



Division of Criminal Law

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Abstract

The division of conventional law, criminal law, is included in the field of public law. This means that criminal law regulates the relationship between citizens and the state and focuses on the general interest or public interest. Historically, the legal relationships that existed were initially private relationships, but over time there were things that were taken over by the state and made into public interests. Criminal law is a law that has special characteristics, namely in terms of sanctions. Every time we encounter the law, our thoughts turn towards something that binds a person's behavior in society. It contains provisions about what should be done and what should not be done, as well as the consequences.

I. INTRODUCTION

Van Hattum's explanation of substantive and procedural criminal law offers a comprehensive understanding of how legal systems classify and manage criminal behavior. Substantive criminal law, as he describes, identifies which actions constitute punishable offenses, who may be held responsible for these actions, and the type of punishment that may be imposed. This is often referred to as "abstract" criminal law because it sets out general rules and standards without delving into specific cases. It establishes the foundation of legality, ensuring that individuals know what constitutes a crime and what the consequences may be (Ali, 2022).

On the other hand, procedural criminal law, or "formal" criminal law, governs the application of these abstract rules to real-life situations. It outlines the processes and methods that must be followed to enforce the substantive law, such as investigation, prosecution, trial procedures, and the execution of sentences. It provides the framework for ensuring that the enforcement of criminal law is conducted fairly, systematically, and within the boundaries of legal safeguards (Irawati, 2019).

The relationship between substantive and procedural law is essential for a functioning legal system. Substantive law without procedural safeguards could lead to arbitrary enforcement, while procedural law without substantive

guidance would lack the foundational principles needed to determine what behavior is criminal.

Van Hattum's distinction highlights the necessity of both aspects, showing that the theoretical legality of a crime must always be matched with proper legal mechanisms for its enforcement. This ensures not only that justice is served but that it is carried out in a way that respects individual rights and legal standards.

II. RESEARCH METHODS

The writing produced by normative legal research that is studied is legal material that contains normative rules. The data obtained and processed in normative legal research is secondary data originating from library sources. The data used is secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. (Purwati, 2020).

III. RESULTS AND DISCUSSION

A. Division of Criminal Law

Based on criminal law literature in relation to criminal acts, many terms are found that have the same meaning as a criminal act. According to R. Soesilo, a criminal act is an act prohibited or mandated by law, and if committed or neglected, the person committing or neglecting it will be subject to punishment (Sirait et al., 2020).

According to Moeljanto, "a criminal event is an act or series of human actions that contradict the law or other regulations, for which punishment is

applied." (Mariadi, 2021). Simons defines a criminal event as an unlawful act related to the fault (schuld) of an individual who is capable of being held accountable (SIMAMORA, 2023). The fault referred to by Simons includes both *dolus* (intent) and *culpa* (negligence). Legislators have used the term "straafbaarfeit," which is known as a criminal act. The Indonesian Criminal Code (KUHP) does not provide an explanation of what is meant by "straafbaarfeit" (Laowo, 2018).

The word "feit" itself in Dutch means "part of a fact" or "een gedeelte van werkelijkheid," while "straafbaar" can be translated as "part of a fact that can be punished." It is later realized that what is punishable is actually the individual as a person and not the fact, deed, or action. Legislators have provided an explanation of what is meant by "straafbaarfeit," leading to the development of a doctrine about what is meant by "straafbaarfeit."

Hazewinkel Suringa in Hilaman defines "straafbaarfeit" as human behavior that, at a certain time, is rejected in social interactions and is considered behavior that must be eliminated by criminal law through its coercive measures (Kencana et al., 2023).

