

# Integrating Due Process into The Enforcement Framework of Criminal Law Politics

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# Integrating Due Process into The Enforcement Framework of Criminal Law Politics

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## Abstract

Criminal Law Reform endeavours to establish legal frameworks that meet society's evolving needs within the realm of criminal justice. It involves revising existing legal standards to craft new regulations that can effectively address contemporary challenges. The core aim is to keep pace with societal changes, ensuring that criminal law remains relevant and responsive to real-world circumstances. Central to this is the concept of due process, a cornerstone of criminal justice systems worldwide, which safeguards individual liberties and human rights. It underscores the intrinsic connection between criminal law and due process, highlighting their indispensable unity. This study explores the vital role of due process in shaping law enforcement practices within the criminal justice domain, seeking to assess its significance in upholding individual rights while facilitating efficient law enforcement. The research methodology involves qualitative analysis through the examination of legal texts, case studies, and evaluations of policies. Findings suggest that due process of law plays a vital role in balancing law enforcement effectiveness with civil liberties protection. The conclusion emphasizes the importance of integrating due process principles uniformly into criminal justice systems to promote fairness and strengthen the rule of law.

## Keywords

Criminal Law, Criminal Law Reform, Due Process of Law



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## Introduction

Criminal law serves as a set of regulations governing criminal conduct, providing the framework for its enforcement.<sup>1</sup> The procedure in criminal law endeavours to ensure fairness for all individuals engaged in the legal system.<sup>2</sup> The entire regulations, the set of institutions and processes responsible for managing matters related to criminal law is widely referred to as the criminal justice system. which is further segmented into substantive criminal law, procedural criminal law, and enforcement statutes.<sup>3</sup> These three elements form an inseparable unit, as they constitute an ongoing interconnected sequence.<sup>4</sup>

The realm of criminal law politics encompasses criminal law policy and serves as a platform for criminal law reform discussions.<sup>5</sup> Criminal law politics involves the ongoing adaptation of legal statutes to real-life circumstances over time.<sup>6</sup> With this expectation, the act of criminal law issues is the state's work to form and execute a progression of details as decently as feasible for the ongoing circumstance until the future in managing violations.<sup>7</sup> As per Marc Ancel, criminal law issues is one of artistic expressions that expects to give guidance that applies to legislators as well as to the courts as implementers of these regulations and guidelines and implementers of court choices.<sup>8</sup> More momentarily than the clarification above, criminal law legislative issues is a progression of endeavours completed determined to destroy wrongdoing through the

<sup>1</sup> Melissa de Vel-Palumbo and Colleen M. Berryessa, "When Bad Things Happen to Rotten People: Indifference to Incidental Harms in the Criminal Justice System," *Psychology, Crime and Law* 29, no. 8 (2023): 796, <https://doi.org/10.1080/1068316X.2022.2036739>.

<sup>2</sup> Abdul Halim, "The Application of Restorative Justice in Civil Dispute Resolution: Potentials and Challenges in Indonesia," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 1 (2023): 883, <https://doi.org/10.37680/almahaj.v5i1.2729>.

<sup>3</sup> Garrath Williams, "What Is Fundamental in Criminal Law?," *Criminal Justice Ethics* 41, no. 3 (2022): 281, <https://doi.org/10.1080/0731129X.2022.2144059>.

<sup>4</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Bandung: Citra Aditya Bakti, 2002).

<sup>5</sup> John Kenedi, "Constitutional Protection For Crime Victims And Witnesses In Indonesia And Its Problems," *MIMBAR : Jurnal Sosial Dan Pembangunan* 36, no. 1 (2020): 55, <https://doi.org/10.29313/mimbar.v36i1.5084>.

<sup>6</sup> Tony Ward and Ethan Carter, "The Classification of Offending and Crime Related Problems: A Functional Perspective," *Psychology, Crime and Law* 25, no. 6 (2019): 546, <https://doi.org/10.1080/1068316X.2018.1557182>.

<sup>7</sup> Lidya Rahmadani Hasibuan, "The Concept of Restorative Justice in the Juvenile Criminal Justice System: A Narrative Review of the Indonesian Context," *Scholars International Journal of Law, Crime and Justice* 5, no. 7 (2022): 264, <https://doi.org/10.36348/sijlcrj.2022.v05i07.004>.

<sup>8</sup> Muhammad Fatahillah Akbar, "The Urgency of Law Reforms on Economic Crimes in Indonesia," *Cogent Social Sciences* 9, no. 1 (2023): 3, <https://doi.org/10.1080/23311886.2023.2175487>.

creation of the Criminal Law itself.<sup>9</sup>

The principal reason for laying out a progression of lawful principles is to safeguard the interests of individuals' lives through due process protections that evolved from historical reform movements. Hence, criminal laws additionally framed with the primary point of safeguarding the interests of society and giving assurance and equity to the whole local area. The politics of criminal law, which live in the midst of society because its primary purpose is to safeguard the community, must also be able to accommodate social changes. With something else, every single legitimate guideline, including criminal political regulation, are expected to have the option to change the social states of the local area, all in all, to have the option to keep on advancing following the local area's requirement for the actual law. With something else, every single legitimate guideline, including criminal political regulation, are expected to have the option to change the social states of the local area, all in all, to have the option to keep on advancing following the local area's requirement for the actual law. The essence of the law extends beyond mere enforcement; it encompasses a broader spectrum of principles and considerations. It doesn't assert dominance without regard for other factors but rather operates within a framework where it upholds its principles while also addressing transgressions through prescribed penalties. Moreover, with criminal regulation, that is not simply an individual is associated with having carried out a wrongdoing and afterward dismisses his privileges as a free person. Criminal law that complies with the standard of Fair treatment Of Regulation implies that even though criminal law plans to manage violations, it doesn't imply that it eliminates the rule of assumption of honesty from the individual concerned.<sup>10</sup> This is in line with the purpose of the law, which is to safeguard rights and advance social justice.<sup>11</sup>

