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Application of the Principle of Legality in the Criminal Justice System: Ensuring Justice and Protection of Human Rights

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Abstract

This article aims to find out about the application of the legality principle in the criminal justice system. Legality is a legal principle that states that there is no criminal act without a clear legal basis. The research method used in this study is a literature study with a normative analysis approach to analyze and interpret laws and regulations related to the principle of legality in the criminal justice system, case studies, and analyzed through comparative studies. Based on the research results, it can be concluded that the principle of legality has a crucial role in ensuring justice and protecting human rights in the criminal justice system. Although there are several challenges in applying this principle, efforts to strengthen adherence to the legality principle must be continued through training, supervision, and evaluation of criminal law policies. In the study of literature and normative analysis, it was found that the principle of legality has a strong legal basis and is the main basis for forming criminal law policies.

Keywords: *Application, Legality Principles, Criminal Justice System, Human Rights.*

A. INTRODUCTION

This principle of legality first took the form of law in the 1776 American Constitution. Then after that in Article 8 of the Declaration de droits de I' homme et ducitoyen 1789: "*nul ne peut etre puni qu'en vertu d'une loi etabile et promulguee anterieurement au delit et legalement appliquee*" (Gienapp, 2021). Napoleon Bonaparte subsequently incorporated this principle into Article 4 of the French Criminal Code. It is from this French Penal Code that this principle is then included in Article 1 paragraph (1) Wetboek van Strafrecht in the Netherlands which expressly states, "*Geen feit is strafbaar and uit kraft van eenedaaraan voorafgegane wetelijke strafbepaling*". Furthermore, this principle is contained in Article 1, paragraph (1) of the Indonesian Criminal Code (Delrée, 2021).

In England, the principle of legality was formulated by a philosopher, Francis Bacon, in the adage moneat lex, piusquam feriat. That is, the law must provide a warning before realizing the threat. In subsequent developments at the national level, the principle of legality is not only included in each country's criminal code but also contained in each country's constitution (Bashayreh et al., 2021).

Legality, as stated in each nation's criminal code or constitution, is one of the fundamental principles that must be upheld for legal certainty. Within the context of law enforcement and justice, the meaning of the principle of legality must be interpreted with discretion. When viewed from the perspective of the situation and conditions that led to the emergence of the principle of legality, the classical school

maintains that the primary objective of criminal law is to safeguard individual interests (Canestrini, 2020).

The applicability of the principle of legality differs from nation to nation, depending on whether the prevailing government system is democratic or authoritarian. Moreover, variations are contingent on the legal family that is followed. Continental European countries tend to apply the principle of legality more strictly than countries adhering to the Common law system because, in Continental European nations, the principle of legality functions as a tool to limit state authority (Pirro & Stanley, 2022). In countries employing the Common Law system, the principle of legality is less prominent because the principles of the rule of law have been achieved through the evolution of the concept of due process of law, which is supported by sound procedural law. In this instance, the analogy is forbidden, but it serves as the foundation for the renewal of common law. The United States is stricter in its restriction of analogy and application of the retroactive principle only in procedural law, particularly evidentiary law (Zalnieriute et al., 2019).

Several countries, including Russia, Germany, and even the Netherlands, violated the principle of legality in the wake of subsequent events. It is recognized that the meaning of the principle of legality is that an act can only be punished if it is governed by criminal law, and that criminal provisions cannot be applied retroactively (Mälksoo, 2021). The consequence of this interpretation is that actions that are not enumerated in the law as crimes cannot be punished, and it is prohibited to use analogies to make an act a crime as defined by the law. While the consequence of the next meaning is that criminal law cannot be enforced retroactively, all of this will have implications for law enforcement and individual justice (Chuasanga & Victoria, 2019). Based on the brief explanation above, this research seeks to see how the principle of legality is applied in the criminal justice system.

