



## The Formulation Policy of War Crimes in the Reformation of Indonesian Criminal Law

Evin Dwi Nugroho<sup>1</sup>, Joko Setiyono<sup>2</sup>

<sup>1</sup>Master of Law Program, Universitas Diponegoro, E-mail: [evindwinugroho2@gmail.com](mailto:evindwinugroho2@gmail.com)

<sup>2</sup>Faculty of Law, Universitas Diponegoro, E-mail: [jokosetiyono61@yahoo.com](mailto:jokosetiyono61@yahoo.com)

### Article Info

Received: 10<sup>th</sup> February 2022

Accepted: 19<sup>th</sup> August 2022

Published: 15<sup>th</sup> September 2022

#### Keywords:

The Formulation Policy; War Crimes; Criminal Law Reforms

#### Corresponding Author:

Evin Dwi Nugroho, E-mail: [evindwinugroho2@gmail.com](mailto:evindwinugroho2@gmail.com)

#### DOI:

10.24843/JMHU.2022.v11.i03.p01.

### Abstract

*This study aims to describe and conduct in-depth research on the current war crime formulation policies in Indonesia that have not accommodated and future war crime formulation policies as a legal product to anticipate problems related to conflict and war. This study uses a normative legal research method, namely examining legal facts by considering the rules, values, principles, and norms regulated in the legislation. The results of this study explain that, firstly, war crimes in Indonesia only include genocide and crimes against humanity as described in the Law on the Human Rights Court. The Criminal Code regarding war crimes has not been written with certainty regarding the qualifications of war crimes themselves. Second, efforts to reform criminal law in Indonesia are currently in the drafting process, aiming to replace the Dutch colonial legacy of the Criminal Code through a criminal law policy approach in two ways: a policy-oriented approach and a value-oriented approach.*

## I. Introduction

Criminal law is a law with penalties. It aims to track every deviant behavior of a person. However, the imposition of sanctions does not always correspond with the purpose of a sentence.<sup>1</sup> In the modern era of nation and state environment, laws are formed and explored by the legislature based on various materials obtained from people's real lives. Its purpose is to create written rules to enforce applicable norms governed by laws and regulations.

The current development of technology in Indonesia may exacerbate the problems as well. This case needs the reformation of the criminal law contained in the Criminal

<sup>1</sup> Safaruddin Harefa, "Penegakan Hukum Terhadap Tindak Pidana Di Indonesia Melalui Hukum Pidana Positif Dan Hukum Pidana Islam," *University Of Bengkulu Law Journal* 4, no. 1 (2019): 35-58, <https://doi.org/10.33369/ubelaj.v4i1.7303>, h.37.

Code to adapt to the culture and personality of Indonesia.<sup>2</sup> Indonesian criminal law is said to be incompatible with current developments. The need for reform aims to develop the criminal law rules that govern the dynamic society. Efforts are made to reform criminal laws in order to harmonize the values that exist in society.<sup>3</sup>

War is a physical or non-physical action carried out by a group to fight over something valuable to them. In a narrow sense, war is hostility perpetrated by both members or groups of people who disagree, resulting in a conflict. The two sides stated that the war was intended to settle disputes and conflicts. As a result, it caused great pain and loss on both sides of the war.<sup>4</sup> War crimes are inextricably linked to International Humanitarian Law. Because war crimes and the law of war are strongly associated. To learn about the laws of war, it must first understand what war crimes are.<sup>5</sup>

According to the Rome Statute, war crimes are acts that are considered serious violations under the provisions of the 1949 Geneva Conventions. According to Geneva Convention I, the recovery of members who are sick or injured in a land war is governed by the Geneva Convention. The Geneva Convention II of 1949 concerns the recovery of members of the armed forces who are injured and suffer from cramps. The third Geneva Convention governs the treatment of prisoners of war. Meanwhile, the Geneva Convention IV of 1949 governs the treatment of civilians. There is an additional protocol I (1977) for international armed conflicts and an additional protocol II (1977) for non-international armed conflicts.<sup>6</sup>

Many countries have attempted to avoid war between groups from other countries and within groups within their own. Many people were killed as a result of attacks or gunfire from conventional weapons, such as rifles, missiles, grenades, and others, during the existence of a war carried out by both groups of warring parties.<sup>7</sup> Thus, war crimes are serious violations that are important or concerning in humanitarian law legal products.<sup>8</sup>

---

<sup>2</sup> Agustinus PH dan Yuliana Yuli W, "Pembaharuan Hukum Pidana Militer Dalam Pembaharuan Hukum Pidana Nasional," *Jurnal Yuridis* 1, no. 2 (2014): 203-16, <https://doi.org/http://dx.doi.org/10.35586/.v1i2.151.>, h.208.

<sup>3</sup> A.A Ngurah Oka Yudistira Darmadi, "Konsep Pembaharuan Pidana dalam Rancangan KuHP," *Jurnal Magister Hukum Udayana* 2, no. 2 (2013): 442-12, <https://doi.org/10.24843/JMHU.2013.v02.i02.p04.>, h. 1.

