



THE PRINCIPLE OF LEGALITY IN THE DYNAMICS OF CRIMINAL LAW INTERPRETATION: A NORMATIVE STUDY ON THE LIMITS OF JUDICIAL AUTHORITY

PRINSIP LEGALITAS DALAM DINAMIKA INTERPRETASI HUKUM PIDANA: STUDI NORMATIF TENTANG BATAS KEWENANGAN YUDISIAL

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Abstract

The principle of legality is a fundamental concept in the Indonesian criminal justice system, ensuring legal certainty and the protection of human rights from arbitrary criminal punishment. However, the rapid development of modern crimes often leads to legal gaps or vague norms that require judges to conduct judicial law-finding (rechtsvinding) when resolving criminal cases. This research aims to analyze the position of the principle of legality as a legal limit to judicial authority and examine how far judicial law-finding can be carried out without violating the essential principles of criminal law. This study employs a normative legal research method with a statute approach, conceptual approach, case approach, and historical approach. The results demonstrate that the principle of legality plays a crucial role in restricting judicial interpretation to prevent the creation of new offenses that may harm defendants and to ensure punishment can only be imposed based on pre-existing laws. Nonetheless, judicial law-finding remains necessary to address contemporary crimes that are not yet regulated under statutory law. Therefore, a proportional balance between legal certainty and substantive justice is required so that the principle of legality and judicial law-finding can work synergistically within Indonesia's criminal justice system.

Keywords : Principle of Legality, Judicial Law-Finding, Judicial Authority, Legal Certainty, Criminal Justice System.

Abstrak

Asas legalitas merupakan prinsip fundamental dalam sistem hukum pidana Indonesia yang bertujuan menjamin kepastian hukum dan perlindungan hak asasi manusia terhadap tindakan pemidanaan yang bersifat sewenang-wenang. Namun demikian, perkembangan kejahatan modern yang berlangsung secara cepat sering kali menimbulkan kondisi kekosongan atau ketidakjelasan norma yang menuntut hakim untuk melakukan penemuan hukum (rechtsvinding) dalam memutus suatu perkara pidana. Penelitian ini bertujuan untuk menganalisis kedudukan asas legalitas sebagai batas yuridis terhadap kewenangan hakim dan mengkaji sejauh mana batas-batas kewenangan tersebut dapat dilakukan tanpa melanggar prinsip dasar hukum pidana. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, pendekatan konseptual, pendekatan kasus, dan pendekatan historis.



Hasil penelitian menunjukkan bahwa asas legalitas memiliki peran sentral dalam membatasi ruang interpretasi hakim agar tidak menciptakan delik baru yang merugikan terdakwa, serta memastikan pemidanaan dilakukan berdasarkan hukum yang telah ada sebelumnya. Namun, penemuan hukum tetap dibutuhkan untuk menjawab tantangan kejahatan kontemporer yang belum terakomodasi dalam peraturan perundang-undangan. Oleh karena itu, diperlukan keseimbangan yang proporsional antara kepastian hukum dan keadilan substantif agar asas legalitas dan penemuan hukum oleh hakim dapat berjalan secara sinergis dalam sistem peradilan pidana Indonesia.

Kata Kunci : Asas Legalitas, Penemuan Hukum, Kewenangan Hakim, Kepastian Hukum, Sistem Peradilan Pidana.

1. INTRODUCTION

The principle of legality is a fundamental tenet in criminal law, emphasizing that no act can be punished without a legal basis established beforehand (*nullum crimen sine lege, nulla poena sine lege*). This principle is stipulated in Article 1 paragraph (1) of the Indonesian Criminal Code (KUHP), which states:

“No act may be subject to criminal punishment except by virtue of a penal provision in the legislation that existed prior to the act being committed.”

In addition, the principle of legality obtains constitutional legitimacy through Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which asserts that, “Every person shall have the right to recognition, guarantees, protection, and certainty of fair law as well as equal treatment before the law.” Thus, this principle is an integral part of human rights protection in the criminal justice process.

