

## The urgency of Indonesian Penal Code (KUHP) reform to realize humanistic-based imprisonment

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### Article info

Submitted:  
2021-07-27

Reviewed:  
2021-08-16

Accepted:  
2021-10-03



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### Publisher

Universitas Muhammadiyah  
Magelang

**Kata kunci:** peradilan  
pidana, humanistik, era 4.0

### ABSTRACT

The development of law shall proportionally handled in all aspects of life and relevant to the interests of the community. Modern community is closely related to the era of information technology which is popular with the era of disruption or the industrial revolution 4.0. This study aims to analyze the concept of a humanistic-based criminal approach and imprisonment in the era of the industrial revolution 4.0. This study uses normative legal research with statute and conceptual approach. The results shows that the development of information technology has been proven to bring many changes in the current pattern of human life as well as the existence of law and criminal law. The swiftly transformation regarding Industrial Revolution 4.0 also demand legal reform as a challenge. Imprisonment as an important aspect of Criminal Law shall accordance with the existence of this 4.0 industrial revolution era. Seeing these conditions, it is necessary to harmonize the laws and regulation in the era of the industrial revolution 4.0 which is an effort to reform criminal and humanistic-based prisons in the era of the industrial revolution 4.0.

**Keywords:** Criminal Justice, Humanistic, 4.0 era

### ABSTRACT

Pembangunan hukum harus ditangani secara proporsional dalam segala aspek kehidupan dan relevan dengan kepentingan masyarakat. Masyarakat modern erat kaitannya dengan era teknologi informasi yang populer dengan era disrupsi atau revolusi industri 4.0. Penelitian ini bertujuan untuk menganalisis konsep pendekatan kriminal berbasis humanistik dan pemenjaraan di era revolusi industri 4.0. Penelitian ini menggunakan penelitian hukum normatif dengan pendekatan undang-undang dan konseptual. Hasil penelitian menunjukkan bahwa perkembangan teknologi informasi telah terbukti membawa banyak perubahan dalam pola kehidupan manusia saat ini serta keberadaan hukum dan hukum pidana. Transformasi yang cepat terkait Revolusi Industri 4.0 juga menuntut reformasi hukum sebagai tantangan. Pemenjaraan sebagai aspek penting dari Hukum Pidana harus sesuai dengan keberadaan era revolusi industri 4.0 ini. Melihat kondisi tersebut, maka perlu dilakukan harmonisasi peraturan perundang-undangan di era revolusi industri 4.0 yang merupakan upaya reformasi lembaga pemasyarakatan berbasis kriminal dan humanistik di era revolusi industri 4.0.

## I. INTRODUCTION

Industrial Revolution Era 4.0 has triggered changes in various aspects such as economics, technology, and employment. This changes demand for the reform of government to responds to the impact of the Industrial Revolution 4.0, especially in the legal aspects. This is inseparable from the role of increasingly advanced technology with the development of an increasingly sophisticated digital world. This reform shall accordance with the ethics, morals, humane, and applicable with the society (Satya, 2018).

Learning from Netherland, there has been a change in the criminal code which resulted in a reduction in the crime rate by 0.9% and closing as many as 5 prisons which resulted in the dismissal of 1,900 prisons employees. Then, the Netherlands tried to find a solution to the layoff employees by renting empty prisons to Belgium and Norway. In addition, there was a change in form and function the prison in the Netherlands as the example *Het Arresthuis* in Roermond has been converted into a luxury hotel as presented in Figure 1 and Figure 2.



**Figure 1.** Het Arresthuis in Roermond Prison

**Source:** <http://www.engelmanarchitecten.nl/en/projecten/het-arresthuis/>



**Figure 2.** Het Arresthuis in Roermond Hotel

**Source:** <https://www.luxurytraveldiary.com/2017/07/review-het-arresthuis-luxury-converted-prison-hotel/>

The Dutch legal system currently focused on humane treatment of criminals through rehabilitation, short sentences, skills programs, and reintegration with the community. This is inseparable from the role of increasingly advanced technology with the development of an increasingly sophisticated digital world. This criminal renewal will be an interesting discussion space for legal experts to discuss changes and improvements to the law in accordance with the applicable interests.

