



THE IDEAL CONCEPT OF SHARP WEAPONS REGULATION IN ACCORDANCE WITH THE IUS CONSTITUENDUM POINT OF VIEW ON ARTICLE 307 OF THE 2023 KUHP

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Abstract

This research discusses the ideal concept of sharp weapons regulation in accordance with the Ius Constituendum perspective of Article 307 of the Criminal Code 2023. The focus of this research is to analyze the differences in the legal concept envisioned when the Criminal Code 2023 is implemented later with Emergency Law No. 12 of 1951. Through a normative research approach with a regulatory approach, this study found that the regulation of sharp weapons in Emergency Law No. 12 of 1951 has weaknesses, especially in the aspects of definition, classification, and declaration of legal ownership and requires renewal contained in the Criminal Code 2023. The results showed that the 2023 Criminal Code was formed due to differences in views and evidence that legal reform exists to achieve legal objectives. With a more comprehensive legal reform, the regulation of sharp weapons in Indonesia is expected to provide legal certainty and balance between community protection and individual rights.

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I. INTRODUCTION

Every country has a legal concept that they want, this concept is called the Ideal concept. The ideal concept is the realization of a law itself whether it can be in accordance with the wishes and expectations of the community or not. As a country that has a long legal history, especially in the formation of the Criminal Code as a legal basis, a clear and positive depiction of the ideal legal concept is needed.

The Criminal Code before it came into force in Indonesian society even before the Dutch colonization was carried out there was already a law in force in society since the royal period. The definition of *Ubi Societas Ibi Ius* or where there is a social group, there is a law is very appropriate to

describe Indonesian law at that time (Mubarok, 2024) . The law is customary law which is a law that grows and develops in society.

Customary law which later developed into the criminal law of the kingdom of the archipelago is different from modern criminal law today because its legal sources are still closely related to the existence of customary law. However, in its development, customary criminal law developed rapidly because the applicable law at that time did not recognize the unification system that made each region in the archipelago at that time had different royal criminal laws.²

The Criminal Code is a legal product that was produced after a year-long debate. Law No. 1/1946 officially stated that Indonesia continued to apply the *Wetboek van Strafrecht voor Nederlandsch Indie* which had been combined with elements of Indonesian customary law. In its journey, this Criminal Code also experienced ups and downs.³ Criminal law dualism emerged as a result of a complex political and legal situation. This period was characterized by the strong influence of Dutch colonial law that was still in use, as well as efforts to develop national laws that were more in line with the spirit of Indonesian independence. After Indonesia's independence, the applicable laws were still heavily influenced by the Dutch colonial legal heritage, including the Criminal Code (KUHP), which was essentially the *Wetboek van Strafrecht voor Nederlandsch-Indië*. Even so, the Old Order government tried to replace colonial law with national law, which was considered more relevant to the values and needs of the nation. (Aseri, 2020)

The influence of the Criminal Code on justice and order in Indonesia is extensive, affecting various aspects of people's lives from public security to the protection of human rights (Saragih et al., 2024) . The main purpose of the Criminal Code is to protect the public from criminal offenses and maintain public safety and order. Some of the issues that become the main concern in the reform of KUHP are human rights, victim protection, child protection, freedom of speech, and so on (Malau, 2023) .

Criminal law can be analyzed through three different perspectives, namely the first perspective focuses on the concept of criminal law that is desirable or should exist (*Ius Constituendum*). This includes idealism about how criminal law should be designed to reflect the principles of justice, human rights, and moral norms recognized by society (Adinda et al., 2024) . As a law that is envisioned by society, it must contain values that are able to improve the welfare of society and make society much safer.

In the concept of sharp weapons, the ideal legal concept often clashes between customary law and criminal law. Customary law is one of the sources of applicable law and is adopted in the formation of the new Criminal Code 2023 which adopts the concept of living law (Anisa Fitri

² Ibid.

