

CRITICAL ANALYSIS OF MARGINALIZED COMMUNITIES IN INDONESIA FOR RECONSTRUCTION OF SOCIAL JUSTICE CRIMINAL LAW

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ABSTRACT The phenomenon of criminalization of marginalized communities in Indonesia is a complex and urgent legal and social justice issue to be addressed. This research aims to analyze the root critical causes underlying the criminalization of vulnerable groups and formulate ideas for reconstructing socially just criminal law. Through a socio-legal approach that combines literature study and field research, this research reveals various weaknesses in legislation, discriminatory law enforcement practices, and structural barriers marginalised communities face in accessing justice. The findings show that the reconstruction of socially just criminal law requires comprehensive and systemic reforms, which include revision of legal rules, paradigm shifts in law enforcement, strengthening access to justice, and transformation of legal culture that is more responsive to the needs of society. The reconstruction must be based on the principles of human rights protection, equality before the law, and empowerment of marginalized groups. This research offers concrete policy recommendations, such as revising the Criminal Code and related regulations, applying restorative justice in law enforcement, and increasing the budget and capacity for legal aid for the poor. Finally, this research emphasizes that the reconstruction of social justice criminal law is an ongoing and participatory process, which demands various stakeholders' commitment and active involvement in realizing the vision of a more just and humane law for all.

KEYWORDS: *Criminalization; Criminal Law; Legal Reconstruction; Marginalized Communities; Social Justice.*

1. INTRODUCTION

Marginalized communities frequently encounter intricate challenges in their everyday existence. One significant concern they encounter is the process of criminalization. Criminalization denotes the procedure through which the behaviours or conditions of individuals or groups are designated as criminal, thereby increasing their susceptibility to arrest, detention, and punitive measures (Joyce & Laverick, 2022). Poverty insufficient access to quality employment and education, and persistent social marginalization are several factors that often exacerbate this phenomenon (Thompson & Dahling, 2019).

The phenomenon of criminalizing marginalized communities is not a recent development. Stacey (2019) asserts that discriminatory law enforcement operations often focus on vulnerable populations, including underprivileged farmers, street vendors, and individuals residing in slums. Individuals frequently face allegations of criminal conduct solely based on their socioeconomic standing without thoroughly examining the structural elements that may have contributed to their circumstances (Jones, 2019). Hung (2024) posits that the criminalization of marginalized communities in Indonesia is fundamentally linked to the entrenched inequality and injustice present within the nation's social, economic, and political frameworks.

The ramifications of criminalization on marginalized communities are profound and deeply concerning. Rather than obtaining the necessary protection and support from the state, individuals frequently encounter violence, exploitation, and violations of their human rights (Capous-Desyllas et al., 2021). The process of criminalization not only results in the deprivation of individual freedom but also exacerbates the poverty and marginalization that these individuals endure (Renzulli, 2022). Notably, the criminal justice system, which is ostensibly designed to uphold justice, frequently contributes to the perpetuation of injustice (Kohler-Haussman, 2019).

In light of this concerning situation, it is imperative to undertake a thorough examination of the criminalization of marginalized communities in Indonesia. The analysis should boldly uncover the underlying causes of intricate issues, encompassing legal, social, and political dimensions. The focus must be directed towards identifying solutions, particularly through reformulating social justice within the realm of criminal law. A comprehensive and transformative approach is essential to dismantle the criminalisation cycle and foster a more just and inclusive society for all individuals.

2. METHOD

This research will employ a qualitative methodology utilizing socio-legal methods to critically analyse the criminalization of marginalized communities in Indonesia while also proposing concepts for reconstructing a socially just criminal law framework. Banakar (2019) articulate that

socio-legal research investigates law within a wider social framework, considering the interplay between legal systems, social institutions, and individual experiences. This methodology enables scholars to reveal the intricacies of legal phenomena and their effects on marginalized populations.

3. RESULT AND DISCUSSION

3.1 Portrait of Criminalization of Marginalized Communities in Indonesia

The issue of criminalization affecting marginalized communities in Indonesia has emerged as a significant and enduring concern. In numerous instances, individuals or groups who are socially and economically marginalized frequently become the subjects of an uneven and biased enforcement of criminal law. Marginalized groups such as impoverished farmers, street vendors, slum dwellers, and Indigenous peoples often encounter criminalization for engaging in actions that serve as survival strategies in the context of restricted access to resources and opportunities.

Enforcement of laws against unpleasant acts (Article 335 of the Criminal Code) or insults (Article 310 of the Criminal Code) is a common way to make people criminals. This is especially done against marginalized groups that protest or criticize government policies. Such actions are frequently viewed as threats to public order or political stability rather than valid expressions of community grievances or aspirations. Consequently, numerous activists or defenders of human rights representing marginalized groups are compelled to confront criminal charges.