In principle, the Indonesian reform of criminal law is an attempt to conduct a review and re-establishment of the law in accordance with the general values of socio-political, sociophilosophic, and cultural values that exist in society (Habriielian A., 2019). Therefore, the reformation of criminal justice based on humanism is a strategic step to change the direction of legal views in the era of the Industrial Revolution 4.0.

Refer to the Legal System's Theory by Friedman, the scope of legal system consists of legal substance, legal structure and legal culture. Based on this theory, the scope of the reformation in the criminal law covers a renewal of the substance of criminal law that includes material criminal law, formal, and criminal law (Setiawan, 2018).

Renewal of the criminal law structure which includes the institutional, administrative, and management systems of law enforcement institutions relating to coordination among national, regional, and international law enforcements. Furthermore, the renewal of criminal law culture which includes changes in culture, morality, behavior, and legal education and legal science that accompanies the implementation of the law itself (Ansori, 2017).

Whereas the Criminal Code reform in the perspective of criminal law consists of partial and universal renewal. Partial renewal means changes its articles of the criminal code, and in universal reformation it is carried out as a whole reformation by changes all the articles in criminal code. Based on the description above, this study aims to analyze the urgency of Indonesian Criminal Code reform in response to the crimes during Industrial Revolution 4.0 era.

## II. RESEARCH METHOD

This article uses a normative juridical research method with a statutory and conceptual approach. The primary legal material used in this study is Indonesian Penal Code (KUHP) and Indonesian Penal Procedure Code (KUHAP). The secondary legal material covers journals, books and other related document to the research. The concept used in this study covers theory of legal system, humane theory and National Legal System. Both of primary and secondary legal material was analyzed and presented descriptively.

## III. ANALYSIS AND DISCUSSION

### 3.1. Criminal Law in Indonesia

Article 1 paragraph (1) of Indonesian Penal Code explains that "An act cannot be convicted, except based on the strength of the existing criminal law provisions". In this case, criminal law implies that all forms of prohibitions or violations done, can be the subject to criminal

sanctions by law. Based on the codification as the main source of criminal law, then in general criminal law is a part of public law that contains the provisions concerning (Chazawi, 2002):

- a. General rules of criminal law and the prohibition to commit certain acts (active/positive or passive/negative) accompanied by the threat of sanctions in the form of criminal (Straf) for those who violate the prohibitions.
- b. There are certain elements that are met for the violator to impose criminal sanctions that are threatened with the prohibition of the act they violate.
- c. Actions and efforts that may or must be carried out by the state through its state apparatus (for example police, prosecutors, judges), against those suspected and convicted as violators of criminal law in the framework of state efforts to determine, impose and implement criminal sanctions to the offender itself, as well as actions and efforts that may and must be carried out by the suspects/defendants in violation of the law in an effort to protect and defend their rights from state actions as their efforts in the reinforcement of the criminal law.

The above limitation is a general scope in defining criminal law. However, this limitation still has a broaden meaning especially in regard to specific matters related to criminal law. Meanwhile, Moeljatno states that the meaning of criminal law as part of the whole applicable law in a country, which held the basis and rules for (Moeljatno, 1985):

- a. Determining which actions should not be done and are prohibited, accompanied by threats or sanctions in the form of certain penalties for anyone who violates the prohibition.
- b. Determining when and in what ways those who have violated the prohibitions may be imposed or convicted as threatened.
- c. Determining in what way the imposition of criminal acts could be imposed to people who are suspected of violating the prohibition.

The function of criminal law is to regulate and protect as an effort to create arrangement and order in the life of the nation and state. Specifically, criminal law has the following functions (Moeljatno, 1985):

- a. Determining which actions should not be done and are prohibited, accompanied by threats or sanctions in the form of certain penalties for anyone who violates the prohibition.
- b. Determining the time and ways the perpetrators violated the prohibitions may be imposed or convicted as threatened.
- c. Determining in imposition of criminal acts could be imposed to perpetrators.