The development of criminal law as a mechanism to combat crime legally represents society's evolving approach to crime control. Gene Kassebaum views criminal law as a reminder of humanity's past barbarity, urging its avoidance in the present and future. He sees crime as a means of

<sup>9</sup> Handaru Arya Ahmad Musyaffar and Radhitya Pratama, "The Sentencing Effectivity on the Criminal Offense of Corruption Through the Perspective of Indonesian State Administrative Law: A Review," *Unizar Law Review* 6, no. 1 (2023): 24, <https://doi.org/10.36679/ulr.v6i1.22>.

<sup>10</sup> Babajide Olatoye Ilo and Adekunbi Folashade Imosemi, "Prospect and Challenges of Criminal Procedures in Nigeria: A Review," *Unnes Law Journal* 8, no. 2 (2022): 306, <https://doi.org/10.15294/ulj.24.i2.56482>.

<sup>11</sup> Agustiana Nurkomalawati and Pujiyono, "Due Process of Law as Part of Political Law Enforcement," *International Journal of Social Science Research and Review* 6, no. 6 (2023): 505, <https://ijssrr.com/journal/article/view/1415/1085>.

inflicting suffering on perpetrators, deterring future atrocities. Cherif Bassiouni echoes Kassebaum's perspective, emphasizing criminal law's role in punishing wrongdoers. The historical lack of specificity in criminal punishment led to movements for reform in Europe and Britain, focusing on more humane responses to criminal law.<sup>12</sup> Today, amidst global challenges in criminal justice, there's a critical need to explore the intersection of due process and law enforcement policy. With heightened scrutiny on law enforcement practices and concerns over human rights violations, it's imperative to adapt legal frameworks to address modern complexities while upholding principles of fairness and justice.<sup>13</sup>

Criminal law serves as a set of regulations governing criminal conduct, providing the framework for its enforcement. The procedure in criminal law endeavours to ensure fairness for all individuals engaged in the legal system through the evolution of legal process principles.<sup>14</sup> The entire regulations, the set of institutions and processes responsible for managing matters related to criminal law is widely referred to as the criminal justice system, which is further segmented into substantive criminal law, procedural criminal law, and enforcement statutes. These three elements form an inseparable unit, as they constitute an ongoing interconnected sequence.

Current challenges in law enforcement practice and human rights concerns necessitating examination of the criminal justice legal process include issues like racial profiling, excessive force, wrongful convictions, prison overcrowding, and disparities in sentencing.<sup>15</sup> There are ongoing debates around police militarization, surveillance overreach, and civil asset forfeiture practices that may infringe on due process rights. The criminal justice system also faces scrutiny over the treatment of vulnerable populations like the mentally ill and substance abusers. Balancing public safety priorities with protecting civil liberties remains an intricate

<sup>12</sup> Amanda Alexander, "The Ethics of Violence: Recent Literature on the Creation of the Contemporary Regime of Law and War," *Journal of Genocide Research* 25, no. 2 (2023): 233, <https://doi.org/10.1080/14623528.2021.1985809>.

<sup>13</sup> Damian Etone, "Theoretical Challenges to Understanding the Potential Impact of the Universal Periodic Review Mechanism: Revisiting Theoretical Approaches to State Human Rights Compliance," *Journal of Human Rights* 18, no. 1 (2019): 36, <https://doi.org/10.1080/14754835.2019.1579639>.

<sup>14</sup> Melissa de Vel-Palumbo and Colleen M. Berryessa, "When Bad Things Happen to Rotten People: Indifference to Incidental Harms in the Criminal Justice System," *Psychology, Crime and Law* 29, no. 8 (2023): 802, <https://doi.org/10.1080/1068316X.2022.2036739>.

<sup>15</sup> Heriantonius Silalahi, "Juridical Analysis of Tax Criminal Law Enforcement: An Overview of Legal Regulations and Its Implementation in Indonesia," *Ilomata International Journal of Tax and Accounting* 4, no. 3 (2023): 561, <https://doi.org/10.52728/ijtc.v4i3.778>.

challenge as the legal process evolves.

The essence of the law extends beyond mere enforcement; it encompasses a broader spectrum of principles and considerations aligned with human rights norms. It doesn't assert dominance without regard for other factors but rather operates within a framework where it upholds its principles while also addressing transgressions through prescribed penalties that comport with human rights standards. Moreover with criminal regulation, that is not simply an individual is associated with having carried out a wrongdoing and afterward dismisses his privileges as a free person. Criminal law that complies with the standard of Fair treatment Of Regulation implies that even though criminal law plans to manage violations, it doesn't imply that it eliminates the rule of assumption of honesty from the individual concerned. This is in line with the purpose of the law, which is to safeguard rights and advance social justice.

