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The Role of Comparative Criminal Law Systems and the Characteristics of the *Legal* Family in Indonesia after the Enactment of the New Criminal Code

Haffian Abdi.M[1], Pujiyono[2]

[1]Master of Law, Faculty of Law, Diponegoro University, Semarang

[2]Lecturer Master of Law, Faculty of Law, Diponegoro University, Semarang

ABSTRACT: This research discusses the comparison of the criminal law system and the characteristics of the *legal family* in Indonesia after the enactment of the new kuhp. This research uses a normative juridical approach method, namely by examining / analyzing secondary data in the form of legal materials, especially primary legal materials and secondary legal materials. The specification in this research is analytical descriptive research. In studying comparative law there are two benefits, namely Theoretical Benefits Can support the development of legal science in general and criminal law in particular, covering two things, namely, closely related to research in the field of legal philosophy and legal history; closely related to the understanding and development of national law. And Practical benefits Provide positive input for the development and formation of law in general and criminal law in particular. The results of the research show that the criminal law system in Indonesia until now (before the enactment of the New Criminal Code) belongs to the *Romano-Germanic Family of* law. This can be seen from the identical characteristics between the characteristics possessed by the criminal law system in Indonesia and the characteristics of the *Romano-Germanic Legal Family*. After the enactment of the New Criminal Code, there is a shift in the legal family, which was originally the *Romano-Germanic* legal *family* or *civil law* has shifted/changed to a mixed legal *family* or *legal mix system* or *civil law and religious law*.

KEYWORDS: Comparative Criminal Law, Family of Law Characteristics, New Criminal Code

I. INTRODUCTION

There are various foreign terms regarding comparative law, including "*Comparative Law*", "*Comparative Jurisprudence*", "*Foreign law*", "*Droit Compare*", "*Rechtsvergelijking*" and "*Rectsvergleichung*" or "*Vergleichende Rechlehre*". By definition, comparative law can be said to be an effort to study law by making comparisons, both similarities and differences in applicable law (Shodiq, D. M, et al., 2020). The term comparative law can be distinguished as follows:

a) *Comparative law*;
b) Law of comparison (English "*law compared"*) or (French "*droid compare*")
c) *Comparative legal systems;*
d) *Comparative legal tradition;*

The comparative law method began when Aristotle (384-322 BC) conducted research on 153 constitutions of Greece and several other cities, followed by Solon (650-558 BC). Further developments occurred in the 19th century, for example the Institute of Comparative Law at the Collage de France (1832) and the University of Paris (1846) (Shodiq, D. M et al., 2020). Initially, the comparison of legal systems was understood as one of the methods of understanding the legal system in addition to legal sociology, legal history and legal anthropology. However, until now there is no one word from jurists and academics regarding the position of comparative law where some say comparative law as a method and some state it as a legal science.

As for those who put forward comparative law as a method is Rudolf D. Schlessinger. as quoted by Prof. Barda Nawawi in his book argues:

- *Comparative Law* is a method of inquiry with the aim of gaining deeper knowledge about certain legal materials.
- *Comparative Law is not a body of rules* and principles, it *is not a branch of law*;
- *Comparative law is the technique of dealing with actual* foreign *law elements of* a *legal problem.*

Starting from this understanding, the term "comparative criminal law" can be used instead of "comparative law". As stated by Dr. Guitens-Borgois, as follows:

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"Comparative law is the method *of comparison* applied to the science of *law*, Comparative *law* is not the *science of law*, but only a method of study, a method of researching something, a way of working, namely comparison. If itụ law consists of a set of rules, then it is clear that "comparative law" (*vergelijkende recht*) does not exist. The method of comparing legal rules from different legal systems does not result in the formulation of independent *rules*: *there is no comparative law*." (Nawawi, B, 2014).

Comparative law as a method means that it is a way of approaching to better understand an object or problem under study, therefore, the term comparative law method is often used. There are those who state comparative law as a legal science. Apeldoorn quoted by Djoni Sumardi Gozali in his book entitled "Introduction to Comparative Legal Systems" states as follows: Gozali, D. S. (2020).

"Laws differ according to place and time, but there is no law of a time, a nation or a country that stands alone. Comparative law reveals that in addition to differences there are also many similarities between the laws of various nations. The science of comparative law, of course, is not satisfied with the mere recording of differences and similarities, but also seeks their explanation."

