



## Complaint Defiction and Ultimum Remedium in the Perspective of Positivism (Roman) Law School, and Realism, and Sociology, and Utilitarism and Freie Recht Slehre (Anglo-American)

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### VII. INTRODUCTION

Wetboek van Strafrecht voor Nederlandsch-Indie or Wetboek van Strafrecht or the Penal Code or the Criminal Code or Criminal Code consists of the First/First Book (Article 1 to Article 103. Concerning General Regulations) and Second Book (Article 104 to/d Article 488. Concerning Crimes) and the Third Book (Articles 489 to Article 569. Regarding Violations). At first Crimineel Wetboek voor Het Koninkrijk Holland (WvS) was made in 1795 and enforced in 1809. Then France colonized the Netherlands, and the Penal Code was born from 1811 to 1813. After the Netherlands became independent, Wetboek van Strafrecht was born in 1881, it was enforced in 1886, and Wetboek was born van Strafrecht voor Nederlandsch-Indie based on Koninklijk Betsuit (order of the king) February 10 1866. About Crimes for Europeans Juncto Algemeene Politie Strafreglement based on Ordonnantie 15 June 1872. About Crimes for Europeans. Juncto Wetboek van Strafrecht voor Nederlandsch-Indie based on Ordonnantie May 5 1872. Concerning Crimes Against Indigenous Indonesians and Indonesian Residents of Foreign Eastern Nations Juncto Algemeene Politie Strafreglement based on Ordonnantie June 15 1872. Concerning Violations Against Indigenous Indonesians and Indonesian Residents of Foreign Eastern Nations. On October 15, 1915, the Juncto Wetboek van Strafrecht voor Nederlandsch-Indie based on Ordonnantie 1915 Number 33 was published. Juncto Staatsblad 1915 Number 723, enacted throughout Indonesia on January 1, 1918. Now Wetboek van Strafrecht voor Nederlandsch-Indie became Wetboek van Strafrecht became the Book The Criminal Law Act (KUHP) was enforced throughout the Republic of Indonesia based on Staatsblatt 1915, Number 723. Juncto Staatsbladen 1945 Number 135. Juncto Staatsbladen 1946, Number 76. Juncto Staatsbladen 1947. Juncto Article-II-Transitional UUD 1945 on August 17 1945. Juncto UU -RI Number: 1 of 1946. Dated February 26, 1946.

Concerning Criminal Law Regulations. Article 1. By deviating as necessary from the Regulation of the President of the Republic of Indonesia dated October 10 1945, No. 2, it stipulates that the criminal law regulations currently in effect are the criminal law regulations that existed on March 8, 1942. Article 2. All criminal law regulations issued by the commander-in-chief of the former Dutch East Indies Army (Verordeningen van het Militair Gezag) are repealed. Article 3. If a penal code is written with the words "Nederlandsch-Indie" or "NederlandschIndisch (e) (en)", then those words must read "Indonesia" or "Indonesishc(e) (en)". Article 4. If in a criminal law regulation, a right, obligation, power or protection is granted or a prohibition is directed against an employee, agency, service and so on, which no longer exists, then that right, obligation, power or protection must be considered is given. The prohibition is directed at employees, agencies, offices and so on, which must be considered as replacing it. Article 5. Penal law regulations, which are wholly or partly currently unenforceable or contradictory to the position of the Republic of Indonesia as an independent country, or have no meaning any more, must be considered in whole or in part temporarily no longer valid. Article 6. Paragraph (1) The name of the criminal law

"Wetboek van Strafrecht voor Nederlandsh-Indie" is changed to "Wetboek van Strafrecht". Paragraph (2) of the Act can be called: the Criminal Code." Article 7. Without prejudice to what is stipulated in Article 3, all the words "Nederlandsch-onderdaan" in the Criminal Code are replaced by " Indonesian citizens".

Article 8. The Criminal Code is amended as follows: 1. In Article 4, paragraph 1, 1e, the numbers "104-108" must read "104, 106, 107 en 108" and the numbers "130- 133" read "131" 2. The words "Directeur van Justitie" in Article 15b are replaced by "Minister van Justitie". 3. Article 16 is amended as follows: a. the words "Directeur van Justitie" should read "Minister van Justitie" b. part of the sentence: "voorzopver betreft de Gouvernementslanden van Java en Madoera, van den assistant- resident en elders van het hoofd van plaatselijk bestuur" is replaced with "van den prosecutor" and the words "Gouverneur-Generaal" are replaced with "Minister van Justitie" . c. part of the sentence: "in de Gouvernementslanden van Java en Madoera ob bevel van den assistant-resident en elders van het hoofd van plaatselijk bestuur" in paragraph 3 is replaced by "op bevel van den Ajak" 4. In article 20 the words "het hoofd van plaatselijk bestuur (den assistent-resident) is replaced with "den prosecutor". 5. In Article 21, the words "Directeur van Justitie" are replaced with "Minister van Justitie". 6. In Article 29, paragraph (2)m the words "Directeur van Justitie " replaced with Minister van Justitie". 7. In article 33a, the word "Gouverneur-Generaal", is replaced by "President". 8. In article 44, paragraph 3, the words "de Europeesche rechtbanken", are replaced by "Supreme Court, Court of Appeal". 9. Article 76 is amended as follows: a. part of the sentence "of van den rechter in Nederland of in Suriname of in Curacao", is deleted. b. the words "inheemsche" and "Inlandsche" were deleted. 10. In article 92, part of the sentence "den Volksraad, van den provinciale raden en van de raden ingesteld ingevolge article 121, tweede lid en article 124, tweede lid der Indische Staatsregeling" is replaced by "een door of namens de regering ingesteld wetgeven, besturend of volksvertegenwoedigend lichaam". 11. Article 94 is abolished. 12. In article 104 the words "den Koning, de regeerende koningin of den Regent" are replaced with "den President of den Vice-President". 13. Article 105 is abolished. 14. In Article 110 paragraph (1) and paragraph (2) the numbers "104-108" should read "104,106, 107 en 108". 15. In Article 111 the words "hetzij" and part of the sentence "hetzij met een Indische vorst of volk" are deleted. 16. In articles 112 and 121 parts of the sentence "een Indische vorst of volk" is deleted. 17. In article 117 no. 3 saying "Gouverneur-General van Nederlandsch-Indie should be read "President". 18. In articles 122 and 123 the word "Nederland" should be read "Indonesie". 19. In article 128 part of the sentence: "een der in de Article 104 en 105 omschreven misdreijven" is replaced with "het in article 104 omshcreven misdrijf". 20. Head of Chapter II is replaced as follows: "Misdrijven tegen de waardigheid van den President en van den Vice-President". 21. Article 130 is abolished. 22. In article 131 the words "des konings of der Koningin" are replaced with "van den President of van den Vice President" 23. Articles 135 and 136 are abolished 24. In article 134 the words "Koning of der Koningin" are replaced with "President of den Vice- President" 25. Articles 135 and 136 are abolished. 26. In article 136 bis part of the sentence: "de Article 134, 135 en 136" must be read "Article 134". 27. In Article 137 part of the sentence "de Koning, de Koningin , den gemaal der regeerende Koningin, den troonopvolger, ee n lid van het Konniklijke Huis of den Regent" should read "den President of den Vice-President". 28. Article 138 is abolished. 29. Article 239 is amended as follows: a. paragraph (1) is abolished. b. in paragraph (2) part of the sentence "een der in Article 131-133 omschreven misdrijven" should read "het in Article 131 omschreven misdrijf". c. in paragraph (3) part of the sentence "een der Article 134-136 omschreven misdrijf" should read "de Article 134 omscht ven misdrijf". 30. The words "Nederlandsche" in articles 143 and 144 should read "Indonesische". 31. In articles 146 and 147 the sentences: "den Volksraad, van een provincialen raad of van een raad ingesteld ingevolge article 121 tweede lid, and wel ingevolge article 124 tweede lid der Indische Staatsregeling" should read "een door or names de Regeering ingested wetgevend, besturend of volksvertegenwoordigend lichaam". 32. Article 153 bis and article 153 have been abolished. 33. In articles 154 and 155 part of the sentence "Nederland of van

