



DISCOURSE ON THE DISCOVERY AND RENEWAL OF THE PRINCIPLE OF LEGALITY IN CRIMINAL LAW

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Abstrak: The principle of legality was created to limit the arbitrary actions of kings/rulers against their people. Power has the ability to punish individuals, even though it is not regulated in advance. However, the form of power is the most important factor in determining whether an action can be punished. The function of protecting victims or people is not fulfilled by the principle of legality. Law No. 1 of 2023 regulates the Criminal Code which is a significant reform. Law No. 1 of 2023 is marked by the recognition and implementation of implicit laws that apply in society, while also recognizing the existence of legal certainty and positive law. The purpose of this study is to analyze the discovery and application of the principle of legality in Law No. 1 of 1946 and examine the renewal of the principle of legality in Law No. 1 of 2023. This study uses normative research methods to support secondary data. The findings of this study show that the concept of the principle of legality was introduced in 1748 as a means to prevent arbitrary actions by kings or tyrants against their people. The court can process and try customary crimes or acts that are contrary to applicable legal values but there is no equivalent or comparison in Law No. 1 of 2023 as a result of the expansion of the principle of legality. **Keywords:** Discovery, Reform, Legality Principles, Criminal Law.

INTRODUCTION

The sociological view that reveres the doctrine of protecting the people from arbitrary treatment by the authorities is the source of the principle of legality known in Indonesian criminal law. In the pre-enlightenment era, power had the ability to punish individuals without prior regulation. At that time, the will to power was the most significant factor in determining whether an act was punishable. The principle of legality, which became an important tool to maintain individual freedom in

interaction with the state, was applied to overcome this. (Ismatullah, 2007)

"*Nullum delictum nulla poena sine praevea lege poenali* (no offense, no punishment, without prior criminal law) or *nullum delictum nulla poena sine praevea lege* (no offense, no punishment, without prior law), or *nullum crimen nulla poena sine praevea lege* (no crime, no punishment, without prior law)" are some variations of the adage that expresses the principle of legality in criminal law.

In positive law, the Republic of Indonesia recognizes the principle of

legality in Article 1 paragraph (1) of the Criminal Code (Law No. 1 Year 1946 regulating the Regulation of Criminal Law), which states: "every act referred to as an act/criminal offense must be formulated in a law enacted in advance that specifies in clear formulation the acts in question". An act is not considered a crime unless it is expressly defined as a crime by the criminal law. Crimes prohibited by criminal law are referred to as *mala prohibitiona*. *Strafbaar* (punishable) are acts that are considered as *mala prohibitiona*. (Ateng Sudibyo, 2021)

Crimina extra ordinaria is a criminal act that is prohibited by criminal law or not. The prosecution of *crimina extra ordinaria* is not possible because it has not been declared a *mala prohibitiona*, even though the crime has caused tremendous harm to the victim or the people. The most famous of these crimes is the *crimina stellionatus* (evil deed or mischief). *Crimina extra ordinaria* are acts that are *strafwaardig* (punishable) but not *strafbaar*, because they are not prohibited by criminal law. (Moeljatno, 2000)

In general, criminal law experts agree that the principle of legality has 3 definitions, namely: first, no act is prohibited and punishable, unless it is expressly stated in the legislation; second, no analogy is allowed in determining the existence or absence of a criminal act; and third, criminal law regulations are not retroactive.

There are many implications associated with these three definitions. Initially, the principle of nonanalogy prohibits the use of analogies, while the second requirement is to apply the criminal law established at the time of the act

(*lex temporis delicti* or existing criminal laws). The principle of *non-retroactivity* prohibits the *retroactive* application of criminal law. This implication is a logical consequence of the *basic ideas* of the principle of legality, which involves protecting individuals by limiting the authority of the authorities (including judges), a limitation that is achieved through the use of criminal law.

