

## THE ORIENTATION AND IMPLICATIONS OF NEW CRIMINAL CODE: AN ANALYSIS OF LAWRENCE FRIEDMAN'S LEGAL SYSTEM

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### Abstract

*This study aims to analyze the orientation and implications of the legalization of the Draft Criminal Code (RKUHP) to become Law No. 1 of 2023 concerning the Criminal Code (New Criminal Code) regarding the legal system theory of Lawrence M. Friedman. This research is normative legal research by prioritizing conceptual and statutory approaches. The results of the study confirm that the orientation of Lawrence Friedman's legal system regarding the ratification of the Draft Criminal Code is that the aspects of legal substance in the New Criminal Code have adopted Indonesian legal values and culture by applying the concept of restorative justice. From the aspect of legal structure, implementing the New Criminal Code in a transitional manner for three years has an orientation to provide socialization. From the aspect of legal culture, the orientation of restorative justice involves the public in the criminal justice process. The implication of Lawrence Friedman's legal system puts forward the substance of customary law as the applicable law, related to the idea of restorative justice to the affirmation that imprisonment is a last resort. That has implications for the need for judges to understand customary law. From the aspect of the legal structure, the roles of judges, prosecutors and other law enforcement officials are also prioritized to provide the essence of justice in implementing the New Criminal Code. From the aspect of legal culture, the role and participation of the community are essential in efforts to prevent and enforce criminal law in society.*

**Keywords:** Criminal Law; Legal System Theory; Lawrence M. Friedman; New Criminal Code

### 1. INTRODUCTION

The promulgation of the Draft Criminal Code (*Rancangan Kitab Undang-Undang Hukum Pidana* or RKUHP) into law on January 2, 2023, is a "New chapter" in Indonesian criminal law. That is a New chapter because the legalization and promulgation of the "New Criminal Code" (Law No. 1 of 2023 concerning the Criminal Code) mean that Indonesia has abandoned the "Old Criminal Code" (*Kitab Undang-Undang Hukum Pidana* or KUHP). That was a "relic" of the Dutch colonial government based on the principle of concordance was ratified as material criminal law in Indonesia.<sup>1</sup> As a "continuation" of

<sup>1</sup> Soetandyo Wignjosebroto, 2004, *Desentralisasi Dalam Tata Pemerintahan Kolonial Hindia-Belanda (Kebijakan Dan Upaya Sepanjang Babak Akhir Kekuasaan Kolonial Di Indonesia (1900-1940))*, 1st ed. Bayu-media, Surabaya.

*Wetboek van Strafrecht* (Wvs/Dutch Criminal Code), the Old Criminal Code had several substances and provisions that still had colonialism. Such as regulation of unpleasant acts, minimal protection of citizens' rights, and efforts to punish, especially imprisonment, which is the "main orientation" in settlement of criminal cases in Indonesia.<sup>2</sup> The promulgation of the Draft Criminal Code in the Indonesian legal system is an "important moment", especially from the aspect of criminal law, so that Indonesia can organize a more substantive criminal justice system following developments in criminal and sentencing theory and practice and following the spirit and ideals of national law. The presence of a New Criminal Code is administratively confirmed by the provisions of Law No. 1 of 2023 concerning the Criminal Code (*New Criminal Code*). The New Criminal Code is not immediately applicable and enforceable.

Referring to Article 624 of the New Criminal Code, it is emphasized that it applies in a transitional manner, which means it is enforced three years after promulgation. The Criminal Code has only come into force on January 2, 2025. It is understood that three years is considered a time for equalizing perceptions, shared commitments, and structuring the orientation of law enforcement officials. That is intended so that the New Criminal Code is not only substantively New but also has a "New" spirit in the effort to implement and enforce the provisions in the New Criminal Code so that they are in harmony with the ideals of national law. The orientation of the New Criminal Code so that it becomes an effort to carry out reforms in Indonesian criminal law is relevant, especially concerning the completion of criminal law in Indonesia, which seems "*Wvs centric*" by emphasizing imprisonment as the main route (*primum remedium*).<sup>3</sup> The development of criminal law should emphasize that imprisonment should be a last resort while the main effort is the punishment oriented towards recovering victims, providing education and a deterrent effect for perpetrators, and ensuring societal balance.<sup>4</sup> From these various aspects, the New Criminal Code is the common hope of the Indonesian people in realizing criminal law following the characteristics of the Indonesian nation