B. LITERATURE REVIEW

1. Human Rights

Human rights are a legal and normative concept that asserts humans possess inherent rights by virtue of their humanity. Human rights are applicable everywhere, at all times, and to everyone, so they are universal. In principle, human liberties are inalienable. Human rights are also interdependent, interconnected, and indivisible. Human rights are typically addressed to the state, and the state has a responsibility to respect, protect, and fulfill human rights, including by preventing and investigating violations committed by the private sector (Geovani et al., 2021). Modern terminology classifies human rights as civil and political rights pertaining to civil liberties (e.g., the right to life, the right not to be tortured, and freedom of opinion), as well as economic, social, and cultural rights pertaining to access to public goods (e.g., the right to receive an adequate education, the right to health care, and the right to housing) (Joseph, 2019).

Human rights can be conceptually founded on the belief that they are "given by nature" by the universe, God, or reason. Those who oppose the use of natural

elements, on the other hand, believe that human rights represent the consensus values of society. Some consider human rights to be a representation of the claims of the subjugated, while other groups deny the existence of human rights, arguing that they only exist because humans coined and discussed the concept (Wardyaningrum, 2019). Under certain circumstances, international law permits the limitation or reduction of human rights. In a democratic society, restrictions must typically be prescribed by law, serve a legitimate purpose, and be necessary. In the meantime, reductions can only be made in the event of an emergency endangering "the life of the nation", which the outbreak of war has not met. International humanitarian law applies as a lex specialis during armed conflict. However, certain rights, such as the right to be free from servitude and torture, cannot be waived under any circumstances (McGregor et al., 2019).

There are various versions of the general understanding of human rights. Each understanding emphasizes certain aspects of human rights. The several definitions of Human Rights (HAM) are as follows:

a. Austin-Ranney argues that human rights are spaces for individual freedom formulated in the constitution and guaranteed by the government (Suryanti & Sinaga, 2022).
b. A. J. M. Milne argued that human rights belong to all human beings at all times and in all places because of the primacy of their existence as human beings (Krauss, 2021).
c. According to Law Number 39 of 1999, "human rights are inherent in the essence of human existence as creatures of God Almighty. This right is a gift from Him that must be respected, upheld and protected by the state, law, government and everyone for honour and human dignity" (Aida, 2023).
d. According to John Locke, human rights are natural rights bestowed by God directly. Thus, the rights that humans possess by nature cannot be separated from their character, and they are therefore sacred (Herdt, 2021).
e. Miriam Budiardjo limits the notion of human rights as rights that belong to humans that have been obtained and brought along with their birth or presence in society (Rahim & Achir, 2023).
f. According to Oemar Seno Adji, what is meant by human rights are rights that are attached to human dignity as human beings created by God Almighty, which cannot be violated by anyone, and which seems to be a holy area (Disemadi & Roisah, 2019).

The understanding of Human Rights (HAM) leads to the conclusion that, as a gift from God to his creatures, human rights cannot be isolated from the individual or human being's personal existence. Human rights cannot be waived by force or other factors. If this occurs, it will have an effect on humans, namely, they will lose their dignity, which is the fundamental value of humanity (Itasari & Mangku, 2021).

2. Legality Principle

Jonkers stated that in Article 1, paragraph (1) of the Criminal Code, "no act can be punished except for the strength of the criminal law that existed before the act was committed is an article on principles". Unlike other legal principles, this legality principle is explicitly stated in the law. According to legal specialists, a legal principle is not a specific legal regulation (Puspito & Masyhar, 2023).

Furthermore, according to Tongat, Article 1 paragraph (1) of the Criminal Code implies that the criminal provisions in the law can only be applied to a crime that occurs after the criminal provisions in the law have been enacted; in other words, the criminal provisions in the law only apply for the future (Harun et al., 2023).

In addition, according to Moeljatno, the principle of legality (principle of legality) establishes that no action is illegal and punishable by law if it is not specified beforehand in legislation. This is typically referred to in Latin as *nullum delictum nulla poena sine praevia lege* (no transgression, no crime absent prior regulation). According to Wirjono Prodjodikoro, the Latin phrase *nullum delictum, nulla puna sine praevia lege punali* means there is no crime and no criminal punishment in the absence of a prior criminal law (Aries, 2022).