<sup>4</sup> Yosua Kereh, "Tinjauan Hukum Tentang Kejahatan Perang Dalam Konflik Bersenjata Menurut Hukum Internasional" 7, no. 1 (2019): 95-103, <https://doi.org/https://doi.org/10.35796/les.v7i4.24709.>, h. 95.

<sup>5</sup> Indah Sari, "Tinjauan Yuridis Hubungan Kejahatan Perang dan Hukum Humaniter Internasional," *Jurnal Ilmiah Hukum Dirgantara-Fakultas Hukum Universitas Dirgantara Marsekal Suryadarma* 11, no. 2 (2021): 23-43, <https://doi.org/https://doi.org/10.35968/jihd.v11i2.766.>, h. 24.

<sup>6</sup> Gracia In Junika Tatodi, "Kewenangan Mahkamah Pidana Internasional Dalam Penyelesaian Kasus Kejahatan Perang," *Lex Crimen* 8, no. 8 (2019): 126-37., h. 126.

<sup>7</sup> Muhammad Khairani et al., "Tinjauan Yuridis Kejahatan Perang Menurut Hukum Internasional," *Jurnal Indonesia Sosial Sains* 2, no. 12 (2020): 2126-37, <https://doi.org/https://doi.org/10.36418/jiss.v2i12.479.>, h. 2127.

<sup>8</sup> Hetty Hassanah, "Kejahatan Genosida dalam Ketentuan Hukum Nasional sebagai Kejahatan Tradisional," *Maleo Law Journal*, no. 26 (2017): 217-35., h. 218.

Indonesia currently lacks the political will to regulate its jurisdiction over war crimes. According to Yustina, war crime laws existed before the country gained independence. These provisions are not included in the transition of Dutch law to the Republic of Indonesia's national legal system. It can be inferred that there is a legal vacuum in the transition from Dutch law to national law on war crimes law. Within jurisdictions, war crimes and aggression remain a point of contention among UN member states. Furthermore, there is substance regarding war crimes, including crimes against humanity. Therefore, Law No. 26 of 2000 concerning the Human Rights Court has been considered sufficient in the responsibility for the protection of human rights.<sup>9</sup>

Humanitarian law is a product of international law that includes violations committed by a particular country. The violations under discussion are those actions that can lead to international and non-international armed conflicts. The theory of humanitarian law already existed. However, in its implementation, it is ignored by the political interests of certain parties.<sup>10</sup> Furthermore, in the four Geneva Conventions governing humanitarian law, there is an obligation on the armed conflict parties to respect the provisions of war.

The issue of conflict and war has become a hot topic of discussion in various countries. It is due to the large number of victims caused by conflicts and wars that it has arisen. War crimes have been around for a long time. However, war crimes were first regulated in the Hague Declaration of 1899, or the nineteenth century, and most recently in the 1998 Rome Statute. The urgency of reforming criminal law in Indonesia regarding war crimes has not been regulated specifically. Furthermore, many countries have regulated war crimes in their criminal codes. To accommodate this, it is necessary to regulate and formulate policies concerning war crimes. For this reason, it is worthwhile to investigate the current and future war crimes policy formulation in Indonesia.

This study aims to describe and conduct an in-depth investigation of Indonesia's current war crime formulation policies that have not been accommodated in the legislation. Furthermore, the purpose of this research is to delve deeper into the policy of formulating war crimes in the future as a form of legal product to anticipate problems related to conflict and war. Therefore, the purpose of this research is to look into several problems. The first problem is the current state of Indonesia's war crime formulation policy. The second problem then discusses how the war crime formulation policy in the future as an attempt at reformation or reformulation of Indonesian criminal law.

The discussion on war crimes in several journals remains to discuss crimes in general and refers to international criminal jurisdictions. Ida Ayu Kade Ngurah Anggreni et al.

---

<sup>9</sup> Rahadian Diffaul Barraq Suwartono, "Pengaturan Tindak Pidana Kejahatan Perang Di Indonesia: Politik Hukum Undang-Undang Nomor 26 Tahun 2000 Tentang Pengadilan Hak Asasi Manusia," *Jurnal Lex Renaissance* 6, no. 4 (2021): 649-63, <https://doi.org/10.20885/jlr.vol6.iss4.art1>, h. 661.

<sup>10</sup> Vikri Trias Wirottama, Joko Setiyono, dan Peni Susetyorini, "Penegakan Hukum Humaniter Internasional Terkait Penggunaan Expanding Bullet Dalam Konflik Bersenjata Antara Israel Dengan Palestina," *Diponegoro Law Jurnal* 9, no. 1 (2020): 224-37., h. 233.

discovered research entitled "Juridical Analysis of State Leaders' Responsibilities Related to War Crimes and Efforts to Trial by the International Criminal Court (Case Study of Omar Al-Bashir, President of Sudan)",<sup>11</sup> and also Joshua R. Wotulo's article entitled "The Mechanism of Law Enforcement Against War Crimes Reviewed from the Aspects of International Humanitarian Law."<sup>12</sup> The findings of the two studies discuss some of the elements contained in war crimes as defined by the provisions of the Rome Statute of 1998, the accountability of state leaders who have immunity from prosecution for war crimes under International Criminal Court regulations, as well as the handling procedures, including the obstacles encountered by the International Criminal Court in adjudicating the case. After reviewing the previous studies, this research differs from those studies in terms of title, problem formulation, and scope of the discussion, which discusses the laws and regulations governing war crimes in the present and future. This study is titled "War Crime Policy Formulation in the Reformation of Indonesian Criminal Law." Therefore, this discussion focuses on the reformation concept of future criminal law reform regarding war crimes in Indonesia.

