

# PENAL POLICY

*by* John Kenedi

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**Submission date:** 24-Marc-2020 06:04AM (UTC+0700)

**Submission ID:** 2100394040

**File name:** draft\_final\_John\_kenedi.docx (222.42K)

**Word count:** 4540

**Character count:** 24796

## Criminal Policy (Penal Policy) In The Effectiveness Of Law Enforcement In Indonesia

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### Article Info

#### Article History

Received:  
Month date, year  
Accepted:  
Month date, year

#### Keywords

Effectiveness, Criminal  
Policy, Criminal Politics,  
Criminal

#### DOI:

xxxxx

### Abstract

Crime always develops, so it needs to be renewed in criminal law. Crimes that arise in the community cannot be separated from the government's efforts to overcome them through regulations issued as a product of the legislature. Efforts to deal with crime with criminal law are essentially part of criminal law enforcement efforts, therefore it is often said that criminal law policy is part of the law enforcement policy. Thus the criminal law policy is related to the criminal law enforcement process as a whole so that it is more directed at the function of material criminal law (substantial), formal criminal law (criminal procedural law) and the implementation of criminal law. This study using the conceptual approach and case study questions how to overcome crime by using both criminal and social policy approaches and questioning the effectiveness of law enforcement through criminal policy. The author chooses a normative juridical research method using secondary data from various kinds of literature. Based on the research conducted, the results obtained are that criminal policy is actually a penal policy (criminal law) which includes the criminal law application and non-penal policy. Some forms of criminal policy in an effort to tackle crime. The application of criminal law can take the form of prevention without crime and influence the views of the public regarding crime and criminalization through mass media. Renewal of criminal law must be an embodiment of changes and renewal of various aspects and policies that lie behind it such as socio-political, socio-philosophical, socio-cultural aspects or from various aspects of policy. These policies can be applied in accordance with the situation and situation in the future.

### Introduction

Renewal of criminal law is always a need for a country along with the development of crimes that occur within the territory of the country. When a country does not renew criminal law, the country can be categorized as a country that fails to carry out legal evolution in its criminal law field. In other words, renewal of criminal law must be directly proportional to the development of crime.

Speaking of criminality and renewal of criminal law, this certainly cannot be separated from the study of criminal law policies or criminal policies. Crimes that arise in the community cannot be separated from the government's efforts to overcome them through regulations issued as a product of the legislature. Efforts to combat crime with criminal law are essentially part of criminal law enforcement efforts. Therefore it is often said that criminal law policy is part of the law enforcement policy. Thus the criminal law policy can be said as a policy relating to the process of overall criminal law enforcement directed at the functioning of material criminal law (substantial), formal criminal law (criminal procedural law), and the implementation of criminal law (penal sanction).

Renewal of criminal law related to criminal policy is currently becoming an urgent problem in Indonesia. Since a few years ago, the discourse on the renewal of the Criminal Code of Indonesia (*KUHPP*) continued to emerge. Various seminars and discussions were carried out to renew the regulations adopted from the Dutch law. Renewal of criminal law by renewing the Criminal Code is a step forward for Indonesian criminal law. However, despite these efforts, there are interesting things that need to be explored further, namely the effectiveness of law enforcement which will be an achievement of renewal of the criminal law.

The effectiveness of law enforcement in the framework of criminal law policy means questioning how to overcome crime by using a policy approach, both criminal policy and social policy. This research is aimed at mining the prospect of effective law enforcement in addition to seeing the role of social policy in the success of law enforcement in Indonesia.

## Theory of Criminal Policy

Criminal law policy, better known as criminal policy is a rational and organized effort from a society to overcome crime. Where the definition was taken from Marc Ancel who formulated it as "the rational organization of control of crime by society". While G. Peter Hoefnagels stated that "the criminal policy is the rational organization of the social reactions to crime".

