

The Principle of Legality: An Orientation of Autonomous Legal Typology

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Abstract

Legality principle as a foundation of criminal law protecting itself with strict, definite, and rigid rules does not justifying analogy, penal provision cannot apply retroactively, it discriminates the formal from the material, consider absolutism and negating relativism, and enforce legal morality toward punitive law, since then the legality of the Criminal Law is belonged to typology of autonomous law. Such typology of autonomous law emphasized the rule of law than access to justice. Next most important aspect is to welcome generation of criminal law by accepting legality principle to be responsive in order to recognize a cosmology of Indonesian criminal law justice in which unwritten laws (material legality) are also living in the middle of people. To support the opinion, an idea of a balance within dynamic unity based on Pancasila's justice values is needed.

Keywords: legality principle, access to justice, autonomous law

1. Introduction

The modern age establishes legitimacy of law through domination of textual rationality. Presentation of the text becomes something glorious signaling that certainty era is a culmination of human thought toward freedom from absolute power manacle.

Steadiness of text became an inevitable choice in restricting ambitious desire of despotic ruler. At that time, whether an act is an evil or not was not determined by the definite sense of justice, and similarly the expectations of justice. Tastes of the ruling constructed assumptions of misconduct as measured only by level of compliance with the rule (Eddy OS Hiariej, 2009: 8).

Such circumstance was worsened by lack of textual guidelines as standard providing references of certainty. Thus, an idea of formalizing something containing moral, ethical, commands, prohibitions, and penalties in attempts of providing definite values in the sense of concrete manifested itself in form of formal legality of "text".

The development of modern jurisprudence characterized by completely written (textual) cannot break away automatically from philosophy of rationalism. The development of rationalism philosophy is part of human's endeavors to understand the nature more rationally and objectively without prejudice (Adji Samekto, 2012: 21).

Modern legal science starts from definitive texts; they are charged with task of facing very complex and multiple social realities. If the law insists on the established text, then the text become an autonomous authority instantly and behind it, domination practice occurs that reality is subordinated by the text. Such beliefs will lead a dogmatic-expressed legal text, as if reality is only a single and the text was so understood.

The dominance of textual steadiness becomes a serious concern when this paper provide a place to discuss the future of science of criminal law based on its fundamental principle, namely principle of legality.

Barda Nawawi Arief as criminalistics experts had stated in the professorial inaugural speech, namely; "The present of Article 1 of the Criminal Code (principle of legality), it is as if that unwritten criminal law or one ever living in the community, was deliberately "*put to sleep or turned off*". During colonial times, the freeze of unwritten criminal law can be understood because it was in accordance with Dutch law of politics at that time. However, it will be felt awkward when the policy is also continued after independence (Barda Nawawi Arief, 2005: 147)".

Legality principle as manifested in the Criminal Code currently is cultural tastes of the Dutch with the existing framework is ideas of individualism and liberalism. The understanding derived from social structure of Western society, so it is not surprised that the Criminal Code only recognizes the principle of legal certainty for the sake of fundamental freedoms of individuals. In addition, rationality of the text becomes the primary domain in determining innocence or guilt status of the criminal act. In a different sense, it is only a written criminal law that can determine whether an act is evil or not. Philosophically the Criminal Code holds the principle of legality in a formal sense, aspects of material is something that is not paid attention. The consequence of it all, the unwritten criminal law is put to sleep and turned off by formal legality principle of the Criminal Code.

In transition period of Indonesian independence, the Dutch Criminal Code remained in place in order to avoid a legal vacuum, but enforceability of the Criminal Code will be allowed to the extent that it is not in conflict with the 1945 Constitution and the meaning of Indonesian independence. Source of the Indonesian criminal justice system (the Criminal Code) is not amended, but only efforts of filling shortages of the Criminal Code by making a special criminal rules and they are not solutions and conversely, they caused only theoretical

ambiguities (changes in technical realm, not substantive one). With no change in the current Criminal Code, then Indonesian criminal law is essentially remains grounded in the practices of colonial criminal law with the face of Indonesia.