This study aims to analyze the orientation and implications of passing the Draft Criminal Code into law concerning the legal system theory proposed by Lawrence M. Friedman. Lawrence M. Friedman's legal system theory is essential as an "analytical knife" because Lawrence M. Friedman's legal system idea seeks to see the legal system in a comprehensive manner; which is not just the rule of law (*legal substance*). However, it also refers to legal culture and the structure of law enforcement in society.<sup>5</sup> In the

<sup>2</sup> Arista Candra Irawatu, 2019, *Politik Hukum Dalam Pembaharuan Hukum Pidana (Ruu Kuhp Asas Legalitas)*, Adil Indonesia Jurnal, Vol. 2, No. 1, pg. 1–12.

<sup>3</sup> Lidya Suryani Widayati, 2019, *Pidana Tutupan Dalam RUU KUHP: Dari Perspektif Tujuan Pemidanaan, Dapatkah Tercapai? Undisclosed Penitential in Criminal Code Bill: From the Purpose of Punishment's Perspective, Can It Be Achieved?*, Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan, Vol. 10, No. 2, pg. 237–57.

<sup>4</sup> Satria Nenda, Eka Saputra, and Muridah Isnawati, 2022, *Overcrowding Lembaga Pemasyarakatan (Lapas) Dalam Sistem Pemidanaan Di Indonesia*, Pagaruyuang Law Journal, Vol. 6, No. 1, pg. 52–70.

<sup>5</sup> Ariel Zuckerbrot, 2019, *Impact: How Law Affects Behavior, by Lawrence M. Friedman*, Osgoode Hall Law Journal, Vol. 3, No. 55, pg. 846–52.

author's opinion, this will be interesting and relevant when Lawrence M. Friedman's legal system theory is used as an analytical knife concerning the passing of the New Criminal Code. Several researchers, including have carried out previous research on the orientation of the New Criminal Code from Faisal and Muhammad Rustamaji (2021), discuss the Reform of the Criminal Law Pillars in the Criminal Code Bill.

This research focuses on the pillars of criminal law in the Criminal Code Bill, which are oriented towards recovering victims and balancing society so that the notion of punishment as retaliation must slowly be abandoned.<sup>6</sup> Furthermore, the research was conducted by Helmalia Cahyani, Intan Nurul Firdaus, Julia Elisabeth Sitanggang, and Ferry Irawan (2022), which discussed the Policy related to Controversial Articles in the Criminal Code Bill Viewed from the Perspective of Social and Cultural Dynamics of Indonesian Society. The research results indicated that there was a need for an assessment re-related to several articles in the Criminal Code Bill so that it is appropriate and in harmony with the culture of Indonesian society.<sup>7</sup> Furthermore, Tiffani Rimandita's (2022) research concerning Efforts to Rearrange the Offenses of Insult to the President in the Indonesian Draft Criminal Code Linked to the Presidential Government System focuses on rearranging arrangements regarding the offence of insulting the President concerning the presidential system. Of the three previous studies, the study discussing the ratification of the Draft Criminal Code was only reviewed from the aspect of Lawrence M. Friedman's legal system theory, which the three previous researchers had never carried out. Therefore, the research that the authors conducted was original. This study aims to answer two problem formulations: 1) What is the orientation of Lawrence Friedman's legal system regarding the ratification of the Draft Criminal Code? and 2) What are the implications of Lawrence Friedman's legal system regarding the ratification of the Draft Criminal Code?

This type of research is normative legal research which focuses on the study and reasoning of authoritative legal products in the form of laws and regulations. The main focus of this research is to answer legal issues, namely the orientation and implications of Lawrence Friedman's legal system regarding ratifying the Draft Criminal Code.<sup>8</sup> The primary legal materials in this study are the 1945 Constitution of the Republic of Indonesia and the New Criminal Code. Secondary legal material in this research includes the results of research and studies regarding the substance of the Draft Criminal Code or the ratification of the New Criminal Code, especially those related to this research.

<sup>6</sup> Muhammad Rustamaji Faisal, 2021, *Pembaruan Pilar Hukum Pidana Dalam RUU KUHP*, Magister Hukum Udayana, Vol. 10, No. 2, pg. 293.