Specifically, criminal law has the following functions:

- a. Protect the legal interest from acts that attack or undermine the legal interest. The legal interest that must be protected in the first function of this criminal law such as:
  - 1) Individual legal interests (individuale belangen), namely a person's legal interests as personal legal subjects, for example, sufficient interests in the right to

- life, legal interests in the body, legal interests in property rights, legal interests in self-esteem and personality, interests' laws against immorality.
- 2) Social interest (Sociale of maatschappelijke belangen) for the example social interest related the security and public order.
  - 3) State legal interests (staats belangen) such as legal interests in state security, legal interests amongs country's partner, legal interests in respect of the dignity of the head of state and its representatives.
- b. Giving a basis of legitimacy for the state in order to carry out the function of maintaining protected law, the second function of criminal law as public law is to uphold and protect the legal interests that are protected by criminal law as well as possible. This function is mainly contained in criminal procedural law that has been codified with what is called the Indonesian Penal Criminal Code (KUHAP).
  - c. Regulating and limiting state's power in the carry out of their functions in maintaining the interests of protected law. This third function is a function of criminal law which limits the state in carrying out the second function of the criminal law, namely limiting state's power so that the state itself is not absolute in carrying out legal interests. Seeing from the three main functions of the criminal law, it is appropriate that criminal law is often a double-edged sword because in addition to giving power to the state, criminal law also limits and can counterattack to the state if the implementation is carried out absolutely.

### 3.2. Criminal and Imprisonment

According to Wirjono Prodjodikoro, the word "punishment" as a term cannot replace the word "criminal" because there is the term "criminal law" besides "civil law" such as compensation in the form of payment of a sum of money or confiscation of goods (Prodjodikoro, 2003). Meanwhile Sudarto states that "punishment" comes from the word "punish" or "decides about the punishment" (berechten). In "establishing the law" for an act not only involves the criminal law, but also civil law (Sudarto, 1981). However, on another occasion, Sudarto argues that the term and meaning of the criminal cannot be separated from the criminal law because the criminal is an important part of the criminal law.

In accordance with the principle referred to as *nullum delictum nulla poena sine praevia lege poenali*, as stated in Article 1 paragraph (1) of the Penal Code, which means that criminal offenses and acts which are threatened by criminal must first be regulated in criminal law. This indicates that there are differences in the terms of punishment and criminal in the Indonesian legal system, namely the criminal must be based on the law, while the punishment has a broader understanding (Ali, 2016).

Punishment means regulating matters which are included in the overall norms, whether the norm of appropriateness, politeness, decency and habit. Nevertheless, the terms punishment and criminal have similarities, such as having a motivation, good and bad, polite and impolite, permitted and prohibited. Someone who is convicted is the one who is guilty according to law or violates regulations. However, person may also become a subject of punishment even not criminal law.



There are many opinions to decide when one is convicted of a criminal offense. It is stated that the government has the right to convict or hold the *Ius Puniendi*. According to Beysens, a government can commit a crime for several reasons:

- a. The state aims and is obliged to maintain public or state order.
- b. The convicted sentence must not contain an element of revenge, but it is objective by giving a compensation due to a violation of the law which is done voluntarily and responsibly.

According to Barda Nawawi Arief, if the definition of punishment is broadly interpreted as a process of giving or imposing a criminal by a judge, then it can be said that the criminal system includes the entire statutory provisions governing how the criminal law is enforced or operationed concretely so that one is convicted (criminal law). This means that all regulations regarding Substantive Criminal Law, Formal Criminal Law and Criminal Procedure Law can be seen as a unified criminal system (Hutabarat, 2018).

Furthermore, Barda Nawawi Arief also argue that, if the legislation is limited to the substantive criminal law contained in the Criminal Code, it can be said that the entire provisions in the Criminal Code, both in the form of general rules and special rules on the formulation of criminal acts, are essentially a unified criminal system. All statutory rules in the field of substantive criminal law consist of general and special rules (Muhammad, 2019).

General rules are contained in the Penal Code (Book I), and special rules are contained in Penal Code Books II and Book III, as well as in Special Laws outside the Penal Code. These special rules generally contain the formulation of certain criminal acts, but they can also contain special rules that deviate from general rules (Anwar et al., 2021).

The criminal system broadly covers 3 (three) main problems, namely the type of criminal (strafsoort), the duration of criminal threats (strafmaat), and the implementation of criminal (strafmodus). According to the provisions in Article 10 of the Penal Code, the criminal system in Indonesia consists of a principal and additional criminal offense. To determine the severity of a crime given by a judge, the law only determines the maximum and minimum criminal penalties (Dutton & Madison, 2019).