According to Purnadi Purbacaraka and Soerjono Soekanto Comparative Law is a branch of science that compares legal systems that apply in one or several societies. Kusumadi Pudjosewojo explains the science of comparative law which shows similarities and differences in the legal systems of the nations of the world (Gozali, D. S., 2020).

Judging from these two groups, there are 2 (two) views on the definition of comparative law, namely the view that comparative law is a method and comparative law is a branch of law in the sense that comparative law is a branch of science. Here the author argues that both definitions are correct definitions because a comparison of law is not only seen from the point of view of a method but must also be seen that comparative law is a branch of legal science due to the development of society which now not only sees comparative law as a method of comparing one legal system with another legal system but now people see comparative law as a branch of legal science that can help the development of law in society (Wicaksono, D. 2022).

In addition, in comparative studies, it is closely related to the discussion of *legal* families, as found by Rane David quoted by Prof. Barda in his book entitled "Comparative Criminal Law", Rene David divides four legal families, namely:

1. *The Roman-Germanic family*
2. *The Common Law family*
3. *The family of Socialist Law*
4. *Other* conceptions *of* law and *the* social order.

But basically, in addition to the four legal families above there are still other legal families such as the Islamic legal system, the Far Eastern legal system and the Chinese legal system. Marc Ancel divides 5 (five) legal systems in the world which are grouped or classified in one legal family based on the origin of its development history, and its method of application. The grouping of the 5 (five) legal families is as follows:

1. Continental European and Latin American systems (also known as *civil systems of Civi Law*)
2. Anglo-American *system* (also known as *Common Law system*)
3. *Middele East system*, e.g. Iraq, Jordan, Saudi Arabia, Lebanon, Syria, Morocco, Sudan, and so on.
4. *Far East system*, e.g. China, Japan.
5. *Socialist Law system*.

Basically, although there are differences in the grouping of families of legal systems in the world as described above, in essence it is stated by Nurul Qamar in his book entitled comparison of legal and judicial systems there are 5 (five) families of legal systems in the world, and which in its development is found in the family of mixed legal systems, so that it can be shown as follows: (Qamar, N. 2010). continental European legal family, Anglo-Saxon legal family, socialist legal family, local / regional legal family, religious legal family, and mixed legal family.

We know that Indonesia is a former Dutch colony and until now the Republic of Indonesia still uses the Criminal Code WvS (*Wetboek van Strafrecht*) inherited from the Netherlands. Historically, the WvS Criminal Code has been in effect since 1886 when it was called the WvSNI Criminal Code (*Wetboek van Strafrecht voor Nederlands Indie*) which was used by the Dutch East Indies Government in Indonesia (then still the Dutch East Indies). After the independence period, the WvSNI then became the Indonesian Criminal Code in 1946. So if we calculate the period of its enactment from the Netherlands, namely in 1886 until 2024, then the Criminal Code has been in effect for 138 years.

In 2023, after a long journey of 138 years, Indonesia finally had its own Criminal Code, according to Prof. Barda Nawawi Arief said that the reform of national criminal law essentially implies an effort to reorient and reform criminal law in accordance with the central socio-political, socio-philosophical, and socio-cultural values of Indonesian society which underlie social policy, criminal policy, and law enforcement policy in Indonesia (Rumah Tahan Negara Kelas IIB Pelaihari, 2024).

In connection with the background put forward by the author in this paper and the title raised by the author, namely "The Comparative Role of Criminal Law Systems and the Characteristics of the *Legal Family* in Indonesia" the author wants to write

how the role of criminal law comparisons, and Indonesia is included in which legal family? And also see whether there are changes to the legal *family* in Indonesia after the passing of the new Criminal Code.

II. RESEARCH METHODS

Research on the Comparative Role of the Criminal Law System and the Characteristics of the Legal Family in Indonesia after the New Criminal Code was passed uses a normative juridical approach method, namely by examining/analyzing secondary data in the form of legal materials, especially primary legal materials and secondary legal materials. The specification in this research is analytical descriptive research. The types and techniques of data collection in legal research are obtained through literature studies. The data analysis method used in the research is qualitative analysis.