It is not an overstatement, when the paper states that the dominating practice of colonial law culture taste has lasted long enough. As formal legality principle of the Criminal Code considers itself with typology of autonomous law based on written rules (text). Regulation is a reliable source in legitimizing power of state in order to protect people against threats of criminal acts. Regulation (formal legality principle) determines boundaries and narrows the scope of a criminal act based on sound of law only.

Till there it seems no problem, but when it is seen with a critical paradigm thought, we would put suspicious of formal legality principle that had been built on traditions of the Western culture. Here the task of this study is important, and next it will explain and parse arguments of the problem focus.

1. Focus Issues

- 1.1 What is behind the domination of legality principle of the Criminal Code as an orientation of an autonomous legal typology?
- 1.2 How to realize a new generation of responsive legality principle of the Criminal Code based on the idea of Pancasila's values-oriented balance?

2. Paradigm

Paradigm used in the paper is paradigm of Critical Theory. The Critical Theory paradigm is adoption of Guba and Lincoln's paradigm.

The Critical theory is one of the four paradigms recognized now by most scholars of social sciences including jurisprudence one in foreign countries. Other three paradigms are positivism, post-positivism and constructivism, as renewed by Guba and Lincoln and, the last paradigm is participatory (Denzin&Lincoln, 1997, 138-139).

Naiveté of reality merely saying that it is formed of objectivism, dualistic, and neutral characteristics is a fundamental attitude of the critical theory to say it must be wrong and should be dismantled. Instead, continuously the critical theory found otherwise, namely the reality is neither objective nor neutral.

In development of jurisprudence, the critical paradigm enters and develops by breaking through the naive reality. The philosophical schools of law such as critical legal theory, critical legal studies, and feminist jurisprudence are also interpreting the law as *law as historical or virtual realities*, where the law is "virtual" or historical fact. Therefore, for them the law is basically false consciousness, or in other words, it is comprehended incorrectly. Law is understood critically as virtual and historical reality resulting from long-crystallization process of political, economic, social, cultural, ethnic, gender, and religious values. Meanwhile, the law for them is a hegemonic instrument with tendency of being dominant, discriminatory and exploitative. As a consequence, every law should be open to criticism, revision, and transformation in order to lead to emancipation (Erlyn Indarti, 2010, 28).

3. Method of Approach

Focus of the problem will be studied by using a socio-legal approach. Principally, socio-legal study is study of law using approach of social science methodology in the broadest sense.

The main thing to understand is the socio-legal study does not identical with a legal sociology and sociological Jurisprudence. Sociology of law focuses primarily on legal discourse that is part of experiences of community daily life. While sociological jurisprudence is one of schools of legal theories initiated by Roscoe Pound and it developed in the United States since the 1930s. The Sociological Jurisprudence says the law is what verdict of the court (Sulistiyowati Irianto, 2009: 176).

Characteristics of the socio-legal study demonstrate the availability of wide variety of methods for legal researchers. This is important, because to date there are still many legal scholars seeking method of the 'pure', mono-discipline methods of legal science research which is not contaminated by social sciences. With the use of interdisciplinary method will have implications on choice of paradigms to be used in describing legal symptoms and their relationship with human being.

Implication of the socio-legal approach will be an effort of looking for answers for the issues focus to be discussed and analyzed in accordance with characteristics of the socio-legal approach, which can be identified through two things; the first, textual studies related to formal legality principle of the Criminal Code. The textual study will focus on explanation behind the dominance of formal legality principle in the Criminal Code as an orientation of autonomous legal typology. They will be analyzed based on Savigny's theory and Selznick's theory.

