HARMONIZATION OF INDONESIAN CRIMINAL LAW THROUGH THE NEW CRIMINAL CODE TOWARDS HUMANE LAW

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ABSTRACT

Objective: The material criminal law currently in effect in Indonesia is a criminal law inherited from the Dutch colonial era, promulgated by Law Number 1 of 1946, which is enforced in accordance with the principle of concordance, which means the application of existing laws in the Netherlands to Indonesia. The problem discussed in the research is How is Law 1/2023 on the Criminal Code harmonized which repeals the previous law? How does society respond to changes in the substance and type of punishment in the new Criminal Code.

Method: The method used in the form of normative juridical with a descriptive analytical approach. The new Criminal Code consists of 2 (two) books, namely Book One and Book Two. Book One of the Criminal Code contains 205 articles which regulate starting from the scope of application of criminal statutory provisions; criminal acts and criminal liability; convictions, penalties and actions; the abolition of prosecutorial authority and criminal implementation.

Result: The results concluded that the new Criminal Code regulates the application of unwritten laws such as customary law and customs, this would be contrary to the principle of "nullum delictum" which requires that a crime can be imposed if there is a law that first regulates it. The novelty of this research is the need to regulate what crimes can be resolved using unwritten law or customary law.

Conclusion: The conclusion obtained is that there is not yet harmony between the principles and substance that regulate actions and the type of punishment that will be imposed and there are various disapproving responses from the public because the criminal regulations in the new KHUP are not yet harmonious. Hopefully a new regulation will be formed or a new Criminal Code will be revised to create a harmonization of criminal law in the future.

Keywords: criminal law, harmonization, criminal code, humane law.

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HARMONIZAÇÃO DO DIREITO PENAL INDONÉSIO ATRAVÉS DO NOVO CÓDIGO PENAL RUMO AO DIREITO HUMANO

RESUMO

Objetivo: O direito penal material atualmente em vigor na Indonésia é uma lei penal herdada da era colonial holandesa, promulgada pela Lei Número 1 de 1946, que é aplicada de acordo com o princípio da concordância, o que significa a aplicação das leis existentes nos Países Baixos para a Indonésia. O problema discutido na pesquisa é Como é que a Lei 1/2023 sobre o Código Penal harmonizado que revoga a lei anterior? Como a sociedade responde às mudanças na substância e no tipo de punição no novo Código Criminal.

Método: O método utilizado na forma de normativo jurídico com uma abordagem analítica descritiva. O novo Código Criminal consiste em 2 (dois) livros, a saber, o Livro Um e o Livro Dois. O Livro Um do Código Penal contém 205 artigos que regulam, a partir do âmbito de aplicação das disposições legais criminais; atos criminosos e responsabilidade penal; condenações, sanções e ações; a abolição da autoridade do Ministério Público e execução penal.

Resultado: Os resultados concluíram que o novo Código Penal regula a aplicação de leis não escritas, como o direito consuetudinário e os costumes, o que seria contrário ao princípio de "nullum delictum", que exige que um crime possa ser imposto se houver uma lei que o regule primeiro. A novidade desta pesquisa é a necessidade de regulamentar quais crimes podem ser resolvidos usando a lei não escrita ou o direito consuetudinário.

Conclusão: A conclusão obtida é que ainda não há harmonia entre os princípios e a substância que regulam as ações e o tipo de punição que será imposta e há várias respostas de desaprovação do público, porque as regras criminais no novo KHUP ainda não são harmoniosas. Espera-se que venha a ser criado um novo regulamento ou que seja revisto um novo Código Penal, a fim de criar uma harmonização do direito penal no futuro.

Palavras-chave: direito penal, harmonização, código penal, direito humano.