³ Ibid

Wibowo et al., 2023) . Human rights and restorative justice are concepts that are echoed in the formation of the 2023 Criminal Code considering that the consideration of making the 2023 Criminal Code must prioritize human rights and justice (Dewanto & Susanti, 2023) .

Legal objectives are the basis for the creation of an ideal concept in accordance with the *ius constituendum* where *ius constituendum* is a concept in law that refers to idealized law or law that is expected to apply in the future (Hikmawati, 2021) . The concept of *ius constituendum* is closely related to legal objectives, because both lead to the achievement of ideal values that are expected to be realized through the legal system. (Glenn Wijaya, 2020)

The concept of ideal sharp weapons implementation in accordance with the *ius constituendum* principle aims to formulate legal arrangements that are more progressive and responsive to the current needs of society. This principle emphasizes the importance of anticipating social change and the need for effective law enforcement by designing regulations that are relevant and adaptive to the dynamic conditions of society. Therefore, the author is interested in examining the ideal concept of sharp weapons regulation through the *ius Constituendum* perspective on Article 307 of the Criminal Code 2023 with the first problem formulation of how the development of legal concepts in Indonesia and secondly, how the ideal concept of sharp weapons regulation is in accordance with the *ius constituendum* view.

II. RESEARCH METHODS

This research uses a normative method with a legislative approach with 3 (three) types of data used, namely, primary in the form of laws and regulations such as Emergency Law No. 12 of 1951 and Criminal Code 2023, secondary data using interviews with legal practitioners such as police, prosecutors and lawyers, and tertiary data, namely literature studies using books, journals and theses regarding sharp weapons and *ius constituendum*.

III. RESEARCH RESULTS AND DISCUSSION

3.1. The Development of Legal Concepts in Indonesia

The history of the concept of law in Indonesia has actually existed since the royal period. The legal concept adopted at that time was customary law which was better known as the criminal law of the archipelago kingdom at that time. However, this law has a significant weakness where at that time there was still no concept of unification that made the laws that applied in each region different (Siombo & Wiludjeng, 2020) . This was also recognized by Van Vollenhoven where he identified that since before the Dutch colonization occurred Indonesia had known the legal system and had its own criminal law based on the existence of various kingdoms at that time.

The concept of law in Indonesia then changed when the Dutch arrived in Indonesia for the first time in 1596, precisely in Banten with the aim of trading. The arrival of the Dutch at that time

slowly turned into colonization which made legal changes in Indonesia occur slowly. the application of this criminal law was marked by the existence of the VOC or *Vereenigde Oost Indische Compagnie*. The VOC was a Dutch trading partnership that was given "territorial power" in the archipelago from the Dutch government (Mubarok, 2024) . The development of law with regulations created mostly in the form of land-related policies and trade policies which over time turned into the development of explicit criminal law.

In the Dutch East Indies government, the development of law in Indonesia became more focused because the Dutch East Indies government recognized the existence of legal pluralism and turned it into a unified criminal law that applied equally regardless of the existence of a race ethnicity or religion (Mubarok, 2024) . This also encouraged Indonesia to create a motto "Bhineka Tunggal Ika" and at this time Indonesian law was arguably at the peak of development where all applicable laws in Indonesia were recognized and unified in the process of unification.

In January 1942 through Ambon, Japan landed and entered Indonesia. The entry of Japan into Indonesia was not easy or straightforward. Because at that time the KNIL (Dutch East Indies army) had tried to prevent the entry of Japan into Indonesia, but their efforts were fruitless because Japan's strength was invincible (Ramadhani, 2021) . The transfer of power from the Dutch to Japan initially provided a bright spot for the Indonesian people because at that time they wanted to be free from Dutch influence and wanted to become an independent country. However, the changes that occurred were very drastic, the change of power from the Dutch to the Japanese gave big changes, especially in the concept of law.