Then, the second characteristics of the socio-legal approach is a contextual study directing its analysis on contestation of the legality principle of reality of criminal legal thought and the presence of legality principle

in the context of Indonesia. In this case, the focus will be directed on how to bring the efforts of a new generation of responsive legality principle based on the idea of Pancasila-oriented balance. Theoretical bases that will be used are Derrida's theory of Deconstruction and responsive theory as well as providing a specific place to Barda Nawawi Arief 's concept/idea of balance.

4. Discussion

4.1 Legality Principle of the Criminal Code with Orientation of the Autonomous Legal Typology

When its history is examined, the principle of legality is a monumental work of Johan Anselm Paul von Feuerbach, a German scientist of criminal law (1775-1833).

Feuerbach formulated what can call in Latin as *delictum nulla poena nullum sine praevia lege poenali*. It can be interpreted as "no offense, no crime without a criminal provision preceding it." Other Latin term is also used frequently, *nulum crimen sine lege stricta*, meaning that "there is no offense without explicit provision."

According Hazewinkel-Suringa:

"An idea as contained in the principle of legality is also found in the Montesquieu's idea on doctrine of powers separation, it is not the judge who may be liable to say what thing can be punished, lawmakers create the law. They are not only determining the norm, but they should also announce the norm before the act (Andi Hamzah, 2008: 40)".

The principle of legality was historically a reaction to arbitrariness of authorities at the time of *Ancient Regime* and an answer to the functional requirements of the rule of law that was a necessity in a liberal constitutional state at that time (Komariah Emong Sapardjaja, 2002: 6).

As what was said by Barda Nawawi Arief that Criminal Code (WvS) of Dutch legacy is motivated by the thought/idea of individualism-liberalism and it is strongly influenced by the classical school, although influence of neo-classical is found also.

The classical school considers a retaliation idea as an excuse for achieving a goal, namely punishment. The criminal law becomes retributive and repressive. The classical school with *indeterminism* orientation regarding human freedom will focus on act of an offender act so criminal law on act is needed and not on the perpetrator (Eddy OS Hiariej, Ibid: 10).

According Groenhuijsen, there are four meanings contained in the principle of legality:

"First, the legislators should not impose retroactive criminal provisions. Secondly, that all prohibited acts must be contained in formulation of the offenses clearly. Third, judge is prohibited from stating that a defendant committed the criminal act based on unwritten law or customary law, and the fourth, analogy is prohibited to apply in criminal law. In setting the source of law or a basis for determining that an act can be punished is based on the principle of legality in its formal sense. The main source of law is rule of the law (Barda Nawawi Arief, 1996: 88)".

A legality principle with characteristics of resisting doctrine of formal law is, in fact, getting condemnation. History of development of criminal legal science had given birth the first Jurisprudence about teaching of characteristics of resisting against material law in 1933 (*Arrest Hoge Raad*, February 20, 1933, and known by the name of *Veaarts arrest*), prove that the application of the teaching of resistance against the formal law is not sufficient to guarantee discovery of fairness when facing a concrete case (Komariah Emong Sapardjaja, Ibid, 18).

Veaarts arrest Jurisprudence is evidence that the legism principle is slowly getting resistance. Teaching of character of resisting the formal law kills common sense of a judge to think critically beyond the text of legislation. The judge becomes funnel of law. Finally, such judge accepts the laws as a final scheme.

If the law is accepted as a final scheme, the law will be stuck on the status quo in its implementation. Satjipto Rahardjo saw the law as seemingly always moves and changes; follows the dynamics of human life and it will always flow. When we accepted the law as a final scheme of human life, then the law is no longer to human, but the human to the law (Satjipto Rahardjo, 2007: vii-viii).

Concept (Draft) of the Criminal Code retained the legality principle in formal terms (written law), but the most fundamental was the changes were made to expand its formulation materially by asserting the principle of legality (formal-written law) without reduced application of the "living law" (material-unwritten law) of a community (Barda Nawawi Arief, Ibid, 88). It is noteworthy, that the prevailing of law living in middle of the people is only for offenses with no comparison (similarities) or they have not been regulated in legislation. Enactment of the laws living in the community should be in accordance with the values of Pancasila and general principles recognized by the community.