## **2. Research Method**

This research uses the normative juridical method to examine the topic of discussion. It investigates the legal evidence with close attention to the legislation's rules, values, principles, and norms. To provide solutions to the problem formulation in this research study, the approach taken is in the form of a statutory, analytical, and conceptual approach. The research approach used to make this research comprehensively studied. The primary reference sources for this research are various literature, such as books, journals, and related laws and regulations, as well as secondary legal materials as supporting legal materials for this research.

## **3. Result and Discussion**

### **3.1. The Current Policies for The Formulation of War Crimes in Indonesian Positive Law**

In discussing war crimes, Yustina stated that war crime laws had existed before the independence of Indonesia. The regulation of war crimes has been included in the products of Dutch colonial laws, such as the Criminal Code. Furthermore, the Dutch colonial government adhered to several humanitarian law conventions and international treaties concerning war crimes. However, there is disagreement about

---

<sup>11</sup> Ida Ayu et al., "Analisis Yuridis Pertanggungjawaban Pemimpin Negara Terkait Dengan Kejahatan Perang Dan Upaya Mengadili Oleh Mahkamah Analisis Yuridis Pertanggungjawaban Pemimpin Negara Terkait Dengan Kejahatan Perang Dan Upaya Mengadili Oleh Mahkamah Pidana Internasional," *Program Studi Ilmu Hukum Universitas Pendidikan Ganesha Singaraja, Indonesia* 2, no. 3 (2019): 227-36, <https://doi.org/http://dx.doi.org/10.23887/jatayu.v2i3.28787>.

<sup>12</sup> Joshua R. Wotulo, "Mekanisme Penegakan Hukum Terhadap Kejahatan Perang Di Tinjau Dari Aspek Hukum Humaniter Internasional," *Lex Et Societatis* 7, no. 5 (2019): 49-57, <https://doi.org/https://doi.org/10.35796/les.v7i4.24703>.

war crimes in Indonesia. It is whether Indonesia inherits the legal provisions established by the Dutch colonial government or not.<sup>13</sup>

After Indonesia's independence, the Dutch colonists in the Dutch East Indies formulated war crimes prevalent in Indonesia through Staatblad No. 44 of 1946. Afterward, this provision became a material law on war crimes in the Dutch East Indies after Indonesian independence was declared. Then, the Staatblad No. 45 of 1946 regulated the formal provisions concerning war crimes in the Dutch East Indies territory. However, Yustina claims that the two provisions are not included in the national legal system. It is because the applicable criminal law in Indonesia is the one that came into place on March 8, 1942.<sup>14</sup>

The current Indonesian Criminal Code is the result of a transition from *Wetboek van Strafrecht's* Dutch law. Indonesian positive law has not defined the qualifications of war crimes in particular. However, referring to the Criminal Code, a war crime is the same as a crime against state security. As has been regulated in Chapter 1 of the Second Book of the current Criminal Code, it contains crimes against state security.

Referring to the formulation policy on war crimes, Barda Nawawi Arief concluded that the following crimes related to war crimes are included in the Criminal Code:

- a. Conduct or engage in a relationship with other countries with the intent of encouraging actions that could lead to war (Article 111 paragraph (1));
- b. Performing actions or behaviors that could endanger the country's neutrality during a war, even though Indonesia is not involved in the war (Article 122-1);
- c. During the war, it is forbidden to violate the rules that have been issued by the government (Article 122-2);
- d. Committing treason against the state by joining the war and becoming a member of an enemy country that is fighting against the Indonesian state (Article 123);
- e. Take actions that can help the opposing party during war or any attempt that can harm the state (Article 124 paragraph (1));
- f. Performing the action of leaking classified maps and blueprints of Indonesian army buildings and so forth, standing as enemy spies who give help to the opposing country during the period of war (Article 124 paragraphs (2) 1 and 2);
- g. Engage in actions that could lead to riots, rebellion, or desertion during the period of war (Article 124 paragraph (3), 2nd);
- h. Virulent conspiracies that can harm the state, are included in Article 124;
- i. Provide accommodation and facilitate the enemy's escape process even without the intention of giving benefit to the opposing country during the war (Article 126);
- j. Commit deception during the transfer of supplies for the Navy or Army throughout the war (Article 127).<sup>15</sup>

In terms of general criminal law, Indonesia has not formulated "war crimes" in Law No. 26 of 2000, defining the Human Rights Court as a jurisdiction. The Human Rights

---

<sup>13</sup> Yustina Trihori Nalesti Dewi, *Kejahatan Perang dalam Hukum Internasional dan Hukum Nasional* (RajaGrafindo Persada, 2013), h. 181.

<sup>14</sup> Ibid., h. 188.

<sup>15</sup> Barda Nawawi Arief, *Pembaharuan Hukum Pidana Dalam Perspektif Kajian Perbandingan* (PT Citra Aditya Bakti, 2011), h. 188-189.