The phenomenon of criminalization frequently arises within disputes concerning land or natural resources. Farming communities or Indigenous peoples who endeavour to protect their traditional land rights frequently face allegations of land grabbing, as outlined in Article 167 of the Criminal Code, or vandalism, as specified in Article 406. In contrast, more influential entities, such as plantations or mining corporations, can engage in the unsustainable exploitation of natural resources. It is noteworthy that Law No. 18/2013, which addresses the Prevention and Eradication of Forest Destruction, tends to be applied in a manner that disproportionately affects indigenous communities and smallholders rather than targeting the corporations that are primarily accountable for extensive deforestation (LP3ES, 2022).

Individuals belonging to marginalized groups in urban settings, including those residing in slums, frequently experience the imposition of stringent law enforcement measures. Actions such as forced evictions or raids frequently stem from local regulations that emphasize public order, often prioritizing urban aesthetics or commercial investment at the expense of the rights of the urban poor to secure housing and livelihoods. In numerous instances, individuals who contest evictions may be charged under provisions concerning disturbance, specifically Article 216 of the Criminal Code, or for resisting authorities, as outlined in Articles 212 or 214 of the Criminal Code.

The depictions of criminalization illustrate the frequent application of criminal law in a manner that is unjust and discriminatory towards marginalized groups within Indonesia. Rather than fulfilling their role of protection and empowerment, law enforcement officers often perceive marginalized communities as potential threats to societal order or progress. Conversely, it is observed that more influential entities, including corporations and political elites, frequently experience a lack of accountability, even when implicated in more severe offences (YLBHI, 2017). Consequently, it is imperative to adopt a more critical and reflective approach in examining the phenomenon of criminalization while simultaneously formulating legal and policy reforms that adequately address the needs and aspirations of marginalized communities.

3.2 Critical Analysis of Criminal Law Related to the Criminalization of Marginalized Communities

A critical analysis of the current criminal law is essential to understanding the criminalization of marginalized communities in Indonesia. Hadiz (2022) posits that criminal law often functions as an instrument for the control and punishment of marginalized groups rather than as a mechanism to protect their rights. This phenomenon is evident in numerous statutes and regulatory frameworks that often favour the interests of prevailing groups while neglecting the socioeconomic challenges encountered by marginalized populations.

One of the fundamental issues in this context pertains to the formulation of criminal acts, which frequently exhibit excessive breadth and ambiguity. This vagueness affords law enforcement officials considerable discretion, potentially leading to the criminalization of actions that merely reflect poverty or marginalization. Provisions concerning unpleasant acts, as delineated in Article 335 of the Criminal Code, or those about insults, as outlined in Article 310 of the Criminal Code, are frequently employed as instruments to target marginalized communities that engage in protest or express dissent regarding governmental policies. In the interim, provisions concerning land grabbing, as delineated in Article 167 of the Criminal Code, alongside those about vandalism under Article 406, are frequently enforced in a manner that is inequitable towards certain demographics, particularly farmers or Indigenous communities endeavouring to safeguard their ancestral rights to natural resources (Samosir, 2023).

In addition to the complexities inherent in criminal law, the issue of discriminatory law enforcement emerges as a significant concern, particularly regarding the criminalization of marginalized communities. Forced evictions or raids targeting urban poor communities are examples of how law enforcement officials frequently use a repressive and militaristic strategy when dealing with marginalized groups (Lund, 2020). Conversely, offences perpetrated by corporations or political elites frequently receive insufficient attention or are addressed with

significantly more lenient penalties (Yunus & Dahri, 2021). This disparity in treatment illustrates the unequal power dynamics fundamentally embedded within Indonesia's law enforcement framework.

Moreover, the absence of equitable access to justice for marginalized communities contributes to their criminalization. Reksodiputro (2020) posits that marginalized groups frequently encounter structural obstacles when accessing legal mechanisms to protect their rights. These obstacles include inadequate legal assistance, prohibitive case costs, and discriminatory attitudes exhibited by law enforcement officials. Consequently, individuals are susceptible to various human rights infringements and the misuse of authority within the criminal justice system.

Given the challenges, we must pursue comprehensive and transformative reform within criminal law. This means carefully reviewing the definitions of crimes in the Criminal Code and other related laws, making sure that they are fair to disadvantaged groups and accurately reflect their social and economic situations (Siti Ruhaini, 2013). Furthermore, law enforcement must transition from a repressive and militaristic methodology to one that is more humanistic and participatory, emphasising the principles of restorative justice and human rights (Manan et al., 2022).

Moreover, efforts aimed at enhancing marginalized groups' access to justice should be closely aligned with criminal law reforms. This may encompass providing quality and affordable legal assistance, simplifying legal processes, and delivering legal education and empowerment initiatives for the community (Reksodiputro, 2020). A comprehensive and socially equitable approach is essential for criminal law to effectively serve as a tool to protect and empower society's most vulnerable individuals.