In the context, Savigny can provide an explanation for the unwritten law living in the community under the terms of *volkgeist* (the soul of the nation). According to Savigny:

There is an organic relationship between the law and nature or character of a nation. Law is simply a reflection of *volkgeist*. Therefore 'customary law' growing and developing in the *volkgeist* womb should be seen as the true law of life (Tanya L. Bernard et al., 2010: 103).

A legal phenomenon does not stand alone. It is united in characters of the people because of united opinion of the people themselves. The law does not arise by chance, but it is born from inner consciousness of the people. That is why the law develops side-by-side with development of the people, and it finally disappears when people lose their nationality. Truly, the law is not made artificially, but it is found in the soul of people. Because of the *volkgeist* element, then a law order is contextual in nature.

It should also be noted that Utrecht was among the thinkers giving critical consideration to application of the principle of legality in Indonesia. He said the principle of legality can potentially hinder enactment of custom criminal laws that are still living and will always be alive in Indonesian societies. In a different opinion. Kelsen corroborated that the principle of legality with teaching of formally breaking the law as real expression of *legal positivism* in the criminal law.

Institutionalization of ratio and logical reasoning as the peak of positivism made observation as a primary tool in absorbing reality. Descartes and other rationalists including the positivistic claimed that ratio and logical reasoning contributed enormously in the process of "doubting" something is, so a critical thinking according to Cartesian, is measured by how great "one's rational-logical reasoning" is used (Anthon Susanto 2007 : 89).

Formal legality principle is a real expression of legal positivism and it has ontological manifestation of the written rules which it performs rigidly and detailed (there is no act can be said as a crime before it has been written in the law). Epistemological understanding of the principle of formal legality stops on notion of objective and logical-rational (forbid analogical interpretation). While methodology or system of methods and principles apply deductively with way of thinking of reducing the plural becomes singular (it does not require that rules apply retroactively). Axiologically, the formal legality principle pursuits the rule of law.

In modern civilization, the principle of legality is a fundamental requirement of a state in order to run legal protection of the public. Autonomous typology of the principle of legality becomes significant resources in maintaining law order of society. Autonomous legal regime is described as a safe and perfect situation. They distance themselves from the nature of relativism and sturdily keep the text absolutism.

As Nonet and Selznick described their argument that liberal legalism sees law as an independent institution with its own objective, impartial and autonomous system of rules and procedures. Icon of liberal legalism is legal autonomy with its characters that the law can control repression and maintain its own integrity.

The formal legality principle provides legitimacy to legal institutions, and acquires procedural autonomy at the expense of substantive autonomy. Principally, the autonomous law is based on rules defined as a norm with the established scope and applications. While the law living in community as an abstract norm has no place in presence of the autonomous law.

Nonet and Selznick gave a brief note about characters of the autonomous law, i.e., law is separated from politics, a rule model that can support law order, a procedure is the heart of the law, and autonomy requires compliance with the law (Nonet and Selznick, 2013: 60).

The autonomous law is law as an institution maintaining faithfully independence of the law itself. Because it is independent, so it emphasizes a strict separation between power and law. Legitimacy of the law lies in primacy of procedural law that is free from political influence by restricting established procedures.

The idea that procedure is the heart of law occupies an important side in ethos of the autonomous law. Autonomous legal system offers the most tangible product, namely procedural justice. Accordingly, the autonomous law will be run by a relatively passive and conservative bureaucracy occupied with the implementation of formalistic policies.