From the several definitions put forward by the scholars or legal experts above, there is a common view among criminal law experts that the principle of legality, known in Latin as "*nullum delictum, nulla puna sine praevia lege punali*", having meaning; that is, "no act can be punished except based on criminal force according to the existing law". This provision, as outlined in Article 1 Paragraph (1) of the Criminal Code, is a standard definition of the principle of legality (Završnik, 2021).

Regarding the definition of 'act' in Article 1 paragraph (1) of the Criminal Code, Noyon and Langemeir state that the intended action can be both positive and negative. Positive action means doing something, while negative action means not doing something. Not doing what one is obligated to do or not doing something that should be done is known as omissionis. Furthermore, Simon defines a criminal act as an act punishable by law, contrary to law, committed by a person who is guilty and considered responsible for his actions (Aditya & Al-Fatih, 2021).

According to Moeljatno, an act that can be punished is strafbaar feit, and in legislation, the term criminal act is used, if strafbaar feit is translated letterlijk, then the translation is an event that can be punished. Moeljatno then defined a criminal act as an act that is prohibited and punishable by a criminal act whoever violates the prohibition, the term criminal act to replace strafbaar feit is more important than the term criminal act. In the sense of a criminal act. Moeljatno did not mention criminal responsibility at all. Mistakes are a determining factor for criminal liability and, therefore, should not be part of the definition of a criminal act (Hamid & Hasbullah, 2021).

C. METODE

This investigation employs conventional research techniques. Legal research is an exhaustive, analytical study of primary and secondary legal materials, and the

results of this study are then presented in a systematic manner. This type of normative research employs secondary data, as well as primary legal materials in the form of laws and regulations pertaining to extant problems. In addition to primary legal materials, secondary legal materials in the form of literature texts and other relevant legal writings are required. The legal materials that resulted from the processing were qualitatively analyzed and then discussed, and based on the results of the earlier discussion, conclusions were drawn as solutions to the examined problems.

D. RESULT AND DISCUSSION

1. The Meaning Contained in the Legality Principle

Many criminal law experts provide different meanings from the definition of the principle of legality. As stated above, regarding the principle of legality, there is an understanding among criminal law experts, but regarding the meaning contained in the legality principle, there are differences of opinion among criminal law experts.

According to Enschede, only two meanings are contained in the legality principle. First, an act can be punished only if regulated in criminal legislation (... wil een feit strafbaar zijn, dan moet het vallen onder een wettelijke strafbepaling...). Second, the power of criminal provisions cannot be applied retroactively (... zo'n strafbepaling mag geen terugwerkende kracht hebben..."). The meaning of the legality principle put forward by Enschede is the same as that of the legality principle put forward by Wirjono Prodjodikoro: criminal sanctions can only be determined by law, and criminal provisions cannot be retroactive.

The legality principle, according to Sudarto, consists of two elements. A illicit act must first be codified in laws and regulations. Second, these statutes and rules must exist prior to the commission of a crime. In addition, Muljatno, the legality principle has three meanings: First, no action is prohibited and punishable by law if it has not been specified in a statute. Second, analogies should not be utilized to determine whether an illicit act has occurred. The three principles of criminal law do not apply retroactively.

According to Groenhuijsen, this principle contains four interpretations. The first two are addressed to legislators, while the remaining two are judicial guidelines. First, lawmakers are prohibited from applying a penal provision retroactively. Second, all prohibited actions must be included in the offense's most precise formulation. Thirdly, judges are prohibited from declaring that an accused individual has committed a crime based on unwritten or customary law. Fourth, analogies cannot be applied to criminal law regulations.