However, societal development presents new challenges to criminal law, particularly regarding modern crimes whose formulations are not yet fully accommodated in the existing legal system. Crimes such as cybercrime, money laundering, environmental crime, and corporate crime often lack comprehensive provisions within the current penal regulations. In such conditions, judges are required not only to act as *la bouche de la loi* but also to perform legal discovery (*rechtsvinding*) to fill normative gaps without violating the principle of legality. This judicial authority is reinforced by Article 5 paragraph (1) of Law Number 48 of 2009 on Judicial Power, which mandates judges to explore, follow, and understand legal values and the sense of justice within society. Nevertheless, the exercise of legal discovery must remain within the boundaries of the legality principle to prevent overcriminalization through excessively broad juridical constructions.

One example of legal discovery gaining public attention is corporate criminal liability in corruption cases, where before the enactment of the Anti-Corruption Law, judges and prosecutors constructed corporate criminal responsibility based on progressive legal interpretation, despite the absence of explicit regulation in the original KUHP. Another example is the enforcement of electronic information and transactions crimes, where judges frequently employed extensive interpretation to fill regulatory gaps prior to the enactment of Law Number 11 of 2008 on Electronic Information and Transactions (ITE).

From a theoretical perspective, the legality principle in criminal law enforcement is closely related to philosophical debates concerning the extent of judicial discretion in legal



discovery. In the school of legal positivism advanced by scholars such as Hans Kelsen and John Austin, law is viewed as a closed and rational system of written norms. Positivism positions the legislator as the sole legitimate creator of criminal norms. Thus, judges are limited to applying statutory provisions according to their textual meaning, without creating or expanding norms through interpretation. Positivism regards the legality principle as the primary safeguard against judicial abuse of power, ensuring legal certainty so that society is informed beforehand about prohibited acts and their corresponding punishment. This perspective treats Article 1 paragraph (1) of the KUHP as an absolute norm, meaning any interpretative effort that exceeds statutory formulation is considered potentially harmful to *nullum crimen sine lege*.

Conversely, the developing doctrine of legal discovery (rechtsvinding) asserts that judges are not merely “the mouthpiece of the law,” but active agents in identifying and shaping law through interpretation and legal reasoning. Thinkers such as Paul Scholten, Utrecht, and Van Eikema Hommes recognize that legislation cannot fully respond to the constant evolution of society. Therefore, when legal gaps, ambiguities, or conflicts arise, judges are obligated to explore living legal values in society as mandated by Article 5 paragraph (1) of the Judicial Power Law. Legal discovery may be carried out through various methods such as grammatical, systematic, and teleological interpretation, as well as legal construction through analogy. This theory provides flexibility in the criminal justice process, as long as the judge remains committed to protecting the rights of suspects and defendants, which are integral to the legality principle.

Furthermore, in the context of modern criminal law, the theory of progressive law developed by Satjipto Rahardjo offers a more advanced view of law as a means for achieving substantive justice in society. This theory rejects the notion that statutory texts must always serve as the primary benchmark of law enforcement. According to progressive law, judges have both the freedom and moral responsibility to go beyond rigid statutory norms when written law fails to address humanitarian issues and the increasing complexity of contemporary crimes. Criminal law enforcement should not be solely oriented toward legal certainty but must also prioritize the effectiveness and societal benefits of law—particularly in addressing emerging crimes such as corporate corruption, cybercrime, and cross-jurisdictional money laundering, which often advance faster than national legislation.

These three theoretical perspectives illustrate a continuum between legal certainty and substantive justice in the application of the legality principle. Legal positivism provides a normative foundation for the protection of human rights by restricting judicial authority, whereas the doctrines of legal discovery and progressive law promote a responsive legal system capable of addressing societal developments. This theoretical tension highlights the urgency of clearly defining the boundaries of judicial authority in criminal legal discovery to ensure that the legality principle remains preserved without hindering the objectives of criminal law in confronting modern challenges. In accordance with the rule of law doctrine, the balance



between legal certainty and substantive justice must be realized within Indonesia's criminal justice system.