The Japanese government that colonized Indonesia at the time was very focused on removing all Dutch influence in Indonesia and replacing it with Japanese. Many regulations were replaced and some were left, Japan enacted *Osamu Seirei* No. 1 of 1942, which stated that Dutch colonial law remained in force as long as it did not conflict with the interests of the Japanese occupation. This meant that the *Wetboek van Strafrecht voor Nederlandsch-Indie* (Dutch Criminal Code) remained in use, with some adjustments to accommodate Japanese military policy (Hafizd, 2021) .

Japanese colonization which finally ended after the chaos that occurred involving World War II where nuclear bombs were dropped on Hiroshima and Nagasaki made Japan chaotic and in the midst of the chaos Japan also had to face rebellions carried out by the Indonesian people but in the end they gave up and let Indonesia become independent (Safar & Ismaidar, 2023) . When Indonesia became independent, it was faced with a difficult choice of maintaining the concept of colonial law with all its legal intricacies or using the concept of traditional law with its diversity. It was finally decided that Indonesia would adopt a legal system that mixed colonial law, customary law and religious law in Indonesia.

The Criminal Code is a legal product produced after a long debate that took a year, namely Law No. 1 Year 1946. In its journey, this Criminal Code also experienced ups and downs. Among

other things, when the Dutch Government returned to Indonesia, and was able to control several areas outside Java and Madura, which was followed up by issuing *Staatblad* Year 1948 No. 224 on September 24, 1948 (Mubarok, 2024) , which issued regulations related to changes which of course meant the existence of legal dualism which made multiple interpretations and confusion in the implementation in the Indonesian jurisdiction (Aseri, 2020) .

The influence of the Criminal Code on justice and order in Indonesia is extensive, affecting various aspects of people's lives from public security to the protection of human rights. (Saragih et al., 2024) . The main purpose of the Criminal Code is to protect the public from criminal offenses and maintain public security and order (Malau, 2023) . The Criminal Code is tasked to implement the objectives of existing laws and be implemented equally. The Criminal Code is tasked with creating a law that is fair in its implementation, must have a deterrent effect, must include prohibitions and penalties, and contains an element of expediency where the law is created to be useful by protecting all levels of society by preventing all kinds of legal deviations from occurring.

The legal concept in the 2023 Criminal Code is the latest innovation considering that Indonesia no longer applies Dutch law but links the existence of Written Law and Customary Law. Customary law itself has existed and been recognized in Indonesia for a long time and is part of the *living law* (Anisa Fitri Wibowo et al., 2023) . Living law is a new form of manifestation of the expansion of the implementation of the principles of legality, human rights, and restorative justice as the basis for the main concept of legal reform 2023.

The ideal legal concept of a State is when they are able to realize the existing legal objectives into a legal concept that is in accordance with the wishes and ideals of society in the future. Therefore, an *ius constituendum* perspective is needed in creating an ideal regulation or legal concept by considering many aspects. In this case, *ius constituendum* acts as a reference for updating laws that have the potential to improve social justice, for example through more inclusive and non-discriminatory regulations. In terms of legal certainty, it guarantees that the law can be understood, accessed, and obeyed by the community clearly and consistently (Pakat Sitingjak, 2023) . Before being applied in the future, every legal or regulatory concept formation certainly requires a community perspective as the main actor or main actor who will later directly interact with the law itself and if the law is formed without a sense of certainty justice and expediency that has the potential to benefit and protect the community, the law will not be successful in the future.

Whether or not a regulation or law functions can be seen whether the law is made for the benefit of the people or not considering that Indonesia is a democratic country that requires the role of the people to make the wheels of the economy and law continue to spin.