According to Soedarto, criminal policy has several meanings, which are divided into two parts, namely criminal policy in the narrow sense and criminal policy in the broadest sense.

1. In a narrow sense, it has the overall meaning of principles and methods that form the basis of the reaction to violations of laws in the form of criminal, in the broadest sense, to have an overall understanding of the functions of law enforcement officials including how to work from the court and the police;
2. In the broadest sense, it means the whole policy, which is carried out through legislation and official bodies, which aims to enforce the norms of society.

Based on the definitions above, it can be seen that criminal policy is a rational effort by the community to prevent crime and to react to crime. This rational effort is a logical consequence, because according to Soedarto, in carrying out politics, people make judgments and make selections from the many alternatives faced.

Barda Nawawi Arief believes that:

Criminal law policy is a direct translation of the term "penal policy", but sometimes the term "penal policy" is translated into the politics of criminal law. The term penal policy has the same meaning as criminal law policy and *strafrechtspolitik* so that both terms are also translated with politics of criminal law or criminal law policy, but from the previous explanation that the term policy is taken from the term policy in English or "Politiek" in Dutch.

Thus, the term criminal law policy or criminal law politics is defined as a rational effort to tackle crime by using the means of criminal law. The definition of criminal or political law policy in criminal law can be viewed from two points of view, both from a legal political perspective and from a criminal political point of view.

Meanwhile, according to Marc Ancel, the definition of the reason policy (criminal law policy) is as a science as well as art which aims to enable the regulation of positive law to be better formulated, where the rules of positive law (the positive rules) and also to the organizers or implementers court decisions, in Marc Ancel's definition are criminal law legislation. Thus the application of criminal law is more measurable if justice for the community is more felt, because the administration and implementation of the judiciary will hold better guidelines.

The criminal policy or criminal political point of view states that criminal law policies are identical to the notion of crime prevention policies through criminal law so that efforts are needed to realize good regulations in accordance with the current and future conditions at situations and state policies through the authorized body to formulate and set the desired regulations can even be used to express what is contained in the community in order to achieve what is aspired. In other words, the goal to be achieved with criminal law policy is good criminal legislation.

It should be noted that there are many ways and efforts that can be done by each state (government) in overcoming crime, including through a criminal law policy or criminal law politics according to Soedarto, the policy or political understanding of criminal law is:

1. Efforts to realize good regulations according to the situation and situation at that time;
2. The policy of the state through the authorized bodies to determine the desired regulations which are expected to be used to express what is contained in the community and to achieve what is intended.

Thus, criminal law policy or criminal law policy (*strafrechtspolitik*) can be defined as "an effort to realize criminal legislation that is in accordance with the situation and situation at the time and for the future". The word "according" to that meaning means good meaning fulfilling requirements of justice and usefulness. If viewed from the standpoint of legal policy or legal politics, then the implementation of criminal law policy means the procurement of elections to achieve the results of criminal law that is best in meeting the requirements of justice and usability. With criminal law policy is the making of good criminal legislation. In addition to making and formulating good criminal legislation, criminal law policy also aims to provide guidance

not only to legislators but also to the courts that apply the law invite and also to the organizers or implementers of court decisions.

Based on the description above, it seems at a glance that criminal law policy is identical with the reform of statutory law, but the notion of criminal law policy is not the same as the renewal of legislation in criminal law in the narrow sense. This can be explained as follows:

Criminal law as a legal system consisting of culture, structure and legal substance. thus renewal of criminal law does not merely renew the laws of criminal law but also renew other sectors such as criminal law and ideas of criminal law through academic processes and thinking.

Furthermore, criminal law policy can be associated with the following actions:

1. What is the government's efforts to tackle crime by criminal law;
2. How to form criminal law to fit the conditions of society;
3. What is the government's policy to regulate the community with criminal law; and
4. How to use criminal law to regulate the community in order to achieve greater goals.