Law considers the legal textual aspect of the law in human rights courts. The law adopted from the Rome Statute, in which the Human Rights Law puts two crimes out of the four crimes regulated by the Rome Statute. Indonesian human rights law defines vicious crimes as "crimes against humanity and genocide." Several countries have ratified the Rome Statute as national law; more than 100 countries have used the Rome Statute as a reference in war crime law enforcement.<sup>16</sup> This law respects international law guidelines regarding the segregation of criminal acts on a person's independence or physical freedom, even though it does not explain war crimes in particular. The absence of jurisdiction regarding war crimes in Law No. 26 of 2000 concerning the Human Rights Court creates problems. It is because, in the event of a non-international armed conflict, violations against protected parties under Article 3 of the 1949 Geneva Conventions are categorized as serious violations if addressed to those who no longer take an active role in the feud. Members of the force who are included in the category of not performing their duty during wartime are members who have laid down weapons used for war and members who have become *hors de combat* due to injuries or illness, as well as detention and other matters. Therefore, based on the violations committed by the perpetrators, they cannot be prosecuted under this human rights law, despite having fulfilled several elements contained in Article 3 of the 1949 Geneva Conventions.<sup>17</sup>

Indonesia takes a stand for world peace and ensures the implementation of human rights, providing protection, justice, certainty, and benefits that ensure the security of individuals or societies. According to the substance of Law No. 26 of 2000 concerning the Human Rights Court, the types of serious violations referred to in Article 1 number 2 are those concerning "the Crime of Genocide" and "Crimes Against Humanity" as defined in article 7 of the provisions.<sup>18</sup> Human rights violations are classified into two types: ordinary violations and serious crimes. Serious crimes are known as extraordinary crimes, which involve the human rights of every individual.<sup>19</sup> Regarding these violations, which include serious crimes, the retroactive principle applies in Article 28 J paragraph (2) of the 1945 Constitution derived from international law. It states that in implementing the rights and freedoms, everyone must comply with the limits set by law. Compliance with these laws aims to protect everyone's

---

<sup>16</sup> M.O.Saut Hamonangan Turnip dan Rizky Alif Kbar, "Urgensi Indonesia Meratifikasi Statuta Roma Dan Harmonisasinya Pada Undang-Undang Nomor 26 Tahun 2000 Tentang Pengadilan Ham," *Jurnal Pendidikan Tambusai* 4, no. 1 (2020): 453-61, <https://doi.org/https://doi.org/10.31004/jptam.v4i1.482>, h. 454.

<sup>17</sup> Heru Cahyono, "Kejahatan Perang Yang Diatur Dalam Hukum Internasional Dan Hukum Nasional," *Jurnal Hukum Humaniter* 1, no. 1 (2005): 120-53, <https://doi.org/http://dx.doi.org/10.25105/teras-irev.v1i1.5391>, h. 150.

<sup>18</sup> Fatma Faisal, "Eksistensi Pengadilan Hak Asasi Manusia Terhadap Penegakan Hak Asasi Manusia Dalam Sistem Peradilan," *Gorontalo Law Review* 2, no. 1 (2019): 33-48, <https://doi.org/10.32662/golrev.v2i1.559>, h. 35.

<sup>19</sup> Bagus Hermanto, "Rekonstruksi Penguatan Eksistensi Pengadilan Hak Asasi Manusia Di Indonesia Berlandaskan Pancasila Dan Statuta Roma Terhadap Pengaturan Undang-Undang Pengadilan Hak Asasi Manusia," *Jurnal Legislasi Indonesia* 16, no. 1 (2021): 89-106., h. 94.

recognition and respect for their rights and liberties in ways consistent with religious and moral values in order to achieve public order in a democratic society.<sup>20</sup>

According to war crimes in the Geneva Conventions, to provide legal sanctions for those who are actively involved in being responsible for any war crimes committed can use the correlation of humanitarian law provisions as a reason. The substance of Articles 2 and 3 of the 1949 Geneva Conventions is regarding serious violations, violations of the law, and the customs of war. It explains that the International Court of Justice has the authority to try anyone who has committed or is commanded to commit serious violations against the 1949 Geneva Conventions. According to the convention, every person and object are given protection from intentional killing, inhumane treatment that can cause extreme suffering, massive destruction, forcing a prisoner of war to serve in the enemy's armed forces, and other unlawful activities that may override the equal rights of prisoners of war and civilians before the law.<sup>21</sup>

It can be an integral part of the policy of controlling and preventing political crimes through criminal law in the case of "war crimes." According to Stephen Schafer's book "The Political Criminal," all crimes are political crimes in the broadest sense. Barda Nawawi Arief stated that political crime is a broad term. It is because the scope has not been determined yet. As a result, there are various charges for political crimes, including:<sup>22</sup>

- a. Crimes against the state/ state security;
- b. Crimes against the political system;
- c. Crimes against the power system;
- d. Crimes against principal values or principal rights (HAM) in society/ state/ politics;
- e. Crimes that contain elements or motives of political;
- f. Crimes in gaining, maintaining, or dropping power;
- g. Crimes against political institutions;
- h. Crimes by the ruling state/ politicians;
- i. The crime of power abuse.