<sup>7</sup> Ferry Irawan Helmalia Cahyani, Intan Nurul Firdaus, Julia Elisabeth, 2022, *Kebijakan Pasal-Pasal Kontroversial Dalam RUU KUHP Ditinjau Dari Perspektif Dinamika Sosial Kultur Masyarakat Indonesia*, Journal of Law, Administration, and Social Science, Vol. 2, No. 2, pg. 85.

<sup>8</sup> Philip Langbroek et al., 2019, *Methodology of Legal Research: Challenges and Opportunities*, Utrecht Law Review, Vol. 13, No. 3, pg. 1-8. Lihat juga dalam Pradeep M.D., *Legal Research- Descriptive Analysis on Doctrinal Methodology*, International Journal of Management, Technology, and Social Sciences, no. December, pg. 95-103.

Non-legal materials in the form of language dictionaries. Efforts to optimize the results of this research are carried out by prioritizing conceptual and statutory approaches.

## 2. ANALYSIS AND DISCUSSION

### 2.1. Lawrence Friedman's Legal System Orientation Regarding The New Criminal Code Ratification: What and How?

Criminal law is one of the essential legal aspects of a country. Criminal law is a field of public law that is substantively related to the relationship between the state as an institution formed by society and citizens or society in general.<sup>9</sup> There are consequences in the form of criminal sanctions if the community or citizens commit an unlawful act which is usually an act. That is contrary to the rules of law in force in society determine whether an action by the community or citizens is contrary to the law in force in society; it is stated in the substance of criminal law, which is usually called the Criminal Code.<sup>10</sup> In Indonesia, the substance of criminal law rules is outlined in the Criminal Code, which is a continuation of *Wetboek van Strafrecht*, the Dutch Criminal Code. The Indonesian Criminal Code, a "continuation" of the Dutch criminal law, is an implementation of the concordance principle, which emphasizes that applying the colonial state's law to the colonized countries is an attempt to overcome the legal vacuum.<sup>11</sup> A legal vacuum must be avoided because it can trigger legal uncertainty. Legal uncertainty must be anticipated so that the substance of the rule of law can be optimally implemented.<sup>12</sup>

That is strengthened by the three basic legal values, as stated by Gustav Radbruch, which states that the three fundamental legal values include justice, benefit and legal certainty.<sup>13</sup> In Gustav Radbruch's view, failure to fulfil one of the basic values of law has implications for the suboptimality of law in society. That means the law must embody three basic values; the implication of not fulfilling one of the three basic values causes the law to lose its existence. Legal certainty, as one of the basic legal values, actually needs to be fulfilled so that the value of certainty as one of three fundamental legal values can be fulfilled so that it can maintain the existence of law in its implementation. Thus, implementing the Dutch Criminal Code as the Indonesian Criminal Code concerning the concordance principle is an attempt to overcome legal uncertainty in society. As a Newly independent country, of course, Indonesia needs criminal law regulations that are applied in society. However, efforts to overcome the turmoil of the revolution and

<sup>9</sup> Robiatul Adawiyah and Umi Rozah, 2020, *Indonesia's Criminal Justice System with Pancasila Perspective as an Open Justice System*, Law Reform, Vol. 16, No. 2, pg. 149–62.

<sup>10</sup> Muridah Isnawati, 2021, *The Urgence of Indonesian Penal Code (KUHP) Reform to Realize Humanistic-Based Imprisonment*, Borobudur Law Review, Vol. 3, No. 1, pg. 73–83.

<sup>11</sup> Dyka Nurchaesar and Muhammad Rusli Arafat, 2021, *Perbandingan Sistem Hukum Pidana Di Indonesia: Pidana Barat (KUHP) Dan Pidana Adat*, JUSTITIA: Jurnal Ilmu Hukum Dan Humaniora, Vol. 8, No. 4, pg. 852–63.

<sup>12</sup> A'An Efendi and Fradhana Putra Disantara, 2022, *Post Conditionally Unconstitutional of Job Creation Law: Quo Vadis Legal Certainty?*, Yuridika, Vol. 37, No. 2, pg. 329–66.