3.3 Reconstruction of Social Justice Criminal Law

In light of the pressing and pervasive issue concerning the criminalization of marginalized communities, we must undertake a comprehensive and transformative re-evaluation of criminal law. Rys (2010) asserts that any reconstruction efforts should be grounded in principles of social justice, with a focus on safeguarding and empowering vulnerable populations. This necessitates a fundamental re-evaluation of our comprehension regarding the function and purpose of criminal law.

One of the essential steps in the reconstruction of criminal law involves the reform of existing legislation. The Criminal Code and associated legislation frequently exhibit excessively broad and abstract definitions of criminal offences, which are susceptible to misuse of authority and discriminatory enforcement (Sari & Sularto, 2019). Consequently, it is imperative to conduct a thorough review and extensive revision of the articles within the Criminal Code, specifically

focusing on those about crimes against public order, crimes against public authority, and crimes against property. The revision should focus on refining the scope of criminalization, eliminating overlapping or ambiguous provisions, and guaranteeing that the regulations do not exhibit bias against economically disadvantaged or marginalized populations.

Furthermore, the reformation of criminal law necessitates a fundamental transformation in the approach to law enforcement. More humanistic and participatory methodologies should supplant the repressive and militaristic strategies directed at marginalized communities. Law enforcement officials must receive appropriate training and are empowered to uphold the principles of restorative justice. This approach emphasizes restoring damaged social relationships and reintegrating offenders into society rather than imposing punitive measures (Reksodiputro, 2020). This approach necessitates the active participation of victims, offenders, and communities within the criminal justice process to guarantee that their interests and aspirations are duly acknowledged and considered.

Moreover, enhancing access to justice for marginalized groups should be aligned with social justice reform within the framework of criminal law. According to Law No. 16/2011 provisions concerning Legal Aid, it is incumbent upon the state to ensure the provision of quality and affordable legal assistance to individuals who are impoverished or in vulnerable circumstances. Nevertheless, implementing this law could be enhanced, considering the limited budget and resources designated for legal aid programs (Sukamto & Rohmah, 2022). Consequently, the government must demonstrate a more robust political commitment to prioritize access to justice issues. This can be achieved through increased budget allocations, the fortification of relevant institutions, and enhanced collaboration with civil society organizations actively providing legal aid.

Ultimately, the reconstruction of social justice within criminal law should be comprehended as an integral component of a comprehensive legal reform agenda. These reforms must involve changes to both the legal statutes and the operational procedures of law enforcement. Furthermore, there must be a comprehensive transformation of the legal framework to enhance its responsiveness to the needs and aspirations of society, with a particular focus on marginalized groups. The active involvement of diverse stakeholders is essential in the formulation and implementation of legal policies that are both equitable and inclusive. This includes the engagement of academics, legal practitioners, civil society organizations, and marginalized groups.

Criminal law can only effectively serve as a mechanism for achieving social justice and safeguarding the rights of our society's most vulnerable members through the adoption of a

comprehensive and transformative approach. This presents both a challenge and a moral obligation that we must collectively address in pursuit of a more equitable and humane future for Indonesia.

4. CONCLUSION

The criminalization of marginalized communities in Indonesia presents a multifaceted and pressing issue that necessitates careful examination within the realms of legal and social justice. An examination of the present circumstances uncovers a multitude of interconnected issues. These include the biased and multifaceted interpretations of criminal offences within legislative frameworks, discriminatory and oppressive law enforcement practices targeting vulnerable populations, as well as the systemic barriers encountered by marginalized communities in their pursuit of justice.

In light of these challenges, the reconstruction of social justice within the realm of criminal law emerges as a necessary and unavoidable obligation. The reconstruction should adhere to the fundamental principles of safeguarding human rights, ensuring equality before the law, and promoting the empowerment of marginalized groups. This necessitates thorough and systemic reform, encompassing the revision of laws and regulations, shifts in paradigms within law enforcement, enhancement of access to justice, and the transformation of a legal culture that is more attuned to society's needs.

Reconstructing social justice within the realm of criminal law presents significant challenges and is not a process that can be achieved swiftly or effortlessly. It necessitates robust political dedication from those in positions of authority, engaged involvement from diverse stakeholders, and an openness to contest prevailing norms and transform entrenched perspectives. It is imperative that broader initiatives aimed at addressing the structural root causes of the phenomenon of criminalization, including poverty, marginalization, and socioeconomic inequality, are implemented concurrently. It is important to recognize that the task of reconstructing a socially just criminal law is indeed feasible. It is an admirable objective we must persistently pursue to construct a more equitable, inclusive, and compassionate Indonesia. Each individual must align themselves with the interests of those who are most vulnerable and marginalized, thereby ensuring that the law serves as a mechanism for social justice rather than a tool of oppression. Reconstructing criminal law that embodies social justice is ongoing and participatory. One must possess a degree of humility to learn from previous errors, demonstrate courage in challenging established doctrines, and maintain an openness to dialogue and collaboration with diverse stakeholders. Only through this commitment can we aspire to progressively and reliably achieve the vision of a more equitable and compassionate criminal law, paving the way for a brighter future for all individuals in Indonesia.

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