Schaffmeister, Keijzer, and Sutorius provided a more in-depth explanation of the legality principle's significance, highlighting its seven facets. First, it cannot be punished unless it is in accordance with criminal provisions of the law. There is no criminal law application predicated on analogy, second. Thirdly, it cannot be punished solely on the basis of habit. In other words, violations of customary norms do not necessarily lead to criminal conduct. Fourth, neither the definition of the offense nor the lex certa principle should be ambiguous. Fifth, criminal provisions lack

retroactive authority. This concept is referred to as the non-retroactivity principle of criminal provisions. Sixth, there are no punishments other than those stipulated by law. Regarding this sixth offense, the judge may not impose a sentence that deviates from what the law specifies. Seventh, and lastly, criminal prosecution must be conducted exclusively in accordance with the law. This means that the entire criminal procedure, from the investigation to the execution of the sentence, must adhere to the law. In this instance, the applicable law is the law in its formal sense. In other words, subordinate legislative bodies are prohibited from establishing criminal procedure rules.

From the aforementioned differences in the meaning of the legality principle, it can be deduced that, in general, the legality principle means: first, no action is prohibited and punishable by a crime before it is stated in a statute; second, all prohibited acts must be included in the clearest formulation of the offense; and third, the rules of criminal law may not be applied retroactively. As mentioned above, the meaning is the principle of formal legality, as formulated in Article 1 paragraph (1) of the Criminal Code. This principle emphasizes that the basis for determining whether or not an act can be considered punishable by crime must first be regulated in law.

2. Regulation of Human Rights in Indonesian Laws and Regulations

The Criminal Procedure Code's provisions on the rule of law are derived from references to human rights in statutes and regulations. The clarification of the Criminal Procedure Code regulates Human Rights principles, which must serve as a guide for comprehending and interpreting the meaning of the provisions contained in the articles of the Criminal Procedure Code. Sometimes it is often forgotten by law enforcement officials (police and prosecutors), legal advisers and courts that the procedural design of the Criminal Procedure Code, meant by legislators, is to give the court a major role in court proceedings. It can be seen in Article 191 and Article 197 of the Criminal Procedure Code, which state that both a guilty verdict and an acquittal must be based on facts and circumstances as well as evidence obtained from the results of an examination before a trial court. Therefore, the opinion of the Chief Justice of the Supreme Court is very appropriate when he sees the importance of the role of court decisions/judges to always adhere to human rights.

The principle of the presumption of innocence as one of the manifestations of human rights is not expressly regulated in the 1945 Constitution, nor is it included in the second amendment (amendment) to the 1945 Constitution, but it is regulated in several laws and regulations, namely; Law Number 35 of 1999 in conjunction with Article 8 of Law Number 8 of 2009 which states; "everyone who is suspected, arrested, detained, prosecuted, and presented before the court must be presumed innocent before a court decision states his guilt and obtains permanent legal force", then the general explanation of point 3 letter c of the Criminal Procedure Code expressly states regarding that "everyone who is suspected, arrested, detained, prosecuted, and presented before a court hearing, must be considered innocent until there is a court decision stating his guilt and obtaining permanent legal force".

In Law Number 39 of 1999 concerning Human Rights, the provisions of Article 18 paragraph (1) state that: "Everyone who is arrested, detained, and prosecuted because he is suspected of having committed a crime has the right to be presumed innocent, until his guilt is legally proven in a court session and given all the legal guarantees necessary for his defense, following the provisions of laws and regulations".

In Law Number 26 of 2000 concerning Human Rights Courts, it is implied in Article 10: "Indonesia's criminal justice system must guarantee human rights". The provisions of Article 27 paragraph (1) of the 1945 Constitution state that; "All citizens have the same position before law and government, and are obliged to uphold that law and government without exception."

This verse implies a fundamental legal principle, namely the principle of equality before the law (APKDH) or equality before the law. Likewise, after the second amendment (amendment) to the 1945 Constitution, this matter was emphasized in Article 28 D paragraph (1) and Article 28 I paragraph (1) and paragraph (2).