1 INTRODUCTION

Legal harmonization has been urgently needed since the promulgation of Law Number 1 of 2023 concerning the Criminal Code. The consequences of the implementation of the new Criminal Code include several laws changing, being revoked in whole or partially revoked and combined into one new law (Slamet, 2004). The Criminal Code currently in use is not originally created by the Indonesian people, so many legal polemics occur in society. 48 Years after the program for the formation of the new Criminal Code and many polemics arose, triggering an international reaction, finally a new Criminal Code was promulgated but it came into effect after 3 years from its promulgation." Law 1 of 2023 is based on neo-classical thinking which maintains a balance between objective factors (actions/outer nature) and subjective factors (person/inner/inner attitude). The mention of the book in Law No. 1 of 2023 eliminates other similar criminal law regulations which then only have a few laws special criminal
law. In my opinion, postponing the implementation of the new Criminal Code for 3 (three) years is sufficient to evaluate and prepare all the necessary tools to implement general criminal law completely. The emergence of the new Criminal Code is a criminal development both substantively and formally (Arief, 2009). Substantially, there are several types of criminal regulations that have changed, for example the "Disappearance of the Penalty of Confinement" in the New Criminal Code, this brings about very fundamental changes, especially the facilities and infrastructure for confinement which are no longer needed. Imprisonment punishment, which was previously popular in society, changed its form of punishment (imprisonment) to social work punishment. In terms of character and shape, of course many prison rooms will change function, because the function of the prison rooms which have been used for prisoners serving prison sentences will be lost or changed. Changes in the function of the place for training inmates who are in the form of prison sentences can be used as a room for inmates who have been sentenced to prison or other uses. The types of punishments contained in the new Criminal Code are in line with the increase in the types of crimes that are regulated. Apart from the polemic that has arisen, it has triggered an international reaction that rejects the new Criminal Code in general and on December 6, 2022, the Criminal Code containing 624 articles was stipulated and promulgated, but it takes effect after 3 years from the date of promulgation. One of the reasons for delaying the enactment of the new Criminal Code is to adjust or harmonize it with formal criminal law because the total number of criminal offense articles is 1251 articles with 882 articles containing a criminal threat of more than five years in prison, namely 517 articles with a threat of 5-10 years imprisonment and 10-10 years imprisonment. 15 years totaling 305 articles (Cahyani et al., 2022).

The development of Criminal Law starting from this Law is intended to replace Wetboek van Strafrecht or what is known as the Criminal Law as stipulated in Law Number 1 of 1946 concerning Criminal Law Regulations which has been amended several times (Haryadi, 2020). This replacement is one of the efforts in the context of developing national law. These efforts are carried out in a directed, integrated and planned manner so that they can support national development in various fields in accordance with development demands as well as the level of legal awareness and dynamics developing in society. In its development, the renewal of this Law which was directed towards a single mission which contained the meaning of "decolonization" of the Criminal Code in the form of "recodification", in the course of the nation's history ultimately also
contained various broader missions relating to development, both national as well as internationally. The second mission is the mission of "democratizing criminal law". The third mission is the mission of "consolidating criminal law" because since independence, criminal law legislation has experienced rapid development, both inside and outside the Criminal Code with its various characteristics, so it needs to be reorganized within the framework of criminal law principles. which is regulated in Book I of the Criminal Code. In addition, the preparation of this Law was carried out on the basis of the fourth mission, namely the mission of adaptation and harmonization of various legal developments that occurred, both as a result of developments in the field of criminal law science and the development of values, standards and norms recognized by the nation -nations in the international world. This mission is placed within a legal political framework by drafting this Law in the form of codification and unification which is intended to create and uphold consistency, justice, truth, order, usefulness and legal certainty by paying attention to the balance between national interests, community interests and the interests of individuals in the Unitary State of the Republic of Indonesia which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia (Muhammad, 2006). After tracing the history of criminal law in Indonesia, it is known that the Criminal Code in force in Indonesia originates from Wetboek van Strafrecht voor Nederlandsch-Indie (Staatsblad 1915). After Indonesia became independent in 1945, Wetboek van Strafrecht was still valid based on Article I of the Transitional Rules of the 1945 Constitution of the Republic of Indonesia. Based on Law Number 1 of 1946 concerning Criminal Law Regulations (State Gazette of the Republic of Indonesia II Number 9), Wetboek van Strafrecht voor Nederlandsch-Indie is referred to as the Criminal Code and is declared to apply to Java and Madura, while for other regions it will be determined later by the President. Efforts to realize the unity of criminal law for the entire territory of the Unitary State of the Republic of Indonesia, de facto have not been able to be realized because there are Dutch occupied areas as a result of Dutch military actions I and II, for which areas the Wetboek van Strafrecht voor Nederlandsch-Indie (Staatsblad) is still in effect. , 1915) with all its changes. Since then, it can be said that after independence in 1945 there was a dualism in criminal law that applied in Indonesia and this situation lasted until 1958 with the promulgation of Law Number 73 of 1958. This law stipulates that Law Number 1 of 1946 concerning The Criminal Law Regulations with all amendments and additions apply to the entire territory of the Unitary State of the Republic of Indonesia. Thus, a uniform
Material criminal law applies for all of Indonesia which is based on the law that came into effect on March 8, 1942, namely Wetboek van Strafrecht voor Nederlandsch-Indie, hereinafter referred to as the Criminal Code (Muhammad, 2006).