The principle of legality is strongly influenced by the basic concepts outlined above. The principle of legality has 2 main functions, namely the protection function, which protects the people from the arbitrary power of the ruler or the authority of the judge, and the limitation function, which limits the authority of the ruler/judge. The protection function seems to be given only to the perpetrator. Even if the perpetrator causes extraordinary harm to the victim or the people, they will not be prosecuted as long as their actions are not prohibited by criminal law. The limitation function is also solely in the interest of the perpetrators, because the government cannot prosecute people whose actions are not prohibited by criminal law, even though these actions cause extraordinary harm to victims or the people. (Yuherawan, 2012)

The principle of legality has no protective function for the community or victims. The principle of legality is inherently weak and limited in its power because it has no function to provide protection for victims and/or the community. The principle of legality is unable to prosecute acts that cause extraordinary harm to individuals or people, because they are not prohibited by criminal law.

Various advances have been made to the principle of legality as a result of its weaknesses and limitations, both in legislation and legal practice.

The enactment of Law No. 1 of 2023 regulating the Criminal Code was a catalyst for this breakthrough. The principle of legality remains a fundamental principle in the Criminal Code that will take effect in 2026. Article 1 paragraph (1) states "No act can be subject to criminal sanctions and/or actions, except on the strength of criminal regulations in laws and regulations that have existed before the act was committed. Furthermore, paragraph (2) "In determining the existence of a criminal act, analogy is prohibited".

Subsequent provisions have expanded the concept of legality. A different concept from the adage "*nullum delictum nulla poena sine praevia lege*" is established by Article 2 paragraph (1) of Law No. 1 Year 2023. Article 2 paragraph (1) states "The provisions referred to in Article 1 paragraph (1) do not reduce the applicability of the law that lives in the community which determines that a person should be punished even though the act is not regulated in this Law". Then continued paragraph (2) "The law that lives in the community as referred to in paragraph (1) applies in the place where the law lives and as long as it is not regulated in this Law and in accordance with the values contained in Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights, and general legal principles recognized by the community of nations".

The conflict between the provisions of Article 1 paragraph (1) and

paragraph (2) with Article 2 paragraph (1) and (2) of Law No. 1 Year 2023 regulating the Criminal Code is exemplified through the expansion of the principle of legality. Article 1 paragraph (1) of Law No. 1 of 2023 requires the existence of a regulation prior to the commission of an unlawful act, thus this conflict arises. Therefore, this provision requires legal certainty. Meanwhile, the provisions of Article 2 paragraph (1) of Law No. 1 of 2023 prioritize justice to fulfill the sense of justice inherent in certain people, thus ignoring legal certainty. On the one hand, criminal law requires a written and firm regulation in line with the principle of legality in Article 1 paragraph (1) of the Criminal Code. Meanwhile, the law established in society is unwritten law (not established by the state).

The provisions of Article 2 paragraph (1) of Law No. 1 of 2023 also contradict the prohibition of the use of analogies in Article 1 paragraph (2) of Law No. 1 of 2023. The application of the principle of legality results in the prohibition of analogical interpretation in determining the existence of a criminal offense. Analogical interpretation is when a criminal provision stipulated for another criminal offense of the same type or form is applied to an act that at the time of its commission was not a criminal offense, because the two acts are considered analogous. (Widayati, 2011)

MAIN PROBLEM

1. How is the discovery and application of the principle of legality in Law No. 1/1946 on Criminal Law Regulation?

2. How is the renewal of the principle of legality in Law No. 1 of 2023 on the Criminal Code?

METHOD OF RESEARCH

This research utilizes a type of library research with a normative approach. Document study or literature study is the methodology of data acquisition in this research. This research uses a qualitative data analysis method that uses a deductive thinking process.

RESEARCH RESULT AND DISCUSSION

The principle of legality is one of the oldest legal principles in the history of human civilization. The existence of this principle is not difficult to find in various national legal provisions of various countries. The principle of legality is maintained as a protection against potential arbitrariness in the administration of criminal law.