<sup>17</sup> This research aims to enhance the current body of knowledge by exploring the importance of due process in criminal law enforcement policy. By analysing past studies and considering international viewpoints, it aims to clarify how due process safeguards both law enforcement effectiveness and individual rights. Moreover, by emphasizing the timeliness and importance of this research, it seeks to offer valuable perspectives for legal experts and professionals globally.

## Method

This study employs a comprehensive qualitative research approach to investigate the role of Due Process of Law within criminal law enforcement policy. Drawing upon legal texts, case studies, and policy analysis, this research synthesizes existing literature to provide a nuanced understanding of the subject matter.<sup>16</sup> This study utilizes a thorough subjective exploration procedure to direct a top to bottom assessment of the job of fair treatment standards in criminal law. In addition to legal texts, the study examines relevant case studies to provide real-world examples and illustrations of the application (or violation) of due process principles in

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<sup>16</sup> Di Fan et al., "Advancing Literature Review Methodology through Rigour, Generativity, Scope and Transparency," *International Journal of Management Reviews* 24, no. 2 (2022): 171, <https://doi.org/10.1111/ijmr.12291>.

criminal law enforcement scenarios. Case studies are selected based on their ability to highlight key issues, challenges, or best practices related to the research topic. The collected data undergo a thorough qualitative analysis process, involving thematic coding and interpretation. This involves identifying and categorizing recurring themes, concepts, and patterns related to due process principles and their implementation in criminal law enforcement policies.<sup>17</sup> It also includes analysing the language, reasoning, and interpretations employed in legal texts and case studies to understand the underlying rationales and perspectives. Additionally, the analysis explores the relationships and interactions between different due process principles, as well as their potential conflicts or tensions with other legal or policy considerations. The practical implications and consequences of adhering to or deviating from due process principles in criminal law enforcement contexts are also examined. Because it allows for a nuanced and contextual understanding of the intricate relationship between legal principles and their practical application, the qualitative method is ideal for this study. The information assortment process includes a thorough survey and examination of significant lawful texts, including rules, legal choices, and insightful articles. Specific criteria are used to select these legal documents to guarantee their relevance and representativeness.<sup>18</sup> Key contemplations incorporate ward, significance, definitiveness, and transient extension. The data collection process involves thorough examination and analysis of relevant legal documents, including statutes, court decisions, and scholarly articles. A Jurisdiction is a primary consideration, with legal texts from various jurisdictions (national, state, or local) included to capture potential variations in the interpretation and application of due process principles across different legal systems.<sup>19</sup>

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<sup>17</sup> Megasari Gusandra Saragih et al., *Metode Penelitian Kualitatif: Dasar-Dasar Memulai Penelitian* (Medan: Yayasan Kita Menulis, 2021), 19.

<sup>18</sup> Suteki and Taufani Galang, *Metodologi Penelitian Hukum* (Jakarta: RajaGrafindo Persada, 2017), 267.

<sup>19</sup> Muhaimin Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), 47.

Relevance is also crucial, as the selected legal texts must directly address or make significant references to due process principles within the context of criminal law enforcement policies and procedures. Authoritativeness ensures the inclusion of sources such as landmark judicial decisions, widely cited scholarly works, and legislation enacted by reputable legislative bodies. Temporal scope is considered, with a focus on contemporary legal texts, though historically significant cases or landmark legislation that have shaped the understanding of due process in criminal law enforcement are also included. Additionally, comparative analysis is utilized to explore variations in due process implementation across different jurisdictions and legal traditions. The collected data are systematically analysed through thematic coding and interpretation to identify key patterns, themes, and insights pertaining to the interaction between due process principles and criminal law enforcement policy. While this study primarily focuses on qualitative analysis, quantitative data, such as statistical trends or empirical studies, are also considered where applicable to enhance the breadth and depth of the analysis.<sup>20</sup> It is essential to acknowledge the inherent limitations of this research, including potential biases in the selection of literature and the subjective nature of qualitative analysis.<sup>21</sup> Nonetheless, by adopting a rigorous methodological approach, this study endeavours to provide valuable insights into the intricate dynamics of due process within criminal law enforcement policy.

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<sup>20</sup> Irwansyah Irwansyah, *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2021), 21.

<sup>21</sup> Lexy Moleong, *Metode Penelitian Kualitatif Edisi Revisi* (Jakarta: Remaja Rosda Karya, 2014), 27.



## Result and Discussions

### The Urgency of Criminal Law Reform on The Community's Need For The Rule of Criminal Law

The domain of Criminal Law Politics is often intricately linked with the concept of reforming criminal laws, a process that involves a myriad of considerations and perspectives. According to the comprehensive Indonesian dictionary, the term "renewal" encompasses a multitude of interpretations and implications, reflecting the complex nature of legal evolution and societal change. This process of reforming criminal laws entails not only legislative amendments but also societal debates, judicial decisions, and policy considerations aimed at addressing emerging issues, enhancing procedural fairness, and promoting justice within the legal system. The renewal of criminal laws involves multifaceted initiatives aimed at rejuvenation, repetition or recommencement, and innovation, all geared towards addressing emerging societal issues and challenges.