Nederlandsch-Indie" it should read "Indonesie". 34. Article 161 bis is abolished. 35. In article 164 the numbers "104-108" should read "104, 106, 107 en 108". 36. In article 165 the numbers "104-108" and 115-133" should read "104, 106, 107 en 108" and 115-129 en 131 respectively. 37. Article 171 is abolished. 38. In articles 207 and 208 part of the sentence: "Nederlan of in Nederlandch-Indie" should read "Indonesie". 39. In Article 210 paragraph (1) the 2nd part of the sentence "dan wel'aan een inlandschen officier van Justitie" is deleted. 40. In article 228 part of the sentence "vier maanden en twee weken" is replaced by "twee jaren". 41. Article 230, abolished. 42. In article 234 behind the words "in een postbus gestaken" are added the words "and wel aan een koerier toevertrouwd". 43. In article 238 the word "Gouverneur-General" should read "President". 44. Article 239 is amended as follows: a. part of the sentence "buiten de gevallen waarin het krachtens algemeene verordening veroorloofds is, zonder toestemming van den Vouverneur-Generaal" is deleted. b. the word "Inlander" is replaced by "Indonesian citizen". 45. In article 240 paragraph (1) No. 1 part of the sentence "167 der Indische Staatsregeling" should read "30 der the Constitution". 46. In articles 253 and 260 the words "van rijkswege of" are omitted. 47. In article 260 bis the sentences "hetzij van Suriname of Curacao" and "hetzij voorzoover merken betreft, van Nederland" are deleted. 48. In article 274 the word "Inlandsch" is deleted. 49. In article 420 paragraph (1) No. 2 parts of the sentence "dan wel de Inlandsch Officier van Justitie die" were omitted. 50. In articles 447, 448 and 449 the words "Nederlansch of" are deleted. 51. In articles 450 and 451 the words "Nederlandsche Regeering" are replaced by "Indonesische Regeering". 52. In articles 453, 454, 455 and 458 paragraph (1) the words "Nederlandsch of" are omitted. 53. In article 458 paragraph (2) the word "Nederlandschen" is replaced by "Indonesischen". 54. In article 459 paragraph (1), 461, 464 paragraph (1), 466, 467, 468, 469 paragraph (1), 470 and 471 the words "Nederlandschen of" are deleted. 55. In articles 173 and 474 the words "Nederlandsch (e)" are replaced by "Indonesisch (e)". 56. In articles 475, 476 and 477 the words "Nederlandsch of" are omitted. 57. Article 587 is amended as follows: a. the numbers and words "130, eerste lid" and "105" were omitted. b. the numbers "131-133" should read "131" 58. In article 490 No. 4 parts of the sentence "aan het hoofd van plaatselijk bestuur" den assistent-resident is replaced with "een het Hoofd van de politie". 59. In article 495, paragraph (1) part of the sentence "het hoofd van plaatselijk bestuur" (den regent) is replaced by "het hoofd van de politie". 60. In article 496 part of the sentence "het hoofd van plaatselijk, bestuur" (den assistent-resident), is replaced by "het hoofd van de politie". 61. In article 500 the sentence "het hoofd plaatselijk bestuur" (de resident), is replaced with "het hoofd van de politie". 62. In article 501 paragraph (1) no. 2 parts of the sentence: "het hoofd van plaatselijk bestuur (de assistent-resident) is replaced by "het hoofd van de politie". zijn, een Indonesischen adelijken titel voert, of een Indonesischen ordeteeken draagt" b. the words "s'Konings verlof" should read "verlof van den President". 64. In article 508 bis part of the sentence: "van een zelfstandige gemeenschap als bedoeld in article 121 eerste lid of article 123 tweede lid der Indische Staatsregeling dan wel van een waterschap" should read "van een bij de wet ingetstelde of eerkende zelfstandige gemeenschap". 65. In article 510 the sentence: "het hoofd van plaatselijk bestuur" (den resident) must read "het hoofd van de politie". 66. In article 516 the sentence: "het hoofd van plaatselijk bestuur of aan den door dezen aangewezen" should read "het hoofd van de politie of aan den door dezen aangewezen". 67. In article 524 the sentence "het hoofd van plaatselijk bestuur" (den assistent-resident) must read "den daartoe aangewezen ambtenaar". 68. In Article 544 paragraph (1) part of the sentence "het hoofd van plaatselijk bestuur" (den regent) must read "het hoofd van den politie". Article 9. Whoever manufactures objects such as currency or banknotes with the intention of operating them or orders them to be used as legal tender, shall be punished with a maximum imprisonment of fifteen years. Article 10. Any person who deliberately uses paper currency as legal tender, while he knows when receiving it knows or at least reasonably suspects that said goods are not recognized by the Government as legal tender, or, with the intention of carry it out or order it to be used as legal tender, provide it or import it into Indonesia, shall be punished with a maximum imprisonment of fifteen years.