The principle of legality is explicitly referred to in the preamble of the Criminal Procedure Code in letter a which read "That the Republic of Indonesia is a state of law based on Pancasila and the 1945 Constitution which upholds human rights and which guarantees all citizens equal status in law and government and shall uphold the law and government with no exception". The author will then elaborate on the discovery and application of the principle of legality in Law No. 1 of 1946 and the reform of the principle of legality in Law No. 1 of 2023.

1. Discovery and Application of the Principle of Legality in Law No. 1/1946 on Criminal Law Regulation

There were no set rules in ancient Rome regarding what acts could be punished as crimes or how punishment should be meted out; instead, the ruler decided what constituted a crime and how to punish it. This was considered harsh and depended heavily on the king's judgment. Thus, to prevent the king or ruler from acting arbitrarily towards his subjects, Montesquieu (1748) (*L'esprit des Lois*) and J.J. Rousseau (1762) (*Du Contract Social*) introduced the concept of the principle of legality at the height of the reaction against the king's unlimited authority. The *Declaration des droits de L'homme et du citoyen* (1789), a law passed during the French Revolution, refers to this idea for the first time in Article 8.

The concept of legality was later incorporated by Napoleon Bonaparte in Article 4 of the *Penal Code* and further elaborated in Article 1 WvS *Nederland* 1881 and 1 WvSNI 1918. The principle of legality is regulated in the following statement in Article 1 paragraph (1) of the Criminal Code: "No act shall be punished except by virtue of a criminal provision in legislation which has existed before the act was committed". Regarding his pioneering theory of psychic compulsion, Anselm von Feuerbach developed the principle of legality with "*nullum delictum nulla poena siena praevia lege poenali*" (no criminal offense, no punishment, without a preceding criminal law) in his book *Lehrbuch des peinlichen Recht* (1801). (Situngkir, 2018)

This proverb was not recognized, like the principle of legality, historically in ancient Roman law, which used Latin. In the essay "*Tijdschrift V.*

Strafrecht," it is asserted that in Roman times, there were *crimes* known as *crimina extra ordinaria*, which referred to crimes that were not explicitly mentioned in the law. (Moeljatno, *Asas-Asas Hukum Pidana*, 2002) One of the most famous *crimina extra ordinaria* was *crimina stellionatus*, which *letterlijk* means "evil deed, mischief." Therefore, it is not clear which act is intended. In the Middle Ages, when ancient Roman law was received (*dirisipieer*) in Western Europe, just as it was in Indonesia during the *dirisipieer* when Dutch law was received, the ruling monarch also accepted the concept of *crimina extra ordinaria*. And the existence of this *crimina extra ordinaria* created the potential to apply criminal law arbitrarily in line with the wishes and requirements of the king.

The principle of legality is a fundamental principle in criminal law. Where it is crucial to know whether criminal law regulations can be applied to a criminal offense that has occurred. If a criminal offense occurs, it is to be determined whether there are legal provisions governing it and whether the current regulations can be applied to certain events.

Therefore, the initial prerequisite for taking action on criminal offenses is that there are provisions in the (criminal) law that define criminal offenses and determine the sanctions, in accordance with the principle of legality in criminal law. This is because in essence, a legal regulation, especially a criminal law regulation, only applies at a later date. This relates to events that occur after a regulation is enacted.

This principle is stated in Article 1 paragraph (1) of Law No. 1 of 1946 or also known as the current Criminal Code, namely: "No criminal act shall be punished except on the strength of the criminal provisions in the existing laws and regulations, before the act is committed."

