OPEN ACCESS
Islamic Research, Pages 56 – 60, Vol. 8, No. 1, 2025
DOI: 10.47076/jkpis.v8i1.311
E-ISSN: 2654-3974
www.islamicresearch.id

ISLAMICRESEARCH
The International Journal of Islamic Civilization Studies

Research Article

Other Undertandsings in Indonesia's Criminal Law Pottentially Create a Repressive Regime

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ARTICLE INFO

Keywords
Article 188, Other undersatanding, Principle of legality

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Article History
Received xx March 202x
Accepted xx April 202x
Published online xx May 202x

ABSTRACT

The element of "other understanding" in Article 188 of Law Number 1 of 2023 can be considered to violate the principle of legality. Unclear about these types of beliefs and groups that are considered to adhere to these beliefs can lead to many interpretations, contrary to Pancasila. The article is not in line with the criminal law principle of legality or the concept of lex scripta, which emphasizes written and clear provisions in the law. Article 188 is also incompatible with the lex stricta principle because it does not explicitly mention what kind of understanding is meant, causing vagueness and potential abuse of critical activists. Furthermore, other interpretations within Article 188 could also potentially create a repressive regime due to significant restrictions on individual freedoms and rights.

1. INTRODUCTION

The Principle of Legality, , which states that no act is prohibited or subject to punishment if it is not specifically stated in law, is well-known in the field of criminal law. Nullum delictum nulla poena sine praevia lege poenalli, as it is known in Latin, signifies that there is no offense or punishment if there is no prior regulation.

German criminal jurist Ansel von Feuerbach is credited with coining the maxim nullum delictum nulla poena sine praevia lege poenalli (1775-1833). He created the Latin maxim and included it in his book "Lehrbuch des peinlichen Recht" (1801). According to Krismiyari (2021: 164) the term is divided into three, namely:

1. Nulla Poena Sine Lege: There is no punishment without the imposition of punishment by law. This expression refers to the role of the principle of legality, which is to safeguard the criminal law, and the instrumental function of the law.
2. Nulla Poena Sine Crimine: An offense does not result in punishment.
3. Nullum crimen sine poena legalli: Stating that there is no crime without a prescribed punishment.

Currently, the Criminal Code (KUHP) Article 1 Paragraph 1 regulates the concept of legality, which states that the only basis for punishing an act is the severity of the applicable criminal law. The aim is to increase legal certainty, provide justice and honesty to the accused, accelerate the deterrence mechanism of the criminal sanction system, stop the abuse of power, and strengthen the rule of law (Chuasanga and Victoria, 2019:131). According to Moeljanto (2000:26) legality has three meanings or notions contained in it, which can be explained as follows: "If an action is not explicitly stated in a rule of law, then the action is not prohibited and there is no threat of punishment. The use of analogies (kias) to determine the existence of a criminal act is prohibited. Criminal law regulations are not retroactive."

Clauses that stipulate punishment for such acts must take precedence. In other words, the principle of legality states that there is no punishment without a law. Nullum delictum, nulla poena sine praevia lege poenali, or "no offense, no punishment, without precedence of a penal provision in law," is a commonly used phrase in criminal law to describe this provision. In this case, lawmakers enacted the law to ensure that court decisions are not capricious,

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rather than judges deciding what behavior is punishable. Lawmakers truly reflect the need for individual legal certainty because they must not only establish norms but also formulate them before any intended action can be brought against them (Remmelink, 2003:355).

Then, , if we examine Law No. 1 of 2023 Article 188 paragraph (1), the following is the content of Law No. 1 of 2023 Article 188 paragraph (1) relating to the Criminal Code:

(1) "Every person who disseminates or develops the teachings of communism/marxism-leninism or other ideologies that are contrary to Pancasila in public orally or in writing, including disseminating or developing through any media, shall be punished with a maximum imprisonment of 4 (four) years."

Article 188 paragraph (1) of the Criminal Code explains that what is meant by "spreading and developing" is encouraging people to embrace communism, marxism, or other ideologies that are anti-Pancasila, and making it a collective movement that opposes the values of Pancasila. Then, in the explanation of Article 188, what is meant by "other ideologies that are contrary to Pancasila" is a political ideology in the form of a movement that opposes Pancasila.

The researchers state that the existence of elements from other ideologies that are contrary to Pancasila will undoubtedly lead to various interpretations and the possibility of the article becoming a rubber stamp. This is because it is not clear what other ideologies are contrary to Pancasila. Obviously, this violates the Lex Certa Legality Principle which states that regulations must be comprehensive and precise (Abdullah, 2013: 3). What happens if the principle of legality is not followed by Article 188 paragraph (1) of Law No. 1 of 2023, which includes elements of other ideologies that are contrary to Pancasila.