Article 11. Any person who deliberately acts as legal tender for currency or banknotes which the Government does not recognize as legal tender, in cases other than those referred to in the previous article, shall be punished with a maximum imprisonment of five fifteen years.

Article 12. Anyone who accepts as a means of payment or exchange or as a gift or keeps or transports currency or paper money, while he knows that these objects are not recognized by the Government as legal tender, shall be punished with a maximum imprisonment of five years high. Article 13. If a person is convicted of committing one of the crimes referred to in articles 9, 10, 11 and 12, the currency or banknotes and other objects used to commit one of the crimes shall be confiscated, even if these objects are not belongs to the condemned.

Pasal 14 ayat(1): Barang siapa, menyiarkan berita atau pemberitahuan bohong, dengan sengaja menerbitkan keonaran dikalangan rakyat, dihukum dengan hukuman penjara setinggi-tingginya sepuluh(10) tahun. Ayat(2): Barang siapa menyiarkan suatu berita atau mengeluarkan pemberitahuan, yang dapat menerbitkan keonaran dikalangan rakyat, sedangkan ia patut dapat menyangka bahwa berita atau pemberitahuan itu adalah bohong, dihukum dengan penjara setinggi-tingginya tiga(3) tahun. Pasal 15: Barang siapa menyiarkan kabar yang tidak pasti atau kabar yang berlebihan atau yang tidak lengkap, sedangkan ia mengerti setidak-tidaknya patut dapat menduga, bahwa kabar demikian akan atau mudah dapat menerbitkan keonaran dikalangan rakyat, dihukum dengan hukuman penjara setinggi-tingginya dua(2)tahun. Pasal 16. Barang siapa terhadap bendera kebangsaan Indonesia dengan sengaja menjalankan suatu perbuatan yang dapat menimbulkan perasaan penghinaan kebangsaan, dihukum dengan hukuman penjara setinggi- tingginya satu tahun enam bulan. Pasal 17. Undang-undang ini mulai berlaku buat pulau Jawa dan Madura pada hari diumumkannya dan buat daerah lain pada hari yang akan ditetapkan oleh Presiden. Agar Undang- undang ini diketahui oleh umum, maka diperintahkan supaya diumumkan sebagai biasa. Menteri Kehakiman Ditetapkan di Yogyakarta Ttd pada tanggal 26 Pebruari 1946. Diumumkan pada tanggal 26 Pebruari 1946.

Based on article II of the Transitional Rules of the Constitution in connection with the Regulation of the President of the Republic of Indonesia dated October 10, 1945 No. 2, all criminal law regulations that existed on 17 August 1945 now apply, both originating from the Dutch East Indies government and those stipulated by the Japanese military government. This has now turned out to be causing difficulties which will be briefly described below: The regulations issued by the Dutch East Indies Government generally applied to all of Indonesia, while the Regulations stipulated by the Government of the Japanese army only applied to a part of Indonesia, by because Indonesia during the Japanese era was divided into several regions (Java, Sumatra, Borneo etc.), each of which had its own government and regulations. From that reason, it is possible that a Dutch East Indies Regulation, which used to apply to all of Indonesia, was completely replaced by the Japanese Government in Java and Madura with a new regulation, in Sumatra it was only partially replaced, and in Borneo it was not replaced at all. It is also possible for each region regarding a matter by the Japanese regional government a new regulation is issued which differs from one another in content. Apart from that, the Dutch East Indies and Japanese criminal law regulations were not the same system. Whereas the criminal law regulations of the Dutch East Indies were based on the principle: *Nullum delictum, nullapuna sine praevia lege punali* (no offense and no penalty unless there is a criminal law rule first) (article 1 *Wetboek van Strafrecht voor Nederlandsch-Indie*), then the regulations Japanese criminal law is broad-based (see for example articles 14 and 35 No. 8 *Gunsei Keizirei*). Here it will not be discussed which system is the better system, but of course it is not good to use the two systems in criminal law regulations, which together apply in one area. In addition, the regulations regarding the general section (*algemeene leerstukken*) of the criminal law of the Dutch East Indies and Japan were not the same. In practice, the general part of the rules from *Wetboek van Strafrecht voor Nederlandsch Indie* must be used if the violation concerns the Dutch East Indies regulations, while the general part of the regulations from *Gunsel Keizirei* must be used, if the Japanese rules are violated. It was felt that there was no need to give a lengthy

explanation, that perfecting the Dutch East Indies and Japanese Criminal law regulations was unsatisfactory and created difficulties for those who had to carry out the criminal law, especially police officers who were not legal experts.

For this reason it is not surprising that from several places and parties it has been suggested that only one criminal law be used. It was proposed by them to be firmer so that Japanese criminal law regulations would be abolished. Indeed, it cannot be denied that the Japanese criminal law regulations, which apply in our land, are fascistisch in nature, moreover they are not unanimous regulations, often unclear and contain a lot of evidence, that these regulations were drawn up hastily at the time of who are restless, while Gunsei Keizirei - sometimes forces judges to impose sentences that are disproportionate to the guilt of the convict, because several articles do not provide an opportunity for judges to give lighter sentences than the limit described in those articles. On the other hand, it may be said that although the Dutch East Indies criminal regulations were not perfect, they were quite complete and in general did not contain the defects mentioned above, so that these regulations, before national criminal law regulations could be finalized, may be used temporarily. after the regulations were amended and added as necessary. Based on the considerations mentioned above, it was felt necessary to abolish the Japanese criminal regulations, so that temporarily the Dutch East Indies criminal law regulations that existed on March 8, 1942 would apply. It is necessary to explain here that what will no longer apply is namely criminal law regulations only, namely Gunsei Keizirei and other Japanese regulations which contain "matereel staffrecht". Other Japanese regulations continue to apply. II. Because the Republic of Indonesia is now not in a state of war with any country, and the state of danger has not been declared by the President (article 12 of the Constitution), it is considered inappropriate to issue regulations as "Verordeningen van het Militair Gezag" issued by the commander-in-chief supreme Dutch East Indies army. Since in practice it is doubtful whether these regulations are still valid or not, then it should be stated that the law is repealed. (article 2 of the plan). III. It is not necessary to explain that all the regulations that came into effect on March 8, 1942, should have been adapted one by one to the current situation. This is as much as possible in the Criminal Code (Wetboek van Strafrecht voor Nederlandsch-Indie). But the work cannot be carried out simultaneously against all the Rules. In this connection, with articles III, IV and V of the plan, instructions are given, although far from perfect, to those who have to carry out everyday criminal law regulations, which way should be taken to adapt the old regulations to the current situation, before the regulations are enforced? -The rules can be changed or replaced. IV. Regarding the language used in the amendments to the Criminal Code, it would be good to give a simple explanation. Because the book was written in Dutch, so as not to cause confusion in reading those changes, which only involved one or two words or part of a chapter or verse, they were also written in Dutch. V.