These initiatives focus on revitalizing existing criminal laws to align with contemporary societal values and norms. For instance, revisiting and modifying laws related to hate crimes, discrimination, and bias-motivated violence can help rejuvenate the legal framework to better protect marginalized communities and promote equality. The United Kingdom's amendments to its hate crime legislation in 2021, expanding the scope to cover discrimination based on sex or gender, exemplify such rejuvenation efforts.

These initiatives involve revisiting and potentially restarting certain aspects of criminal law formulation or implementation. An example could be the repetition of public consultations and impact assessments to ensure that proposed criminal laws adequately address evolving societal concerns, such as cybercrime or environmental offenses. The European Union's recent efforts to harmonize cybercrime laws across member states, through a repeated consultation process, illustrate this approach.<sup>22</sup>

These initiatives encompass the introduction of novel concepts, approaches, or legal frameworks to tackle emerging issues effectively. For instance, developing new legal frameworks to address emerging forms of crime, such as cyberbullying, online harassment, or identity theft, could be considered innovative initiatives. Canada's introduction of specific laws

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<sup>22</sup> Sherzod Raimberdiyev, "Combating Cyber Extortion by Corrupt Officials," *Uzbek Journal of Law and Digital Policy* 1, no. 4 (2023): 18.

targeting non-consensual sharing of intimate images (sometimes referred to as "revenge porn") in 2015 exemplifies such an innovative approach to addressing a contemporary societal challenge.<sup>23</sup>

Through these initiatives, modernizing the legal framework can effectively address evolving societal norms and values in various ways:

1. **Enhancing Inclusivity and Representation:** Updating criminal laws to reflect the diversity of societal experiences and perspectives can promote inclusivity and ensure equal protection under the law. For example, reforms to legal definitions of sexual assault and consent can better align with modern understandings of gender dynamics and bodily autonomy.
2. **Addressing Technological Advancements:** As technology rapidly evolves, criminal laws need to adapt to address new forms of crime and challenges posed by advancements in areas like cybersecurity, data privacy, and artificial intelligence. The European Union's General Data Protection Regulation (GDPR) is an example of a comprehensive legal framework designed to address data privacy concerns in the digital age.
3. **Promoting Restorative Justice:** Incorporating restorative justice principles into criminal law reform can shift the focus towards rehabilitation, victim-offender reconciliation, and community healing. New Zealand's Family Violence Act of 2018 incorporates restorative justice practices, recognizing the complex dynamics of domestic violence and emphasizing accountability and support for both victims and offenders.

By examining case studies and examples from various jurisdictions, it becomes evident that initiatives for rejuvenation, repetition, and innovation in criminal law reform are essential to address emerging social challenges, uphold societal values, and ensure the legal framework remains relevant and effective in a continuously evolving world. Moreover, it encompasses efforts to modernize legal frameworks, adapt to evolving societal norms and values, and respond to systemic challenges such as discrimination, inequality, and inefficiency.

Understanding the essence of these three concepts and amalgamating their data reveals a shared narrative: criminal law reform, or the politics surrounding it, constitutes a pursuit of innovation. This political aspect of criminal law extends its influence across various disciplines. Through the lens of Legal Politics, it emerges as an endeavours to formulate effective regulations tailored to specific circumstances. It can also be viewed as a

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<sup>23</sup> Leon McRae, "Blaming Rape on Sleep: A Psychoanalytic Intervention," *International Journal of Law and Psychiatry* 62, no. January 2019 (2019): 135, <https://doi.org/10.1016/j.ijlp.2018.12.004>.

manifestation of state policies, executed through governmental agencies, aimed at crafting rules conducive to societal advancement.

However, Sudarto offers a divergent perspective concerning the Politics of Criminal Law. According to him, this facet of legal discourse encompasses a multifaceted approach towards realizing the objectives delineated within established laws, all in pursuit of optimal outcomes while steadfastly upholding the tenets of justice. Expanding on this viewpoint, Sudarto underscores the intricacies involved in navigating the terrain of criminal law politics, which necessitates concerted efforts aimed at ensuring the effective execution of legal statutes. This involves a delicate balancing act, wherein the imperatives of the law are harmonized with the evolving needs and expectations of the community. Sudarto advocates for a nuanced understanding of the interplay between legal frameworks and societal dynamics, positing that the successful practice of criminal law politics hinges upon adeptly reconciling these often divergent forces. Through his perspective, Sudarto illuminates the complex interconnections inherent in the realm of criminal law, urging a holistic approach towards its interpretation and application.<sup>24</sup>

In other languages, the concept of the politics of criminal law is referred to as Penal Policy, Criminal Policy, or Strafrechtspolitik. Below are various political ideas regarding criminal law as outlined by experts.<sup>25</sup>

- 1) As Marc Ancel suggests, Penal Policy serves as both a scholarly discipline and an art form, aiming to enhance the efficacy of legal frameworks. These frameworks not only guide lawmakers but also shape the practices of those involved in judicial proceedings.
- 2) In the words of Mulder, Strafrechtspolitik serves as a crucial gauge for assessing the relevance of criminal statutes and devising strategies to prevent criminal behaviour. It encompasses the systematic approach to investigation, prosecution, trial, and enforcement.
- 3) Soerjono Soekanto emphasizes that criminal law politics involves understanding the underlying principles of legal statutes and their application in society. Essentially, it entails a rational and conscious effort to organize societal responses to criminal activities.