III. RESULTS AND DISCUSSION

A. The Benefits or Role of Comparison to Criminal Law

As said by Prof. Sudarto quoted by Prof. Barda Nawawi in his book "*comparative criminal law*" said; In studying comparative law there is a tendency to lead to studying foreign legal systems. There are two benefits of studying foreign legal systems it: The general one (Nawawi, B, 2014):

a. Which is general:
   1) gives satisfaction to people with a scientific curiosity;
   2) deepen understanding of the institutions of society and one's own culture;
   3) brings a critical attitude to the legal system itself.

b. Which is specialized:
   - In connection with the adoption of the active national principle in our Criminal Code, namely Article 5 paragraph 1 to 2, that "criminal rules in Indonesian legislation apply to citizens who outside Indonesia commit one of the acts which by a criminal rule in Indonesian legislation is considered a crime while according to the legislation of the country where the act is committed, threatened with punishment". For example: an Indonesian woman commits a criminalized abortus provocatus in Singapore which is not punishable there, then if the woman returns to Indonesia, she cannot be punished.

Furthermore, according to Rene David and Brierley, Useful in legal research of a theoretical and philosophical nature, Important for better understanding and for developing our own national law and Helps in developing an understanding of other nations and therefore contributes to creating a good relationship / atmosphere for the development of international relations.

Meanwhile, according to Prof. Soerjono Soekanto, explained that there are several points of usefulness and benefits of comparative law, among others:

1) Provides knowledge of the similarities and differences between the various areas of the legal system and their basic definitions.
2) Knowledge of the equation in number 1 will make it easier to establish: a) legal uniformity (unification); b) legal certainty; and c) legal simplicity.
3) Knowledge of the differences that exist provides a more solid grip or guidance, that in certain matters of legal diversity is a reality and things that must be applied.
4) Comparative Law will be able to provide material on what legal factors need to be developed or gradually abolished for the sake of societal integrity, especially in a pluralistic society like Indonesia.
5) PH can provide materials for the development of law across legal systems in areas where codification and unification are too difficult to realize.
6) With the development of PH, the ultimate goal is no longer finding similarities and/or differences, but rather solving legal problems fairly and accurately.
7) Know the political, economic, social, and psychological motives behind the legislation, jurisprudence, customary law, treaties and doctrines that apply in a country.
8) PH is not bound to the rigidity of dogma.
9) It is important to carry out legal reform
10) In the area of research, it is important to further refine and direct the legal research process
11) In the field of legal education; expanding the ability to understand existing legal systems and their proper and fair enforcement.

Basically, the purpose of comparative law as expressed by Van Apeldorn in the book by Romli Atmasasmita, distinguishes the purpose of comparative law in theoretical purposes and practical purposes. The theoretical purpose explains that law as a symptom of the world (universal) and therefore legal science must be able to understand the symptoms of the world; and for that it must be understood the law in the past and the law in the present while the practical purpose of comparative law is a tool to help order society and national legal reform and provide knowledge about various regulations and legal thoughts to legislators and judges (Atmasasmita, R, 2000).

So after several expert opinions above, the author divides the two benefits in comparative criminal law, namely:

1) Theoretical Benefits
   Can support the development of legal science in general and criminal law in particular, covering two things, namely (1) closely related to research in the field of legal philosophy and legal history, (2) closely related to the understanding and development of national law. For example: Restorative *justice*, which is a concept of justice that prioritizes reconciliation over retribution, is currently practiced in several developed countries. In North America, Australia and parts of Europe, restorative justice has been applied to the conventional stages of the court process, namely the investigation and prosecution stages, the adjudication stage and the execution stage of imprisonment. With a comparative study of criminal law, it is not impossible that restorative justice can also be applied in the Indonesian national criminal law.
2) Practical Benefits
   Provide positive input for the development and formation of law in general and criminal law in particular.

B. Characteristics of The Legal Family In Indonesia Today

Judging from these objectives here the author basically aims to reveal which Indonesian criminal law system belongs to which legal family, so that basically it must be understood in advance the law in the past such as the legal family classified by Rene David and John and will be compared with the law in the present, namely Indonesian criminal law that is developing at this time.

Based on the usefulness of comparative law discussed in the first problem formulation, the author sees that by comparing the legal families classified by Rene David and John will make us or the public better understand national law, more precisely criminal law in Indonesia.

The author will first explain the classification of the legal family classified by Rene David and John, namely *Romano-Germanic* (*civil* law), *The common law family* and *the family of socialist law*. Rene and John quoted from the same book state that *Romano-Germanic* as the first legal family mentioned first compared to the others. This legal family is a term to honor the joint efforts of jurists from Latin and *Germanic* countries who were born and grew in several universities in Europe since the 12th century.