Apart from these minor changes, it is also felt necessary to amend article 171 of the entire Criminal Code and introduce several new regulations, among others, to protect our society in this transitional era. Because the changes and additions referred to are heavily influenced by the current situation and it is not yet certain whether these regulations, as proposed now, will still be needed, also for the future, it is deemed more appropriate to give place to these articles outside the body of the Criminal Code. These articles were written in Indonesian (see articles IX, X, XI, XII, XIII and XV). VI. Until now the translation of the name: "Wetboek van Strafrecht voor Nederlandsch-Indie" in Indonesian is not the same. The names used include, among others: the Torture Code", "the Code of Laws", "Criminal Code", etc. To achieve equality in the translation of these names, it is deemed necessary to establish an official translation with the law (article 6). The term "criminal law" in the meaning of "strafrecht" is a term determined by the Committee for the implementation of laws in the Ministry of Justice in the Japanese era. Articles I to VI. Explanations have been given in the general explanation section. The instructions in Articles I to V above are deemed necessary for criminal law regulations which cannot be amended or replaced according to the current situation Article VII No need to explain further Article VIII No. 1 Articles 105, 130, 132 and

133 abolished, (No. 13, 19 and 21). No. 2 and 3a do not require explanation. No. 3b, and No. 4 are related to the current position of a prosecutor, it is this employee who must be given the powers referred to in pa In this case, while the previous Gouverneur-Generaal's obligations should be handed over to the Minister of Justice. No. 5, No. 6, No. 7, No. 8, no explanation needed No. 9 The Netherlands, Suriname and Curacao are not included in the territory of the State of Indonesia. No. 10 The names of the political bodies referred to in this article cannot yet be named. The Indonesian National Committee, among others, is also included in this article. No. 11, no. 12, No. 13 needs no explanation. No. 14 Article 105 is abolished, (No. 13). No. 15, No. 16 requires no explanation. No. 17 Article 105 was abolished (No. 13). No. 18 requires no explanation. No. 19 This article is not in accordance with the form of our country as a republic. No. 20 needs no explanation. No. 21 explanation explanation 19. No. 22 needs no explanation. No. 23 Explanation No. 19 and amendment to article 134(No. 22). No. 24 Articles 135 and 136 are abolished (No. 23) No. 25, no. 26 requires no explanation. No. 27a. Article 130 is abolished (No. 19) b. articles 132 and 133 were abolished (No. 21). c. articles 135 and 136 were abolished (No. 23). No. 28 requires no explanation. No. 29 Explanation No. 10. No. 30 These articles are considered inconsistent with the principles of our country as a democratic country. No. 31 requires no explanation. No. 32 Explanation No. 30. No. 33 Article 105 is abolished. No. 34 Articles 105, 130, 132 and 133 were abolished. No. 35 was amended and became Articles XIV and XV of this draft. No. 36 needs no explanation.

No. 37 in relation to the current prosecutor's position which is the same as the previous (Eur) Officier van Justitie. No. 38 This article is not in accordance with the current situation. No. 39 The addition in article 234 is deemed necessary because now many letters are sent by person. No. 40 needs no explanation. No. 41 It is not yet clear to whom the powers of the Governor General referred to in Article 239 of the Criminal Code will be given. No. 42, no. 43 requires no explanation. No. 44 Suriname, Curacao and the Netherlands have entered the words "buitenlandsche mogendheid". No. 45 The word "Inlandsch" has no meaning anymore. No. 46 This deletion is in accordance with the Prosecutor's current position. No. 47, no. 48, No. 49, No. 50, no. 51, no. 52, no. 53, needs no explanation. No. 55, no. 56, No. 57, no. 58, No. 59 It was deemed appropriate that the report in question should be submitted to the Chief of Police. No. 60, no. 61, No. 62, No. 63 need not be explained. No. 64 The employee referred to in this article must be appointed, among others, in articles 41 and 333 of the Burgerlijk Wetboek. No. 65 The Chief of Police is appointed in this article due to his current position. Articles IX to XIII These articles are needed to suppress efforts to disrupt the circulation of money in our country by distributing currency or paper money which our government does not recognize as legal tender. Currency or banknotes that are not mentioned in the Declaration of the President of the Republic of Indonesia dated October 3, 1945 No. 1/10 as legal means of payment, is for Java and Madura as an illegal means of payment. Article IX. Threatening penalties against anyone who manufactures objects such as currency or paper money with the intention as explained in that article. Article X and Article XI. Compiled almost the same as the arrangement of articles 245 and 249 of the Criminal Code. The difference is caused by matters in Articles X and XI regarding invalid currency or banknotes, while Articles 245 and 249 of the Criminal Code concerning counterfeit or counterfeit currency or banknotes. Explanations in commentary books on articles 245 and 249 of the Criminal Code can be used to interpret articles X and XI of this draft, bearing in mind the differences. Article XIII. Is a partner of article 250 bis of the Criminal Code. Article XIV and article XV. Replaces article 171 of the Criminal Code, which needs to be expanded during this transition period. Article XIV. It is the same as "Verordening No. 18 van het Militair Gezag". The confusion is greater than anxiety and shakes the hearts of a large number of people. Chaos is also chaos. Broadcasting means the same as "verspreiden" in Article 171 of the Criminal Code. Article XV. Compiled not so extensively as "verordening No. 19 van het Militair Gezag". This article deals with "rumors" (uncertain news) and news broadcast with additions or subtractions. Proclaiming the true news in a truthful manner is not penalized. The meaning of the word "trouble" has been

explained in the elucidation of Article XIV. Last article. Due to the difficulty of communication between the island of Java and other parts of the State of Indonesia, it is not yet possible to determine when this law will apply to areas outside the islands of Java and Madura, so it is best left to the President to decide at that time. Juncto UU-RI Number: 73 of 1958.