In line with the development of era, there are various insights that talk about the purpose of punishment. The following are theories regarding punishment, such as (Nawawi Arief, 2003) :

- a. Absolute Theory / Theory of Vengeance (Vergeldings Theorien)

The theory explains that a crime can be imposed solely because people have committed a crime. This theory was first introduced by Kent and Hegel. Absolute theory is based on the idea that crime does not aim to be practical, such as correcting criminals but crime is an absolute demand, not just something that needs to be dropped but becomes imperative. In other words, the nature of punishment is a revenge (revegen).

- b. Relative Theory or Objectives (Doel Theorien)

This theory states that crime is an instrument to enforce law in society. The rationale used in this theory is that a crime can be sentenced to mean that criminal imprisonment has a

specific purpose, for example improving mental attitude or making the perpetrator to be harmless. This is the reason that a mental attitude development process is needed.

c. Combined / modern theory (Vereningsings Theorien)

This theory combines the principles of relative (goal) and absolute (revenge) as one unity. This theory is double patterned, in which the punishment implies the character of revenge since the punishment is seen as a moral critique in answering wrong actions. While the purpose of the character lies in the idea that the objective of moral criticism is reforming or changing the behavior of criminals in the future.

### 3.3. Industrial Revolution Era 4.0 and the need of Indonesian Panel Code Reform to the Humanity Based

The 4.0 Industrial Revolution era is marked by the emergence of various artificial intelligence, such as the sophistication of digital technology, nano technology, automatic cars, and various other innovations. Prof. Klaus Schwab is a world-famous economist from Germany argue Industrial revolution 4.0 has fundamentally changed the lives and work of people.

According to Schwab, the impact of the 4.0 Industrial Revolution was divided into 5 clusters (Wibowo, 2019):

- a. Economy; growth, employment, character, and work
- b. Business; consumer expectations, products with better data, collaborative innovation, and new operating models.
- c. National-Global Relations; government; country, region, city and international security
- d. Society; inequality and middle class, and community
- e. Individual; identity, morality and ethics; human-to-human connections, management of public and private information

These changes may generate rapid and completely automated world on the aspects of economic, industrial, government, and political. As the example, one might not expect that a popular motorcycle taxi used by the community for the benefit of human mobility has been successfully increased, namely by an internet-based application system. The sophistication of digital applications makes it easier for the public to get transportation services and even at very affordable prices. However, on the other hand the conflicts between the traditional motorcycle taxi and the online one is inevitable.

The technology used by online motorcycle taxi is not only an alternative instrument of transportation, but also extends to the online delivery service businesses. This condition indicates that online technology as major changes in human civilization and the economic.

Prof. Clayton M. Christensen, business administration expert from Harvard Business School, explains that the era of disruption had disrupted or damaged existing markets but also encouraged the development of products or services that were unexpected in the market before, created diverse consumers, and had an impact on the price that is getting cheaper (L.Hurt, 2011).

Indonesia responded to the implementation of the Industrial Revolution 4.0 era by launching Making Indonesia 4.0 as a strategic step in dealing with this digital era. In addition, various steps have been taken by the government by increasing the competence of human resources through the link and match program. The government also synergizes between several ministries and related institutions to facilitate access, improve the quality of human resources, and integrate with digital technology. To encourage anticipatory steps towards the possible negative impact on the national economy in the Industrial Revolution 4.0 era, legal reform efforts are needed to regulate the application of the latest system of the industrial revolution.

Minister of Law and Human Rights (Menkumham), Yasonna H Laoly stated that Indonesia still uses the Penal Code (KUHP) as a legal basis which is a Dutch colonial inheritance of hundreds of years ago. Furthermore, he explained that this could cause problems because the basis of criminal law should be made in line with the development of society. Therefore, a comprehensive reform of criminal law is needed.

There are at least three reasons that underlie the necessity of reforming criminal law, namely the KUHP is no longer appropriate with the dynamic improvement of Indonesia's national criminal law, the improvement of criminal law outside the KUHP, and there has been a duplication of legal norms criminal code between criminal legal norms in the KUHP and criminal law norms in laws outside the KUHP (Junaidi & Imansyah, 2018).

