 and called as unconstitutional¹², but anomaly happens when the new criminal code passed.

Some of the anomalies that happen in the new Criminal Code are some resurgent Article that deems unconstitutional by the Constitutional Court of Indonesia, one example is the fact that Contempt of the President and vice president are included in the new Criminal Code in Article 218 until 220 in the new Criminal Code of Indonesia and even worse now the new criminal code contains a prohibition of contempt of Government body like President and Vice President, Legislative Body, and many others.

Yasonna Hamonangan Laoly, the current Minister of Law and Human Rights of Indonesia stated that contempt of the President should exist in the new criminal code to avoid Indonesia acting like a liberal country.¹³ Yasonna added that there is no freedom without rule because freedom without rule is anarchy although he gave assurance that criticism will be allowed attack President personally is unacceptable.¹⁴ On the contrary Bivitri Susanti, an expert on Constitutional

⁸ Ika, "PUKAT UGM: Pemberantasan Korupsi Indonesia Masih Lemah," December 9, 2022, <https://ugm.ac.id/id/berita/23251-pukat-ugm-pemberantasan-korupsi-indonesia-masih-lemah>.

⁹ CNN Indonesia, "Memori atas Kasus Bali Nine, Sindikat Penyelundup Narkoba," November 22, 2018, <https://www.cnnindonesia.com/nasional/20181121135528-12-348095/memori-atas-kasus-bali-nine-sindikats-penyelundup-narkoba>.

¹⁰ *Ibid*

¹¹ Dharmawan Sutanto, "Lobi & ancaman Australia bikin pemerintah melunak soal hukuman mati," February 20, 2015, <https://www.merdeka.com/peristiwa/lobi-dan-ancaman-australia-bikin-pemerintah-melunak-soal-hukuman-mati.html>.

¹² Guntoro Saparie, "Pasal Penghinaan terhadap Presiden," August 12, 2015, <https://www.mkri.id/index.php?page=web.Berita&id=11735>.

¹³ Dwi Nurita, "Alasan Penghinaan Presiden Masuk RKUHP, Yasonna: Kalau Dibiarkan Jadi Liberal," June 9, 2021, <https://nasional.tempo.co/read/1470565/alasan-penghinaan-presiden-masuk-rkuhp-yasonna-kalau-dibiarkan-jadi-liberal>.

¹⁴ Nurita.

law said that the new criminal code is to ensure the leisure of the ruler because of too many controversial articles that are possible to criminalise government opposition.¹⁵¹⁶

Indonesia's constitution protects the freedom of speech under article 28 which stated "Indonesia is protecting the right of freedom to associate and to assemble, to express written and oral opinions, etc., shall be regulated by law. " It is should be remembered too that Indonesia signed and ratified ICCPR 1966 one of the points is the protection of freedom of speech which stated in article 18 (1) of ICCPR 1966.

Even the United Nations already had an official statement regarding Indonesia's new criminal code and it was The U.N. is concerned that several articles in the revised Criminal Code contravene Indonesia's international legal obligations concerning human rights and Some articles have the potential to criminalise journalistic work... Others would discriminate against, or have a discriminatory impact on, women, girls, boys and sexual minorities¹⁷ which the original UN statement in the provided link in the article now has been restricted¹⁸ and UN official was summoned for the statement.¹⁹

It can be said that the new Indonesian criminal code potentially breaches many aspects of the human rights convention commitment and Indonesia's commitment to international law. Furthermore, the Death Penalty still exists although The Law and Human Rights Ministry's director general of legislation Dhahana Putra said that in the revised Criminal Code or KUHP, capital punishment will be preceded by 10-year imprisonment, the 10-year period will allow convicts to change and can be considered to life imprisonment.²⁰ While rule about corruption is also problematic because the Indonesia Corruption Watch press conference stated that the new criminal code is not included recommended offences/crimes in UNCAC²¹, Which added a question on Indonesia's commitment to Internasional Law and human rights that had universal values.

E. CONCLUSION

Indonesia's new criminal code is can be considered one of the greatest Indonesia achievements but many problems need to be outlined and it was Indonesia's commitment to international law and human rights. It can be looked upon by many experts and NGOs that stated

¹⁵ The Word Rubber law in Indonesia is assosicated with multi-interpretaion article in Indonesian's law with sometimes use by the Government or people in power to criminalized its opposition.

¹⁶ Vitorio Mantalean, "Kritik Pasal Penghinaan Pemerintah di RKUHP, Pakar: Akan Buat Nyaman Presiden dan Semua Lembaga Negara," December 4, 2022, <https://nasional.kompas.com/read/2022/12/04/18285751/kritik-pasal-penghinaan-pemerintah-di-rkuhp-pakar-akan-buat-nyaman-presiden>.

¹⁷ Kate Lamb and Ananda Teresia, "Indonesia's New Laws a Threat to Privacy, Press and Human Rights, Says UN," December 9, 2022, <https://www.reuters.com/world/asia-pacific/indonesias-new-laws-threat-privacy-press-human-rights-says-un-2022-12-09/>.

¹⁸United Nation, Acess Denied <https://indonesia.un.org/en/system/403>, originally link is embedded in <https://www.reuters.com/world/asia-pacific/indonesias-new-laws-threat-privacy-press-human-rights-says-un-2022-12-09/>.

¹⁹ Sebastian Strangio, "Indonesia Summons UN Official Over Criticisms of Revised Criminal Code The Move Came amid a Rash of Bad International Press about the Legal Changes, Particularly a Provision Banning Sex before Marriage.," December 13, 2022, <https://thediplomat.com/2022/12/indonesia-summons-un-official-over-criticisms-of-revised-criminal-code/>.

²⁰ Tempo.co, "Govt Explain Criminal Code's Death Penalty to Life Sentence Conversion," accessed February 16, 2023, <https://en.tempo.co/read/1668823/govt-explain-criminal-codes-death-penalty-to-life-sentence-conversion>.

²¹ Indonesia Corruption Watch, "Pasal Korupsi Dalam KUHP: Menjauhkan Efek Jera Dan Menguntungkan Koruptor," December 15, 2022, <https://antikorupsi.org/id/pasal-korupsi-dalam-kuhp-menjauhkan-efek-jera-dan-menguntungkan-koruptor>.

that the new Indonesian criminal code is not ready and even potentially harmful to the protection of human rights in Indonesia proven by how the UN put special concern regarding this issue. It can be said that the New Indonesia Criminal Code is still not fully integrated with Indonesia's commitment to International law and Human Right Law although it should address the improvement of the death penalty sentence in Indonesia to become harder than the previous Criminal code the commitment to erase it still does not complete, although it indicated about how Indonesia point of view regarding human rights as the universal value.

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