<sup>13</sup> Dyah Ochtorina Susanti A'an Efendi, 2021, *Ilmu Hukum*, 1st ed., Prenadamedia Group, Jakarta.



efforts to maintain independence have prevented Indonesia from making an effort to make laws, one of which is regarding the regulation of criminal law.<sup>14</sup>

Therefore, the application of the concordance principle by applying the Dutch Criminal Code as the Indonesian Penal Code is actually transitional, which means that when the time comes for Indonesia to be ready to design regulations regarding its criminal law, Indonesia is obliged to make a Criminal Code according to the ideals of Indonesian law. The enactment of the Dutch Criminal Code, which later became the Indonesian Criminal Code, encountered various problems in practice and application. There are some problems with the Criminal Code, especially in the substance aspect. *First*, several substances in the Criminal Code are irrelevant to the conditions and realities of Indonesian society, such as adultery provisions in the Criminal Code which are relevant to be translated as “affairs” rather than adultery.<sup>15</sup> Apart from that, several provisions in the Criminal Code are also biased towards colonialism, such as the provision regarding “unpleasant acts”, later annulled by the Constitutional Court, which substantially made it easier for everyone to be punished.<sup>16</sup> Of course, apart from these two provisions, there are still several other substantive aspects of the Criminal Code that are problematic and tend to cause legal ambiguity in their application.

In the view of J.E. Sahetapy that the inaccuracy of the translation of the substance from the Dutch Criminal Code into the Indonesian Criminal Code also has an impact on inconsistencies in its application; it also has implications for the incompatibility between the substances regulated in the Criminal Code and the reality of Indonesian society. It can be understood that as a legal product of the Netherlands, the Criminal Code is a reflection of the legal reality of Dutch society, so if it is applied to Indonesian society, this will cause disparities in its application.<sup>17</sup> *Second*, the Criminal Code is substantively a “product of the times”, which was formed in the early 1900s. Hence, several provisions in the Criminal Code failed to facilitate the development of modern criminal acts.<sup>18</sup> The absence of regulation on several New criminal acts that have not been facilitated in the Criminal Code has resulted in the presence of special criminal arrangements, which are usually called special criminal laws.

Special criminal law regulates particular offences or offences for specific criminal acts whose provisions deviate from the Criminal Code.<sup>19</sup> Even though there is a special

<sup>14</sup> George McTurnan Kahin, 2003, *Nationalism And Revolution in Indonesia*, 1st ed., Southeast Asia Program Publications.

<sup>15</sup> Muhammad Yasin, “Penjelasan Kembali Tentang Pasal Zina Dalam KUHP” (www.hukumonline.com, 2022).

<sup>16</sup> Nefa Claudia Meliala, 2020, *Rechterlijk Pardon (Pemaafan Hakim) : Suatu Upaya Menuju Sistem Peradilan Pidana Dengan Paradigma Keadilan Restoratif*, Jurnal IUS Kajian Hukum dan Keadilan, Vol. 8, No. 3, pg. 551.

<sup>17</sup> Helmalia Cahyani et al., 2022, *Kebijakan Pasal-Pasal Kontroversial Dalam RUU KUHP Ditinjau Dari Perspektif Dinamika Sosial Kultur Masyarakat Indonesia*, Journal of Law, Administration, and Social Science, Vol. 2, no. 2, pg. 81–90. there has been an attempt to update the criminal code which is motivated by cultural or socio-cultural developments in society. This led to the discovery of several articles in the criminal code (KUHP

<sup>18</sup> Ellectrananda Anugerah Ash-shidiqqi, 2021, *Rule of Law Dalam Perspektif Critical Legal Studies*, Amnesti Jurnal Hukum, Vol. 3, No. 1, pg. 25–36.

<sup>19</sup> Fradhana Putra Disantara et al., 2022, *Enigma Pemberantasan Korupsi Di Masa Pandemi COVID-19*, JURNAL USM LAW REVIEW, Vol. 5, no. 1, pg. 61–79.

criminal law regulation, the values and orientations based on the ideals of Indonesian law have not been accommodated, which has an impact on the application of special criminal law, which also creates injustice and legal uncertainty in society. That can be exemplified in the special criminal law arrangements relating to Electronic Information and Transactions Law (*ITE Law*), where the ITE Law, in practice, actually criminalizes society.<sup>20</sup> *Third*, the orientation of the Criminal Code, which is based on the construction of legal positivism, also impacts law enforcement practices by law enforcement officials. In the view of Barda Nawawi Arief, the practice of implementing and enforcing the substance of the Criminal Code by law enforcement officials is based on the term “No forgive to you”. That means the enforcement of the Criminal Code is carried out directly by law enforcement officials following the rules of criminal procedural law.<sup>21</sup> In this case, local wisdom-based settlement of criminal acts is ignored and considered not part of the criminal justice system.