On the other hand, the Netherlands now no longer applies the conventional legal system. They now more focus on not indicting crimes that have not caused casualties, rehabilitation, short sentences, skills programs, and reintegration with the public. For example, in convicted drug cases, the laws related to drug use is more flexible. They focus on rehabilitation of drug users by using bands on their ankles. They serve to monitor the convicts so that they can mingle in the community. A study released in 2008 found that the watchband attached to the ankles reduced a person's potential to become a recidivist by half compared to the traditional punishment system. The role of the bands on drug convicts who undergo the rehabilitation process is one form of technology utilization and makes the criminal process more humanistic.

The development in this era of disruption has encouraged more acceleration so that there are many changes in society. It certainly also has an impact on the aspect of law as one of the instruments of the state whose function is to maintain the order and system in society. Indonesia should enhance criminal law by looking at the development in society and starting to be dare to leave the conventional legal system.

The reform of criminal law principally is an attempt to conduct a review and reformation (reorientation and reform) of law in accordance with the general values of socio-political, sociophilosophic, and cultural values of Indonesian society. The reform of criminal law is expected to be comprehensive and complete not only in terms of a reform of the Criminal Code. As stated in the previous paragraph, the reform of criminal law covers various aspects contained in the values of the Indonesia. While the reform of the Criminal Code means a reform of criminal law material.



The reform of criminal law starts from the politics of criminal law or criminal law policies that direct criminal law regulations in accordance with the values contained in Pancasila and the 1945 Constitution of the Republic of Indonesia. The reform of criminal law should be able to reflect the national aspirations and the needs of the developing community for today and the future.

According to Barda Nawawi Arief, the development of the National Legal System is related to development, reform, renovation, rebuild, reconstuction, evaluation, whereas from a theoretical or conceptual standpoint is a series of unity of the National Legal sub system (Kumnas), namely its substance, structure and culture. Moreover, Barda Nawawi Arief explained that in the Development of the National Legal System, there is a demand for values, namely the religious moral (the divine), humanistic, social justice, nationalistic, and democratic/wisdom approaches. Humanistic values are also called human values or better known as Human Rights (HAM) (Rofiq et al., 2019).

Criminal reform should be done by Indonesia to change the legal system that is still conventional and is inheritance of hundreds of years of the Dutch. Efforts to make the perpetrators of criminal acts deterrent by imposing penalties such as imprisonment are felt to be no longer appropriate in the era of industrial revolution 4.0.

The concept of criminal and criminalization in Indonesian criminal law must be shifted towards paying more attention to the efficiency of the implementation of the crime itself. Imprisonment as an example will not solve criminal problems and criminalization in our criminal law. Criminals are sentenced to imprisonment does not necessarily make the perpetrators deterrent, and the costs incurred by the state will remain quite high with the inclusion of imprisonment in our Criminal Code.

Indonesia can adopt what the Dutch have done through criminal reformation efforts that are carried out humanistically and comprehensively by exploring the values existed in Indonesian society. So that it can reduce the rate of crime in our country as well as in the Netherlands where crime and criminal offenders are reduced. As the result, the sentences given to criminal offenders are reduced as well.

#### **IV. CONCLUSION**

To responses the global changes and increases the crime in Indonesia, the Government shall reform the Indonesian Penal Code and implement the human-based imprisonment. These responses in line with the principle of the human rights in Indonesia. The Penal Code reform shall cover the legal substance, legal structure and relevant with the legal culture. The role of law as an instrument to create a civilized society is strongly needed. It is necessary to adjust to existing regulations regarding criminal law, especially in terms of crime and punishment, humanistic-based criminal and criminal justice concepts adapted to the development of society in the industrial revolution era 4.0.

## Author Declaration

**Author contributions and responsibilities** - The authors contributed substantially to the conception and design of the study. The author is responsible for data analysis, interpretation, and discussion of the results. The authors read and approved the final manuscript.

**Funding** – No funding information from the author

**Availability of data and materials** - All data are available from the authors.

**Conflict of interest** - The authors declare no conflict of interest.

**Additional information** - No additional information from the author.

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