So far, this article will give a place for question in the focus of first issue that dominance of the formal legality principle in the Criminal Code is a representative proof of the autonomous law. It can be explained as follows;

- 1) The principle of legality of the Criminal Code lulls and switches off "proclamation soul" of the legal sovereignty aspiring to be free from colonial law towards national legal society. Because the legality principle of the Criminal Code has soul of thoughts and values that do not correspond with the Pancasila.
- 2) The principle of legality of the Criminal Code institutionalizes reductionism (legal positivism) of criminal law by imposing obligations and principle of formal legality but ignores pluralism law (system of custom criminal law and values living in the community).
- 3) Priority of the Criminal Code's legality principle is an enforcement of law moving toward punitive law (the punitive law has indiscriminative character; it does not consider greatly the context of "public morality", namely morality of specific collaboration " of any particular event, because the punitive law paradigm sees violations and crimes as acts of disobedience to the rule).
- 4) The Criminal Code's principle of legality is the primary source of text legitimacy (formal legality) where character of the autonomous law can be understood as a legitimate strategy. Separating material legality from formal legality is manifestation of legitimacy strategy of the Colonial's Criminal Code, thus the legitimacy requires action of control in implementing the power. Therefore, acknowledging material

legality principle is an instrument of control against the power of formal legality principle.

Therefore, since the formal legality principle of the Criminal Code asserted itself as a foundation of criminal law protecting itself with strict and definite rules, and it does not justify analogy as well as criminal provisions should not apply retroactively, so since that the formal legality has been belonged to the regime of autonomous law. Problems emerge as it is not in accordance with the cosmology of the Indonesian criminal code in which unwritten laws are still living in communities. Accordingly, the criminal law (Criminal Code) should decide for its future to choose idea or concept of Pancasila values-based balance. In the final section, this paper will attempt to outline the expectations.

4.2 Toward Principle of Responsive Legality Grounded on the Idea of Pancasila Values-Based Balance

Working on the future of criminal law has become a national consensus since the first National Law Seminar on March 11th, 1963 in Jakarta. The seminar required that General Section of the new Criminal Code containing general (fundamental) principles such as principle of legality should be arranged progressively according to Indonesia personality and development of revolution (Barda Nawawi Arief, 2011: 6).

The progressive character has lived long enough as an attempt of managing a post-independence national legal system of Indonesia. As what was said by Santos, the law must be able to bring great and thorough social changes. In this case, the law must be able to follow the social changes as they are occurring in order that the law is able to resolve problems it faces. How could Santos's opinion be realized if only rely on argument of the legal text "formal legality principle" of Dutch *W v. S* filled with rigidity and stiffness.

It is time to crave a criminal law filled with a soul of balance conception in one side to impose sanctions, and to spread affection in other side by correcting evil character of a perpetrator, looking for solutions for the root of evil, humanizing role of victim and witness, as well as sharing space with text living in community (customary criminal laws and the values that are living in communities). The attempt can be performed if the textual "principle of legality" is pull out and to make a dialogue with its context.

Context of the Indonesian criminal law should not be considered as similar to the colonialism context. Of course, they cannot be considered as uniform for granted. For this purpose, regime of the textual constancy of the legality principle must be objectified to the context of Indonesian cultural-taste.

So, perspective of the formal legality principle is actually orienting itself to definite value of the text, otherwise there is no certainty beyond the text. Perhaps, the difference is certainty beyond the text rests on the relativism road, otherwise the certainty of legal text has absolute, static, and dogmatic characters.

A dogmatic way of thinking becomes special in establishing formal-procedural justice. Activity interpretation, critical thinking, search for a meaning behind an event is something impossible to do by those who are loyally within circumference of dominance of the text. This is what I refer to as a consciousness continuously handcuffed by unconscious until the thinking peak of emphasizing the text and forgetting the conscience. Such path of thought is not easily agreeing with what was said by Donald Black that the law does not concern merely rules, but filled with relativity and complex choices. Steadiness of the text lies in the author's intent domination. So that the law is expelled as what has been thought by legism experts that the law is merely what is contained the statute text.