Of the three problems in the Criminal Code above, there is an urgency to pass a New Criminal Code following the substance and ideals of community law. However, citing the views of Eddy O.S. Hiarij, formulating criminal law provisions in a country with a multicultural character Indonesia is not easy.<sup>22</sup> That is because one aspect of the politics of criminal law is related to society’s culture. The more the culture of the people in a country, the more complicated and time-consuming the formulation of a Criminal Code is in society.<sup>23</sup> In 2022, at the plenary meeting of The House of Representatives of the Republic of Indonesia, the Draft Criminal Code was passed as the New Criminal Law in Indonesia. In 2023, Law no. 1 of 2023 concerning the Criminal Code (the New Criminal Code). The New Criminal Code that was passed has an orientation to uphold the legal ideals of Pancasila as a “guide” in the criminal justice system. In Muladi’s view, the New Criminal Code is oriented to strengthen three aspects:<sup>24</sup> (1) the legal ideals of Pancasila; (2) the balance between human rights and human obligations; and (3) strengthening customary criminal norms as part of the national criminal law.

In particular, customary criminal law, as part of the national criminal law in the New Criminal Code, is emphasized in Article 2 of the New Criminal Code, which confirms that customary criminal law is used as one of the parameters, a person can be punished or not. In this context, the New Criminal Code confirms the existence of an understanding of the principle of material legality in which a person can be punished based on written

<sup>20</sup> Rezkyta Pasca, Abrini Daeng Ngiji, and Budi Arta Atmaja Sigid Suseno, “Penerapan Pasal 27 Ayat (3) UU ITE Dalam Perkara Pencemaran Nama Baik Melalui Media Sosial Terhadap Kelompok Orang,” *Fundamental Justice* 3, no. 1 (2022): 24. Lihat juga dalam Ismail Koto, 2021, *Cyber Crime According to the ITE Law*, International Journal Reglement & Society, IJRS 2, no. 2, pg. 103–10.

<sup>21</sup> Noveria Devy Irmawanti and Barda Nawawi Arief, 2021, *Urgensi Tujuan Dan Pedoman Pemidanaan Dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidana*, Jurnal Pembangunan Hukum Indonesia, Vol. 3, No. 2, pg. 217–27.

<sup>22</sup> Eddy O. S. Hiarij, 2019, *Asas Legalitas Dan Penemuan Hukum Dalam Hukum Pidana*, Erlangga, Jakarta.

<sup>23</sup> Hanafi Amrani, 2019, *Politik Pembaruan Hukum Pidana*, UII Press, Yogyakarta.

<sup>24</sup> Diah Ratna Sari Hariyanto I Gusti Ngurah Bayu Pradiva, 2022, *Perluasan Asas Legalitas Dalam Rkuhp Sebagai Upaya Pembaharuan Hukum Pidana Indonesia*, Jurnal Kertha Semaya, Vol. 10, No. 8, pg. 1766–78.

not only legal regulations but also on unwritten laws, in this case, customary criminal law. Referring to Lawrence M. Friedman's theory of the legal system, there are three aspects to the legal system, namely: substance, structure, and legal culture.<sup>25</sup> The substance is related to regulated legal norms, both legal norms contained in written law in the form of statutory regulations and unwritten legal norms.<sup>26</sup> Furthermore, the legal structure is the legal apparatus that implements and enforces criminal law arrangements. In this case, the structure is the "movers" of the substance of the law. The law is applied if the legal structure in the form of law enforcement officers implements and enforces its substance in society. Related to the next aspect, legal culture is the most critical aspect in carrying out legal substance and structure. Legal culture is the "spirit" of carrying out legal substance and structure.<sup>27</sup>