Thus, criminal law politics, whether termed as Penal Policy, Criminal Policy, or Strafrechtspolitik, revolves around the deliberate structuring of reactions to crime in social contexts.<sup>26</sup> Criminal law issues alludes to the

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<sup>24</sup> Sudarto, *Kapita Selektta Hukum Pidana* (Bandung: Alumni, 1981).

<sup>25</sup> Karen B. Friend et al., "Sentinel Event Reviews in the Criminal Justice System: A Review of the Literature," *Criminal Justice Studies* 33, no. 4 (2020): 343, <https://doi.org/10.1080/1478601X.2020.1741227>.

<sup>26</sup> *Ibid*, 403

endeavours to address wrongdoing.<sup>20</sup> It is understood that criminal law politics can be approached through penal (criminal law) or non-penal (non-criminal law) measures. Subsequently, criminal legislative issues, as one more term for criminal law legislative issues, includes the two methodologies.<sup>27</sup> In delving deeper into the political underpinnings of criminal law, a critical evolution unfolds, intricately tied to regulatory formulation, rule application, and enforcement. These sequential phases form a cohesive continuum, where legal policy emerges from authoritative deliberations, not only grounded in normative jurisprudence but also scrutinized through a sociological lens. This dual perspective ensures that legal constructs resonate with and are viable for all stakeholders, aligning with the overarching objective of enhancing societal welfare through rule establishment.<sup>28</sup>

Hence, the overhaul of criminal legislation emerges as a pragmatic approach, ensuring rules evolve to better serve society. This adaptability is crucial, given the dynamic nature of societal norms and the imperative for legal frameworks to reflect contemporary realities. Gustav Radbruch underscores that reforming criminal law isn't merely about refinement; it's about ensuring its relevance and wisdom. Similarly, Sudarto highlights that while ongoing reforms, particularly concerning the Criminal Code, are pivotal, they may not comprehensively address all facets. A holistic approach, covering substantive, procedural, and enforcement aspects, is essential for effective reform. In societal practice, criminal law isn't merely punitive but serves as a necessary control mechanism for actions beyond alternative remedies. Essentially, it acts as society's ultimate regulatory tool. Thus, its constant evolution serves as a mechanism to address emerging criminal behaviours, aligning with the principle of legality dictating that acts are deemed criminal only if expressly prohibited. This necessitates ongoing updates to ensure criminal law remains pertinent amid societal shifts.<sup>29</sup>

Utilizing Criminal Law to Combat Crime while Innovating Policy Solutions. Criminal law not only serves as a tool against crime but also inspires alternative strategies. Crafting policies beyond traditional legal frameworks, such as in health or education, enhances societal well-being. By employing non-criminal formulations, specific actions can be addressed within alternative legal frameworks. When criminal law policy intervenes, it

<sup>27</sup> Mugambi Jouet, "Foucault, Prison, and Human Rights: A Dialectic of Theory and Criminal Justice Reform," *Theoretical Criminology* 26, no. 2 (2022): 204, <https://doi.org/10.1177/13624806211015968>.

<sup>28</sup> Hasibuan, "The Concept of Restorative Justice in the Juvenile Criminal Justice System: A Narrative Review of the Indonesian Context."

<sup>29</sup> Jian Zhang, Ke Li, and Yang Feng, "Criminal Sanctions on Identity Theft in Shanghai: An Empirical Case Law Analysis," *International Journal of Law, Crime and Justice* 71, no. 51 (2022): 7, <https://doi.org/10.1016/j.ijlcj.2022.100562>.

triggers a series of legal procedures. These include the formulation, enactment, and enforcement stages, forming an integrated process. The initial stage, termed criminal determination, marks the identification of actions violating criminal statutes. This phase transitions from abstract formulation to concrete enactment and implementation. All three stages are interconnected, constituting a unified mechanism. The formulation stage holds strategic importance, allowing for the creation of effective policies aligned with societal needs. Criminal law politics, rooted in reform efforts, aims to adapt legal frameworks to societal requirements. Thus, criminal law reform, intertwined with policy innovation, serves the shared goal of combating crime effectively.<sup>30</sup>

The intricate interplay between criminal law and the societal fabric is readily discernible in the evolutionary trajectory of Indonesia. As the nation navigates through profound shifts spanning political reconfigurations, advancements in healthcare, reforms in education, and the continuous evolution of social dynamics, it becomes evident that these changes are not merely incidental but meticulously designed to cultivate enduring progress at the national level. However, amidst this transformative journey, one immutable facet remains: the persistent existence of crime. This stark reality underscores the indispensable role of criminal law as both a deterrent and a responsive mechanism in safeguarding the sanctity of societal order and individual rights. Thus, within the tapestry of Indonesia's societal evolution, the calibration of criminal law emerges as an indispensable thread, intricately woven to uphold justice, protect citizens, and navigate the complex terrain of legal and moral imperatives.<sup>31</sup>

The presence of criminal law in the public eye is a basic part that has been organized as one of the preparation in public turn of events. Avoidance and countermeasures are remembered for wrongdoing control which ought to likewise be the worry of the experts with regards to shaping regulations. The ruler in his strategy in shaping a result of rules then synchronizes these standards to turn into a regulative item and congruity with different capabilities in the public eye. Hence, one might say that criminal law governmental issues is important for social governmental issues in the public eye. This is on the grounds that the execution of criminal law change

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<sup>30</sup> Suci Ramadani et al., "Criminal Law Politics on Regulation of Criminal Actions in Indonesia," *Linguistics and Culture Review* 5, no. S1 (2021): 73, <https://doi.org/10.21744/lingcure.v5ns1.1651>.

