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The Urgency of Codification of Criminal Law Regulation on Providing Legal Certainty in Indonesia

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***Abstract*— Codification is a form of modern law that exists today, codification indicates that a law has been terbukukan in an official rule book to an authority which is a state law. The criminal law is a branch of law that is central at the same time is extremely important to be codified, the current criminal law material has been codified neatly in the Criminal Code but codifying it still resulted in stolen goods stolen goods criminal law beyond the codification of the effects and the impact of it all is uncertainty and multi regulatory simpler and complicated, so with a variety of special legal developments that exist in the realm of criminal makes codified into something that should and begin immediately to create legal certainty in national legal systems Indonesia.**

Keywords*— *codification, criminal law, legal certainty

I. INTRODUCTION

Many who say that codification is a legal culture that is applying the law derivative negra civil law, but today's culture Suati codification in order to achieve certainty is that already very universal sestu legal world remember one purpose of the law that can not be released Iyalah legal certainty [1]Referring to the history of the concept of codification, Jeremy Bentham (1748-1832) was the person who first introduced the term codification in English "Codification" .[1]

The term embryo is even codification and development only began in the century to 182 despite the codification which etymologically derived from Latin codex, which means we can track the books since the days of the Babylonian Hammurabi Code 1750 BC through the gaining influence of Sumerian and Akkadian.[2] According to Franz Wieacker, codification is a unique creation that is highly maintained and proud of the Continental European culture, while according to the Pio Caroni, codification is a fundamental turning point and the beginning of an era in the history of European law. Codification system is a social phenomenon historically developed around the 19th century For its own Criminal Law codification affair was common and almost certainly Criminal Law is one law that is easy for codification, history recorded on the date of entry into force October 15, 1915 set Wetboek van Stracfrecht voor Nederlandsch Indie and entered into force on 1 January 1918. this is the book that to this day still exist as lex generalis codification of the existing criminal law in Indonesia.

[1] Expert Group on the Codification of the Criminal Law, codifying the Criminal Law, (Department of Justice, Equality and Law Reform, Dublin, November 2004), chapter [1:06].

[2] Franz Wieacker, Blüte und der kodifikationsidee crisis, (Berlin: Festschrift fur Gustav Boehmer, 1954), p. 34. Translated in English by Reinhard Zimmermann.

II. THE URGENCY TO CODIFY CRIMINAL LAW REGULATIONS

Speaking of criminal law in Indonesia then we will talk about indigenous Criminal Law as criminal law that existed before the Criminal Law moderent entered in Inonesia, according to Van Vollenhoven, in Indonesia there are 19 kinds of people of indigenous or *rechtsgemeenschapen*. Each *rechtsgemeen-schapen* have their own customary laws that are different from customary law in rechtsgmeenschapen another, so for the whole of Indonesia there is no unity and legal certainty. Nationally there are no legal unity and legal certainty for each region taking its own laws which differ from each other. So for the sake of unity and certainty of Indonesian law requires a national law, which applies equally to all citizens of the Republic of Indonesia.

III. POLITICS OF LAW CODIFICATION AND PRACTICE OF LAW REFORMS

Since independence day of Indonesia until today actually the criminal law reform has always been an endless urgensifitas akademisis, particularly among criminal experts. The reason appears about the urgency, there are some kind of punishment such as: for political reasons defined bahwasannya sovereign states are supposed to use the sovereign law is not the law also peningalan kolonila the requirement for meaning plunder and greed., kemidian second reason is sociological reasons that reflect an applicable law should be the law that mencermintakn culture of a nation that is applicable and the latter is a practical reason means of the development of criminal law itself based keterbutuhan times then it sewajaranyalah criminal law was in codification recycled into more relefan in the civilization of Indonesia.

In connection with the above, the problem of codification certainly can not be separated from the political

direction of the law in general and in particular to the development of law in relation to the characteristics of the product legislation. As mentioned in the previous section of this paper, codification aims to achieve unity, legal certainty and simplification of the law. to include holding codification and unification of the law in areas of certain laws by taking into account legal awareness evolved in society "TAP MPR No. II / MPR / 1988 re-Outline of State Policy under (c): "*Within the framework of the development of law needs to be more improved law reform efforts in a focused and integrated, among others codification and unification of certain areas of law as well as the preparation of new legislation that is needed to be able to support development in various fields in accordance with the demands of development and the level of public awareness*".

New in 1999 took the direction of political change national law through TAP MPR Number IV / MPR / 1999 re Outline of State Policy paragraph (c), which reads:[3]According to Jerome Hall, such a case is because the purpose of codification is not only limited to collecting a rule, but until the unification of the legal and political system of a country. The view from Jerome Hall also reinforced by Frank Gahan who said the following: "*Codification of law may mean no more than the reduction of law into a compact form, setting out the existing law in the form of concise general principle. Such a code is a mere consolidation or a digest of the law; it is the concern not so much the substance as with the form of law. On the other hand, Codification may be much more ambitious, It may aim at supplying a complete logical system of ideal law*". Frank Gahan of the opinion can be concluded that codification is a matter that has not only the purpose of consolidation / compilation.