Indonesian criminal law recognizes the term "tindak pidana," which is used as a substitute for the Dutch word "straafbaarfeit." A criminal act is a fundamental concept in criminal law. A criminal act is a legal concept. This differs from terms like crime or wrongdoing, which can be understood both legally and criminologically. Regarding the content of the concept of a criminal act, there is a consensus among scholars. According to the Causal Theory (causal relationship), it is stated that essentially everyone must be responsible for their actions, but there must be a causal relationship between the act and the consequences that are prohibited and punishable. This is not always easy, as an event is a series of events, and no consequences arise without a cause. Criminal law can be divided/distinguished from various perspectives, including the following:

- a) Objective Criminal Law (*jus poenale*) and Subjective Criminal Law (*jus puniendi*). (P.A.F. Lamintang, 1984). According to Vos, objective criminal law refers to objective rules, i.e., criminal law rules (Hiariej, 2021). Material criminal law regulates situations that arise and are not in accordance with the law, along with the law of procedure and sanctions, including rules regarding when, who, and how punishment is imposed. Subjective criminal law, on the other hand, refers to the subjective right of the

authorities regarding punishment, consisting of the right to prosecute, impose, and execute punishment.

- b) Material Criminal Law and Formal Criminal Law. According to van Hattum: Material criminal law includes all provisions and regulations that specify which actions are punishable, who is responsible for those actions, and what punishments can be imposed, also referred to as abstract criminal law. Formal criminal law contains the rules governing how abstract criminal law should be applied concretely. This type of criminal law is commonly referred to as criminal procedural law.

Criminal liability, according to the Indonesian Penal Code (KUHP), requires more than just a person committing an act that is against the law or illegal. In the imposition of punishment, the person must also meet the condition that "the person who commits the act has guilt or is culpable." In other words, the person must be accountable for their actions, or if viewed from the perspective of the act, the act must be one for which responsibility can be attributed. This principle aligns with the maxim "no punishment without guilt" (*Nulla poena sine culpa*) (Toumahuw et al., 2023). Based on this formulation, it is stated that for criminal liability to exist, the offender must be capable of being held accountable. It is not possible for someone to be held liable if they are not capable of being held accountable. The Indonesian Penal Code does not provide a definition of criminal liability. However, in Indonesian criminal law literature, several definitions of criminal liability can be found.

For example, as proposed by Hazewinkel Suriga, Articles 489, 490, or 506 of the KUHP, which deal with violations, essentially involve reprehensible behavior that is punishable even before being included in the law. Conversely, there are crimes such as those defined in Articles 198 and 344, which are considered serious and prohibited only after being codified in law (Ali, 2022).

Whatever the reasons for the distinction between crimes and violations, it is certain that violations are less severe than crimes. This can be seen from the punishments for violations, which do not include imprisonment but rather confinement and fines, whereas crimes are predominantly punishable by imprisonment.

The sharp distinction between crimes and violations in the KUHP has several consequences in substantive criminal law, such as (Ruba'i, 2021):

- a) In the case of attempts, only attempts to commit crimes are punishable, not attempts to commit violations.
- b) Regarding aiding and abetting, only aiding in crimes is punishable, not aiding in violations.
- c) The principle of personality only applies to Indonesian citizens who commit crimes (not violations) within the jurisdiction of Indonesia, where the act is punishable under foreign criminal law.
- d) In the case of violations, managers or members of management or commissioners are only punishable if the violation occurs with their knowledge; otherwise, they are not punished. This does not apply to crimes.
- e) The requirement for a complaint for prosecution applies only to crimes and not to violations.
- f) The statute of limitations for the state's right to prosecute and execute punishment for violations is relatively shorter than for crimes.
- g) The state's right to prosecute is extinguished if the maximum fine and the costs incurred are voluntarily paid once prosecution has begun, but this only applies to violations.
- h) In the case of property forfeiture as a punishment for certain violations, forfeiture can only be imposed if it is stipulated in the law for the specific violation.
- i) Provisions regarding participation in criminal acts involving printed materials only apply to violations.
- j) In the case of receiving stolen goods, the goods in question must be the result of a crime, not a violation.
- k) Criminal provisions in Indonesian legislation only apply to civil servants who commit crimes outside Indonesian territory, not to those who commit violations.
- l) In cases of multiple offenses, the punishment system differs between multiple crimes and multiple violations or crimes combined with violations, with the former using the absorption system and the latter using pure cumulative sentencing.