If human behavior or something is considered evil but criminal law has not been able to reach/prevent or eradicate the crime, it is necessary to take a criminal law policy (reasoning policy) by legislators (legislative and executive), namely by criminal law policy.

E. Utrecht argues that: law is "a set of live instructions, orders and prohibitions that regulate the order in a society and should be obeyed by members of the community concerned because violations of the instructions can lead to the actions of the government or the ruler of the community".<sup>†</sup> Law is nothing but a rational order that must be obeyed so that it can be binding and it is the duty of a person to act according to certain rules or measures and when they do not obey the state uses the authority to provide sanctions for upholding legal certainty, and a sense of justice both for the violator and the sense of justice felt by other communities.

After understanding the term criminal law policy, it is also necessary to understand other terms or other terms that are also related to that, namely the word "*politik*". The word "*politik*" is taken from the term "policy" (English) or "*politiek*" (Netherlands). Starting from these two foreign terms, the term "criminal law policy" can also be referred to as "criminal law politics". In the foreign literature the term "criminal law politics" is often known by various terms, including "reason policy", "criminal law policy", or "*strafrechtpolitiek*".

Implementing "criminal law politics" means holding elections to achieve the results of criminal legislation that are best in the sense of meeting the requirements of justice and usability, or it can be in the form of an effort to realize criminal legislation that is appropriate to the situation and situation at a time and for the future.

The politics of criminal law when viewed as part of legal politics implies, how to try or make and form a good criminal law.<sup>‡</sup> This understanding is in line with Marc Ancel's thinking which defines "reason policy" as "a science as well as art that aims to enable the regulation of positive law to be better formulated". Thus it can be clearly interpreted that Marc Ancel defines "positive law rules" (the positive rules) are laws and regulations of criminal law, because according to Marc Ancel that the term "penal policy" is the same as the term "policy or politics of criminal law".

### Research Methods

Methodologically, this research is a qualitative type with library research, where this research method is often used to examine the condition of natural objects. This research emphasizes the meaning rather than generalization. While according to the purpose of this research is explorative research. The assessment will be carried out through searching and reviewing the literature or written sources (library material) related to the subject matter.

The researcher used several approaches in this study which were adjusted to the problem statement. The researcher used the conceptual approach where researchers did not move from the concept of criminal policy under study. In this descriptive-analytic study, researchers will use secondary data to answer the problems presented above. Data sources that will be used by researchers include: books, texts, monographs, reviews, letters, journals, Thesis, Thesis, research reports, and documents, including the work of others. Sugiyono stated that the document is a record of events that have passed, it can be in the form of writing, drawing, or monumental works from someone.

The data collection technique in this study was carried out through documentation studies that researchers obtained from previous research, and various relevant sources of literature. Then a discussion of the above material is carried out, then make notes or do things that are considered important in order to obtain



theories, principles and doctrines related to the problems discussed. Data that has been collected is analyzed inductively. Namely <sup>29</sup> learning the direction of reasoning from a number of specific things to be brought to a general conclusion. The data analysis technique used in this study is qualitative data analysis, following the concept of the research <sup>15</sup> steps made by Miles and Huberman, and Spradley; in the analysis of qualitative data, research is conducted interactively and takes place continuously at each stage of the research so that it is complete, and the data is saturated. Activities in data analysis include: data reduction, data display, and conclusions drawing/verificator.

This research is inseparable from several other studies as prior research, such <sup>25</sup> Hans Boultelier's research entitled "The Convergence of Social Policy and Criminal Justice" published in the *European Journal on Criminal Policy and Research* 9: 361–380, December 2001 by Kluwer Academic Publishers Netherlands. The journal explains the relevance of social policy and law enforcement in the Netherlands. In addition, there are also two local journals, each entitled "Crime Management Through Criminal Policy" by Sudirman Sitepu, published in the *Al-Madani Journal* Volume VIII, No. 3, in November 2006. The journal discusses the role of criminal policy from the point of view of criminalization and criminal law. The difference between the two journals above with the work of the author is that the author discusses efforts to tackle crime through two policies, both criminal policy and social policy. On the other hand, the author also mentioned the correlation of criminal policies and social policies in the framework of reforming criminal law in Indonesia.