IV. CODIFICATION MODEL AND ITS STRUCTURE

Each country has a background that is different when applying the codification of the rules of the law, as an example is the context of the codification which in applied by France in which the goal is to address the "lack of legal certainty and unity of law". Basically, the codification of written law has three objectives , first is to obtain legal certainty where the law has actually been written in one book of the Law; second is simplification of law, which will facilitate the community in obtaining or owning, and then studying it; and third is the unity of the law, which can prevent uncertainty of understanding of the laws that related, the possibility of irregularities in the implementation, and the blind law of society in a rut. Whereas in the modern era, codification of the law has a purpose: (ICJR, 2015: 7-10)

a. For designing and simplify difference legislation into one collection with a view to facilitate the legal practitioners;
b. For making material law systematization and unification of the law, so that an arrangement of interconnected;
c. For establish a new legal system based on political fundamentals of law, so that each legal institution to support each other to achieve the unity of the system.

Where, in forming a codification in the form of a law there are at least four methods that must be considered: (ICJR, 2015: 8)

a. Unifying the applicable regulations, meaning that the codification of the law does not make new regulations because it only unifies the regulations that are in force. The regulations can be in the form of written law, but also can be in the form of non-written law insofar as the existence of the unwritten law is recognized. Efforts to incorporate new regulations into the codification text ; on the one hand, can invite legal debate so that codification lasts a long time; on the other hand, can distance the purpose of codification, namely legal unity because new regulations tend to want to correct old regulations .
b. Second, classify similar material and arrange it into parts logically. Codification is an activity of gathering various kinds of rules and reuniting them into one book of regulations. Although the various regulations regulate one thing, it does not mean the amount and type of material is limited. Therefore, in bringing together diverse regulations must be arranged logically into part - sections. Each part is a unity of understanding , so that it will be easy to understand. If each part is easy to understand then the overall results of the codification are also easy to understand.
c. Third, it eliminates detailed and technical provisions. The codification of the law must avoid the appearance of detailed provisions; also technical provisions. Very detailed and technical provisions not only make the Law so complicated that it is difficult to understand, but it also reduces its ability to reach a long future. The results of a simple codification can last a long time because it can be translated into technical regulations that can be changed to follow the development of society.
d. Fourth, eliminate the provisions that overlap and contradictory. Because codification gather many provisions that are scattered in various regulations, it would be quite possible the emergence of conditions that overlap . Not only that, the contradiction between the terms of which one and the other provisions could also arise. To avoid this, for the sake of legal certainty, in the codification three principles of law must be used: first, the higher rules defeat the lower rules (*lex superior derogate legi inferiori*), second, the new rules defeat the old rules (*lex fosterior derogat priori legi*), three, special rules defeat general rules (*lex specialist derogat legi generalis*).
e. According to C.J. Friederich, there are three codification properties related to how they are arranged: (ICJR, 2015: 8)
f. Digest type of preparation by collecting and uniting all the rules of law that apply in society. Its main activity is to arrange, so that it does not contain original and new things. The role of lawmakers in codification is to recognize existing rules and sort out rules to be codified. Examples of codifications included in the digestion type are the steps of Emperor Justinus in Constantinople at the beginning of the sixth century when compiling the corpus iuris civilis.
g. Reform type is if the compiler of the codification makes rational considerations by holding a certain pattern of legal materials that have been applied for compilation. After compiling and sorting the legislator then proceed with steps to change and develop it from existing laws into

[3] Érôme Hall, "Codification of the Criminal law" in the American Bar Association Journal, Vol.38 No.11, November 1952, p. 952.

formulations that developed from their origin. The Prussian Civil Code and the French Civil Code are examples of this type.

h. Revolutionary type, i.e. if the codification carried out contains revolutionary properties. The revolutionary nature is obtained if the drafting of the Law is really endeavored to explore the sources of law that are in society, not passive, and consciously made to produce law as a picture of a new and perfect society.
i. According to Imam Syaukani and Ahsin Thohari who quoted the opinion of Tengku Muhamad Radhie, there were two codification models namely the open codification model and the partial codification model.
j. The open codification model, outside of the code, allows for independent regulations. This model opens the possibility to regulate something that is caused by new developments, but it is not regulated in the codification. However, the new regulations must remain closely related to the Law. Thus the open codification model gives the possibility to accommodate developments that will occur in the future with legal regulations outside the codification.
k. The partial codification model is carried out on certain parts. Here the codification is only carried out in parts which are classified as neutral law and do not include laws relating to cultural awareness and religious beliefs. This is done because often state legislation in the field of religious law aimed at certain religious communities can cause national disintegration. But the development of democratic politics has changed the political constellation so that the demands to express religious beliefs are included in the codification.

V. CONCLUSION

The codification is important of criminal law regulations is to support the success of interest law in the form of certainty, the codification of the Criminal Law is urgent applied in Indonesia because it was too breadth of the spread of criminal law dibergai perturan regulations which particular so that simplification and synchronization criminal law is not negotiable bargaining again as a form of refreshment and improve the effectiveness of penengakan law, especially criminal law in Indoneisia, despite the political climate law in Indonesia makes it seems difficult to happen does not mean it can not be realized so urgensifitas codification of criminal law in Indonesia has reached the point where it has to be done in order to achieve legal certainty equitable.

VI. REFERENCES

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