The theoretical tension between legal positivism and progressive law demonstrates that judicial legal discovery in criminal cases often lies at the intersection of maintaining legal certainty and achieving substantive justice. If judges are too creative, the legality principle may be undermined; however, if they are too formalistic, law becomes rigid and fails to address the evolving nature of modern crime.

Based on the above background, the primary issues to be examined in this study can be formulated as follows:

- a. How is the position of the legality principle within Indonesia's criminal law system as a legal constraint on judicial authority in legal discovery?
- b. To what extent can judicial legal discovery in criminal cases be exercised in harmony with the principle of legal certainty without contravening the legality principle within the framework of the Indonesian rule of law?

2. RESEARCH METHOD

This study employs a normative juridical method, which positions law as a set of norms regulating societal life, with a focus on examining the principle of legality and the limits of judicial authority in criminal law interpretation. The analysis is conducted based on various legal provisions, including the 1945 Constitution of the Republic of Indonesia, the Criminal Code (KUHP), and Law Number 48 of 2009 on Judicial Power, which are further complemented by the views of legal scholars and relevant legal doctrines. This research also adopts a conceptual approach to elaborate related theories such as legal positivism, the theory of legal interpretation (rechtsvinding), and progressive law, in order to explain the relationship between the principle of legality and judicial authority in ensuring justice and legal certainty.

In addition, the study applies both case and historical approaches to examine examples of legal interpretation in judicial practice, particularly regarding modern crimes such as corporate crime and cybercrime, which were initially not explicitly regulated in positive law. The legal materials used include primary legal materials such as laws and court decisions, secondary legal materials such as textbooks and scientific journals, and tertiary legal materials such as legal dictionaries and encyclopedias. All legal materials are analyzed qualitatively through systematic and logical legal interpretation and construction to produce accurate and relevant arguments and conclusions within the framework of the Indonesian rule of law.

3. RESULT AND DISCUSSION

a. The Position of the Principle of Legality in Indonesia's Criminal Law System as a Juridical Limitation on Judicial Authority in Legal Interpretation

The principle of legality is a fundamental pillar of Indonesia's criminal law system, which places written law as the sole basis for criminal punishment. This principle is explicitly formulated in Article 1(1) of the Indonesian Criminal Code (KUHP), which states that no act



may be punished except on the basis of a criminal provision established by law prior to its commission. The existence of this principle reflects an effort to protect individuals from repressive and arbitrary actions of the state, while ensuring that every citizen has legal certainty regarding prohibited acts and the applicable sanctions.

The position of the principle of legality also gains constitutional legitimacy under Article 28D(1) of the 1945 Constitution of the Republic of Indonesia, which guarantees fair legal treatment and legal certainty for all citizens. This constitutional foundation makes the principle of legality not only a technical instrument in criminal law, but also a guarantee of the protection of fundamental human rights (non-derogable rights). In this context, the principle functions as a limitation on the power of all law enforcement authorities, including the judiciary, in exercising their authority to adjudicate and impose criminal sanctions.

Philosophically, the principle of legality is rooted in the tradition of legal positivism, which views law as written rules enacted by the state that must be strictly obeyed and enforced. From the perspective of Hans Kelsen's Stufenbau Theory, the authority to impose criminal penalties is legitimate only if it derives from and is based on a higher hierarchical legal norm. Thus, judges are prohibited from engaging in judge-made law by creating new criminal norms or expanding the scope of criminal offenses beyond statutory definitions. In this respect, the principle of legality serves as a limitative rule, restraining judges in filling legal gaps.