These provisions imply that all people, as supporters of rights and obligations, are equal before the law. Even though it is not strictly regulated in the 1945 Constitution, it can be used as a legal basis for these principles, including:

a. All citizens have the same position before the law and government (Article 27, paragraph 1),
b. Provide legal protection to all Indonesian people and all Indonesian bloodshed,
c. Indonesia is a constitutional state, not based on power (authentic explanation of the 1945 Constitution). Not a police/military state, not a power state that acts arbitrarily. Every action must be based on laws and regulations. The people can only be governed by law and law and the same obligation without exception to comply with law and law,

Furthermore, the main rules contained in the main law on judicial power Number 48 of 2009 include:

a. Trials are conducted for the sake of justice based on Belief in the One and Only God (Article 2, paragraph 1), the provisions of this article are again outlined in Article 197 of the Criminal Procedure Code as a philosophical foundation.
b. Trials are carried out simply, quickly and at low cost (Article 2, paragraph 4), there are many elaborations on this article in the Criminal Procedure Code, such as;
    1). The right of the suspect/defendant to immediately receive an examination and trial in court (Article 50); the transfer of case files from the District Court to the High Court for examination at the appeal level must have been sent 14 days from the date of the appeal request (Article 236); To speed up the process and lower costs, an article has regulated the combination of criminal cases with claims for compensation as found in Chapter V starting from Article 98-Article 101.
    2). Courts judge according to the law without discriminating against people (Article 5, paragraph 1)

c. No one can be subject to arrest, written by lawful authority in matters and according to the manner regulated by law (Article 7). This provision is described in Chapter V, starting from Article 16-Article 49 of the Criminal Procedure Code.
d. Presumption of innocence (equality before the law). A person who is suspected of being arrested, detained, prosecuted or brought before a court must be presumed innocent before a decision stating his guilt and obtaining permanent legal force (Article 8)
e. A person arrested, detained, prosecuted or tried without reason based on law or because of a mistake regarding the person or the law applied has the right to demand compensation and rehabilitation (Article 19, paragraph 1). Chapter XII explains This basic provision in more detail, starting from Articles 95-97.
f. A suspect in a criminal case, especially when an arrest and detention is carried out, has the right to contact and ask for the assistance of a legal adviser (Article 36). The implementation of the provisions of this article is outlined in Chapter VII, Articles 69-74 of the Criminal Procedure Code.

The provisions above can be the main basis for the Human Rights position. From this basic basis, further implementation is described as formulated in the articles of the Criminal Procedure Code. In the elaboration of the codification in the Criminal Procedure Code article, but tested and linked to the philosophical basis of Pancasila and the operational base of the GBHN, TAP MPR No. IV of 1978. In such a way, the articles of the Criminal Procedure Code are completely consistent and in sync with the intended basis. Within the framework of elaborating and realizing its formulation into the Criminal Procedure Code, making laws has tried to align them parallel to actual, rational and practical values so that they are more efficient in achieving the intended goals, namely achieving order and protecting society and protecting human dignity for suspects/defendants. The suspect or defendant is not burdened with the obligation to prove, while in the elucidation of the article, it is said that the provisions in Article 66 of the Criminal Procedure Code embody the principle of the presumption of innocence.

3. Forms of Implementation of Human Rights in the Criminal Justice System

The criminal justice system is fundamentally an enforcement of criminal law. It is therefore closely related to the criminal legislation itself, both substantive law and criminal procedural law, as criminal law is the enforcement of criminal law in abstracto, which will be realized in the enforcement of criminal law in concrito. The significance of criminal legislation in the criminal justice system stems from the fact that these laws give policymakers authority and provide a legal foundation for implemented policies. The legislature will participate in the formulation of policies and carry out established policy programs. Law formation, law enforcement, and the exercise of authority and competence are therefore all aspects of legal politics, which fundamentally function in three ways: law formation, law enforcement, and the exercise of authority and competence.

As a system, the criminal justice system has administrative components, including the police, the Prosecutor's Office, the Courts and Correctional Institutions, all of which will be interrelated, and it is hoped that there will be an integrated collaboration. If there are weaknesses in one of its component work systems, it will greatly affect the other components, in fact, there is a strong tendency in Indonesia to expand this component of the criminal justice system in the sense of law enforcement officials, namely lawyers/advocates.