These various reforms or changes have not been able to fulfill the 4 (four) fundamental change missions outlined above, namely, decolonialization, democratization, consolidation and harmonization so that the drafting of the Law on the Criminal Code must be carried out comprehensively and codified (Gani and Takbir, 2020). The formulation of the problem in this research is (1). How to harmonize Law 1/2023 concerning the Criminal Code which repeals the previous law? (2). How does society respond to changes in the substance and type of punishment in the new Criminal Code.

2 LITERATURE REVIEW
2.1 A NEW CRIMINAL CODE

The New Criminal Code contains two books, the First Book contains general rules as guidelines for the application of the Second Book as well as Laws outside this Law, Provincial Regional Regulations, and Regency/City Regional Regulations, unless otherwise determined according to the Law so that the First Book also forms the basis for laws outside this law. The definition of terms in Book One is placed in Chapter V because the meaning of these terms does not only apply to this Law but also applies to Laws that are lex specialis, unless otherwise determined according to the Law. This First Book contains the substance, among other things, the scope of the application of criminal law, criminal acts and criminal responsibility, punishment, punishment, diversion and actions, as well as the objectives and guidelines for punishment, factors that reduce the crime, factors that aggravate the crime, concurrence, and the loss of authority. criminal prosecution and implementation, understanding of terms, and closing rules (Gani and Takbir, 2020).

Overall, the fundamental difference between Wetboek van Strafrecht and the new Criminal Code Law is the underlying philosophy. Wetboek van Strafrecht is based on Classical School thinking which developed in the 18th Century which focused the attention of criminal law on criminal acts or acts. This new Criminal Code Law is based on neo-classical thinking which maintains a balance between objective factors (actions/outer parts) and subjective factors (person/mind/inner attitudes). This school
developed in the 19th century and focused its attention not only on the crime that occurred, but also on the individual aspects of the perpetrator of the crime. Another fundamental thought that influenced the drafting of this new Criminal Code Law was the development of knowledge about victims of crime (victimology) which developed after World War II, which paid great attention to fair treatment of victims of crime and abuse of power. The philosophy of daad-dader strafrecht and victimology will influence the formulation of 3 (three) main problems in criminal law, namely the formulation of acts that are unlawful, criminal liability or mistakes, and sanctions (crimes and actions) that can be imposed along with the underlying principles of criminal law (van Strafrecht, 2020).

The new Criminal Code Law also recognizes the existence of criminal acts based on laws that exist in society or what was previously known as customary crimes to better fulfill the sense of justice that lives in society. In reality, in several regions in the country, there are still unwritten legal provisions, which exist and are recognized as law in the area concerned, which determine that violations of the law are worthy of punishment. In this case, the judge can determine sanctions in the form of fulfilling local customary obligations that must be carried out by the perpetrator of the crime. This means that the standard values and norms that exist in the local community are still protected in order to fulfill the sense of justice that exists in a particular community. Such a situation will not shake things up and will still guarantee the implementation of the principle of legality and the prohibition on analogies adopted in this Law (Pradityo & Timur, 2017).