<sup>31</sup> Margie Gladies Sopacua, "Criminology Study on the Circulation of the Sopi Traditional Liquor in the Villages of Zeith, Asilulu, and Kaitetu during the Covid-19 Pandemic," *Law Reform: Jurnal Pembaharuan Hukum* 17, no. 2 (2021): 168–82, <https://doi.org/10.14710/lr.v17i2.41743>.

should be as per social components in the public eye since it includes the interests of local area life in the long haul.<sup>32</sup>

Barda Nawawi proposes that political changes in criminal regulation involve significant modifications to criminal laws, such as drafting a new Criminal Code (KUHP). This process is then followed by thorough evaluations and research to understand the challenges in aligning these changes with the Criminal Procedure Code (KUHAP). Through this approach, it is hoped that a more effective criminal justice system, relevant to current conditions and societal needs, can be established.<sup>33</sup> In addition to creating a new Criminal Code and analysing its alignment with the Criminal Procedure Code, another vital component of criminal law reform is appraising the applicability of current Criminal Code principles. This assessment holds significant importance as it precedes the adoption of any new conceptual framework within the Criminal Code. Therefore, criminal law reform should not only entail replacing old laws with new ones but also be informed by research and the coherence between legal regulations to avoid mere abolishment.<sup>34</sup>

Reforming criminal law extends beyond the mere creation of novel concepts; it necessitates robust support from law enforcement agencies. This involves harmonizing the execution of state apparatus with legal reform efforts to ensure a seamless alignment. Furthermore, educating law enforcement officers on legal culture, diverse perspectives, and the fundamental principles of Pancasila serves as the bedrock for integrating the restructured criminal law into practical enforcement practices. In the midst of reform efforts, it is imperative to uphold the principle of due process, particularly in light of the evolving needs of society and the intricate dynamics of crime. Recognizing the fluid nature of societal dynamics and the impact of international developments underscores the ongoing necessity for reform within the realm of criminal law. These reforms are driven by the overarching objective of upholding justice and safeguarding the welfare of the community, emphasizing the critical importance of

<sup>32</sup> Mokhammad Najih, "Indonesian Penal Policy: Toward Indonesian Criminal Law Reform Based on Pancasila," *Journal of Indonesian Legal Studies* 3, no. 2 (2018): 149–74, <https://doi.org/10.15294/jjls.v3i02.27510>.

<sup>33</sup> Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?," *Griffith Law Review* 32, no. 2 (2023): 190–214, <https://doi.org/10.1080/10383441.2023.2243772>.

<sup>34</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana : (Perkembangan Penyusunan Konsep KUHP Baru)* (Jakarta: Kencana, 2011).

garnering consensus from the community as an essential initial step in the reform process.<sup>35</sup>

The global push for reform in international criminal law acts as a driving force for revising domestic criminal laws. Discussions during the 1970 UN congress highlighted the need to address "crime prevention and treatment of offenders," exposing discrepancies between motives for crimes and regulatory frameworks. Despite rapid changes in crime trends over the past 25 years, legal systems have struggled to keep pace. A 1975 assessment revealed significant disparities between courtroom procedures and societal criminal behaviours, underscoring the urgency for ongoing enhancements in criminal legislation to reflect contemporary social dynamics. Political, sociological, and practical considerations further underscore this necessity. Politically, the notion prevails that a sovereign state demonstrates its authority through adherence to the rule of law both domestically and internationally. Sociologically, legal frameworks must mirror the cultural ethos of a nation. Practically, nations formerly colonized often adopt aspects of their colonizers' legal systems, necessitating reforms to establish a distinct national legal identity reflective of the nation's essence.<sup>36</sup> These three rationales are commonly cited to advocate for criminal law reform. A practical motivation arises from the longstanding discrepancy between colonial-era criminal law and the evolving standards of national law and contemporary society. Sudarto emphasizes the necessity of reforming criminal law, citing several reasons. Muladi adds that an independent nation boasts its own legal framework, a source of national pride, reflecting its unique identity and catering to its citizens' needs. Sudarto further argues that relying on colonial-era laws signifies a lack of national legal autonomy and cultural identity.<sup>37</sup> Reforming the national criminal justice system with a focus on due process is vital. Efforts should not only revolve around rule adjustments but also prioritize their practical application in society. The law, aimed at protecting community interests, must also promote societal well-being. Goldstein highlights three weaknesses in law enforcement: strict adherence to statutes, technical limitations, and daily operational hurdles. Muladi points out the drawbacks of overly rigid enforcement, such as procedural delays. Balancing swift response with procedural adherence may appear challenging but ensures fairness. Embracing due process reduces errors, safeguards individual rights, and fosters accountability. It extends to discretionary decisions, emphasizing adherence to established procedures over hierarchical structures. Criminal law reform rooted in due process is

<sup>35</sup> Muladi, *Kapita Selekta Sistem Peradilan Pidana* (Semarang: Badan Penerbit Universitas Diponegoro, 1995), 35.