The development of this family of laws relied on compilations that lived during the time of Emperor Justinianus (483-565) or known as *codex justinianus*. Basically, this family of *laws* is based on Roman law and Roman law views "*the rules of law*" as rules of behavior related to the image of justice and morality. The task of formulating the law in this family of laws is left entirely to jurists with doctrines on legal aspects, thus paying less attention to the legal and administrative accountability of law enforcement practices. One of the characteristics of this family of laws as explained by Rene and John is that this law is private so that it regulates the interaction relationship between each citizen. A feature of this family of laws is that it basically prioritizes the use of laws in the form of a *Code*. Furthermore, this family of laws is disseminated through colonialization by countries that adhere to this family of laws throughout the world (Atmasasmita, R, 2000).

In this case the author will discuss the common law family, Rene and John quoted from the same book state that the common law family is identical to the formation of law in the family of law formed by judges. In this legal family, dispute resolution through the courts is preferred over formulating a general rule for future behavior. In this legal family, basically creating is more concerned with creating peace than an articulation of the moral foundations of a social order. Furthermore, the family of laws in terms of its history has a close relationship with royal power. This family of laws developed as a system in cases that threatened the peace of the English royal family or where the intervention of the king's power was necessary.

The essence of this family of laws is therefore "public law". Thus in this law if there is a conflict between individuals then the conflict is not always a matter for the courts as long as it does not concern the interests of the kingdom. Thus, the role of the *Romano-Germanic* family of *laws* was very small for the formation and development of the *common law* family of *laws*. In this legal family, cultivating the same experience in disseminating its influence, namely using the same reasons of interest, colonization and reception (Atmasasmita, R, 2000).

Regarding *the family of socialist law*, based on what Romli Atmasasmita wrote in his book entitled Comparative Criminal Law, this family of law emerged in the Soviet Union. Countries that embrace this family of law are socialist countries that originally came from the *Romano-Germanic* family of law, and they still maintain the characteristics of the family of law.

Related to the characteristics of the criminal *law system* adopted by Indonesia, which in its development is often associated with Indonesia as a *civil law system*, but this cannot be taken for granted. It must be explained first about the characteristics of the criminal law system adopted in Indonesia, namely the existence of a codification system, in Indonesia the codification system can be seen from the Criminal Code, then judges in the Indonesian judiciary do not refer to precedents or the doctrine of *stare decisis* so that judges in the trial refer to the law as the main source even though in Indonesia there are jurisprudence-jurisprudence used as a source for resolving a case but still the law is used as the main source of law in resolving a case. Basically, judging from these characteristics, it can be said that Indonesia adheres to the legal system of *civil law* or *Continental Europe*. Gerald Paul in his book entitled *an introduction to American law* states that European continental systems are often referred to as *romano Germanic legal families* because they have identical characteristics. The European continental system or often referred to as *civil law* is known to have a legal source that comes from the codification of written law (Gerald Paul Mc Allen, 2010).

Judging from this, where *civil law* which is part of *Romano Germanic* has the same identicality with the criminal law system in Indonesia where in *Romano Germanic* uses a codification or law while in Indonesia in the criminal law system uses the Criminal Code. Stated by John Henry Merryman in his book entitled the *civil law tradition: an introduction to the legal system of western Europe and Latin America* that there are three sources of law from *civil law*, namely laws, derivative regulations and customs that do not conflict with the law. In this *civil law* legal system, judges' decisions are often considered not a law (Merryman et al., 2018).

Based on the characteristics that have been explained, it is clear that the criminal *law system* in Indonesia can be said to be included in the *civil law* system where the *civil law* system is part of or often referred to as the *Romano-Germanic Family*, where Indonesia has characteristics that are identical to *Romano-Germanic*, namely using a source of law based on a codification, namely a law in this case, namely the criminal law code. Furthermore, the criminal law system in Indonesia can be viewed in terms of the history experienced by Indonesia. As we know that Indonesia has been colonized by the Netherlands for more than 3 centuries and this can be said to have influenced the Indonesian legal system until now. Choky R. Ramadhan in his journal entitled the convergence of *civil law* and *common law* in Indonesia in the discovery and formation of law stated that during the colonial era, the Dutch had been influenced by the *Romano-Germanic* legal family (Ramadhan, C. 2018). So when viewed from these origins, it is clear that the *Romano-Germanic* legal system adopted by the Netherlands will be passed down to the colonized country, which in this case is Indonesia. Therefore, the characteristics adopted by the Indonesian criminal law system have similarities with the characteristics of the *Romano-Germanic Family*.