## Research Results and Discussion

### 1. Efforts to Tackle Crime Through Policy

#### a. Criminal Policy Approach

Marc Ancel stated that modern criminal science consists of three components, namely "Criminology" <sup>1</sup> Law of Criminal and "Penal Policy". He said that criminal law or reasoning policy is both a science and an art which has practical objectives in formulating laws, implementing laws invite and implement court decisions. So criminal law policy is not just <sup>1</sup> formative and systemic dogmatic juridical legislation but more than that it must be done with a variety of juridical, sociological, historical approaches or various other social disciplines including criminology.

If you look at the basic idea of drafting a new *KUHP* <sup>13</sup> concept, it can be seen from various angles/aspects, it can be seen from several <sup>6</sup> points of view, namely from the point of view of national legal renewal policy and from the unity aspect of the criminal law system. The aspect of national law renewal policy was motivated by the national needs and demands for renewal and at the same time changing/changing the concept of the *KUHP* (*Wetboek van Strafrecht*) inherited from the Dutch colonial era. So it is closely related to the idea of "reforming reasoning" (renewal of criminal law) which in essence is also part of a larger idea, namely the development/renewal (system) of national law.

Efforts to reform criminal law ("reforming reasoning") in its nature include the "reasoning policy" which is part and closely related <sup>12</sup> to "law enforcement policy", "criminal policy", and "social policy". So that the two central problems in criminal policy by using the <sup>11</sup> legal means (criminal law) are the problem of determining which actions are supposed to be a crime, and what sanctions should be used or imposed on the offender.

The analysis of the two central problems above cannot be separated from the integral conception of criminal policy with social policy or overall national development policy. This means that solving these problems must also be directed towards achieving certain objectives of the social political policies that have been determined by using a policy-oriented approach (policy oriented approach). This integral policy approach is not only in the field of criminal law, but also in the development of law in general.

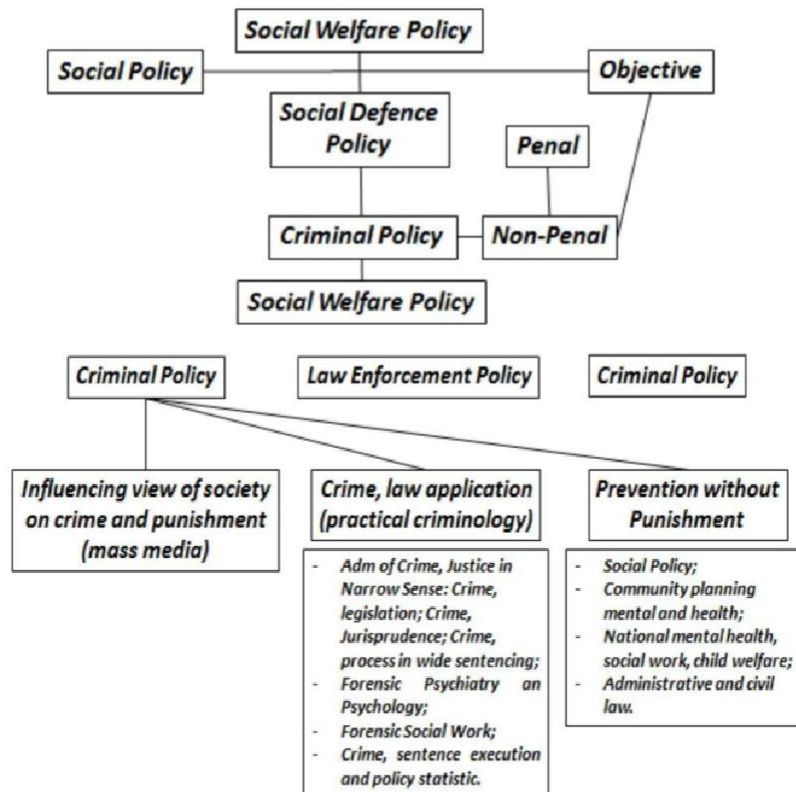
<sup>7</sup> Theoretically, crime prevention efforts according to G.P. Hoefnagels, namely: Application of criminal law (criminal law application); Prevention without crime (prevention without punishment); Influence the public's view of crime and criminalization through mass media (influencing views of society on crime and punishment/mass media. Thus, efforts to deal with crime in general can be divided into two criminal policies, namely through the reasoning line (criminal law) and through non-criminal channels (non-penal/outside of criminal law) In the above division, there are several legal remedies that can be included in a group of non-indigenous efforts, while the main approach is when taken, this means that the handling of a crime is carried out using criminal law (reasoning policy/criminal law policy/*strafrechtspolitiek*), meaning that criminal law is functioned as a suggestion of social controllers, namely sanctions in the form of criminal acts as a means of tackling crime, so that norms in social policy can be enforced by sanctions in criminal law.