The principle of no crime without fault remains one of the main principles in criminal law. However, in certain cases as an exception it is possible to apply the principle of absolute liability (strict liability) and the principle of vicarious liability. In terms of absolute liability, the perpetrator of a criminal act can be punished only because the elements of the criminal act of the perpetrator have been fulfilled. Meanwhile, in vicarious liability, a person’s criminal responsibility is extended to the actions of his subordinates who carry out work or actions for him or within the limits of his orders.

This Law regulates the types of punishment in the form of basic punishment, additional punishment and special punishment (death penalty) for certain criminal acts specified in the Law. The main types of crime consist of: (Lawyers, 2023)

a. imprisonment;

b. cover-up crime;
c. criminal supervision;
d. criminal fines; And
e. social work crime. In the main criminal law, new types of punishment are regulated in the form of supervision punishment and social work punishment. Supervision penalties, fines and social work penalties need to be developed as alternatives to short-term deprivation of liberty sentences that will be imposed by judges because by implementing these three types of punishment, convicts can be helped to free themselves from the feeling of guilt. Likewise, the community can interact and participate actively in helping convicts carry out their social lives properly by doing useful things. The order of the main types of punishment determines the severity of the punishment. The judge can choose the type of punishment to be imposed among the five types of punishment, although in Book Two of this Law only three types of punishment are formulated, namely imprisonment, fine and death penalty. The types of cover-up crime, supervision crime, and social work crime are essentially methods of carrying out punishment as an alternative to imprisonment. The death penalty is not listed in the main types of punishment. The death penalty is specified in a separate article to show that this type of punishment is truly special as a last resort to protect society. The death penalty is the most serious punishment and must always be punished alternatively with life imprisonment or a maximum imprisonment of 20 (twenty) years. The death penalty is imposed with a probation period. During the trial period, the convict is expected to be able to improve himself so that the death penalty does not need to be carried out and can be replaced with life imprisonment or a maximum imprisonment of 20 (twenty) years. Apart from that, the death penalty can be imposed on types of criminal acts whose time and actions do not take into account the conditions experienced by society, for example monetary crises and natural disasters (Lawyer, 2023).

Sentencing still adheres to a two-track system, that is, apart from imposing the main sentence, this Law also regulates the types of actions. In this case, judges can impose measures on those who commit criminal acts, but are not or are less able to take responsibility for their actions because the perpetrator has a mental disability and/or intellectual disability. Apart from being sentenced to a crime in certain cases, the convict can also be subject to action with the aim of providing protection to the community and realizing social order (https://unjung Hukum.com).
The regulation of criminal fines is formulated using a category system, this system is intended so that in the formulation of criminal acts there is no need to mention a specific amount of fine, but it is sufficient to indicate the category of fine that has been determined in Book One. The rationale for using this category system is that fines are a type of crime whose value changes relatively frequently due to developments in the value of the currency due to the economic situation (Rahman et al., 2022). Thus, if there is a change in currency value, the category system will be easier to change or adjust (Nasution et al., 2022). This law also regulates diversion and types of actions and crimes for children. This arrangement is intended for the best interests of children because it is related to the Law on the Juvenile Criminal Justice System and apart from that, Indonesia has ratified the International Convention on the Rights of the Child. Apart from that, there is also a "Special Crime Chapter" regulation, for example serious crimes against human rights, terrorism crimes, corruption crimes, money laundering crimes and narcotics crimes (Ermawan, 2022).