Decided: To stipulate: Law Regarding Declaring the Applicability of Law No. 1 of 1946 of the Republic of Indonesia concerning Criminal Law Regulations for the Entire Territory of the Republic of Indonesia and Amending the Criminal Code. Article I. Law no. 1 of 1946 of the Republic of Indonesia concerning criminal law regulations declared applicable to the entire territory of the Republic of Indonesia. Article II. Article XVI of Law no. I of 1946 of the Republic of Indonesia regarding criminal law regulations repealed. Article III. The Criminal Code (Staatsblad 1915 No. 732) has been amended several times, and most recently by Law No. 1 of 1946 of the Republic of Indonesia, amended again as follows:

1. After article 52, article 52a is added as follows: "Article 52a. If at the time of committing a crime the National Flag of the Republic of Indonesia is used, the penalty for said crime can be increased by one third."
2. After article 142, article 142a is added as follows: Article 142a. Whoever desecrates the National Flag of a friendly country, shall be punished with a maximum imprisonment of four years or a maximum fine of three thousand rupiahs."
3. After Article 154, Article 154a is added as follows: Article 154a: Whoever desecrates the National Flag of the Republic of Indonesia and the State Emblem of the Republic of Indonesia, shall be punished with a maximum imprisonment of four years or a maximum fine of three thousand rupiahs." Article IV. Law this law shall come into force on the day it is promulgated. So that everyone may know it, it is ordered that this law be promulgated by placing it in the State Gazette of the Republic of Indonesia. Ratified in Jakarta on September 20, 1958. Promulgated on September 29, 1958.

#### **MEMORY EXPLANATION GENERAL**

It is felt very strange that until now in Indonesia there are still two types of Criminal Code, namely: 1. The Criminal Code according to Law no. 1 of 1946 of the Republic of Indonesia; 2. "Wetboek van Strafrecht voor Indonesia" (Staatsblad 1915 No. 732) as amended several times; which is totally unreasonable. With the existence of this law, this oddity will be eliminated. In article I it is determined that Law no. 1 of 1946 of the Republic of Indonesia is declared valid for the entire territory of the Republic of Indonesia. This opportunity was also used to make changes/additions to the Criminal Code in connection with the stipulation of Government Regulations concerning the National Flag of the Republic of Indonesia, concerning the Use of Foreign Flags in Indonesia and concerning the Use of the State Emblem of the Republic of Indonesia (State Gazette of 1958). No. 68, No. 69 and No. 71). As has been understood, before the issuance of Government Regulations concerning Foreign National Flags, State Emblems and the Use of Foreign National Flags, there was Law No. 1 of 1946 of the Republic of Indonesia old form (Law on Criminal Law Regulations) which in Article XVI regulates the threat of punishment for insulting the National Flag which reads as follows: "Anyone against the Indonesian National Flag deliberately carries out an act that can cause feelings of national humiliation, shall be punished with a maximum imprisonment of one year and six months". This provision, according to the last article of the law, only applies to Java and Madura, while Government Regulation No. 8 of 1946 This law also applies to all of Sumatra (Sumatra Province). In other words, the provisions in Article XVI have until now only applied to Java (and Madura) and Sumatra. Now that these Government Regulations have been promulgated, it is necessary to stipulate punishment rules related to the National Flag for all of Indonesia. Apart from that, it is also necessary to enact punishment rules related to the Foreign National Flag and State Emblem. Further explanation can be read in the elucidation of the proposed new articles, namely articles 52a. 142a and 154a of the Criminal Code. Article I. Self-explanatory. Article II. Article XVI of Law no. 1 of 1946 needs to be repealed, because this has been regulated more fully in Article III sub 2 and 3 of this Law, namely Article 142a and Article 154a. Article III. Article 52a of the

Criminal Code. 1. The National Flag can be used to facilitate or facilitate the implementation of a crime. The people who suffered from the crime were influenced by the flag and got the impression that those who committed the crime acted in an official manner. 2. This article does not specify how to use the National Flag; it is left to practice; it just has to be remembered, that between the use of the flag and the crime there must be a causal relationship. 3. Place this additional article in title III, book I of the Criminal Code with No. 52a is considered appropriate. Article 142a and Article 154a of the Criminal Code. 1. Because there are no such provisions in the Criminal Code in these articles, with the existence of Government Regulations concerning the National Flag, Indonesian State-Symbol and Foreign National Flags, it is necessary to enact the said provisions. It is true that in the Military Criminal Code there is article 136 paragraph 2 which reads as follows: 2e. "hij die het wapen van Indonesie, de Indonesische vlag enz, beschimpt enz." However, based on Article 52 of the Military Criminal Code, Article 136 only applies to military personnel and persons subject to military justice. 2. Defamation is an act done intentionally to humiliate. 3. The word order used in Article XVI of Law No. 1 of 1946 is not used in Article 142a and Article 154a of the Criminal Code, because the insult to national feelings referred to in Article XVI is difficult to determine, while according to the editorials of Article 142a and Article 154a, the object that is insulted is a certain object: namely the flag Nationality. Even the editorial of these articles is in accordance with the editorial of article 136 paragraph 2 of the Indonesian Military Criminal Code. 4. The sentence is adjusted to the sentence in Article 136 of the Indonesian Military Criminal Code. Including State Gazette No. 127 of 1958. Andi Hamzah's opinion: Article 14 and Article 15 are problematic because they are not mentioned in UU-RI No: 73 of 1958. To be declared valid Article 14 and Article 15 must be included in the KUHP version of UU-RI No: 1 year 1946 or stated that it is still valid through UU-RI No: 73 of 1958. As is the case with Article 156a of the Criminal Code which originates from Presidential Decree No. 1/PNPS of 1965. Regarding the Prevention and Abuse or Blasphemy of Religion. The Criminal Code has undergone changes and additions other than what has been stated above:

1. Republic of Indonesia Emergency Law Number 8 of 1948. Dated March 31 1948;
2. Republic of Indonesia Emergency Law Number 8 of 1955. Dated June 2, 1955. Concerning Immigration Offenses and Elimination of Article 241 Sub-1 and Article 257;
3. UU-RI Number 1 of 1960. Dated January 5, 1960. Concerning Changes & Aggravating Criminal Threats Article 359, Article 360, Article 188;
4. PERPU-RI Number 16 of 1960. Concerning Changes and Limitations on the Value of Goods Prices in Article 363, Article 373, Article 379, Article 384, Article 407 paragraph (1) from Vijf entwining gulden to Rp. 250;
5. PERPU-RI Number 18 of 1960. Concerning Changes in the Amount of Threats of Fines and Issues of Economic Delicts and Rupiah Currency, the Amount is Multiplied to 15 Times the Amount;
6. PERPU-RI Number 1 of 1960. Dated April 14, 1960; 7. UU-RI Number 1 of 1961. Dated 04 February 1961;
7. PENPRES-RI Number 11 of 1963. Dated October 16, 1963. Concerning Subversion Activities and Offenses;
8. PENPRES-RI No. 2 of 1964. Dated April 17, 1964. Concerning the Implementation of Decisions of General Courts and Military Punishment of Death by Shot;
9. 10. PENPRESRI No. 1 of 1965. Dated January 27, 1965. Concerning the Prevention of Misuse or Blasphemy of Religion;
10. UU-RI Number 15 of 1969. Dated December 17, 1969;
11. UU-RI Number 3 of 1971. Dated March 29, 1971. Concerning the Qualifications of Article 209, Article 210, Article 387, Article 388, Article 415, Article 416, Article 417, Article 418, Article 419, Article 420, Article 423, Article 425, Article 435 Becomes an Offense
12. Corruption; UU-RI Number 7 of 1974. Dated November 6, 1974. Regarding Controlling Gambling;