Lawrence M. Friedman's theory of the legal system concerning the new Criminal Code actually needs to be examined from the aspects of substance, structure, and legal culture. From the substance aspect, it can be seen that several substances in the new Criminal Code have adopted Indonesian legal values and culture. That can be seen, for example, in Article 53 of the New Criminal Code regarding sentencing guidelines, so it can be seen that the sentencing guidelines in the New Criminal Code have an orientation to apply the concept of restorative justice. In this case, punishment is considered not a means of retaliation but a means to heal and balance social conditions caused by criminal acts. From the aspect of the legal structure, the provisions for the transitional implementation of the New Criminal Code for three years Article 624 of the New Criminal Code has an orientation to provide socialization and understanding. As well as deepening the substance of the New Criminal Code so that it can be applied optimally and optimally following the ideals of Indonesian law. From the aspect of legal culture or culture, the

<sup>25</sup> Lawrence M. Friedman, 1975, *The Legal System: A Social Science Perspective*, Russel Sage Foundation, New York.

<sup>26</sup> Fradhana Putra Disantara, Bayu Dwi Anggono, and A'An Efendi, 2022, *Mendudukkan Norma Etika: Perspektif Teori Keadilan Bermartabat Terhadap Relasi Etika Dan Hukum*, Rechtsidee, Vol. 10, No. 2, pg. 1–13

<sup>27</sup> Kwong-or Fu, 2021, *Institutionalizing Social Norms and Legal Culture: Social Dynamics under Legal Awareness Policy in Contemporary China*, ed. G.I. Muromtsev and S.B. Zinkovskii, Beijing Law Review, Vol. 12, No. 03, pg. 993–1015. which enabled to reveal certain types of social norms, their particularities and characteristic features, as well as the historical-legal method and methods of analysis and synthesis. The result of the work was the conclusion that through the prism of customary law norms, the level of development of the state, the degree of independence of society from the state, as well as the state of legal culture is seen on the largest scale. In addition, the author considers a well-reasoned and proven conclusion that it is required to study customary law and customs to modernize legal theory. The work also gives the author's definition of the category of "custom": a custom is the established models of human behavior in society, which have developed in the course of their multifold repetition. The novelty of the research lies in the author's approach to examining the relationship between customs and the theory of law, as well as in the fact that the norms of customary law and the custom appear to be independent and fundamental methods of social regulation in the system of social norms.,"author":{"dropping-particle":"","family":"Fu","given":"Kwong-or","non-dropping-particle":"","parse-names":false,"suffix":""},"container-title":"Beijing Law Review","editor":{"dropping-particle":"","family":"Muromtsev","given":"G.I.","non-dropping-particle":"","parse-names":false,"suffix":""},"dropping-particle":"","family":"Zinkovskii","given":"S.B.","non-dropping-particle":"","parse-names":false,"suffix":""},"id":"ITEM-1","issue":"03","issued":{"date-parts":["2021","8","23"]},"page":"993-1015","title":"Institutionalizing Social Norms and Legal Culture: Social Dynamics under Legal Awareness Policy in Contemporary China","type":"article-journal","volume":"12"},"uris":["http://www.mendeley.com/documents/?uuid=a9392add-1d59-4b73-add3-791223a0b7ed"]},"mendeley":{"formattedCitation":"Kwong-or Fu, \"Institutionalizing Social Norms and Legal Culture: Social Dynamics under Legal Awareness Policy in Contemporary China,\" ed. G.I. Muromtsev and S.B. Zinkovskii, <i> Beijing Law Review </i> 12, no. 03 (August 23, 2021

orientation of restorative justice in the new Criminal Code has a view to involving the community in the criminal justice process. In this case, the criminal settlement process is amicable based on restorative justice by prioritizing returning the victims' rights and overcoming criminal acts that will occur in the future.

Based on the description above, the orientation of Lawrence Friedman's legal system regarding the ratification of the Draft Criminal Code, namely from the substance aspect, it can be seen that several substances in the New Criminal Code have adopted the values and culture of Indonesian law. That is in Article 53 of the New Criminal Code regarding sentencing guidelines, so it can be seen that sentencing guidelines in the New Criminal Code have an orientation to apply the conception of restorative justice. From the aspect of legal structure, the implementation of the new Criminal Code in a transitional manner for three years Article 624 of the New Criminal Code has an orientation to provide socialization and understanding. As well as deepening the substance of the New Criminal Code so that it can be applied optimally and optimally by law enforcement officials. From legal culture, the orientation of restorative justice in the New Criminal Code has a view to involving the community in the criminal justice process.