<sup>36</sup> *Ibid.*, 44.

<sup>37</sup> Sudarto, *Hukum Dan Hukum Pidana* (Bandung: Alumni, 1981), 29.

fundamental, covering regulations, implementation, law enforcement officers, and offenders alike.

## Due Process of Law Becomes An Inseparable Part of Criminal Law Rules

In the realm of criminal law, Due Process encompasses a series of organized protocols aimed at guaranteeing equity and righteousness.<sup>38</sup> This serves as guidance for law enforcement officers to consider the due process elements when making decisions. Implementing these principles fosters a just criminal justice system, ensuring respect for human rights.<sup>39</sup> Incorporating the concept of due process into Indonesia's criminal justice framework stems from the nation's commitment to the rule of law. This underscores the notion that individuals are governed by laws, not individuals or authorities. By promoting adherence to legal standards rather than obedience to directives, this approach aims to mitigate instances of arbitrary behaviour.<sup>40</sup>

This serves as guidance for law enforcement officers to consider due process elements when making decisions. Implementing these principles fosters a just criminal justice system, ensuring respect for human rights. Incorporating the concept of due process into Indonesia's criminal justice framework stems from the nation's commitment to the rule of law. The essence of due process is inherently integrated into the implementation of criminal law. Simplified, it sanctions criminal offenders. To uphold this, various procedural regulations under both criminal and procedural codes are implemented to prevent covert agendas. Due process ensures all involved parties have the chance to defend against accusations, whether under traditional or reformed criminal law, emphasizing its significance.<sup>41</sup> This underscores the notion that individuals are governed by laws, not by individuals or authorities. By promoting adherence to legal standards rather than obedience to directives, this approach aims to mitigate instances of

<sup>38</sup> Carolyn McKay, "Predicting Risk in Criminal Procedure: Actuarial Tools, Algorithms, AI and Judicial Decision-Making," *Current Issues in Criminal Justice* 32, no. 1 (2020): 22, <https://doi.org/10.1080/10345329.2019.1658694>.

<sup>39</sup> Jet, "Foucault, Prison, and Human Rights: A Dialectic of Theory and Criminal Justice Reform."

<sup>40</sup> Beatriz Corrêa Camargo and Joachim Renzikowski, "The Concept of an 'Act of a Sexual Nature' in Criminal Law," *German Law Journal* 22, no. 5 (2021): 753, <https://doi.org/10.1017/glj.2021.37>.

<sup>41</sup> Anis Widyawati et al., "Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions," *Lex Scientia Law Review* 6, no. 2 (2022): 339, <https://doi.org/10.15294/lesrev.v6i2.58131>.



arbitrary behaviour. The fundamental principle of due process revolves around the acknowledgment that the rule of law stands supreme. Just as in cases of criminal offenses, nothing surpasses the statutes of criminal law. Consequently, due process prohibits any infringement that undermines the primacy of law, irrespective of the justification, even if it pertains to upholding criminal statutes. This principle manifests in the provision that individuals cannot be compelled to testify unwillingly; even suspects hold the right to withhold testimony if they choose and are entitled to legal representation. An investigation into an individual accused of a specific crime is conducted to determine whether or not they actually committed the alleged offense. Certainly, demonstrating this requires following a set of procedures and regulations to attain the desired outcomes. In application, there exist two frameworks for establishing whether an individual has truly perpetrated the offense they're charged with. The initial framework is known as the Crime Control Model, which prioritizes swift processing and punishment of all criminal deeds to uphold a harmonious societal order. However, the CCM model has the drawback of being susceptible to misunderstandings and incorrect charges due to the rushed and incomplete procedures.

The second framework is the Due Process Model (DPM), which developed as a reaction to the Crime Control Model. The DPM focuses on ensuring individual rights by imposing limits on arbitrary behaviour that may occur during the evidentiary process of a crime. This model adheres to the presumption of innocence, meaning that an individual suspected of committing a crime is presumed innocent until proven guilty. Individual rights are protected in the due process system, ensuring that the arbitrariness of law enforcement is monitored and controlled by human rights standards. The presumption of innocence underscores the need for a comprehensive system designed to investigate cases meticulously, prioritizing objective evidence as the cornerstone of justice. This principle mandates that when an individual becomes the subject of suspicion or accusation, they are entitled to a transparent and impartial legal proceeding. By upholding this principle, the goal is to safeguard against miscarriages of justice that result from hasty or erroneous prosecution, thereby preserving fundamental human rights within the legal sphere.<sup>42</sup> An investigation into an individual accused of a specific crime is conducted to determine whether

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<sup>42</sup> Martha Minow, "Do Alternative Justice Mechanisms Deserve Recognition in International Criminal Law?: Truth Commissions, Amnesties, and Complementarity at the International Criminal Court," *Harvard International Law Journal* 60, no. 1 (2019): 1–46, <https://ssrn.com/abstract=3359900>.