Even though the Indonesian Criminal Procedure Code is a normative provision of criminal proceedings, the existence of a lawyer/advocate/legal advisor obtains a designation of legality as a part of the Criminal Justice System, which requires attachment and linkage with the initial components that have previously obtained recognition.

Law Number 8 of 1981 has introduced reforms including the rights of suspects (Article 50 to Article 68) as well as the existence of a Pre-trial institution which provides a function for judges to exercise oversight over several implementations of coercive measures, such as arrests, detentions and termination of investigations and prosecution.

Law No. 8 of 1981 in the life of law in Indonesia has embarked on a new era, namely the awakening of national law, which prioritizes the protection of a suspect's human rights in the criminal justice system. Furthermore, this law argues that it is hoped that the suspect's human rights will be protected when a suspect is arrested, detained, prosecuted, and tried before a court hearing. In addition to protecting the basic rights of suspects, there is also the hope that law enforcers based on this law will give powers to a judiciary that is free and responsible for judges in examining and deciding a criminal case. The above expectations seem only to be realized if the law enforcement orientation is based on a systems approach.

Because the system approach is an approach that uses all the elements involved in it as a unit, interrelation and correlation with one another. Concretely, the law enforcement process elements include the police, prosecutors, courts and correctional institutions. The characteristics of this research are more inclined to how the application of human rights in the criminal justice system, not only as a legal basis and institution which is full of normative content but will look at how the implementation of human rights by law enforcement officials working in the criminal justice system.

The shield on human rights which is formulated in the articles contained in the Criminal Procedure Code, theoretically from the stage of investigation, prosecution and examination before the court, including examination, the suspect/defendant already has a position equivalent to the examining official in legal standing, has the right demand the treatment specified in the Criminal Procedure Code.

4. Soften the Principle of Legality in the Context of Law Enforcement and Justice

The existence of the principle of legality, as stated in Article 1 paragraph (1) of the Criminal Code in law enforcement and justice, is a dilemma. Because it is clear

that the principle of legality only recognizes written law. In fact, in the life of the Indonesian people, they have customary laws or unwritten laws whose existence is still recognized. Often judges in a criminal case are faced with a case with no basis or rule of law. In this case, the judge may not refuse on the pretext that no law is governing. As formulated in Article 10 paragraph (1) of Law Number 48 of 2009 Concerning Judicial Power, which reads: "The court is prohibited from refusing to examine, try and decide on a case filed on the pretext that the law does not exist or is unclear, but obligated to examine and prosecute him".

The obligation of judges in the context of upholding law and justice, to follow the dynamics of law, is not only in the sense of written law but includes the meaning of unwritten law in society. The Indonesian legal system, which was previously heavily influenced by the civil law system in the development of the common law system, has also influenced the development of law in Indonesia through international agreements and transplants. In criminal law in Indonesia, judges can carry out Rechtsvinding, even though judges must judge based on law, judges still have the freedom to interpret. The legality principle of Article 1 paragraph (1) of the Criminal Code has formalistic characteristics.

According to Mardjono, the desire to obtain legal certainty has been wrongly linked to the need for criminal legislation (written regulations). While it is true that written regulations can provide strong feelings of certainty and justice, legal certainty comes primarily from the belief that criminal law is not applied arbitrarily. The possibility of customary criminal law affecting written criminal law should strengthen the sense of justice and legal certainty because it brings it closer to a sense of justice in society. Judges, as "enforcers of justice", are obligated to always "explore, follow and understand the values of living law" according to local custom.

In legal life in Indonesia, which not only recognizes the meaning of written law but includes unwritten legal provisions that are still alive in society, the existence of customary law still plays a very high and influential role in law enforcement; moreover, there is a necessity for judges to explore the values that live in society, even though a criminal act is not regulated formally as defined in the principle of legality.