Formal offenses are those in which the criminal act is defined such that the core of the prohibition is the act itself. In formal offenses, the consequences of the act do not matter, as long as the act is committed. For example, in theft, the

offense is considered complete when the act of taking is completed (Lubis et al., 2023).

Conversely, in material offenses, the core of the prohibition lies in causing the prohibited result. The person who causes the prohibited result is held accountable and punished, regardless of the form of the act that caused the result. For example, in murder, the core of the prohibition is causing the death of a person, not the act of shooting, stabbing, or hitting. The offense is considered complete when the result (death) occurs, not when the act itself is finished.

Similarly, the completion of a material offense does not depend on the extent of the form of the act committed, but is entirely contingent upon the condition that the prohibited result arises. For example, if in a murder case the act of stabbing has been completed, the murder itself is not considered to have occurred if the prohibited result, namely the death of the victim, has not yet or does not occur, leaving the case as an attempted murder (MATERI & KEJAHATAN, 2021).

For example, the existence of laws on domestic violence becomes crucial, as without clear legal provisions or public policy, the practice of domestic violence would be further perpetuated. The absence of public policy is evident from the lack of serious attention from the government towards victims of domestic violence. In fact, domestic violence has not yet been viewed as a public issue but rather as a trivial matter occurring within the domestic sphere. Furthermore, the provisions regulating violence in the Indonesian Penal Code (KUHP) have yet to provide adequate protection for victims of violence, as the concept of violence in the Penal Code only refers to physical violence, as stipulated in Articles 89 and 90 of the Penal Code. These provisions do not cover forms of violence beyond physical violence, such as emotional/psychological, sexual, and especially economic violence, in the form of household neglect, where a husband neglects his wife (MULYADI & Sh, 2023).

Another limitation within the Penal Code is the absence of a minimum penalty, which often leads to sentences imposed by judges that do not meet the expectations of the victims. For instance, Article 351 paragraphs 1, 2, and 3 of the Penal Code, along with Article 356, which are often used to prosecute perpetrators of domestic violence, provide for sentences ranging from two (2) to twelve (12) years of imprisonment for perpetrators of assault. However, in practice, perpetrators of domestic violence are often given

suspended sentences. This is due to the perception held by law enforcement officers (judges or prosecutors) that the assault committed by a husband against his wife is different from an assault committed by someone without a marital relationship. In other words, the approach taken by judges or prosecutors tends to emphasize the concept of harmony within the family.

To examine the shift from civil law to public law regarding domestic violence, Pitlo's theory can be used, which asserts that:

Initially, each individual had the freedom to determine their legal position. At this stage, individual freedom took precedence in legal relationships within society. However, it became apparent that prioritizing individual freedom in societal interactions led to sharp disparities within the community. Eventually, a realization emerged that the general public interest was of utmost importance. This realization was based on the fact that juridical freedom and economic inequality created opportunities for abuse of power, which resulted in the oppression and subjugation of those who were economically weaker. Consequently, the authorities or government took measures to protect the vulnerable by enacting legislation, thereby naturally limiting individual freedom.

From Pitlo's argument, it can be concluded that in human relations, the first law to apply is private law, where agreements made between individuals form the basis for the rules governing those relationships. The act of domestic neglect committed by a husband towards his wife, prior to the enactment of the Law on the Elimination of Domestic Violence, was still considered a private law issue, and its resolution was handled by the Religious Court.

In several cases before the enactment of the Law on the Elimination of Domestic Violence, it was evident that patriarchal culture consistently suppressed women in obtaining legal protection. There were many instances of household neglect by husbands, where the wives ultimately became the breadwinners for the family abandoned by their husbands. This situation persisted due to the societal understanding that problems within the family should be resolved by the family members themselves. Before the Penal Code was updated, the act of a husband neglecting his wife was not considered violence as stipulated in Articles 89 and 90 of the Penal Code (Muthhar & Jazuli, 2020).