#### b. Social Policy Approach <sup>2</sup>

Criminal politics are essentially an integral part of social protection efforts and efforts to achieve social welfare, therefore it can be said that the ultimate goal or main goal of criminal politics or criminal policy is the protection of the community to achieve social welfare. Thus it can be said, that criminal

politics is essentially an integral part of social politics. Thus it can be said, that criminal politics is essentially an integral part of social politics. Schematically it can be described as follows:

G. Peter Hoefnagel stated that Criminal policy as a science of policy is part of a larger policy: the law enforcement policy. The legislative and enforcement policy is a part of social policy. Based on the above schematically G. Peter Hoefnagel gives the following description:



Based on the above diagrams, it can be seen that efforts to overcome crime, criminal politics can be described in various forms, including:

- 1) Application of criminal law application;
- 2) Prevention without crime (prevention without punishment), and
- 3) Influence the public's view of crime and punishment through mass media (influencing views of society on crime and punishment).

Criminal politics can be carried out in a *represif* manner through criminal law application, can also be through means of non-reasoning/prevention with punishment. This non-reasoning tool needs to be explored further, it needs to be developed and utilized with the support of all potential and participation owned by the community so that it can do the effectiveness and "extra legal system" or "informal and traditional system" that can be explored more far.

Indeed, renewal of criminal law can be viewed from the socio-political, socio-philosophical, socio-cultural aspects or from various aspects of policy (specifically social policies, criminal policies and law enforcement policies). This means that the meaning and nature of renewal of criminal law must be an embodiment of changes and renewal of various aspects and policies underlying it. As for the issue of criminalization in the social sphere, it must pay attention to the following matters:

- 1) The use of criminal law must pay attention to the objectives of national development, namely to create a just and prosperous society that is evenly materially spiritual based on *Pancasila*; in connection with this, (the use of) criminal law aims to combat crime and impose a counter-action against itself, for the welfare and protection of the community;

- 2) Acts that are attempted to be prevented or overcome with criminal law must be undesirable actions, namely actions that bring harm (material and or spiritual) to the community;
- 3) The use of criminal law must also take into account the cost and benefit principle;
- 4) The use of criminal law must also pay attention to the capacity or capability of the work force of law enforcement agencies, that is, there must be no overloading of duties.

The issue of criminalization and decriminalization of an act must be in accordance with the criminal politics adopted by the Indonesian nation, namely the extent to which the act is contrary to the fundamental values prevailing in society and by the community is deemed appropriate or inappropriate to be punished in order to carry out community welfare.

The above policy approach is clearly a rational approach because the characteristics of a rational criminal politics are nothing but the application of rational methods (a rational total of responses to crime), and a rational policy is an embodiment of values that always apply and or develop in the community so that the product of the policy is able to describe the atmosphere of the spirit of the community.