13. UU-RI Number 4 of 1975. Dated November 24, 1975; 15. UU-RI Number 4 of 1976. Dated April 27, 1976. Concerning Amendments and Additions to Several Articles Relating to the Expansion of the Applicability of Aviation Crimes and Aviation Facilities/Infrastructure Crimes;
14. UU-RI Number 2 of 1980. Dated March 20, 1980;
15. UU-RI Number 11 of 1980. Dated October 27, 1980. Concerning Bribery Offenses;
16. UU-RI Number 15 of 1969. Juncto UU-RI Number 4 of 1969
17. 1975. Juncto UU-RI Number 2 of 1980. Juncto UU-RI Number 1 of 1985. Dated January 7, 1985. Concerning Additions to ELECTION Offenses;
18. UU-RI Number 27 of 1999. Concerning Crimes Against State Security; 20. RUU-KUHP-National. Juncto Law No. 19 of 2016. Concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions. Furthermore, the CRIMINAL ACTIONS OF COMPLAINTS/DELICS OF COMPLAINTS are contained in the First/First Book. General Regulations (Article: 72 to Article 75 of the Criminal Code) Juncto Second Book. Crime (Article 134 and Article 137 of the Criminal Code).

Offense of Insulting the President/Vice President. Article 142 of the Criminal Code. Offenses of Insult of Neighboring Countries. Article 143 of the Criminal Code. Offensive Insulting Foreign Ambassador. Article 284 of the Criminal Code. Adultery Offense (Absolute Complaint Offense). Article 310 of the Criminal Code. Offense of Humiliation. Article 311 and Article 316 of the Criminal Code. Blasphemy offense. Article 322 and Article 323 of the Criminal Code. Delik Opening Company Secrets. Article 335 of the Criminal Code. Offenses of Unpleasant Acts. Article 362. Offense of Theft. Article 372. Offense of embezzlement of objects. Article 378 and Article 379a. Object Fraud Delict (Relative Complaint Offense).

#### **ULTIMUM REMEDIUM PRINCIPLE**

Van Bemmelen. The application of Ultimium Remedium must be interpreted "efforts", not as a tool to remedy injustice or to recover losses, but rather efforts to restore unsettled conditions in society, which if nothing is done about the injustice, can cause people to take justice into their own hands. Hoenagels' thoughts: The importance of considering various factors for committing criminalization in order to maintain the Ultimium Remedium argument and prevent over-criminalization, among others: a. Do not use criminal law in an emotional way; b. Do not use criminal law to convict an act where the victim or loss is not clear; c. Do not use criminal law, if the loss caused by punishment will be greater than the loss by the criminal act to be formulated; d. Do not use criminal law if it is not strongly supported by society; e. Do not use criminal law if its use is not expected to be effective; f. Criminal law in certain cases must take into account the priority scale of regulatory interests; g. Criminal law as a means of repression must be utilized simultaneously with means of prevention. Criminal law as Ultimium Remedium should not only be a theory. But it should be an understanding of the intent of the principle and its implementation in real life.

#### **POSITIVISM LEGAL FLOW**

Understand Logical Positivism: The term positivism comes from the word "ponere" which means to put, then becomes a passive form "putus-a-um" which means "to be placed". Thus, positivism refers to an attitude or thought that places its views and approaches on something. Positivism sees law as "law on books". Legal positivism (positive legal school) views the need to separate law and morals between applicable law (das sein) and future law (das sollen). In a positivism perspective. There is no other law except the order of the ruler. Law is the order of the ruler and the will of the state. The source of his thinking is logic, which is a human way of thinking based on the theory of probability (towards truth) Legism (positive sub-law): Law of Reasoning Positivism Logical Induction Method Knowledge (science) must be empirical. Only reality is the object of science. The verification principle of testing legal reality is identical to law. This school is of the view that law is synonymous with law, namely the rules that apply. The only source of law is law. John Austin. The Concept of

Law is State Order. That law is an order from the rulers of the state (state order), that, the essence of law lies in the element of command, that law is seen as a fixed, logical and closed system, that it is the superior party that determines what is permissible and that superior power forces other people to do so. obey and comply. That the law is an order that compels, (force order) which can be wise (wise) and fair (fair) or vice versa. Whereas, the law is distinguished between God's law and the law made by humans, that, the law made by humans, namely the actual law which includes; orders, sanctions, obligations and sovereignty.

### **REALISM LEGAL FLOW**

Etymologically realism comes from the Latin "res" which means "object or something". Realism can be interpreted as "an attempt to see things as they really are without idealization, speculation or idealization". Realism (Split Positivism) Realism seeks to accept facts as they are, however distasteful. The flow of Realism in the context of law, sees that law is seen and accepted as it is, without identity and speculation on the law that works and applies. Charles Sander Pierce(1839 - 1914). Pragmatism and Pragmaticim. Thoughts that deny the possibility for humans to get a correct theoretical knowledge, therefore ideas need to be investigated in real life. That, ideas must be explained in an analytical way, that this analytical method must be used functionally, namely by investigating the whole context of an understanding in the practice of life, how certain meanings are responded to in certain situations, then truth is the result of empirical investigation of the situation. John Chipman Gray(1839 - 1915) The Nature and Sources of the law. The judge is the center of attention, his famous motto is "all the law is judge-made law". Whereas logic is an important factor in the formation of legislation, elements of personality, prejudice, and other illogical factors have a great influence on the formation of law, that the history of English and American law shows political, economic and personal characteristics that other than certain judges, have resolved issues that have been important to millions of people for hundreds of years. Oliver Wendel Holmes, Jr. (1841-1935) The Common Law. American philosopher born in Boston Massachusetts. Member of the United States Supreme Court (30 years) That the soul of law is not logic but experience, that courts should look at facts in a changing society, rather than just applying legal slogans and legal formulas, that law must evolve and serving the community, that law is the same as experience, as well as logic, therefore according to him the law is only predictions of what decisions will be made by the judiciary. Benjamin Nathan Cardozo(1870 - 1938) The Nature of The Judicial Process. American philosopher born in New York. Whereas the law is the same as the court, that the development of law is bound to the purpose of law, namely the public interest, therefore the activities of judges are guided by the norms of the public interest.