B. Codified Criminal Law (Gecodificeerd) and Uncodified Criminal Law (Niet Gecodificeerd)

Examples of codified criminal law include: the Indonesian Penal Code (KUHP), the Military Penal Code, and the Criminal Procedure Code (KUHP). Uncodified criminal law refers to various criminal provisions scattered outside the Penal Code, such as the Corruption Crimes Law (Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 on the Eradication of Corruption Crimes), Emergency Law No. 7 of 1955 on Economic Crimes, Emergency Law No. 12 of 1951 on Firearms and Explosives, Law No. 9 of 1998 on Freedom of Public Expression, Law No. 8 of 1999 on Consumer Protection, Law No. 21 of 2007 on the Eradication of Human Trafficking, and other regulations that include criminal sanctions.

C. General Criminal Law (Algemene Deel) and Special Criminal Law (Bijzonder Deel)

General criminal law encompasses general principles as regulated in Book I of the Penal Code, which addresses General Provisions. Special criminal law governs crimes and offenses, both codified and uncodified. According to Van Hattum in P.A.F. Lamintang, general criminal law refers to criminal law that has been intentionally established to apply to everyone (general), whereas special criminal law is intentionally created to apply only to specific individuals, such as members of the Armed Forces, or pertains to specific crimes, such as fiscal offenses (Hiariej, 2021).

1) Written and Unwritten Criminal Law

The diverse customary laws in Indonesia are still recognized as long as they do not conflict with Pancasila. Customary law is generally unwritten. According to Wirjono, there is no customary law (*gewoonterecht*) within the framework of criminal law. Officially, this is according to Article 1 of the Penal Code; however, in rural areas of Indonesia, remnants of customary legal regulations may still exist, which could concretely influence the interpretation of the articles in the Penal Code.

2) General Criminal Law (Algemeen Strafrecht) and Local Criminal Law (Plaatselijk Strafrecht)

General criminal law or ordinary criminal law is also referred to as national criminal law (Chazawi, 2022). General criminal law is that which is established by the Central Government and applies to legal subjects who are located and

violate criminal law prohibitions throughout the national legal territory. In contrast, local criminal law is created by local governments and applies to legal subjects who commit acts prohibited by criminal law within that local government's jurisdiction. Local criminal law can be found in Regional Regulations at the provincial, district, or municipal government levels.

Imposition of penalties as threatened against any violator of regional regulations must be carried out by the court. In conducting detention, examination, and seizure, local government authorities and their enforcement tools are bound by the provisions set out in Law No. 8 of 1981 on Criminal Procedure. Additionally, based on the jurisdictional applicability of the law, criminal law can still be distinguished between national criminal law and international criminal law (supra-national criminal law). International criminal law is established, recognized, and enforced by many or all countries worldwide based on international conventions, serving as law that must be recognized and applied by nations globally, such as:

- a) International criminal law originating from the London Agreement (August 8, 1945), which served as the basis for the International Military Tribunal in Nuremberg to prosecute German war criminals in World War II.
- b) The Geneva Conventions of 1949, which include provisions concerning the wounded and sick in land and sea warfare, prisoners of war, and civilian populations during armed conflict.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Criminal Law, as an independent branch of Public Law, is a legal instrument whose existence has been crucial since ancient times. This law is considered essential for ensuring public safety against criminal threats, maintaining state stability, and even serving as a "moral institution" that plays a role in rehabilitating offenders. Criminal law continues to evolve in response to the demands of criminal acts present in each era.

B. Suggestion

Based on the conclusion, it is suggested that criminal law should continue to evolve proactively to address emerging criminal activities and societal changes. Policymakers and legal practitioners must work collaboratively to adapt legal frameworks, ensuring they effectively

protect the community while promoting rehabilitation for offenders. Additionally, raising public awareness about the importance of criminal law and its role in maintaining societal stability can foster a more supportive environment for legal reforms. It is also essential to strengthen the implementation of existing laws and enhance the legal system's responsiveness to prevent crime and support victims effectively.

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