3 METHODOLOGY

This research uses normative juridical methodology. Normative legal research is a process of finding legal rules, legal principles and legal doctrines to answer the legal issues faced (Sutiarnoto et al., 2019). Normative legal research or library research is research that examines document studies using various secondary data such as statutory regulations, court decisions, legal theory, and can be the opinions of scholars.
4 RESULT AND DISCUSSION

Harmonization of Law 1/2023 concerning the Criminal Code which repeals the previous law, changes to the criminal law with the publication of the new Criminal Code really feel the nuances of Indonesia which has a heterogeneous society with different religions, tribes and customs. In general, the substance of the new Criminal Code is strongly influenced by divine law (religion) so that the author believes it is very close to religious and customary values. The substances contained in the new Criminal Code consist of 37 chapters. There are 632 articles in the Criminal Code. "The Criminal Code consists of 37 chapters. So, the number of chapters is exactly the same as the chapters in our constitution, the 1945 Constitution (Setiawan & Kurnianingsih, 2023).

The first book of the new Criminal Code contains 205 articles which regulate starting from the scope of application of criminal law provisions; criminal offenses and criminal liability; punishment, crime, and action; the abolition of prosecutorial authority and criminal execution; understanding of terms; as well as closing provisions. The second book regulates objects as objects of human rights and also regarding material rights. Objects in a broad sense are anything that can be judged (owned) by a person from Article 206 to Article 632. From the new Criminal Code there are several crucial issues in the new Criminal Code which regulate the development of criminal law, including:

4.1 INSULTING THE PRESIDENT AND VICE PRESIDENT THREATENS 3.5 YEARS IN PRISON.

In this new Criminal Code, criminal offenses against the dignity of the President and Vice President are included. Article 1 217 regulates attacks on the President and Vice President. Anyone who attacks the Head of State and his deputy faces a maximum prison sentence of five years. Meanwhile, Article 218 regulates attacks on the honor or dignity of the President and Vice President. A person who attacks the honor or dignity of the President and his deputy will be sentenced to a maximum of three years and six months in prison.

4.2 BLASPHEMY SENTENCED TO 5 YEARS IN PRISON.

The new Criminal Code regulates articles regarding religious blasphemy which are regulated in CHAPTER VII concerning Non-crimes Against Religion, Beliefs and Religious Life.
4.3 HUSBAND RAPES WIFE OR VICE-VERSA, THREATENS 12 YEAR SENTENCE.

The latest Criminal Code (KUHP) expands the definition of rape. One article that has attracted attention concerns rape in marital relations between husband and wife. In the new Criminal Code, the rules for rape are regulated in article 477. This article states that if someone commits violence or threatens to force another person to have sex, they can be sentenced to 12 years in prison. In paragraph 2 it is explained that the act of rape includes sexual intercourse with a husband or wife, a child, someone who is helpless and someone with a disability. Furthermore, prosecution for alleged rape in a marital relationship can be carried out if there is a complaint from the victim.

4.4 COHABITATION IS THREATENED WITH A SIX MONTH SENTENCE.

The rules regarding adultery are regulated in the fourth part of articles 415, 416 and 417. Article 415 regulates that someone who has sexual relations without the status of husband and wife can be sentenced to a maximum of one year. However, adultery will not be prosecuted without a complaint from the husband or wife for people who are married and parents or children for people who are not married. Next, article 416 states that someone who lives together like husband and wife faces a maximum sentence of six months. Just like article 415, this criminal act can proceed to prosecution if there is a report from the husband or wife, parents or children of the person concerned. Finally, the crime of adultery is also regulated in Article 417. This article states that someone who has sexual relations with a family member can be sentenced to 12 years. The death penalty can be changed to life imprisonment as long as you behave well. In article 98 which reads: "The death penalty is alternatively punishable as a last resort to prevent the commission of criminal acts and protect the community."

4.5 BIRDS ENTER PEOPLE’S GARDENS: PERPETRATORS FINED & ANIMALS CONFISCATED BY STATE.

In the Criminal Code, one of the crimes regulated is that poultry owners can be charged if they allow their animals to enter other people's yards. In accordance with Article 277 of the Criminal Code. It is stated that every person who allows the birds they breed to walk in a garden or land that has been sown with seeds or plants belonging to another person which causes harm will be punished with a fine of up to category II.
4.6 CLAIMING TO BE A SHAMAN & HAVING SUPERNATURAL POWERS THREATENS 18 MONTHS.