The provisions of several articles above concern the countries that justify the Geneva Conventions required to regulate a national legal product. It intends to provide criminal sanctions against individuals and groups who commit serious violations of the Geneva Conventions on purpose. In this case, the state will try a person or group of war crimes perpetrators using the applicable national judicial mechanism. According to the Indonesian legal system, the handling of crimes only includes genocide and crimes against humanity as defined in the Law of the Human Rights Court. Concerning war crimes, there is no certainty in the Criminal Code regarding the qualifications of war crimes themselves. However, it is apparent from the current

---

<sup>20</sup> Mahfud, "Integrasi Ham Dan Hukum Humaniter Dalam Sistem Peradilan Ham Nasional Dalam Rangka Penerapan Peradilan Ham Terhadap Pelaku Kejahatan Kemanusiaan," *Jurnal Ilmu Hukum* 17, no. 61 (2013): 397-413, h. 397-413.

<sup>21</sup> Ibid., h. 48-49.

<sup>22</sup> Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, (Jakarta: Kencana Prenada Media Group, 2018), h. 182-183.

Dutch legacy of the Criminal Code that a war crime is the same as a crime against state security.

### **3.2. The Formulation Policy of War Crimes in The Future**

According to Marc Ancel, Penal Policy or Criminal Law Policy is a science and art with practical aims to enable a better formulation of positive legal regulations to provide guidance for the legislators and the courts that apply the laws and regulations. The nature of the penal policy is part of criminal politics. It is policies that use criminal law as the medium (penalization).<sup>23</sup>

In addition, based on Sudarto, legal politics is the state policy through the intermediary of the competent institutions that determine the desired regulations to accommodate and express what is inside society and achieve what is aspired. Meanwhile, Nyoman Serikat Putra Jaya explains the efforts to reform criminal laws. It is a continuous effort to carry out legislation to harmonize criminal laws and regulations with legal principles and values that have developed in society at the national and international levels.<sup>24</sup>

In conclusion, individuals and society hope for peace in their country. Therefore, many people avoid war between groups. Each country's commitment demonstrates that they have a goal in mind for world peace. The conventions in the national laws of the countries are proof of it. Therefore, all countries around the world must hold hands in the commitment to aspiring for peace in the world.<sup>25</sup>

The policy of formulating criminal law regarding "war crimes" and the efforts to restrain war crimes in Indonesia in the future can be carried out by forming a policy of war crimes formulation in Indonesia. There is no specific formulation or chapter in the Criminal Code or special laws outside the Criminal Code that regulate "war crimes" in Indonesia. However, as discussed in the first discussion, there is a formulation in the Criminal Code regarding war or those actions carried out during wartime that is included in the "Crimes Against the State" group in Chapter I, Book II of the Criminal Code.

The reformation attempt of criminal law in Indonesia is currently in the process of drafting. In particular, it requires critical and constructive comparative studies to replace the criminal code of the Dutch colonial era. In principle, legal reformulation attempts to renew the substance of the law to make law enforcement more effective and restrain crimes. It aims to provide protection for the community and handle humanitarian issues to achieve national goals.<sup>26</sup> Comparative studies of legal products

---

<sup>23</sup> Fifink Praiseda Alviolita dan Barda Nawawi Arief, "Kebijakan Formulasi Tentang Perumusan Tindak Pidana Pencemaran Nama Baik Dalam Pembaharuan Hukum Pidana Di Indonesia," *Law Reform* 15, no. 1 (2019): 130, <https://doi.org/10.14710/lr.v15i1.23359>, h. 142.

<sup>24</sup> Ibid., h. 142.

<sup>25</sup> M. Asnawi, "Konsistensi Penegakan Hukum Humaniter Internasional Dalam Hubungan Antar Bangsa," *Jurnal Hukum Samudra Keadilan* 12, no. 1 (2017): 111-22., h. 112.

<sup>26</sup> Randy Pradityo, "Menuju Pembaharuan Hukum Pidana Indonesia: Suatu Tinjauan Singkat," *Jurnal Legislasi Indonesia* 14, no. 2 (2017): 137-44, <https://doi.org/https://doi.org/10.54629/jli.v14i2.92>, h. 140.



from other countries' criminal codes can assist in analyzing and examining crime prevention policies. The following are some of the international criminal codes that govern war crimes, as follows:

a. The 1995 Albanian criminal code

The policy of formulation regarding war crimes contained in the 1995 Albanian Criminal Code is included in Chapter I on Crimes Against Humanity. The regulation of war crimes is alongside genocide and crimes against humanity. In Article 75 regarding war crimes, it stated that acts committed by different peoples or nations in times of war, such as murder, persecution, or deportation for slavery, as well as any inhumane exploitation to cause damage or loss to the civilian population or in the territory of the nation, killing or abusive treatment to prisoners of war, killing of hostages, destruction of public or private property, destruction of cities, public lands, or villages that do not constitute a military interest. In this case, the punishment is not less than fifteen years in prison, life imprisonment, or the death penalty.<sup>27</sup>

b. The 1996 Macedonian criminal code

The Macedonian Government aims to impose criminal sanctions against perpetrators of war crimes under Special Section Chapter 34 on Crimes against humanity and International Law. Chapter 34 contains information about:

Genocide (Art. 403);

- 1) War crimes against the civilian population (Art. 404)
- 2) War crimes against the ill and wounded person (Art. 405);
- 3) War crimes against prisoners of war (Art. 406);
- 4) Usage of the prohibited war advice (Art. 407);
- 5) Organizing groups and advocating for genocide and war crimes (Art. 408);
- 6) Killing and injuring the enemy in a contrary way to the law (Art. 409);
- 7) Illegal confiscation of goods against killed or injured people in a battle (Art. 410);
- 8) Violation of the parliamentary member (Art. 411);
- 9) Abusive treatment of the members of parliament (Art. 412);
- 10) Postponing the repatriation of prisoners of war (Art. 413);
- 11) Destruction of cultural and historical monuments (Art. 414);
- 12) Advocating for a war of aggression (Art. 415);
- 13) Misuse of international symbols (Art. 416);
- 14) Racial discrimination and so on (Art. 417);
- 15) Transporting people into slavery (Art. 418);
- 16) International terrorism (Art. 419);
- 17) Harming the persons who are under international protection (Art. 420);
- 18) Hostage (Art. 421)

According to Barda Nawawi Arief, there are some interesting cases found in Macedonian criminal law. There are:

---

<sup>27</sup> Barda Nawawi Arief., Op.Cit., h. 194.

- 1) The formulation of war crimes goes along with other international crimes, such as genocide, racial discrimination, slavery, terrorism, taking hostage, and piracy of ships or airplanes.
  - 2) Only Articles 404 to 415 define crimes committed during wartime or periods of occupation that violate international law. Therefore, any offense is classified as a general offense.
  - 3) According to Article 404, all war crimes against the civilian population are formulated in one Article and can be sentenced to the same punishment. The various types of crimes, such as attacking the population resulting in death, serious injury, damaging health, attacking impulsively and without consideration, inhumane acts, forcing prostitution or rape, committing acts of terror, taking hostage, collective punishment, enforcement to work in the enemy's armed forces, forced labor, and others according to article 404.
  - 4) The formulation of war crimes does not distinguish between war crimes in international and non-international scope.<sup>28</sup>
- c. The 1998 Latvian criminal code
- The state of Latvia includes war crimes as part of Chapter IX: Crimes Against Humanity and Peace, War Crimes, and Genocide. The chapter discusses:
- 1) Genocide;
  - 2) Crimes against peace;
  - 3) war crimes;
  - 4) Constrain the resident in enemy territory;
  - 5) Looting or robbery;
  - 6) Promote war of aggression;
  - 7) Violation of national equality or racism and human rights restrictions;
  - 8) Destruction of national and cultural heritage.

The previous chapters explain that the war crimes regulation is put into a single article, Section 74. In conclusion, a person who commits the crimes may be subject to life imprisonment or deprivation of liberty for not less than 3 years and not more than 20 years. The crimes in charge are violations of laws and customs regarding prohibited acts in a war that are contained in international treaties that bind the Republic of Latvia, such as murder, torture, robbery, transfer, or assignment to perform forced labor against civilians, hostages, prisoners of war, or to destroy cities and so on.<sup>29</sup>

According to the draft of the Indonesian criminal code, the formulation of "Crime of Genocide" and "Crime Against Humanity" will be regulated in the National Criminal Code. These criminal acts are detailed in Chapter XXXIV of Special Crimes Part One, titled "Severe Crimes Against Human Rights," which states:

- Article 598

---

<sup>28</sup> Ibid., h. 201-203.

<sup>29</sup> Ibid., h. 200-201.

Article 598 of the Indonesian criminal code draft explains the actions that can be classified as genocide actions, as follows: (a) killing members of the group; (b) causing severe physical or mental harm to members of the group; (c) creating living conditions for the group that is considered to result in physical destruction, either in whole or in part; (d) imposing practices aimed at preventing births within the group; or (e) forcibly transferring children from one group to another. Therefore, the provision of criminal sanctions for the crime of genocide is a threat of criminal imprisonment for 5 to 20 years. More severe penalties can be in the form of the death penalty or life imprisonment.

- Article 599

Article 599 of the Indonesian criminal code draft here discusses crimes against humanity. The provisions contained in this article are divided into 4 (four) paragraphs which explain that criminal sanctions may be imposed. It is as follows: (a). murder, extermination, expulsion or forcible transfer of population, deprivation of liberty or other deprivation of physical freedom in violation of the basic rules of international law, or the crime of apartheid. It may be sentenced to the death penalty, life imprisonment, or a minimum imprisonment of 5 (five) years and a maximum imprisonment of 20 (twenty) years. (b). slavery, torture, or other inhumane acts of a similar nature aimed at causing severe suffering or serious injury to the body or physical and mental health, with a minimum sentence of 5 (five) years and a maximum of 15 (fifteen) years. (c). persecution of groups or associations based on politics, race, nationality, ethnicity, culture, religion, gender, or persecution for other universally recognized discriminatory reasons as prohibited under international law, with a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years. And (d). rape, sexual slavery, forced prostitution, forced pregnancy, sterilization or forced sterilization or other equivalent forms of sexual violence, or enforced disappearance of persons with a minimum imprisonment of 5 (five) years and a maximum of 20 (twenty) years.