or not they actually committed the alleged offense.<sup>43</sup> Certainly, demonstrating this requires following a set of procedures and regulations to attain the desired outcomes. In application, there exist two frameworks for establishing whether an individual has truly perpetrated the offense they're charged with. The initial framework is known as the Crime Control Model, which prioritizes swift processing and punishment of all criminal deeds to uphold the establishment of a harmonious societal order.<sup>44</sup> The primary guideline in CCM is high effectiveness, so by and by, the whole circuit is done rapidly and should be finished straightaway and there is no impedance in any structure and has little chance of opposition for different gatherings.<sup>45</sup> Another point is that the police and examiners as implementers of the criminal regulation should fill in as fast and as completely as conceivable to tackle cases despite the fact that they should disregard and forfeit basic freedoms. The CCM model, on the other hand, has the drawback of being susceptible to misunderstandings and incorrect charges as a result of the rushed and incomplete procedure. The second is Fair treatment Of Regulation The development of this guideline is an activity response to the Wrongdoing Control Model. The guideline of fair treatment of regulation spotlights on guaranteeing individual freedoms by giving cut-off points on erratic way of behaving that might happen during the evidentiary course of the wrongdoing. Fair treatment of regulation itself complies with the rule of assumption of guiltlessness which implies that an individual who is associated with having perpetrated a specific wrongdoing actually has the chance of blamelessness, and as long as his activities can't be found liable, then the privileges of that individual as a free individual ought to be kept up with and maintained. Individual rights are protected in the due process of law system so that lawyers' arbitrariness can be monitored and controlled by human rights and not just the speed at which someone is found guilty or not.<sup>46</sup>

The Crime Control Model (CCM) operates on the principle of Presumption of Guilt, suggesting that an individual suspected of

<sup>43</sup> Rizkan Zulyadi, "Police's Role in Investigation Process of Fraud Criminal Act of Civil Servants Candidate (Case Study of Police Station Binjai)," *Britain International of Humanities and Social Sciences (BioHS) Journal* 2, no. 2 (2020): 403, <https://doi.org/10.33258/biohs.v2i2.238>.

<sup>44</sup> Thomas A. Loughran, "Behavioral Criminology and Public Policy," *Criminology and Public Policy* 18, no. 4 (2019): 737, <https://doi.org/10.1111/1745-9133.12465>.

<sup>45</sup> Raymond Ali et al., "Restructuring the Termination of Prosecution in the Criminal Jurisdiction System of Indonesia," *Scholars International Journal of Law, Crime and Justice* 4, no. 2 (2021): 27–33, <https://doi.org/10.36348/sijlcj.2021.v04i02.001>.

<sup>46</sup> Hafsa Mansoor, "Guilty Until Proven Guilty: Effective Bail Reform as a Human Rights Imperative," *DePaul Law Review* 70, no. 1 (2020) 73, <https://doi.org/10.2139/ssrn.3566273>.

committing a crime is highly likely to be the actual perpetrator.<sup>47</sup> The foundational concept of the Presumption of Innocence underscores the critical need for the establishment of a comprehensive system designed to meticulously investigate any given case, prioritizing the pursuit of objective evidence as the cornerstone of justice. Embedded within the broader framework of Due Process of Law, this principle mandates that when an individual becomes the subject of suspicion or accusation regarding a criminal offense, they are entitled to a transparent and impartial legal proceeding wherein their defense can be vigorously presented to counter the allegations levelled against them. Central to this procedural safeguard is the recognition that the ultimate goal of the justice system should not be mere expediency in identifying and penalizing alleged wrongdoers, but rather the rigorous substantiation of both the crime itself and the corresponding charges through the careful examination of factual evidence. By upholding this foundational principle, the overarching objective is to safeguard against the grave miscarriage of justice that can result from hasty or erroneous prosecution, thereby upholding and preserving fundamental human rights within the legal sphere. Through the conscientious application of Due Process, the integrity of the legal system is fortified, ensuring that individuals are accorded the fair treatment and protection to which they are entitled under the law.<sup>48</sup>

## Conclusion

Criminal Law, which lies at the core of general sets of laws internationally, includes a bunch of rules overseeing different crimes inside society. To keep criminal law up to date, laws must be changed to meet the changing needs and values of society. The principle of due process is essential to this development because it ensures fairness and safeguards the rights of those accused of crimes. Installed inside criminal law, fair treatment means a pledge to procedural decency, straightforwardness, and the conservation of basic opportunities. A commitment to upholding equality and justice is

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<sup>47</sup> Raymond Ali et al., "Restructuring the Termination of Prosecution in the Criminal Jurisdiction System of Indonesia," *Scholars International Journal of Law, Crime and Justice* 4, no. 2 (2021): 27–33, <https://doi.org/10.36348/sijlcj.2021.v04i02.001>.

<sup>48</sup> Superior Basoeky, "The Reformulation of Criminal Procedure Law against the Rights of Suspects and Defendants in the Perspective of the Criminal Justice System," *Ratio Legis Journal* 1, no. 4 (2022): 1015–29.

demonstrated by its incorporation into legal systems. Chasing changing criminal law, fair treatment fills in as a core value, forming the improvement of new legitimate structures that focus on local area prosperity while regarding the respect and freedoms of all engaged with legal procedures. As general sets of laws develop to address current difficulties and change normal practices, the fuse of fair treatment into change endeavours highlights a persevering obligation to equity and perceives the fundamental job of procedural reasonableness in encouraging trust and believability inside overall sets of laws. By underlining fair treatment, changes can endeavours to figure out some kind of harmony between policing and the security of common freedoms, in this manner advancing a more pleasant and more impartial society.

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