Nevertheless, positive criminal law in practice often fails to comprehensively address all forms of emerging crimes in society. The complexity of modern crimes—such as corporate corruption, transnational money laundering, human trafficking, and cybercrime—demonstrates that social and technological developments evolve faster than legislative reform. This condition may create a law lag between emerging criminal behavior and the availability of appropriate and explicit legal provisions. Therefore, the role of judges cannot be confined merely as *la bouche de la loi* (the mouthpiece of the law), but must include the function of *rechtsvinding* in order to achieve substantive justice.

Even so, any judicial legal interpretation in criminal cases must remain within the boundaries set by the principle of legality. This means that in conducting legal interpretation or construction, judges may not create new offense elements or expand the scope of criminal liability in a manner detrimental to the defendant. The principle of *lex stricta* prohibits the use of analogical interpretation to define an act as a crime, except where the interpretation results in advantages or protection for the defendant, in accordance with the principle of *in dubio pro reo*.

Within this framework, the principle of legality simultaneously performs two functions in Indonesia's criminal justice system. On the one hand, it serves as a limitation of power, ensuring that judicial authority does not encroach upon the legislative domain. On the other hand, it still accommodates room for judicial interpretation, as long as the method used does not contradict constitutional norms and the Criminal Code. Thus, the principle of legality is flexible but not permissive, maintaining equilibrium between legal certainty and the need for justice in criminal adjudication.



Case studies on corporate criminal liability and cybercrime in Indonesia provide concrete examples of how the principle of legality operates as a boundary for judicial interpretation. Before the explicit regulation of corporations as criminal subjects under legislation such as the Environmental Law, judges were required to adopt a progressive interpretation to hold perpetrators accountable who operated behind corporate entities. Similarly, prior to the enactment of the Electronic Information and Transactions Law (UU ITE) in 2008, Criminal Code provisions on defamation, fraud, and unpleasant acts were applied to crimes committed in digital spaces. In such practices, the principle of legality serves as an evaluative standard for determining whether judicial interpretation exceeds lawful limits or remains within the acceptable boundaries of positive law.

Accordingly, it can be affirmed that the principle of legality holds a central position in Indonesia's criminal law system because it not only ensures legal certainty but also directs and controls judicial authority to prevent misuse of interpretation. This principle stands as the primary juridical foundation that must be upheld in every judicial act of legal interpretation in criminal cases, ensuring that punishment remains the implementation of written law, not merely the product of judicial creativity.

b. The Boundaries of Judicial Authority in Criminal Law Interpretation: Balancing Legal Certainty and Substantive Justice

Within the framework of a state governed by law, judges play a strategic role in ensuring that the law operates effectively to provide public protection. Article 5(1) of Law Number 48 of 2009 explicitly requires judges to explore, follow, and understand the legal values and sense of justice that live within society. This provision reinforces the prohibition for judges from refusing to adjudicate a case on the grounds that no law regulates it, as also stipulated in Article 10(1) of the Judicial Power Law.

However, judicial freedom in legal interpretation is not absolute. There are constitutional and codified limitations that must be respected to prevent judges from transforming into lawmakers, a role reserved for the legislative branch. The primary limitation is the principle of legality, which prohibits the creation of criminal offenses through judicial rulings, except in the form of interpretation of existing norms.

Judges may employ various interpretative methods such as grammatical, systematic, historical, and teleological approaches, yet must remain within the corridor of *lex stricta* so as not to interpret criminal norms extensively in a manner that expands criminal liability. Interpretative expansion that harms the defendant risks violating the principle of non-retroactivity and *nulla poena sine lege*, and therefore may lead to the annulment of the decision through legal remedies.