Considering the formulation of statutory policies in Indonesia, the legal product formulation regarding war crimes has to be optimal. The fundamental aims of the reformation of criminal law are to make reorientation and reformation of criminal law. It is through comparison of the other countries' criminal codes that they are considered recommendations and references in reformulating the legislation on war crimes in Indonesia. There are two approaches to implementing policies of criminal law. The first approach is concerned with the policy, or policy-oriented approach. The second approach is concerned with the value, or value-oriented approach.<sup>30</sup>

The approaches mentioned above will be elaborated upon from the perspective of the policy approach. It is divided into 3 (three) points of description. (a) As a social policy, legal reformation is a movement to overcome social problems such as humanity. It aims to support a national goal that is useful for the welfare of society. (b) As a component of criminal policy, legal reformulation is a movement to protect the entire community from criminal acts. (c) As part of law enforcement, this condition aims to reformulate the law substance, which has the purpose of making law enforcement in

---

<sup>30</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru* (Jakarta: Kencana, 2016), h. 29.

Indonesia effective. The fundamental idea of criminal law in the aspect of value is an approach from a value point of view. Renewal or reformulation of criminal law is a part of an evaluation or reevaluation action towards the legal product, especially regarding war crimes in Indonesia.<sup>31</sup>

#### **4. Conclusion**

Based on the discussion, it is possible to conclude that war crimes are currently regulated in Indonesia by the Criminal Code and Law No. 26 of 2000 concerning the Human Rights Court. The regulation of war crimes is not broadly explained in the Criminal Code, so reformulation of these crimes is required. The discussion infers a war crime is the same as a crime against national security. This issue has been addressed in Chapter I of Book II on Crime. Reformulation of these crimes is required because the Criminal Code still does not give detailed regulations regarding war crimes. There is still no reformulation or specific chapter of criminal law regarding war crimes in the Indonesian criminal code. There is also no special regulation or law except the criminal code that regulates the provisions regarding war crimes. The attempt to renew or reform criminal law in Indonesia is currently in the process of drafting, which aims to replace the Dutch colonial legacy of the Criminal Code.

#### **References**

- Alviolita, Fifink Praiseda, dan Barda Nawawi Arief. "Kebijakan Formulasi Tentang Perumusan Tindak Pidana Pencemaran Nama Baik Dalam Pembaharuan Hukum Pidana Di Indonesia." *Law Reform* 15, no. 1 (2019): 130. <https://doi.org/10.14710/lr.v15i1.23359>.
- Arief, Barda Nawawi. *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru*. Kencana, 2016.
- — —. *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*. Kencana Prenada Media Group. Jakarta: Kencana, 2018.
- — —. *Pembaharuan Hukum Pidana Dalam Perspektif Kajian Perbandingan*. PT Citra Aditya Bakti, 2011.
- Asnawi, M. "Konsistensi Penegakan Hukum Humaniter Internasional Dalam Hubungan Antar Bangsa." *Jurnal Hukum Samudra Keadilan* 12, no. 1 (2017): 111-22.
- Ayu, Ida, Kade Ngurah, Dewa Gede, Sudika Mangku, Ni Putu, dan Rai Yuliantini. "Analisis Yuridis Pertanggungjawaban Pemimpin Negara Terkait Dengan Kejahatan Perang Dan Upaya Mengadili Oleh Mahkamah Analisis Yuridis Pertanggungjawaban Pemimpin Negara Terkait Dengan Kejahatan Perang Dan Upaya Mengadili Oleh Mahkamah Pidana Internasional." *Program Studi Ilmu Hukum Universitas Pendidikan Ganesha Singaraja, Indonesia* 2, no. 3 (2019): 227-36. <https://doi.org/http://dx.doi.org/10.23887/jatayu.v2i3.28787>.
- Cahyono, Heru. "KEJAHATAN PERANG YANG DIATUR DALAM HUKUM INTERNASIONAL DAN HUKUM NASIONAL." *Jurnal Hukum Humaniter* 1, no. 1 (2005): 120-53. <https://doi.org/http://dx.doi.org/10.25105/teras-lrev.v1i1.5391>, h. 150.
- Darmadi, A.A Ngurah Oka Yudistira. "Konsep Pembaharuan Pidanaan Dalam

---

<sup>31</sup> Ibid., h. 29-30.