Furthermore, it can be seen that for countries that adhere to *civil law*, judges in these countries can be said to only be the mouthpiece of the law, this happens in Indonesia where judges in Indonesia often become the mouthpiece of the law. This is different from countries that adhere to *common law* where in the common law system, judges can make a law or law. Basically, as explained earlier, *civil law* is part of the *Romano-Germanic* family, because it includes Roman law and the contribution of German legal science in the development of juristic styles. Then, it is stated by Peter De Cruz in his book entitled a comparison of the legal systems of *common law*, *civil law* and *socialist law* that countries that adhere to *civil law* are based on the criteria of their legal sources (regulations, laws and main legislation in force), the characteristics of the mode of thought regarding legal issues, different legal institutions namely executive, legislative and judicial structures) and fundamental legal ideology (Peter De Cruz, 2014). Judging from these characteristics, it can be said that Indonesia belongs to the *Romano-Germanic* legal family because it has identical characteristics, especially regarding the most important characteristic, namely the source of law where Indonesia uses laws as its legal source, similar to *Romano-Germanic* which uses laws as its main legal source.

However, there are different opinions such as the opinion conveyed by Achmad Ali, where Achmad Ali argues that Indonesia is not included in *civil law* or *common law* but Indonesia is included in the *legal mix system* classification. This is stated based on the facts, namely: Indonesia treats legislation which is a characteristic of *civil* law, the existence of *customary law* as a characteristic of *customary law*, the existence of Islamic *law* and the existence of religious courts in Indonesia as a characteristic of the Muslim *law system* and judges in Indonesia in practice follow jurisprudence which is a characteristic of *common law* (Ali, A., 2012).

However, according to the author, when viewed in terms of criminal *law* in Indonesia, Indonesia basically uses *civil law* or *Romano-Germanic* because in the criminal law system in Indonesia, Islamic law is not used as a basis for punishment for criminal acts in Indonesia, the Criminal Code is the source of law used for criminal acts in Indonesia. As previously explained, the dominant legal family groups are *common law* and *civil law*. Ernu Widodo in his journal entitled the relevance of *civil law* and *common law* systems in the legal regulation of standard agreements in Indonesia states that the important *civil law* areas are mainland Europe and Latin America and also include Indonesia based on the traditions and history that have been conveyed previously. Basically, the joint foundation of this group is the *reception of the Roman law*. The development of the German Roman law system was an effort thanks to Napoleon Bonaparte who tried to compile the Code Civil and Code Napoleon based on Roman law (Widodo, E., 2010).

Furthermore, Paisal Burlian in his book entitled the legal system in Indonesia explains that the Continental European legal *system* is also known as the *romano-germanic legal system* which is a system that originally developed in mainland Europe. The main point in this system is the use of written legal rules, and various legal provisions are codified or systematically compiled which will be further interpreted by judges in their application (Burlian, P., 2015). According to the author, this is in accordance with the characteristics contained in the criminal law system in Indonesia such as the use of written legal rules and various codified provisions such as in Indonesia where the Criminal Code is a source of law that is systematically codified and used as the main source of law in applying penalties for criminal acts in Indonesia.

Furthermore, Paisol Burlian explained that with the concordance principle applied by the Dutch government during the colonization of Indonesia, the applicable law for Indonesia was Dutch law and at that time it was one of the adherents of *civil law* which was part of the *Romano-Germanic Family* so that the legal system in Indonesia also used the *Romano-Germanic Family* because Indonesia was a Dutch colony. Furthermore, mutatis mutandis the *civil law* system was implemented in Indonesia. Although the Netherlands no longer colonized Indonesia and Indonesia achieved independence, the influence of the civil law system is seen in the spirit of codification and unification.

So when viewed from the historical aspects experienced by Indonesia, the legal family adopted by Indonesia is basically a *Romano-Germanic* legal family because at first Indonesia was a country colonized by the Netherlands while the Netherlands was one of the countries that adhered to the *Romano-Germanic* legal family. Furthermore, when viewed based on characteristics, Indonesia is basically included in the *Romano-Germanic* legal family because it has identical characteristics, namely in *Romano-Germanic* the use of legislation as the most important source of law in the form of a book and there is a codification system, as well as the criminal law system in Indonesia where in the criminal law system in Indonesia the legislation in the criminal aspect, namely the Criminal Code, is a written regulation in the form of a book that is used as the main source of law in resolving a criminal case and the Criminal Code is the result of codification so that it becomes a unified regulation in written form.