This figure believes that law follows a set of general rules and believes that adherence to precedent should be the rule and not an exception in the administration of justice. However, there is leeway or flexibility in the implementation of these strict rules if adhering to precedents is inconsistent with a sense of justice and social welfare. Axel Hagerstorm(1868 - 1939) Inquiries into the Natural of Law and Morals. Swedish scholar. Investigator of Principles - legal principles that were in effect in Roman times. That the Roman people obeyed the law irrationally, based on magical images or fear of superstition (meta-physics) of law should be investigated based on empirical evidence that can be found in psychological feelings that, psychological feelings are a sense of obligation, a sense of power in gaining profit, a sense of fear of reactions from the environment. Karl Olivecrona(1897 - 1980) Law as Fact, Legal Language and Reality and The Imperative Element in Law. Swedish Law Expert. Equating law with independent imperatives, and then denying the existence of a normative one. Whereas, the law is not an order from a human being, because it is impossible for a human being to be able to give all the orders contained in that law, that the law giver is not identical with the state or the people, such identification is abstract and unrealistic, that, Legal provisions always have two elements, namely; an idea to act and several imperative symbols (ought, duty, offence) that, the provisions of the law itself

are only words on paper, the facts relating to scientific discussions about law must be related to the psychological reactions of individuals, namely ideas about what actions and feelings arise when they hear or see a provision. Alf Ross(1899 - 1979) Danish nationality. Theorie Rechts quellen, Critique der Sogenanten Practicalchen Erkentis. Towards A Realistic Jurisprudence and On Law and Justice. That law is a social reality, that, trying to form a mere empirical legal theory, but which can account for normative imperatives as an absolute element of legal phenomena, that, when normative enactment of legal regulations is interpreted as rationalization or maybe symbols of reality- physio-psychic reality, then in reality there are only facts, that normative imperatives in the form of rationalization and symbols, are not reality, that is, the development of law passes through four (4) stages:

1. law is a system of actual coercion;
2. law is a how to act in accordance with the tendencies and desires of community members;
3. law is something that applies and obligations in the true juridical sense;
4. In order for the law to apply, there must be competence in the people who make it up.

### **SOCIOLOGICAL FLOW OF LAW**

Satjipto Rahardjo. Progressive Legal Theory: Satjipto Rahardjo who is confused by the way law is administered in Indonesia. Even though every time legal issues arise in transitional nuances, the administration of law continues to be carried out under normal conditions. There was almost no smart breakthrough in dealing with the post-New Order transition crisis. What is even more concerning is that the law is not only carried out as an ordinary routine, but is also toyed with as a commodity. As a result, the law was pushed into a slow lane and experienced serious traffic jams. Legal thinking needs to return to its basic philosophy: "Law for humans". Humans become the determinant and legal orientation point. The law is in charge of serving humans, not the other way around. Therefore, the law is not an institution that is free from human interests. The quality of law is determined by its ability to serve human welfare. Sociologists see law as "law in action". Prof. Lili Rasyidi: Sociology of Law is a branch of sociology. The object is about the mutual influence between law and society. Sociological Jurisprudence legal approach to society. The sociology of law is an approach from society to law. Sociological Jurisprudence pays equal attention to the factors that create and enforce law, namely society and law. The main ideas of this school have a sharp difference with the schools of positivism, historical law (evolutionist) and naturalists in terms of placing society and law. Sociological Jurisprudence is more directed to reality than the position and function of law in society. Eugen Erlich(1862–1922) Grundlegung der Sociologie des Rechts. Sociological Jurisprudence Figure Austrian-European Law Expert. "A good law is a law that is in accordance with the law that lives in society. Law as a social reality. Good law is law that is in accordance with the law that lives in society. The law must be a reflection of the values that live and develop society. Roscoe Pound(1870 - 1964) The history and system of commons law. The social control through law and justice according to law: "Law is a tool for updating (engineering) society (law as a tool of social engineering)". Groups that must be protected by law. First: the public interest which includes the interests of the state as a legal entity, the interests of the state as guardian of the interests of society, Second: the interests of society which includes the interests of peace and order, protection of social institutions, prevention of moral decline, prevention of decline in rights, social welfare, Third: personal interests which include individual interests, family interests and property rights interests.

### **UTILITARISM LEGAL FLOW**

Utilism: "Utilization as the goal of law. Good or bad or fair or not a law, depending on what the law is give happiness to humans or not? Jeremy Bentham (1748 - 1832) and John Stuart Mill (1806 – 1873) and Rudolf von Jhering (1818 - 1892) a radical figure in England. "The purpose of law is to create public order, in addition to providing benefits to the greatest

number of people. So that the law is able to provide benefits to the community which ultimately creates a prosperous country and people. Gosta Esping-Andersen: the welfare state becomes three(3):

1. The Anglo Saxon Welfare States (United States, United Kingdom, New Zealand, Australia) reflects a political commitment to minimize the role of the state, individualize risks and advance solutions through market mechanisms to citizens' welfare problems.
2. Scandinavians. Wefare States (Sweden, Norway, Denmark) have a strong commitment to covering the welfare of citizens as a whole.
3. Conservative Regime Welfare States (Germany, Netherlands, France, Italy, Belgium, Spain) a mixture of status segmentation and the role of church and family in advancing welfare. A judge can determine his decision without being bound by law.