3.2. The Ideal Concept of Sharp Weapons Regulation in accordance with the Ius Constituendum Perspective

The concept of implementing ideal sharp weapons in accordance with the *ius constituendum* principle aims to formulate legal arrangements that are more progressive and responsive to the needs of society and current legal developments. This principle emphasizes the importance of anticipating social change and the need for effective law enforcement by designing regulations that are relevant and adaptive to the dynamic conditions of society. Existing legal developments often go against the needs of society so that the regulations created are unable to protect and exist but are not in accordance with the needs. The application of ideal sharp weapons in the *ius constituendum* in Indonesia can be formulated by considering the following important aspects:

a. Clear and Firm Ownership Restrictions:

The use and possession of sharp weapons should be strictly regulated, especially for purposes that are not daily necessities, such as agriculture or work that requires certain tools. Ideal regulations will categorize types of sharp weapons based on their intended use, as well as provide clear boundaries between legal and unlawful ownership (Hartawan, 2020) . Sharp weapons are literally tools or objects that have sharp or pointed parts that can be used to cut, stab, or injure. The existence of specific regulations governing the definition of sharp weapons, types of sharp weapons, exceptions to sharp weapons, types and professions that are permitted to use sharp weapons and requirements for sharp weapon ownership can increase public understanding of the dangers of using illegal sharp weapons.

b. Fair Law Enforcement:

Regulations governing sharp weapons must be applied fairly and without discrimination, so that legal certainty can be felt by the entire community. Firm law enforcement, but also taking into account the principle of justice, is needed to prevent the misuse of sharp weapons while protecting the rights of citizens. The case of wrongful arrest that often occurs when the authorities conduct raids on vehicles is an example of why the application of the law regarding sharp weapons must be measured, fair and without discrimination by considering the factors that cause people to carry sharp weapons. (Hutapea et al., 2024) .in the 2023 Criminal Code itself, considering the principles of restorative, human rights, and proportional sanctions in accordance with the facts of the trial is one form of consideration of Justice in the future.

c. Proportional Sanctions:

Penalties or sanctions for offenses related to sharp weapons need to be formulated proportionally, adjusted to the level of offense and the impact caused. Punishments that are too severe without considering the context can create injustice, while punishments that are too light can weaken the deterrent effect (Arianto et al., 2022) . Sanctions for bladed weapon offenders should be tailored to the level of threat, the intention of the offender, and the impact on society. For serious offenses or those involving violence, severe sanctions would be more appropriate. However, for minor offenses

without an element of direct threat, light sanctions accompanied by education or coaching may be more effective and fair (Salsabila et al., 2024) .

d. Preventive Supervision and Prevention:

The concept of ideal implementation also includes preventive efforts through strict supervision, both at the production, distribution, and possession levels of sharp weapons, as well as security surveillance. The government could implement a stricter registration or permit system for individuals who need sharp weapons for certain jobs or hobbies, while raising public awareness about the risks of misuse through patrols and crime surveillance in each area and providing socialization about the dangers of sharp weapons. (Halawa et al., 2023)

Through this approach, the concept of the ideal application of sharp weapons in accordance with the *ius constituendum* seeks to develop laws that not only suppress misuse, but also provide protection to individuals who legitimately need these tools. This adaptive application of the law is expected to be the basis for more effective and relevant regulatory reforms in the future, while reflecting the evolving needs of society (Arianto et al., 2022) .

This ideal concept can be achieved and realized by means of collaboration between the executive and legislative parties to create supporting regulations in each government area or area of power. Given that the 2023 Criminal Code does not only use a universal definition of law but also relates the concept of living law into it. With the existence of derivative regulations that are appropriate and able to support the concept of the concept above, it can help create the ideal state concept that is aspired to in accordance with the objectives of State law. **CONCLUSION**

The future ideal concept of sharp weapons regulation in accordance with the *Ius Constituendum* can be achieved by being guided by legal objectives which are justice, certainty and legal benefits. The ideal concept is if there are clear and firm restrictions on ownership, there is measurable and fair law enforcement, there are proportional sanctions, there is supervision and preventive prevention. This ideal concept of sharp weapons if considered and supported by additional regulations that will be created over time in the future, it will encourage the creation of the right and appropriate sharp weapon regulation law so that in evaluation it can reduce the crime rate using sharp weapons.

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