C. Characteristics of Legal Family in Indonesia After the Enactment of the New Criminal Code

The previous discussion on the characteristics of the legal *family* in Indonesia that until now the WvS Criminal Code is still used which is still closely related to the Dutch legal system (at that time), the author argues that it still tends to group Indonesia in the area of criminal law still *Romano-Germanic* legal *family* or *civil law*. Although in other legal families, for example the Indonesian civil family is categorized in a mixed legal *family* or *legal mix system* because in carrying out civil law Muslims use Islamic law in religious courts. Or according to Prof. Barda in his book entitled "Comparative Criminal Law" Indonesia is grouped in the legal family of *civil law and religious law* (Nawawi, B, 2014).

However, after the enactment of the New Criminal Code or the Criminal Code of 2023, the author tends to group Indonesia into the *legal mix system*. The reason the author groups it in the legal mix is because in the concept of reforming the Criminal Code in Indonesia, there is an "idea of balance / monodualism". With regard to this, Barda Nawawi Arief stated: One of the alternative/comparative studies that is very urgent and in accordance with the idea of National Law Reform at this time is the study of *Family Law* which is closer to the character of society and legal sources in Indonesia. The characteristics of Indonesian society are more monodualistic and pluralistic and based on various conclusions of the National Seminar, the sources of National Law are expected to be oriented towards the values of Law that live in society, namely those sourced from the values of Customary Law and Religious Law (Irmawanti, N. D. et al., 2021).

It can be proven that there is an idea of balance, namely the existence of the principle of material legality contained in Article 2 of the Criminal Code, which reads as follows:

1. The provisions referred to in Article 1 paragraph (1) shall not prejudice the applicability of the law living in the community which determines that a person should be punished even though the act is not regulated in this Law.
2. The law that lives in the community as referred to in paragraph (1) applies in the place where the law lives and as long as it is not regulated in this Law and in accordance with the values contained in Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights and general legal principles recognized by the community of nations.
3. Provisions regarding the procedures and criteria for determining life in the community are regulated by Government Regulation.

The elucidation of Article 2 of Law 1/2023 explains that "laws that live in the community" are customary laws that determine that a person who commits certain acts should be punished. The law that lives in the community in this article relates to unwritten laws that still apply and develop in community life in Indonesia.

In addition to the principle of material legality contained in the New Criminal Code, judges are no longer the mouthpiece of the law. It can be seen in the Sentencing Guidelines in Article 53 and Article 54, which reads:

Article 53 which reads:

1) In adjudicating a criminal case, judges are obliged to uphold law and justice;
2) If in upholding law and justice as referred to in paragraph (1) there is a conflict between legal certainty and justice, the judge shall prioritize justice.

Article 54 paragraph 1 which reads:

1) In sentencing, consideration must be given to
   a) Form of culpability of the perpetrator of the crime;
   b) motive and purpose for committing the crime;
   c) the inner attitude of the perpetrator of the crime;
   d) the crime is either premeditated or unpremeditated;
   e) manner of committing a criminal offense;
   f) the attitude and actions of the perpetrator after committing the crime;
   g) life history, social circumstances, and economic circumstances of the criminal offender;
   h) the effect of punishment on the future of the offender;
   i) the effect of the criminal offense on the victim or the victim's family;
   j) forgiveness from the victim and/or their family; and/or
   k) the values of law and justice that live in society.

From these two articles governing guidelines, it can be seen that judges in adjudicating a case must prioritize justice when there is a conflict with legal certainty. and judges must consider the values of law and justice that live in society, which means that not only the laws contained in the law as a basis for sentencing but also customary law.

From the discussion of the characteristics of the legal *family* in Indonesia after the enactment of the new Criminal Code, the author argues that based on the idea of balance / monodualitik contained in the Criminal Code, the Indonesian legal *family* / legal *family* has shifted, which initially included the *Romano-Germanic* legal *family* / legal *family* or *civil law* shifted / changed to a mixed legal family / *legal family* or *legal mix system* or according to Prof. Barda grouped in the legal family of *civil law and religious law*. However, the new Criminal Code is still not in effect, the new Criminal Code will come into force in 2026 (3 years after its enactment).