As the principle of legality is a fundamental principle in criminal law, it is important to understand the various aspects of the principle. It covers a variety of different aspects when viewed from its content: (Nurmala, 2021)

- a. Punishment is only permitted under criminal law. According to Article 1 paragraph (1) of the Criminal Code, no act can be punished except according to the criminal provisions expressly stipulated in the previous legislation. The formal sense of a law or the material sense of a law that is authorized to determine the punishment of an act must be used by the legislator in the formal sense.
- b. The application of criminal law is not based on analogy. A provision is applied to a case that does not fall under the application of law by analogy. By analogy, the applicability of a legal rule is extended by abstracting it into a legal rule that becomes the core of the application of general legal rules to concrete actions that are not regulated in law, as a rule is applied to real actions that are not regulated. The prohibition of the use of analogies is also associated with the function of criminal law, especially the incompatibility of the application of criminal norms based on

- analogy with the protective function of criminal law.
- c. Vague criminal offenses are prohibited. *Lex Certa* requires the law to be sufficiently clear. The purpose of the requirement for criminal offenses to be clear is to: a) ensure that the regulation serves as a guide for citizens in determining their actions, and b) provide certainty to the authorities regarding the limits of their authority.
 - d. Criminal provisions are not retroactive. It is emphasized that no act can be punished other than by the criminal force in accordance with the "pre-existing" law according to the provisions of Article 1 paragraph (1) of the Criminal Code. It is concluded that criminal regulations are essentially applicable for the future (unless otherwise stipulated by law) and are not retroactive based on these provisions. Exceptions to the prohibition of retroactive application of criminal regulations are allowed if the retroactive application of criminal regulations is in the (mitigating) interest of the defendant, as stipulated in Article 1 paragraph (2) of the Criminal Code. In addition, if the legal regulations change after the act is committed, then the most lenient regulation for the defendant shall apply.
 - e. Criminal sanctions that can be imposed are only those stipulated by law. In criminal law, the prevailing norm is that criminal sanctions are determined by law. The KUHP regulates the criminal sanctions

that can be imposed based on Article 10. Assuming there is no specific law regulating it, this provision also applies to laws that are not part of the KUHP.

Although the principle of legality has expressly set out guidelines for the application of criminal rules, it is often very difficult to determine whether a particular case falls under a criminal provision. As such, judges are obliged to ascertain the precise meaning of criminal provisions; in other words, judges are obliged to interpret criminal provisions.

Safeguarding human rights is explicitly regulated in criminal law. Conversely, it also devalues what it is supposed to protect. As a result, criminal law, which includes criminal procedural law as well as criminal enforcement law, is often analyzed, emphasized, and criticized by various parties, including those with legal and non-legal backgrounds. This is accurate because criminal law covers all aspects of human activity, including individuals, groups, and authorities, both directly and indirectly. (Kadri Husin, 2016)

Based on Article 6 paragraph (1) of Law No. 48/2009 regulating Judicial Power, hereinafter referred to as the Judicial Power Law, no one can be tried before a court in a manner not stipulated by law. The principle of legality is contained in Article 6 paragraph (1) of the Judicial Power Law which states that "everyone who is tried is a perpetrator in the sense that he has committed an act prohibited by law".

In contrast, the principle of legality is in direct opposition to the principle of *rechtweigerig*, which is stated in

Article 10 paragraph (1) of the Judicial Power Law. This principle prohibits judges from hearing, examining, and deciding a case submitted to them on the grounds that the law does not exist or is unclear. In addition, this principle also directly contradicts the principle of judicial independence, which is an important principle in the legal system.

While the principle of legality requires judges to adhere to the law in their decision-making, the principle of judicial independence requires judges not to be constrained by parties outside the court. It is important to understand the definition of judicial independence in order to use the principle of legality together with the principle of judicial independence. The purpose of adjudication and the adjudication of judges shall be to enable the court to fulfill its duties as effectively as possible and to make decisions based on truth, integrity and justice. These are fundamental characteristics of any legal system.