A person who claims to be a shaman or claims to have supernatural powers will be punished for 1 year and 6 months in the draft Revised Criminal Code (RKUHP). Regulated in article 252 concerning Offers to Commit a Crime.

4.7 ABORTION PERPETRATORS ARE SENTENCED TO 4 YEARS, DOCTORS WHO HELP THEM ARE PUNISHED SEVERELY.

The final draft of the Criminal Code Bill also regulates penalties for someone who practices abortion. The rules regarding abortion are regulated in articles 467, 468 and 469. In article 467 it is stated that women who have an abortion are threatened with four years in prison. However, this criminal threat does not apply to those who are victims of rape with a pregnancy of no more than 12 weeks. The article also states that a person who helps a woman have an abortion with consent is sentenced to a maximum of 5 years. If the abortion is carried out without consent, then the person is sentenced to a more severe sentence of 12 years. This rule is regulated in Article 468. Then, in Article 469, health workers ranging from doctors, midwives or pharmacists who assist in the practice of abortion will be given heavier penalties. However, they are not punished if they have an abortion due to a medical emergency.

4.8 ANIMAL ABUSE IN PRISON 1 YEAR.

The Criminal Code regulates, among other things, criminal acts of careless care and mistreatment of animals.

4.9 PARENTS INVITING CHILDREN TO BEG WILL BE PUNISHED, HOMELESS PEOPLE WILL BE FINED.

The Criminal Code stipulates that someone who uses a child under twelve years of age to beg can be sentenced to a maximum of four years. This rule is stated in article 428 of the Criminal Code. Then, in paragraph two of the same article, it is stated that someone who accepts a child for use will be given the same sentence, namely four years in prison. The Criminal Code also regulates vagrancy on the streets. Article 429 states that someone who wanders around in public spaces can be fined a maximum of category I or IDR 1,000,000.00 (one million Rupiah).
4.10 DENTISTS WHO CARRY OUT THEIR DUTIES WITHOUT PERMISSION.

Remove Article 276 of the Criminal Code which regulates the punishment of doctors or dentists who carry out work without a permit. "This is true, apart from the decision of the Constitutional Court, Article 276 is also regulated in the Medical Practice Law."

4.11 FRAUDULENT ADVOCATE.

Remove Article 282 of the Criminal Code regarding a five-year prison sentence for advocates who carry out their work fraudulently, namely entering into agreements with opposing parties to their clients, or influencing clerks, substitute clerks, bailiffs, witnesses, interpreters, investigators, public prosecutors or judges in cases.

4.12 CONTEMPT OF COURT OR CONTEMPT OF COURT.

The government changed the formulation of Article 280 which regulates contempt of court. Especially in letter c which states anyone who without permission records, publishes directly, or takes place.

4.13 CUSTOMARY LAW.

Indonesia has laws that live within the community or customary law. Article 2 of the Criminal Code, customary law can be used as a reference to criminalize someone, if that person's actions are not regulated in the Criminal Code. The public's response is focused on the implementation of customary criminal law as long as it is not regulated in the new Criminal Code as well as changes to the substance and type of punishment regarding the death penalty regulations. The death penalty in the Criminal Code is regulated as a special crime and is always threatened alternatively with other types of punishment, namely life imprisonment or a maximum imprisonment of 20 (twenty) years, which is still being debated for a long time, especially the adoption of special penalties that are compiled and unified in New Criminal Code. The disappearance of the death penalty as a basic punishment has many views that argue that Akita criminal law is becoming more humanistic. Even though the death penalty was made into an alternative crime, new types of punishment have emerged in the new Criminal Code, namely social work crimes and cover-up crimes (Setiawan & Kurnianingsih, 2023).
Although there have been several additions and reductions to the Indonesian criminal law, it still sides with the victim, in contrast to the Brazilian Criminal Law which does not side with either party, either the victim or the perpetrator (Soares, 2021). The similarity between Indonesian law and Brasilia is that they both adhere to written law or to be precise adhere to the Legism school of law (Indriati & Sabowo, 2023). There are several types of criminal acts which are referred to as Types, namely:

a. Crimes and Offenses.

b. Formal Offenses and Material Offenses.

c. Commissioner's offenses, commissioner's offenses and commissionis' offenses per ommissionem commissa.

d. Dolus offense and culpa offense.

e. Single offense and multiple offenses.