On the other hand, the principle of legality emphasizes that an act is only criminally punishable if it has been expressly specified in the relevant laws and regulations before the act is committed. Article 188 paragraph (1) of Law No. 1 of 2023 may be deemed to violate the Principle of Legality if it does not fulfill this requirement. Therefore, law enforcement can be questioned based on Article 188 paragraph (1) of Law No. 1 of 2023. Based on the description above, the research title "**Other Undertandsings in Indonesia's Criminal Law Potentially Create a Repressive Regime.**".

2. RESEARCH METHODS

According to Peter Mahmud Marzuki (2005:47), the term "legal research" or "recthsonderzoek" in Dutch is always normative. Legal research aims to find the truth of coherence, namely whether legal rules are in accordance with legal norms, whether these norms are in accordance with legal principles, and whether a person's actions are in accordance with legal norms and legal principles, not just legal rules. This research is normative legal research, that conducted by examining library materials or secondary data as a basis for tracing the regulations related to the legal issues discussed (Soekanto dan Madmuji, 2022).

The type of research used to discuss and analyze this problem is doctrinal research method. This research is prescriptive in nature using a statutory and conceptual approach. The research materials used include primary, secondary, and tertiary legal materials, with data collection techniques in the form of literature studies. The analysis is carried out systematically to produce conclusions that are relevant to the legal issues discussed.

3. RESULTS AND DISCUSSIONS

3.1. Other Understandings in the National Criminal Code Potentially Create a Refressive Regime 2

Indonesia applies the principle of legality as a basic principle in its legal system. The principle of legality asserts that any action that is considered a crime or violation of the law must be based on existing laws. As a sovereign state that upholds the rule of law, Indonesia applies and integrates the principle of legality in its legal system. The principle of legality, which means that all actions must be based on existing laws, is a solid foundation in running the legal system in this island nation.

The principle of legality demands legal certainty. Laws that are clear and understandable to the public are highly prioritized. The Indonesian government and its legal institutions are committed to creating laws and regulations that are clear and provide guidelines that can be followed by the entire community. Article 1 paragraph (1) of the Criminal Code (KUHP) regulates the principle of legality, which states that an act cannot be punished unless the act is declared a criminal offense based on the strength of the criminal provisions contained in higher laws and regulations. In other words, without a legal basis, there is no punishment.

The meaning of the principle of legality according to Moeljatno (2000:25) includes three notions, which include: (1) no act is prohibited or threatened with punishment if it is not specified in a rule of law; (2) no analogies (kias) can

be used to determine the existence of a criminal act; and (3) criminal law regulations are not retroactive. The principle of legality has four meanings, according to Groenhuijsen. First, criminal provisions cannot be applied retroactively by the legislator. Second, the offense must be defined as clearly as possible to cover all prohibited acts. Third, based on unwritten law or customary law, the judge may not declare that the defendant has committed a criminal offense. Fourth, criminal law regulations cannot be applied through analogy (Hiariej, 2016:75).

However, according to Jan Remmelink, the principle of legality has three different meanings. First, Article 1 of the Criminal Code presupposes the notion of law. Second, the law, or lex certa, is made with care and precision. Third, with reference to the prohibition of analogy, the principle of legality prohibits the application of criminal provisions by analogy (Aksara, 2021).

The House of Representatives of the Republic of Indonesia passed Law Number 1 Year 2023 on January 2, 2023. This Criminal Code, which contains all criminal offenses and general provisions of criminal law (also known as principles of criminal law), became the primary and exclusive source of Indonesia's national criminal law three years after its enactment date on January 2 2026.

Then the ideology of Communism/Marxism, Leninism contained in Article 188 of Law Number 1 of 2023, we certainly agree that this ideology is very dangerous, this ideology has twice committed rebellion by the Indonesian Communist Party in 1948 and G30S-PKI 1965. The Madiun affair or the events of 1948 was a historical episode in the Indonesian revolution that occurred from September to December 1948 in the Madiun Karesidenan region.

The PKI's objectives in the Madiun uprising can be explained as follows: First, the PKI aimed to establish a socialist government following the principles of Marxism-Leninism in Indonesia, starting from Madiun. Second, the PKI sought to gather mass support that would oppose Soekarno-Hatta and eliminate anyone who stood in their way. Third, the PKI was ambitious to take control of the government of the Republic of Indonesia and change the system of government, with the first step in the Madiun city government.

On September 18, 1948, there was the Madiun Uprising in East Java led by sympathizers of the Indonesian Communist Party (PKI). PKI supporters took to the streets with weapons, stormed strategic places, and carried out mass killings of anti-communist figures. Resistance occurred in several areas, including Magetan, Ponorogo, Pacitan, Trenggalek, and other areas. Many victims were mainly Muslims, including clerics and santri. FDR/PKI atrocities also involved torture and the destruction of villages (Rizqa, 2023).

Six generals and one Indonesian military officer were killed in the September 30th Movement (G30S), a coup that took place on the night of September 30 to October 1, 1965. Their bodies were buried in Lubang Buaya, East Jakarta, in an old well. While President Soeharto called it GESTAPU, President Soekarno called it GESTOK. President Soeharto changed the designation to G30S/PKI during the New Order, and the PKI was blamed for what was considered the biggest betrayal in Indonesian history.