## **2.2. Ratification of the Draft Criminal Code in the Perspective of the Legal System Lawrence Friedman: An Implication**

Referring to Lawrence Friedman's legal system regarding the ratification of the Draft Criminal Code, it can be seen that from the aspects of substance, structure, and legal culture, the New Criminal Code, which was enacted in 2023, has fulfilled three aspects of the legal system as emphasized by Lawrence Friedman. Even so, what is even more important is the effort to apply aspects of substance, structure, and legal culture in the Draft Criminal Code so that it can be implemented according to the ideals of Indonesian law.<sup>28</sup> That is especially interesting regarding the legal implications of substance, structure, and legal culture. The Big Indonesian Dictionary (*Kamus Besar Bahasa Indonesia* or KBBI) explains that implication is involvement or a state of being involved.<sup>29</sup> In the context of legal science, legal implications are commonly referred to as legal involvement in an act or legal relationship. With the ratification of the Draft Criminal Code to become the New Criminal Code, legal action has taken place, namely the creation of criminal law rules. In this case, the legal implication of the ratification of the Draft Criminal Code into the New Criminal Code is the legal involvement that occurs as a result of the ratification of the Draft Criminal Code into the New Criminal Code.

Based on Lawrence Friedman's legal system theory, the legal implications related to Lawrence Friedman's legal system theory in the ratification of the Draft Criminal

<sup>28</sup> Nurul Adhha Asep Saepudin Jahar, Raju Moh Hazmi, 2021, *Construction of Legal Justice, Certainty, and Benefits in the Supreme Court Decision Number 46P/HUM/2018*, Cita Hukum 9, no. 1 (2021): 162.

<sup>29</sup> KBBI, "Kamus Besar Bahasa Indonesia Online" (KBBI, 2022).



Code to become the New Criminal Code consist of three aspects, namely: substance, structure, and legal culture. From the aspect of legal substance, it can be seen that the legal implications are related to Lawrence Friedman's legal system theory in the ratification of the Draft Criminal Code. That is with the presence of a New Criminal Code legal substance that prioritizes the substance of customary law as applicable law, substance related to the idea of restorative justice, to the affirmation that imprisonment is a part of the last resort.<sup>30</sup> That has implications for the need for judges to understand customary law, which is the law that applies in a particular indigenous community. In this case, judges must pay attention to customary court decisions concerning efforts to convict people based on the New Criminal Code.<sup>31</sup> In addition, from the aspect of the idea of restorative justice to the affirmation that imprisonment is part of the last resort, it can be seen in Article 65 of the new Criminal Code. The main types of punishment include fines, social work, and supervision, in addition to imprisonment and criminal punishment.<sup>32</sup> The presence of fines, social work, and supervision is intended to reinforce the concept of restorative justice and imprisonment as part of the last resort.

That indicates that punishment in the future must have a curative element or healing or recovery for victims and not just punish the perpetrators of criminal acts. Related to legal structure, the provisions of the new Criminal Code also prioritize the role of law enforcement officials' role in carrying out and realizing substantive justice based on the provisions of the New Criminal Code. This can be seen in Article 80 of the New Criminal Code, which emphasizes that in imposing a fine, the judge must look at the economic capacity of the defendant, both his expenses and income. In addition, Article 53, paragraph (2) of the New Criminal Code related to sentencing guidelines emphasizes that judges must choose justice if there is a conflict between legal certainty and justice. Conceptually, this aligns with Cicero's view that the highest legal certainty is the highest injustice in law. That means that the existence of an antinomy between justice versus certainty is the domain of judges to assess and decide based on facts and law. In the context of evidentiary law, this is commonly referred to as "...depending on judge conviction".<sup>33</sup> Other provisions can also be seen in Article 76 paragraph (6) of the New Criminal Code that the Prosecutor can propose a reduction in supervision to the judge if the defendant has good behaviour. From these brief provisions, it can be concluded that the provisions of the Criminal Code in the aspect of legal structure mandate the substantive role of law enforcement officials.