Judges are expected to have a thorough understanding of the law in their capacity as organs of the judiciary. Individuals seeking justice come to him to ask for it. He is obliged to research the unwritten law if he cannot find the written law to ensure that he is fully responsible and prudent before God Almighty, himself, the community, and the state. In societies that continue to honor the unwritten law, the judge is the shaper and extractor of legal values in society. To achieve this, he or she must fully engage with society to understand, experience and derive the emotions of justice and truth that exist within it. Thus, judges are allowed to make decisions in line with the law and the

principles of justice. (Pingkan Utari, 2024)

Because it is intended to uphold public order, the law is tasked with upholding legal certainty. Meanwhile, the people want benefits in the enforcement or implementation of the law, which must provide benefits or goals for the people, as the law is for humans. In a concrete event, the law can be established to ensure legal certainty for each individual. Basically, there should be no deviation from the applicable law.

Legal certainty is a value that principally guarantees legal protection for every citizen from arbitrary power. Therefore, the state is legally obliged to ensure protection for every citizen. This value is closely related to positive legal instruments and the role of the state in the implementation of positive law.

2. Juridical Analysis of the Principle of Legality in Law No. 1 of 2023 on the Criminal Code

The provisions of Article 1 paragraph (1) of the Criminal Code are essentially the same as the provisions in Law No. 1 of 2023, namely the principle of formal legality is still upheld. This principle is upheld because the principle of legality is fundamental in criminal law, which guarantees legal certainty and the absence of arbitrary law enforcement in the implementation of its duties.

In order to accommodate the demands and development of the people who mostly still adhere to the value of living law (customary offense), as well as the development of international law, the drafters of the Draft Criminal Code include provisions

in Article 2 paragraph (1): "The provisions as referred to in Article 1 paragraph (l) shall not prejudice the applicability of the living law in the community which determines that a person should be punished even though the act is not regulated in this Law. Then continued paragraph (2) The law that lives in the community as referred to in paragraph (1) applies in the place where the law lives and as long as it is not regulated in this Law and in accordance with the values contained in Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights, and general legal principles recognized by the community of nations".

The provisions of Article 2 paragraphs (1) and (2) are new provisions that have never been regulated in the current Criminal Code. In addition, the provisions of Article 2 paragraphs (1) and (2) imply that Indonesia will apply two legal principles, namely the principle of formal and material legality, after Law No. 1 of 2023 officially takes effect. The principle of formal legality states that the legal basis for criminalizing an act is the legal regulations that existed before the act was committed (written law). In contrast, the principle of material legality states that the legal basis for criminalizing an act is the law established in society, whether written or unwritten. Local customary criminal law greatly influences the application of the principle of material legality.

The legislators agreed that the living law referred to in Law No. 1 Year 2023 is customary law; however, the term "living law" in Article 2 of Law No. 1 Year 2023 has a broader definition than customary law. Eugene Ehrlich

defines living law as "*the law that dominates life itself, even though it has not been printed in legal propositions.*" This perspective implies that living law is a form of law that focuses on the people and not the state. As such, living law includes customary law as well as religion, not limited to customary law alone. (Putri, 2021)

To resolve criminal deviance, the principle of legality in criminal law is deconstructed by examining and integrating the value of customary law. Criminal deviance is defined as the absence of reliance on legal provisions contained in written criminal law, as well as an emphasis on unwritten law. The deconstruction method with regard to the principle of legality is based on the main reference for judges to qualify criminal offenses that are not regulated by criminal law: unwritten, especially common law principles. The concept of moral values is used when legal principles have no foundation. Morality is the basic substance of law, and is the essence of law. As a result, judges are obliged to consistently seek to establish or evaluate the law in accordance with the most important moral principles, including truth and justice.

The limitations of the application of living law are expressly regulated in Article 2 paragraph (2) of Law No. 1 Year 2023. There are 4 parameters that must be met, namely:

- a. Applies in the jurisdiction where it is enforced;
- b. As long as it is in accordance with the principles stated in the 1945 Constitution and Pancasila;
- c. Human rights;

- d. General legal principles that are universally recognized by the people of a nation.