In the context of rapidly evolving crimes such as cybercrime and corporate criminal offenses, judicial interpretation becomes a necessity. Judges must be capable of fulfilling the demands of justice where written law fails to anticipate emerging unlawful behaviors. On the other hand, they must still respect the separation of powers in a rule-of-law system, whereby



the authority to establish criminal offenses lies with the legislature. Consequently, the use of analogy to expand the scope of criminal acts is prohibited, unless it benefits the defendant. In practice, several court decisions illustrate the importance of balancing legal certainty with substantive justice. For instance, in cases involving corporate criminal liability prior to explicit regulation, judges interpreted legal subjects to include corporations to avoid legal gaps that might allow systemic crimes to occur without accountability. However, as specific legal provisions were later introduced designating corporations as criminal subjects, the room for judicial interpretation became normatively more limited.

A progressive judicial approach was also evident in cybercrime cases prior to the enactment of the Electronic Information and Transactions Law (UU ITE), where judges continued to impose sanctions even though no specific legal norms yet existed to regulate such offenses. In this context, legal interpretation served as a primary mechanism to adapt the law to technological developments. Nevertheless, following the enactment of the UU ITE, the principle of legality reaffirmed boundaries to prevent interpretive expansion beyond what legislation permits.

Thus, the boundaries of judicial authority in criminal law interpretation may be understood based on three principal parameters:

- 1) Judges must not create new criminal offenses to the detriment of the defendant, as this violates *nullum crimen sine lege*.
- 2) Judges must not expand the unlawfulness of an act beyond the scope permitted by criminal law doctrine.
- 3) Judges must remain subject to principles of human rights protection, particularly in *dubio pro reo*.

These principles ensure that judicial freedom in legal interpretation continues to promote substantive justice without undermining legal certainty.

In correlation with the principle of legality, the boundaries of judicial authority in criminal law interpretation must always be preserved in a complementary manner rather than a contradictory one. Both principles complement each other so that the function of criminal law can operate in balance between public protection and the protection of individual rights confronted by state power. Therefore, judicial interpretation is limited to normative interpretation, not the creation of new criminal norms. Judicial authority must be viewed as an instrumental power, not a norm-creating authority within Indonesia's criminal law system.

Based on normative analysis and various case studies, it is evident that the principle of legality occupies a central position as a juridical limitation on judicial authority in interpreting criminal law, while judicial interpretation itself continues to have a legitimate space to ensure effective legal protection against modern crime phenomena. Maintaining a balance between the two reflects the essence of a democratic state governed by law, ensuring that criminal punishment is rooted not only in written legal certainty, but also in providing real justice for society..



4. CONCLUSION

Regarding the first research question, it can be concluded that the principle of legality holds a fundamental position within the Indonesian criminal law system as a clear juridical limitation on the authority of judges in judicial law-making. The principle of legality as stipulated in Article 1 paragraph (1) of the Criminal Code (KUHP) and guaranteed by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia serves as a pillar of legal certainty and a safeguard against arbitrary punishment. Therefore, in performing their *rechtsvinding* function, judges are prohibited from creating new offenses, expanding the formulation of criminal elements, or applying analogies that would be detrimental to the defendant. The status of the principle of legality emphasizes that punishment is only valid when supported by pre-existing written laws, thereby normatively restricting judicial law-making so that it remains consistent with the principles of *nullum crimen sine lege* and *nulla poena sine lege*.

Regarding the second research question, the limits of judicial authority in criminal law-making require a balance between legal certainty and substantive justice. Judges are required to explore the living values within society as mandated by Article 5 paragraph (1) of the Law on Judicial Power, especially when dealing with gaps or ambiguities in the law concerning modern crimes, such as corporate criminal liability and cybercrime. However, such freedom is not absolute; the interpretative methods employed must remain within the scope of *lex stricta* and *in dubio pro reo*, ensuring that judicial decisions continue to protect defendants' rights and do not violate the principle of legality. Thus, judicial law-making is permitted insofar as it does not encroach upon the realm of establishing new criminal norms, which constitutionally belongs to the legislature. In this way, the principle of legality and the role of judges can operate synergistically in upholding the rule of law in Indonesia.

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