The Preamble of The 1945 Constitution of Indonesia essentially has a basic formula regarding social policy which consists of policies for public welfare and social protection policies, so that in order to protect the public, to overcome crime, a policy is needed rational which became known as criminal policy. In addition, crime prevention efforts need to be pursued with a policy approach, in the sense that there is integration between criminal policies and social policies. Criminal policy itself includes a penal policy (criminal law), namely the application of criminal law and non-criminal policy (non-criminal law).

## 2. Measures for Effective Law Enforcement Through Criminal Policies

Crime prevention through criminal law is a preceding activity with the determination of criminal acts (criminalization). The response in question can be in the form of countermeasures in the reasoning line focusing more on the nature of repressive after the crime occurs while the non-reasoning pathway focuses more on the preventive nature (deterrence/deterrence/control) before the crime occurs, so that it can be said that repressive action in its essence can also be seen as a preventive measure in a broad sense.

Considering that efforts to combat crime through non-criminal lines are more about preventing crime, the main objective is to deal with conducive factors that cause crime. conducive factors include social conditions that can directly or indirectly generate or foster crime.

Various forms of reaction or social response were carried out in an effort to overcome crime according to Muladi that efforts to tackle crime manifested themselves in various forms. The first form is repressive using criminal means which are often referred to as criminal justice systems. Second, efforts without using reason (prevention without punishment) and the third is utilizing efforts to form public opinion about crime and legal socialization through mass media widely. (prevention without punishment) which called Muladi as a criminal policy of non-criminal justice systems can be distinguished in the typology of preventive measures namely primary prevention, secondary prevention, and tertiary prevention.

Events to address the problem of crime in the community are divided into large businesses, namely: Informal and Formal. Informal countermeasures (informal social control) are actions taken through the family environment, neighborhoods (*Rukun Tetangga/RT* and *Rukun Warga/RW*), schools, religious institutions, and so on. The formal prevention (formal social control) is through the criminal justice system (criminal justice system).

One effort to overcome social problems using legal means including criminal law is a field of law enforcement studies. besides, because the aim is to achieve public welfare in general, then even law enforcement policies are included in the field of social policy.

The law enforcement policy, according to Barda Nawawi Arief, is basically to use legal remedies, including criminal law as an effort to overcome social problems. This law enforcement policy covers both criminal law, civil law, administrative law and others.

Regarding the relationship between social policies, law enforcement policies and criminal policies that rational efforts to tackle crime from the community are essentially part of law enforcement policies in a broad sense (covering both criminal, civil, administrative law and others) because the purpose is protection community to achieve community welfare, even then law enforcement policies are included in the field of social policy. thus social policies, law enforcement policies and criminal policies have the same ultimate goal of protecting the community in order to achieve social welfare. therefore, social policies, law enforcement policies and criminal policies must be integrated policies.

## Conclusion

Criminal policy and social policy are essential substances in law enforcement in Indonesia. Both are approaches that can be taken in an effort to tackle crime. When the state only focuses on the effectiveness of criminal policies alone, law enforcement in the empirical level will be difficult to maximize. Thus, criminal

policy must be accompanied by social policy, moreover a rule is applied to people who have eastern cultures. So that the renewal of criminal law to be carried out in Indonesia must be an embodiment of renewal of various aspects and policies. The renewal must pay attention to all the backgrounds that influence it, such as: socio-political, socio-philosophical, socio-cultural aspects or from various other aspects of policy.

Some forms of social-criminal policies in an effort to tackle crime can take the form of prevention without punishment and efforts to influence people's views on crime, including criminalization through mass media. The concept of social policy in the criminal field can be a way of effective application of criminal law in Indonesia in addition to continuing to rely on pure criminal policies which indeed become the core of enforcement of criminal law in all countries in the world.

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