The aforementioned four parameters are cumulative, meaning that the living law should be applied only after all relevant parameters are met. The enforcement of Law No. 1 of 2023, Article 2 paragraph (2), may be hampered or complicated by the existence of this law, as courts are required to present evidence of all relevant parameters before applying it. The parameters are cumulative, meaning that the living law should be applied only after four relevant parameters are met.

To be able to assess the existence of customary law, there must be a customary law community (customary law society). Based on Constitutional Court Decision No. 35/PUU-X/2012 regulating the Examination of Law No. 41 of 1999 concerning Forestry, a community can be said to be customary law society if it meets three criteria: (RY, 2014)

- a. An customary law society unit that is *de facto* still alive, whether genealogical, territorial, or functional, and contains at least one or a combination of the following: the existence of an customary law society whose citizens have a group feeling, there is customary wealth or objects, there are customary government institutions, and there are customary law norms. In territorial customary law society there are special regional elements.
- b. Recognition of the unity of customary law society and their traditional rights is based on the

development of society that can be assessed through their existence. Such recognition is a reflection of the development of values that are considered ideal in today's society. The substance of these traditional rights is recognized and respected by the people concerned and the wider community, and is not contrary to human rights. This is reflected in legal regulations that are sectoral, general, and regional regulations.

- c. The principle of NKRI is upheld by the unity of customary law society and their traditional rights. This implies that the sovereignty and integrity of the unitary state is not threatened by the existence of customary law society, and the substance of its customary law norms is consistent with and not contrary to the rule of law.

The principle of legality is further developed in its material formulation with the recognition of the presence of living law or custom as a source of positive law in Article 2 paragraph (1) of Law No. 1 Year 2023. This recognition becomes the basis for criminalizing an act, as long as the act does not have similarities or comparisons with the Concept. This means that the principle of *lex certa* may deviate from the principle, as mandated in the principle of legality in Article 1 paragraph (1) of Law No. 1 of 2023.

The principle of balance between the interests of individuals and the people, and between legal certainty and justice, cannot be separated from the expansion of the principle of formal

legality in its material formulation. Justice is the material benchmark, while legal certainty is the formal benchmark. In certain judicial practices, the values of justice and legal certainty can be equally emphasized. If this is the case, judges will prioritize justice over legal certainty as much as possible. The boundaries of criminal acts are also expanded with the expansion of the principle of legality in a material sense, which includes not only formal legal provisions but also acts that are considered as offenses according to living law. (Suartha, 2015)

The principle of formal legality requires the existence of regulations prior to the occurrence of an unlawful act. In other words, this principle shows legal certainty and ignores justice, because the criminal law process ends with the imposition of punishment. The main way to prevent arbitrary actions by the authorities in criminalizing is the principle of legality. In other words, all authority must be based on established legal regulations. Therefore, the principle of formal legality can be a means to achieve justice in criminalization by providing legal certainty for the community.

Justice takes precedence over legal certainty in the principle of material legality, which recognizes the presence of customary law to be unwritten. Given that justice cannot be measured, it is difficult to imagine how harmony between certainty and justice can be achieved. While it is true that the primary purpose of law is to ensure justice, law will only be a means to justify the imposition of the majority or ruling party on the minority or

controlled party if justice is not its primary purpose. Nonetheless, the concept of justice itself is not fully understood, and there are many different perspectives on justice from various legal theorists. Therefore, the question of how to achieve justice over legal certainty remains uncertain. "Subjective" and "relative" assessments of justice can also be made. The term "subjective" is used to describe something determined by humans who have the authority to determine that absolute perfection is impossible. It is "relative" because it is considered fair by some individuals but completely unfair by others.

It is expected that the priority of justice over legal certainty will be a reason for judges to abandon legal certainty. Justice should be characterized by impartiality, honesty, fairness, equal treatment, and propriety, which are rooted in cultivated and accepted community values. Another issue is whether the formalization of law in society can guarantee the achievement of a sense of justice.