- Rancangan Kuhp." *Jurnal Magister Hukum Udayana* 2, no. 2 (2013): 44212. <https://doi.org/10.24843/JMHU.2013.v02.i02.p04.>, h. 1.
- Dewi, Yustina Trihori Nalesti. *Kejahatan Perang dalam Hukum Internasional dan Hukum Nasional*. RajaGrafindo Persada, 2013.
- Faisal, Fatma. "Eksistensi Pengadilan Hak Asasi Manusia Terhadap Penegakan Hak Asasi Manusia Dalam Sistem Peradilan." *Gorontalo Law Review* 2, no. 1 (2019): 33-48. <https://doi.org/10.32662/golrev.v2i1.559.>, h. 35.
- Harefa, Safaruddin. "Penegakan Hukum Terhadap Tindak Pidana Di Indonesia Melalui Hukum Pidana Positif Dan Hukum Pidana Islam." *University Of Bengkulu Law Journal* 4, no. 1 (2019): 35-58. <https://doi.org/10.33369/ubelaj.v4i1.7303.>, h.37.
- Hassanah, Hetty. "Kejahatan Genosida dalam Ketentuan Hukum Nasional sebagai kejahatan Tradisional." *Maleo Law Journal*, no. 26 (2017): 217-35.
- Hermanto, Bagus. "REKONSTRUKSI PENGUATAN EKSISTENSI PENGADILAN HAK ASASI MANUSIA DI INDONESIA BERLANDASKAN PANCASILA DAN STATUTA ROMA TERHADAP PENGATURAN UNDANG-UNDANG PENGADILAN HAK ASASI MANUSIA." *Jurnal Legislasi Indonesia* 16, no. 1 (2021): 89-106.
- Kereh, Yosua. "TINJAUAN HUKUM TENTANG KEJAHATAN PERANG DALAM KONFLIK BERSENJATA MENURUT HUKUM INTERNASIONAL" 7, no. 1 (2019): 95-103. <https://doi.org/https://doi.org/10.35796/les.v7i4.24709.>, h. 95.
- Khairani, Muhammad, Perdana Fadrijn Wira, Purboyo, Driaskoro Budi Sidarta, dan Surnata. "TINJAUAN YURIDIS KEJAHATAN PERANG MENURUT HUKUM INTERNASIONAL." *Jurnal Indonesia Sosial Sains* 2, no. 12 (2020): 2126-37. <https://doi.org/https://doi.org/10.36418/jiss.v2i12.479.>, h. 2127.
- Mahfud. "INTEGRASI HAM DAN HUKUM HUMANITER DALAM SISTEM PERADILAN HAM NASIONAL DALAM RANGKA PENERAPAN PERADILAN HAM TERHADAP PELAKU KEJAHATAN KEMANUSIAAN." *Jurnal Ilmu Hukum* 17, no. 61 (2013): 397-413.
- PH, Agustinus, dan Yuliana Yuli W. "Pembaharuan Hukum Pidana Militer Dalam Pembaharuan Hukum Pidana Nasional." *Jurnal Yuridis* 1, no. 2 (2014): 203-16. <https://doi.org/http://dx.doi.org/10.35586/.v1i2.151.>, h.208.
- Pradityo, Randy. "Menuju Pembaharuan Hukum Pidana Indonesia: Suatu Tinjauan Singkat." *Jurnal Legislasi Indonesia* 14, no. 2 (2017): 137-44. <https://doi.org/https://doi.org/10.54629/jli.v14i2.92.>, h. 140.
- Sari, Indah. "Tinjauan Yuridis Hubungan Kejahatan Perang dan Hukum Humaniter Internasional." *Jurnal Ilmiah Hukum Dirgantara-Fakultas Hukum Universitas Dirgantara Marsekal Suryadarma* 11, no. 2 (2021): 23-43. <https://doi.org/https://doi.org/10.35968/jihd.v11i2.766.>, h. 24.
- Suwartono, Rahadian Diffaul Barraq. "Pengaturan Tindak Pidana Kejahatan Perang Di Indonesia: Politik Hukum Undang-Undang Nomor 26 Tahun 2000 Tentang Pengadilan Hak Asasi Manusia." *Jurnal Lex Renaissance* 6, no. 4 (2021): 649-63. <https://doi.org/10.20885/jlr.vol6.iss4.art1.>, h. 661.
- Tatodi, Gracia In Junika. "KEWENANGAN MAHKAMAH PIDANA INTERNASIONAL DALAM PENYELESAIAN KASUS KEJAHATAN PERANG." *Lex Crimen* 8, no. 8 (2019): 126-37.
- Turnip, M.O.Saut Hamonangan, dan Rizky Alif Kbar. "URGENSI INDONESIA MERATIFIKASI STATUTA ROMA DAN HARMONISASINYA PADA UNDANG-UNDANG NOMOR 26 TAHUN 2000 TENTANG PENGADILAN HAM." *Jurnal Pendidikan Tambusai* 4, no. 1 (2020): 453-61.

<https://doi.org/https://doi.org/10.31004/jptam.v4i1.482.>, h. 454.

Wirottama, Vikri Trias, Joko Setiyono, dan Peni Susetyorini. "Penegakan Hukum Humaniter Internasional Terkait Penggunaan Expanding Bullet Dalam Konflik Bersenjata Antara Israel Dengan Palestina." *Diponegoro Law Jurnal* 9, no. 1 (2020): 224-37.

Wotulo, Joshua R. "MEKANISME PENEGAKAN HUKUM TERHADAP KEJAHATAN PERANG DI TINJAU DARI ASPEK HUKUM HUMANITER INTERNASIONAL." *Lex Et Societatis* 7, no. 5 (2019): 49-57.  
<https://doi.org/https://doi.org/10.35796/les.v7i4.24703>.

## **Regulations**

The Criminal Code

Law No. 26 of 2000 concerning the Human Rights Court

The Geneva Convention II of 1949

The 1995 Albanian criminal code

The 1996 Macedonian criminal code

The 1998 Latvian criminal code