In the postmodern condition, authors with Cartesian spirit are no longer having a place in the discourse - through an adage, Roland Barthes said that "the author is dead". This is, of course, is only a metaphor to illustrate that there is no longer spirit and soul of the author in his work (Yasraf Amir Piliang, 2003: 119).

Borrowing what Barthes said, it seems powerful enough to knock out dominance of the established text of formal legality principle and centrality idea of author's intent. Currently, we arrives at the process of reaching a point in which language and context react and play a role, no longer emphasize authentic intention of authors of the Criminal Code, namely colonialism regime.

Building the humanist values-oriented Indonesian criminal law is not an easy effort. Since the Independence Day until today, regime of retributive "retaliation" paradigm has been fettering strictly the principle of legality. At least, a deconstructive reading model of association between a text (principle of legality and the context (culture) of the Indonesian nation is needed.

Deconstruction can be a way of thinking which we call dismantles the established order for the sake of taking care of the plurality of meaning in the text. Not that the plurality of meaning at the center of a single truth, but it was in the context of the situation and keep moving liquid (Anthon F. Susanto, 2005: 181).

Dismantling the text steadiness can be categorized as a creative effort in looking a liquid/chaos nature of a reality/context. As Sampford had explained that a reality is full of disorder and uncertainty because it is caused by interactions occurred in community based on the power-relation. We may explain that what had Sampford said about the liquid/chaos reality does not always lead to negative situation. However, Sampford emphasized it in a real sense that a reality is not in a predictable situation, even a reality is often going beyond what is already predicted by text limitedly.

Goal of Derrida's deconstruction is to perform a critical reading that would understand and explore as

possible meaning of the text. Furthermore, the goal of Derrida's Deconstruction is to eliminate illusive ideas saying the ratio could be detached from language and arrive at the truth, or pure and authentic method in itself without the others' helps (Christopher Norris, 2006.10).

Anthon F. Susanto assumes:

"Many legal experts/legal thinkers experienced "illusion of the ego", namely a belief about a pure identity, a fixed essence, or the beginning of the great-egocentric. This illusion grows to the attempt of text purification (make it sacred and untouched), so emerge what is known as purification and centralism of legal text interpretation. So that, fencing of the legal text with social reality is taken place during the process. The inside cannot come out and the outside cannot come in (Anthon F. Susanto, Ibid, 04)".

The centralism of interpretation is very solidly in treating the text as if it gives all to the rules. Finality of the text does not justify a judge to use his or her own interpretation. He or she is, of course, bound by the systematic and chronology of a legal incident.

In fact, beyond it all, when Donny Gahral Adian was reading Dworkin, he found a problem hidden behind the collar of Dworkin's epistemological thought. Dworkin based his legal philosophy on certain assumptions about a "story". The story at this point is understood as a continuous narrative unity of the positives (regulations) in achieving the moral (Donny Gahral Adian, 2013: 35). A judge may build his or her story of legal considerations with a touch of public morality emotion. Thus, the judge can understand justice as a complex moral reality. Accordingly, the judge who is interpreting the law is actually telling a story about the formal and substantive, and not merely regulatory matter.

Derrida's Deconstruction can guide to see that the Criminal Code's principle of legality is, in essence, potentially producing an expert/legal thinker with illusion of ego. The character maintaining the legal experts/thinkers are on textual centralism in interpreting criminal act and only reduced to the formal certainty legislation. Idea and concept of the illusive principle of legality is making the criminal law is characterized as rigid and frozen. With such development it can be seen how difficult to direct the criminal law to the aspect of social protection of society, especially in achieving well-being goal.

The Derrida's Deconstruction can turn on the hidden forces assisting the construction of the text (principle of legality). The legality principle is no longer an intact order of the formal certainty, but it must run sustainability and care for the continuously developing spirit of law as what had been proposed by Savigny. Since then, the principle of legality became an open arena of struggle, or exactly after it shared space with the law living in public (material legality).