Law is intended to create tranquility by fostering a balance between order and fairness. The law will function properly if supported by legal obligations, especially the balance between legal certainty and legal harmony, which will produce justice. Therefore, justice is a legal goal that can be realized through legal certainty. (Barkatullah, 2009)

CONCLUSION

The principle of legality is a fundamental principle in Indonesian positive criminal law. Given the importance of the principle of legality

in criminal law in determining whether or not criminal law regulations can be applied to criminal acts that have occurred. When a criminal offense occurs, it is to be determined whether the applicable legal rules and statutory provisions governing it can be applied to the criminal offense. Therefore, the principle of legality prevents kings and judges from acting arbitrarily or at will. The application of the principle of legality is based on the ability of the principle to ensure legal certainty (*Rechtssicherheit*). Human rights as an individual is a very crucial factor to be considered, especially when dealing with the legal system.

The WvS system has changed or expanded the principle of formal legality into the principle of material legality as stated in the provisions of the article. The court can process and prosecute customary criminal offenses or acts that violate legal values that apply in the community and there is no equivalent in Law No. 1 of 2023 by expanding the principle of legality. This will provide a clear and firm legal basis for law enforcers to try and examine customary criminal offenses.

REFERENCE

- [1] Ismatullah, Deddy, 2007, Ilmu Negara dalam Multi Perspektif Kekuasaan, Masyarakat, Hukum, dan Agama, Pustaka Setia, Bandung,
- [2] Moeljatno, 2000, Asas-Asas Hukum Pidana, Rineka Cipta, Jakarta.
- [3] Nurmala, Leni Dwi, "Studi Komparatif Tentang Asas Legalitas Berdasarkan Hukum Pidana Positif Indonesia Dan Hukum Pidana Islam", Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh, Volume 9, Nomor 1, 2021.
- [4] Prasetyo, Teguh dan Abdul Halim Barkatullah, 2009, Ilmu Hukum dan Filsafat Hukum: Studi pemikiran Ahli Hukum Sepanjang Zaman, Pustaka Pelajar, Yogyakarta.
- [5] Putri, Nella Sumika, "Memikirkan Kembali Unsur "Hukum Yang Hidup Dalam Masyarakat" Dalam Pasal 2 RKUHP Ditinjau Perspektif Asas Legalitas", Indonesia Criminal Law Review, Volume 1, Nomor 1, 2021.
- [6] Situngkir, Danel Aditia, "Asas Legalitas Dalam Hukum Pidana Nasional Dan Hukum Pidana Internasional", Soumatera Law Review, Volume 1, Nomor 1, 2018
- [7] Suartha, I Dewa Made, "Pergeseran Asas Legalitas Formal Ke Formal Dan Material Dalam Pembaharuan Hukum Pidana Nasional", Yustisia, Volume 4 Nomor 1, 2015.
- [8] Sudibyo, Ateng, Aji Halim Rahman, "Dekonstruksi Asas Legalitas Dalam Hukum Pidana", Presumption Of Law, Volume 3, Nomor 1, 2021.
- [9] Widayati, Lidya Suryani, "Perluasan Asas Legalitas Dalam RUU KUHP", Negara Hukum, Volume 2, Nomor 2, 2011.
- [10] Yuherawan, Deni SB, "Kritik Ideologis Terhadap Dasar Kefilsafatan Asas Legalitas Dalam Hukum Pidana", Jurnal Dinamika Hukum, Volume 12, Nomor 2, 2012.
- [11] Zakaria, RY, "Kriteria Masyarakat (Hukum) Adat dan Potensi Implikasinya terhadap Perebutan Sumberdaya Hutan Pasca-Putusan MK No 35/PUU-X/2012 Studi Kasus Kabupaten Kutai

Barat Kalimantan Timur, Wacana,
Jurnal Transformasi Sosial,
Volume 15, Nomor 33, 2014..