B. CONCLUSIONS

Comparative Law has a very important role and has many benefits both theoretically and practically, which can support the development of legal science in general and criminal law in particular, and can provide positive input in efforts to reform national criminal law.

The criminal law system in Indonesia until now (before the enactment of the New Criminal Code) is included in the *Romano-Germanic* Legal *Family*. This can be seen from the identical characteristics between the characteristics possessed by the criminal law system in Indonesia and the characteristics that exist in the *Romano-Germanic Legal Family*. because it has identical characteristics, namely in *Romano-Germanic* the use of laws and regulations as the main source of law in the form of a book and there is a codification system, as well as the criminal law system in Indonesia where in the criminal law system in Indonesia the laws and regulations in the criminal aspect, namely the Criminal Code, are written regulations in the form of a book that is used as the main source of law. And it can be seen for countries that adhere to the *Romano-Germanic /* civil *law*, judges in the country can be said to only be the mouthpiece of the law, this happens in Indonesia where judges in Indonesia often become the mouthpiece of the law.

After the enactment of the New Criminal Code, there is a shift in the legal *family*, which was originally the *Romano-Germanic* legal *family* or *civil law*, which has shifted to a mixed legal *family* or *legal mix system* or *civil law and religious law*. This is influenced by the idea of balance / monodualitik contained in the Criminal Code, namely the inclusion of the principle of material legality, namely the recognition of customary law, as well as the inclusion of sentencing guidelines for judges, namely considering the values of law and justice that live in society.

REFERENCES

1) Ali, A. (2012). Menguak Teori Hukum (Legal Theory) dan Teori peradilan (Jurisprudence): Termasuk Interpretasi terhadap Undang-undang (Legisprudence).
2) Atmasasmita, R. (2000). Perbandingan Hukum Pidana. Bandung: Mandar Maju
3) Burlian, P. (2015). Sistem Hukum di Indonesia (full text).
4) Gerald Paul Mc Allen (2010), An Introduction to American Law. Carolina: Academic Press. p. 63
5) Gozali, D. S. (2020). Pengantar Perbandingan Sistem Hukum.
6) Merryman, J., & Pérez-Perdomo, R. (2018). *The civil law tradition: an introduction to the legal systems of Europe and Latin America*. Stanford University Press
7) Nawawi, B. (2014). Perbandingan Hukum Pidana. *Jakarta: Raja Grafindo*.
8) Peter De Cruz (2014). Perbandingan Sistem Hukum Common Law, Civil Law Dan Socialist Law. Bandung: Nusa Media.
9) Qamar, N. (2010). Perbandingan sistem hukum dan peradilan civil law system dan common law system. Makassar: Pustaka Refleksi.
10) Ramadhan, C. (2018). Konvergensi Civil Law dan Common Law di Indonesia dalam Penemuan dan Pembentukan Hukum. Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada, 30(2), 213-229.
11) Shodiq, D. M., & Djafar Shodiq, S. H. (2023). Perbandingan Sistem Hukum.
12) Irmawanti, N. D., & Arief, B. N. (2021). Urgensi tujuan dan pedoman pemidanaan dalam rangka pembaharuan sistem pemidanaan hukum pidana. *Jurnal Pembangunan Hukum Indonesia*, *3*(2), 217-227.
13) Wicaksono, D. (2022). Perbandingan Sistem Hukum Pidana Indonesia dengan Belanda Ditinjau Berdasarkan Karakteristik Romano-Germanic Legal Family. *Ajudikasi: Jurnal Ilmu Hukum*, *6*(2), 181-196.
14) Widodo, E. (2010). Relevansi Sistem Civil Law Dan Common Law Dalam Pengaturan Hukum Perjanjian Baku Di Indonesia. De Jure: Jurnal Hukum dan Syar'iah, 2(2).
15) Rumah Tahan Negara Kelas IIB Pelaihari (2024). Kenapa "KUHP" Harus Diubah? Diperoleh dari https://rutanpelaihari.kemenkumham.go.id/informasi-publik-2/infographis/kenapa-kuhp-harus-diubah#:~:text=KUHP%20Indonesia%20(Wetboek%20van%20Strafrecht,tahun%201918%20dengan%20beberapa%20penyesuaian. Diakses pada 06 Juni 2024