The types of criminal acts consist of crimes and criminal offenses, formal crimes and material crimes, intentional crimes and unintentional crimes as well as active crimes and passive crimes. The explanation of Article 34 states 4 exceptional conditions which mean that someone who commits a prohibited act in self-defense will not be punished. The 4 conditions are that there must be an immediate attack or threat of an unlawful attack, the defense is carried out because there is no other way (subsidiarity) to ward off the attack, the defense can only be carried out against interests that are determined in a limitative manner, namely the legal interests of oneself or another person, honor in the sense of morality, or property and the balance between the defense carried out and the attacks received (proportionality). In contrast to the act of wiretapping, it is also regulated in the Criminal Code (KUHP). In its regulations, perpetrators of wiretapping of other people can face imprisonment for up to 10 years or a fine of a fantastic value, namely IDR 2 billion. Eavesdropping is the act of listening to (recording) information (secrets, conversations) of other people intentionally without the person's knowledge. The rules regarding wiretapping were also stated in the Information and Electronic Transactions Law (UU ITE), but were removed. Then regarding wiretapping, it appeared again in the new Criminal Code which was passed by the DPR, which regulated the authority of criminal law enforcement agencies that would be involved, such as the police, prosecutors, judges, correctional institutions, and houses storing confiscated assets. Brasilia's Federal Constitution establishes 8 (eight) law enforcement agencies including 7 (seven) titular agencies and 1 (one) subsidiary agency (Wikipedia, 2023).
The new Criminal Code has been promulgated by the Government and all possibilities have been regulated in it, but based on the explanation of the types of crimes above, the researcher saw that there was one irregularity which was contrary to legal principles, namely written principles were violated due to regulations regarding the application of unwritten laws, because our legal principles what applies is "nullum delictum" without the threat of punishment without any governing regulations. Researchers analyze that with the regulation and enforcement of unwritten laws, the harmonization of criminal law will have little negative influence from the enforcement of unwritten laws. The application of unwritten laws clearly creates non-uniformity in both the law enforcement system and the type of punishment, this will result in a double track system in criminal law and in the same crime. If there is a goal of enforcing written law, the type of law and its pattern must still be regulated in one decision so that any type of crime can use customary or customary law as the basis for its resolution. This new Criminal Code cannot yet cover this and there should be additional articles relating to limitations and models of application of unwritten laws in Indonesia.

5 CONCLUSION

Harmonization of criminal law regulations is something that must be done to increase legal certainty in law enforcement. The new Criminal Code regulates new substances that change old norms so that in order to avoid conflicting principles and new norms there must be firmness so that it does not harm law enforcement in the future. The public believes that the new KHUP will bring more certainty if improvements are made in several topics. The most common response is regarding the application of customary law if it has not been regulated in the new Criminal Code, which in principle there is no punishment without any regulations governing it, "nullum delictum", in accordance with the school of law. The legislation that we follow in Indonesia. The recommendation offered is immediate revision or a new form of regulation specifically to provide legitimacy regarding the implementation of customary crimes in Indonesia. The state must clearly regulate the type of act, type of punishment and the authority that will impose punishment must be clearly regulated.
REFERENCES


Lawyers, B. P (2023). Types of Crimes in the New Criminal Code · death penalty; · imprisonment; · criminal Cage: V; · criminal fines; · criminal cover-up, https://bplawyers.co.id/2023/01/04


https://ejournal.insuriponorogo.ac.id/index.php/almanhaj/article/view/2815

https://fahum.um.ac.id.


https://bplawyers.co.id/2023/01/04.

The Criminal System in Concept consists of criminal sanctions and action sanctions. Penalty. Punishment is divided into two main penalties and additional penalties (https://unjung Hukum.com/2018/02)
http://repository.unissula.ac.id/26262.