## **FLOW OF LAW FREIE RECHT SLEHRE**

The Free Law Teaching is a radical sociological teaching, propounded by American Realism. defending theory judge's freedom. Judges can determine decisions without being bound by law. "Judges have the duty to create laws. Inventors of law who are free from their duties are not applying laws, but creating appropriate solutions for concrete events, so that subsequent events follow the norms created by judges. Free flow of law: "the judge has the duty to create law. The discovery of law that is free from duty is not applying laws, but rather creating appropriate solutions for concrete events, so that subsequent events can be solved according to the norms created by the judge. Oliver Wendell Holmes (1841 - 1935) Exponent of American Realism: a law enforcer (judge) actually faces the symptoms of life in reality. Often he encounters two (2) or even more "truths" which seem to ask for certainty which one is "superior" in a particular context. One of them, is the truth of the legal version. Not infrequently, even very often, other truths are superior to those proffered or formal. They are more relevant, more appropriate and even more useful for a reel context, than the truth offered by legal rules. In this case, a judge risks his sensitivity and wisdom. He must win over the truth which he thinks is superior, even at the risk of defeating official rules. Legal rules are only one factor that should be considered in a weighty decision. Moral factors, about benefits, and equality of social interests, are factors that are no less important in making decisions. So it's not a taboo, if for the sake of a functional and contextual decision, the official rule has to be removed (especially if using the rule actually has bad consequences).

## **RESULT AND DISCUSSION**

### **1. COMPLAINT DELICATION/COMPLAINT CRIMINAL ACTIONS**

- a. Book One/First. General Regulations (Article: 72 to Article 75 Criminal Code)
- b. Second Book. Crime (Article 134 and Article 137 of the Criminal Code. Offense of Insulting the President/Vice President. Article 142 of the Criminal Code. Offenses of Insult of Neighboring Countries. Article 143 of the Criminal Code. Offensive Insulting Foreign Ambassador. Article 284 of the Criminal Code. Adultery Offense (Absolute Complaint Offense). Article 310 of the Criminal Code. Offense of Humiliation. Chapter 311 and Article 316 of the Criminal Code. Blasphemy offense. Article 322 and Article 323 Criminal Code. Delik Opening Company Secrets. Article 335 Criminal Code. Offenses of Unpleasant Acts. Article 362. Offense of Theft. Article 372. Offense of embezzlement of objects. Article 378 and Article 379a. Object Fraud Delict (Relative Complaint Offense).

### **2. ULTIMUM REMIDIUM**

- a. Philosophy of Law: The Principle of Nemo Prudens Punit, Quia Peccatum, Sed Ne Peccetur: A wise man does not punish because he has committed a sin, but so that sin does not occur again.

- b. Principle of Punier Non Necessesse Est: Punishment is not always necessary.
- c. FRANCIS BACON. Moneat Lex Principle, Piusquam Feriat: The law must provide a warning before realizing the threat contained in it (the crime).
- d. Restoration Justice System: "Restoration of the Original State Vs Compensation (compensation) Restoration of the Original State Vs Restitution (return) Legal Certainty & Justice & Benefit". Definition of Restorative Justice: "Settlement of criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation. "Termination of prosecution based on restorative justice is carried out on the principles of: justice; public interest; proportionality; punishment as a last resort; and fast, simple, and low cost". Settlement of cases out of court with a Restorative Justice approach is what can stop prosecutions. Termination of prosecution based on Restorative Justice is carried out by the Public Prosecutor in a responsible manner and is submitted in stages.
- e. Restorative Justice System By Investigators: KAPOLRI Circular Number 8 of 2018, concerning Guidelines for Handling Case Settlements Using a Restorative Justice Approach.
- f. Restorative Justice System By Public Prosecutor: The Opportunity Principle (Public Interest) in the Criminal Procedure Code. The prosecutor acts as a quasi-judicial service. Juncto Regulation of the Attorney General-RI Number 15 of 2020, concerning Termination of Prosecution Based on Restorative Justice. Requirements for applying the principle of restorative justice in a general criminal case, including the suspect having committed a crime for the first time, the threat of a fine or imprisonment of not more than five years and evidence or a case loss value of not more than IDR 2.5 million as stated in the Letter Circular of the Supreme Court (SEMA) and the parties to the dispute are willing to settle the dispute amicably.
- g. Restorative Justice System By Judicial Service (judicial) Law Number 23 of 2004, concerning the Elimination of Domestic Violence Juncto PERMA-RI Number 3 of 2017, concerning Guidelines for Trying Cases of Women Against the Law. PERMA-RI Number 2 of 2012, concerning Settlement of Limits for Minor Crimes (Tipiring Rp. 2.5 million) and Amount of Fines in the Criminal Code. Juncto Law Number 11 of 2012, concerning the Justice Syste Juvenile Crime, effective July 2014. Juncto PERMA-RI Number 42014, concerning Guidelines for Implementation of Internal Diversion Juvenile Criminal Justice System. Pre Judicieele (Pre Judicieele Geschil) PERMA-RI Number: 1 year 1956. March 18th 1956. Article 1: examination of a criminal case must be decided in the event that there is a civil matter over an object or regarding a legal relationship between two certain parties, then the examination of a criminal case may be postponed to wait for a Court decision in examining a civil case regarding the presence or absence of civil rights . Article 2: This postponement of examining a criminal case can be terminated at any time, if it is deemed unnecessary. Article 3: The court in examining criminal cases is not bound by a court decision in examining civil cases regarding the presence or absence of a civil right. SEMA Number 4 years 1980, regarding "Question Pre Judicielle a l' Action" and "Question Pre Judicielle au Jugement". "Question Pre Judicielle a l' Action": regarding certain criminal acts referred to in the Criminal Code (among others Article 284 Criminal Code) In this case it was decided on civil provisions before considering criminal prosecution. Question Pre Judicielle au Jugement: concerns regulated issues in Article 81 of the Criminal Code. to give authority, not obligation, to the Criminal Judge to suspend the examination, awaiting the decision of the Civil Judge regarding the dispute. Attention is requested, that if the Judge wants to use this legal institution, this Criminal Judge is not bound by the decision of the Civil Judge concerned as stated in PERMA Number 1 of 1956. Pre Judicieele Geschil: MA-RI Decision Number 413 K/Kr /1980. Dated August 26, 1980. Consideration of the Judge: If what is meant by the cassation prosecutor / defendant is "Question Pre Judicielle au Jugement" as stated in Article 81 of the Criminal Code, then this merely gives authority in this criminal case,

this authority is not used by the Judge and is not an obligation the judge to wait for a civil decision regarding a dispute, to suspend a prosecution that is being examined while waiting for a civil decision;

## **CONCLUSION**

1. In line with the history of legal development in the world since the School of Law Nature to the Positive Law School to the Law School Realism and to the Law School of Sociology and to the School Utility Law and lastly until Free Flow Law.
2. The Indonesian judiciary now adheres to various streams (mixture), both the Continental European Legal System and the Anglo-American Legal System, the Customary Law System and the Religious Law System.