Starting from the fact that the principle or principle of legality adhered to by the currently applicable criminal law (KUHP) is not suitable in the legal tradition of society, the formulation of the principle of legitimacy in the development of criminal law in Indonesia has undergone a shift or softening.

According to Barda Nawawi, applying the legality principle in the Dutch-inherited Criminal Code in the Indonesian context (the national legal system) should also not be interpreted solely as certainty/truth but must focus more on certainty/truth/justice of substantive values. Furthermore, it was revealed that Article 1 of the Criminal Code also seems to impact the blockage or lack of functioning of the jurisprudential and academic/scientific pathways in exploring legal values that live in society. Attempts to give place to unwritten law as a source of positive law means loosening the application of Article 1 of the Criminal Code. Likewise, efforts to develop jurisprudence in exploring sources of unwritten law and living legal values

have been made possible by the Judicial Powers Act. However, these provisions cannot function properly in criminal law because they hit a solid wall, namely Article 1 of the Criminal Code. It is ironic if the values that live in society are not channeled and even hidden under the pretext of Article 1 of the Criminal Code as a former Dutch colonial heritage.

In the context of law reform and enforcement, 3 (three) things need attention. First, the renewal of legal substance, i.e., the renewal of laws and regulations that are no longer pertinent to society's growth. Second is the renewal of the legal structure, or the need to enhance various aspects of the legal institutions. Thirdly, the revitalization of the legal culture necessitates a shift in the attitudes of law enforcement officials and the general populace. With this legal update, law enforcement becomes a strategic issue and simultaneously determines the role of the legal function in establishing legal certainty and achieving justice. In future criminal law reforms, the source of law or legal basis for declaring an act a crime will be based on the principles of formal legality and material legality, specifically by granting living law or unwritten law precedence.

In addition, the legality principle in the context of international criminal law, said Muladi, the application of the legality principle is not as stringent between national law and international law due to the peculiarities of each country. International criminal law is typically codified in instruments crafted by international organizations. The resulting formulation of norms is not intended for direct application by international criminal tribunals to specific individuals. These norms are more of a collection of obligations for nations to use as a basis for reforming their national criminal law. Typically, international crimes are formulated in a very general and broad manner, frequently omitting the elements of criminal acts and criminal responsibility. It is frequently discovered that international criminal law does not regulate criminal sanctions; consequently, the customary practice of international law does not include the principle of *nulla poena sine lege* (no crime without law).

According to Machteld Boot, the principle of legality in international criminal law must be applied with distinct standards than national criminal law in regards to individual criminal responsibility for international crimes. International criminal law is not codified like domestic criminal law; rather, it is derived from international customary law. Therefore, the principle of legality is not completely binding in international law's context of crimes.

Regarding international criminal law, the measurement of the principle of legality's application cannot be compared to the measurement of the principle's application in national criminal law. International criminal law also derives from international custom, so the principle of legality may apply based on customary international law, which is distinct from its application to national criminal law.

E. CONCLUSION

The principle of legality means that no action is prohibited and punishable by crime if it has not been previously stated in the rule of law. In determining the existence of a criminal act, analogies should not be used. Then the basis for regulating

human rights has been formulated in the existing articles in the Criminal Procedure Code (UU No. 8 of 2981), which have brought about reforms in regulating human rights; as stipulated in the articles on the rights of suspects (Article 50 to Article 68) as well as the existence of a Pre-trial institution which provides a function for judges to supervise several executors of coercive measures, such as arrest, detention, or termination of investigations and prosecutions. The protection of human rights in the Criminal Procedure Code also regulates the principles that support human rights, such as the Presumption of Innocence, "that every person who is suspected, arrested, detained, prosecuted and presented before a court hearing must be presumed innocent until a court decision states his guilty and obtain permanent legal force", and also implies a very fundamental legal principle, namely the principle of Equality in Legal Position (APKDH) or known as Equality Before The Law. In the development of criminal law in Indonesia, the principle of legality has undergone a shift, which is not only based on the formal legality principle but also on the material legality principle by giving place to living law or unwritten law.

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