<sup>30</sup> Nathalina Naibaho, "Rethinking the Ultimatum Remedium Principle to Support Justice and Strong Law Enforcement Institutions in Environmental Crimes," in *IOP Conference Series Earth and Environmental Science*, 2021, 1–10.

<sup>31</sup> Dicky Eko Prasetyo et al., 2021, *The Legal Pluralism Strategy of Sendi Traditional Court in the Era of Modernization Law*, Rechtsidee, Vol. 8, No. March 9, 2021, pg. 1–14.

<sup>32</sup> Maria Ulfah, 2021, *Pidana Kerja Sosial, Tokyo Rules, Serta Tantangannya Di Masa Mendatang*, Jurnal Magister Hukum Udayana (Udayana Master Law Journal), Vol 10, no. 3, pg. 517. Article 82, and Article 85 of the Draft of Indonesia Criminal Code on the September 2019 (RUU KUHP)

<sup>33</sup> Hiariej, *Asas Legalitas Dan Penemuan Hukum Dalam Hukum Pidana*. Lihat juga dalam R. Subekti, 2001, *Hukum Pembuktian*, Pradnya Paramita Jakarta.

So, that special understanding, training, and skills are needed for law enforcement officials in order to be able to apply the substance in the New Criminal Code. As aspects of culture or legal culture in society, the substance of the new Criminal Code emphasizes the importance of the role and participation of the community in preventing and enforcing the law. This can be seen, for example, in the provisions of Article 107 of the new Criminal Code that the accused can be given treatment at an institution based on the interests of society. Apart from that, Article 109 of the New Criminal Code also emphasizes an orientation to surrender the accused to the government based on the public interest. Referring to this, it can be seen that in addition to law enforcement efforts in implementing the provisions of the New Criminal Code, the public is also allowed to resolve criminal cases based on restorative justice concerning the level of disgrace in society. Equally important is the need for the community's role in preventing a crime by coordinating with the relevant law enforcement officials.

The implications of Lawrence Friedman's legal system regarding the ratification of the Draft Criminal Code can be seen from the aspect of legal substance; it can be seen that the legal implications are related to Lawrence Friedman's legal system theory in ratifying the Draft Criminal Code that with the presence of a newly legal substance of the Criminal Code. There are prioritizes the substance of customary law as applicable law, the substance related to the idea of restorative justice, to the assertion that imprisonment is part of the last resort. This has implications for the need for judges to understand customary law, which is the law that applies in a particular indigenous community. Furthermore, from the aspect of the legal structure, the role of judges, prosecutors and other law enforcement officials is also prioritized, primarily to provide the essence of justice in carrying out the New Criminal Code. This is one of the provisions in Article 53, paragraph (2) of the New Criminal Code related to sentencing guidelines; it is emphasized that judges must choose justice if there is a conflict between legal certainty and justice. From the aspect of legal culture, the role and participation of the community are essential in efforts to prevent and enforce criminal law in society.

### 3. CONCLUSION

The orientation of Lawrence Friedman's legal system regarding the ratification of the Draft Criminal Code, namely from the substance aspect, it can be seen that several substances in the New Criminal Code have adopted the values and culture of Indonesian law. From the aspect of legal structure, the implementation of the new Criminal Code in a transitional manner for three years Article 624 of the new Criminal Code has an orientation to provide socialization and understanding. As well as deepening the substance of the new Criminal Code so that law enforcement officials can apply optimally and optimally. From legal culture, the orientation of restorative justice in the new Criminal Code has a view to involving the community in the criminal justice

process. The implications of Lawrence Friedman's legal system regarding ratifying the Draft Criminal Code can be seen from the legal substance. It can be seen that the newly legal substance of the Criminal Code, which some prioritizes, the substance of customary law as applicable law, the substance related to the idea of restorative justice, to the assertion that imprisonment is part of the last resort. That has implications for the need for judges to understand customary law, which is the law that applies in a particular indigenous community. Furthermore, from the aspect of the legal structure, the role of judges, prosecutors and other law enforcement officials is also prioritized, primarily to provide the essence of justice in carrying out the new Criminal Code. That is one of the provisions in Article 53, paragraph (2) of the new Criminal Code related to sentencing guidelines; it is emphasized that judges must choose justice if there is a conflict between legal certainty and justice. From the aspect of legal culture, the role and participation of the community are essential in efforts to prevent and enforce criminal law in society..

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