As a result of this event, Communism was banned in Indonesia with the issuance of TAP MPRS Number XXV/MPRS/1966. Based on TAP MPRS XXV/MPRS/1966, the PKI was banned in Indonesia due to its violent past and the ideology of communism/marxism-leninism which contradicts Pancasila as well as the PKI's intention to overthrow the legitimate government in Indonesia. As a result, the PKI was considered a banned organization throughout Indonesia, and any attempt to spread or advance this understanding was prohibited. Then came Law No. 27/1999 on crimes against state security, which prohibits the spread of the teachings of Marxism, Leninism and Communism with criminal penalties.

In Law Number 1 of 2023 concerning the Criminal Code, regarding the elements of other ideologies contained in Article 188 paragraph (1), the following is the content of the provisions of Article 188 paragraph (1) “Every person who disseminates or develops the teachings of communism/marxism-leninism or other ideologies contrary to Pancasila in public orally or in writing, including disseminating or developing through any media, shall be punished with a maximum imprisonment of 4 (four) years.”

The existence of other elements of understanding, of course, will lead to multiple interpretations because there is no clarity on who or what groups embrace other understandings, which are contrary to Pancasila. If left to Law Enforcement as a tool of state power, this Article can be a tool to hit and silence every activist or group that is critical of the policies of the ruling authorities. based on taking the elements of other understandings, people will have their own perceptions or interpretations.

Multiple interpretation articles can lead to ambiguity in the law. If a regulation can be interpreted in various conflicting ways, it can create confusion among the public and legal actors. Legal clarity is an important element in creating justice, and uncertainty can harm parties involved in the justice system. Of course, this is contrary to the principle of legality in the sense of lex certa (the rules must be careful and detailed) (Abdullah, 2013:3). Furthermore,

it goes against lex scripta, the doctrine of legality in the criminal justice system. Any person can only be charged with a crime if it is explicitly stated or written in the law, which means that the law must be appropriately drafted, clearly designed, and written so that it can be used to control everyone's behavior.

Thus, it cannot be denied that the incorporation of alternative interpretation aspects in Article 188 Paragraph 1 will lead to a diversity of readings. Article 188 paragraph (1), which contains elements of alternative interpretation, contradicts the principle of legality of the criminal justice system, which is the idea of lex scripta. Anyone can only be charged with a criminal offense if it is expressly stated or written in the law, which requires that the law be properly drafted, clearly designed, and convey the intended meaning so that it can be used to control behavior for all people.

Therefore, the application of the lex stricta that establishes the existence of a criminal offense must not rely on multiple interpretations or analogies. On the contrary, Article 188 Paragraph (1) is unable to express its meaning clearly, unambiguously, and expressively (expressive verbis). Based on the description above, there is no clarity as to who or what group is called adhering to other ideologies, which are contrary to Pancasila, where the inclusion of other ideology elements will certainly lead to multiple interpretations. Based on this description, the element of other understanding in Article 188 of Law Number 1 Year 2023 is contrary to the principle of legality.

In addition to contradicting the principle of legality, the other ideology element can also result in significant restrictions on individual freedoms and rights. The existence of other ideology elements will certainly lead to multiple interpretations because there is no clarity on who or what group adheres to other ideologies, which are contrary to Pancasila. This article can be a tool to hit and silence any activists or groups that are critical of the policies of the ruling authorities. based on taking the elements of other ideologies, people will have their own perceptions or interpretations. This has the potential to create a refressive regime.

A repressive regime is a term used to describe a system or government that tends to oppress or closely monitor people's behavior and political activities. The term is often used in legal and political contexts to denote a harsh application of the law or authoritarian law enforcement, where individual freedoms are often restricted or closely monitored for security or stability purposes according to the government.

In the context of criminal law, a repressive regime can refer to the application of harsh penalties or the enactment of laws that result in a negative impact on human rights or individual freedoms. This can include the use of law to suppress political opposition, limit freedom of speech, or restrict other civic activities. It can therefore be concluded that a repressive regime refers to a system or government that tends to take authoritarian measures in applying the rule of law, which can result in significant restrictions on individual freedoms and rights. Repressive regimes often result in strong restrictions on freedom of speech, assembly, opinion, and other political freedoms. This can lead to the suppression of human rights and limitations on democratic space.

4. CONCLUSION

Based on the description of the discussion that has been described, it can be concluded that Article 188 of Law Number 1 Year 2023 is considered contrary to the principle of legality because the elements of other understandings mentioned are unclear and multi-interpreted, violating the principle of lex scripta criminal law which requires clarity in the law. Lex stricta is also required, where criminal prosecution must be based on strict provisions, not analogies or multiple interpretations. In addition to contradicting the principle of legality, these other elements of the notion can also result in significant restrictions on individual freedoms and rights, potentially creating a repressive regime.

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