Flexibility of thought with the idea of balance in the aspect of material and formal senses becomes a strategic choice in an attempt of deconstructing the illusive idea of legality principle of the Criminal Code. Considering how difficult to make a hope on the principle of legality with its obsolete retributive "retaliation" paradigm, and particularly the principle is not in accordance with the development of roots culture of Indonesia.

Toward generation of criminal law, it must be performed responsively. The first and main thing is making the principle of legality to be more responsive to social needs in future. So that logical reasoning of the criminal law can include knowledge of social context and have an effect on development of the laws living in communities. Logical consequence of accepting that the principle of legality being responsive is: the principle will encounter with the openness (flexible-dynamic) and certainty (static). However, the most important side of the responsive law is to the principle of legality was able to recognize the legal cosmology of his own nation, the hope of the creation of substantive justice.

Thinking responsively cannot certainly avoid difficulties about substance matter to technical level. There is an assumption requiring to pay attention, if the living values are so broad in scope; are all said to be worth responsive; or can they be accommodated in our criminal law.

For the purposes, dominance of the legality principle of the colonial legacy must be rearranged and reformulated by what had been called by Barda Nawawi Arief as a principle oriented at the basic idea of "balance" and embodied in three main problems of criminal law, namely problems of "criminal acts", criminal responsibility/guilt", and "crime and punishment".

The basic idea of balance within dynamic unity is needed, namely monodualistic balance between community's interest and individual's one, a balance between interest of the criminal and interests of the victim, a balance between "objective" (action/physical) and "subjective" (person/inner/inner attitude) elements/factors; idea of *daad-dader strafrecht*, the balance between formal and material criteria, the balance between the rule of law and justice, and the balance between national values and universal values. The idea of balance is always oriented to the values of Pancasila.

Based on the thinking above, preparation of the New Criminal Code concept cannot be separated from the idea/ policy of development of the National Legal System based on Pancasila as the aspired values of national life . This means, the renewal of National Criminal Law should also be motivated by and sourced on/oriented to the basic ideas of Pancasila containing the balance of value/idea/ paradigm, namely; religious moral (The Godhead), humanitarian (humanistic), nationality, democracy, and social justice. The balance of the

five precepts can be realized into the balance of three pillars', namely; a pillar of Deity (religious), a pillar of humanity (humanistic), and a pillar of society (national, nationalistic; democracy/people-oriented, and social justice (Barda Nawawi Arief, *Ibid*: 04).

5. Conclusion

The legality principle of the Criminal Code is a tangible expression of legal positivism having ontology of rigid and detailer rules (criminal act is written in the law). Understanding of epistemology is objective and logical-rational (forbid analogy). The methodology applied is deductive with way of thinking of reducing the plural into the singular (retroactively applied rules are not required). Axiologically, the principle of legality pursues value of the rule of law.

Autonomous typology of the principle of legality is a significant resource in maintaining societal and law orders. Regime of the autonomous law is described as a safe and perfect situation. It distances itself from relativism and keeps sturdily the text absolutism. Principally, the autonomous law is centered on rules defined as a norm with the established scope and applications. While, the law living in community is considered an abstract norm and it has no place in the presence of autonomous law. The system of autonomous law offers its most tangible product, namely procedural justice.

Toward generation of criminal law, it must be performed responsively. A responsive legality principle has a selective-adaptive capacity in strengthening the ways how the openness (responsive law- material legality) and the integrity (autonomous law-formal legality) can support to each other, although there is a difference of meaning between the two. To support it, an idea of balance within dynamic unity is needed, namely: a monodualistic balance between interests of the community and the individual, a balance between interests of the criminal and the victim, the balance between "objective" (action/physical) and "subjective" (person/inner/inner attitude) elements/factors, idea of *daad-dader strafrecht*, a balance between formal and material criteria, a balance between the rule of law and justice, and a balance between national and universal values. The idea of balance should always be oriented to the values of Pancasila.

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