

Legal Hermeneutics: A Standard and Parameters of Interpretation of the New Criminal Code

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Article Info

Article history:

Received: 25 September 2024

Published: 30 September 2024

Keywords:

Legal Hermeneutics;

Standard;

Parameter;

Interpretation;

KUHP.

Abstract

The purpose of this study is to investigate how standards and parameter for interpreting the Kitab Undang-Undang Hukum Pidana (KUHP) were developed. Public believes that the KUHP contains a number of contentious sections. This study is a type of qualitative research through library data. It is called library research because data regarding legal interpretation and the formation of standards and parameters are obtained from library materials. The text analysis method with a multidisciplinary, interdisciplinary, and transdisciplinary approach to science will be employed as the data analysis technique. In this study, authoritative and original data serve as the primary source, while supporting data from multiple sources serves as the secondary source. scholarly writings, news articles or official reports, commentary on the recently. This research finds that hermeneutics as legal interpretation serves as a bridge between law and moral ethics. There are 6 standards and parameters in the process of legal interpretation, namely text and legal context analysis, contextual interpretation, methodological interpretation, dialogue between the text and the interpreter, principles of justice and humanity, evaluation, and validity testing. Finally, the results of applying those standards and parameters in examining Pasal 2 ayat (2) KUHP regarding common law emphasize the importance of balancing respect for local wisdom and alignment with national legal principles.

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1. INTRODUCTION

The ratification of the Draft Criminal Code (KUHP) Bill into law at the end of 2022 sparked a broad public response. One of the most contrasting causes is the existence of controversial articles that can be interpreted by various parties (*5 Most Highlighted Controversial Articles in the New Criminal Code*, n.d.). It is feared by the public that controversial articles will be misused by certain individuals to be misinterpreted for one-sided interests. The peak is in September 2019 or towards the end of the term of service for DPR RI members for the 2014-2019 period, the RKUHP triggered a wave of resistance from students in various cities. They consider that the RKUHP still contains problematic articles and has the potential to become a "rubber article" or have multiple interpretations and shows an anti-democratic attitude (*Analysis of the Latest Criminal Code Controversy Articles / SIP Law Firm*, n.d.).

Although theoretically and practically, legal interpretation methods have been widely discussed, it is unfortunate that legal standards and parameters have not received special attention. In fact, in interpreting a text, a clear unity of tools is needed that includes various points of view to produce the same understanding and justice. The absence of standardization and the same parameters makes a text lively, in the sense that the text can be interpreted according to the wishes of the creator and reader and furthermore, a text will be able to interpret itself according to the existing context (Sugianto et al., 2021). Therefore, standardization and parameters must be established to prevent multiple interpretations of legal texts. Through this explanation, the method of legal interpretation becomes very important to be discussed further.

From a hermeneutic perspective, law is seen as a text that is born from social construction through historical progress and is formed through the legislative process. This

process is also known as sociological jurisprudence where people's behavior and interactions are the basis for the formation of law (Arinta et al., 2021). Through this view, hermeneutics takes an important role in the interpretation of legal products. Hermeneutics attempts to bridge the historical journey, social interaction, and rigidity of texts with standardization and clear parameters to produce unity of meaning and achieve social justice. This research attempts to use legal hermeneutics as a tool in finding standardization and parameters in the interpretation of the new Criminal Code.

Many academics have conducted studies on legal hermeneutics, but not many have discussed the standardization and parameters of legal interpretation from a hermeneutic perspective. So that the discussion that will be carried out is more comprehensive, it is necessary for this research to include a study of the understanding of hermeneutics and the urgency of hermeneutics in studying texts. Thus, *state of art* in this research can be classified into two major themes. *First*, academic works that examine hermeneutics and legal hermeneutics. *Second*, Academic works that examine the formation of standards and parameters in text interpretation. The most up-to-date academic studies will be used as a reference and comparison in this research.

Academic studies belonging to the first theme will be divided into two sub-categories: namely hermeneutical studies in studying texts and legal hermeneutic studies. In the first subcategory are articles written by *Theodore George* entitled "*Understanding Hermeneutics in Studying Texts*" (George, 2021). George in his writing explains that the success of hermeneutic understanding lies on two sides of discourse, namely the grammatical side and the psychological side. The grammatical side is a contribution to the meaning of discourse that depends on the general structure of the language used. Meanwhile, the psychological side is that the meaning of discourse depends on the thoughts of the individual writer or creator.

In the second sub-category there is research entitled "Annotation of the Decision of the Constitutional Court of the Republic of Indonesia Number 46/PUU-XIV/2016 in a Legal Hermeneutics Perspective" (Hidayat & Ambarsari, 2020). The aim of this research is to find out and analyze whether the Constitutional Court Decision Number 46/PUU-XIV/2016 reflects the sense of justice that exists in society or not when analyzed from a legal hermeneutics perspective. The research method used is legal research. The research results show that the Constitutional Court's decision does not reflect the sense of justice that exists in society when analyzed from a legal hermeneutics perspective. The Constitutional Court's decision prioritizes aspects of legal certainty alone at the expense of justice and expediency.

The academic study belonging to the second theme regarding the establishment of standardization and interpretation parameters is a book entitled "*Multidisciplinary, Interdisciplinary, & Transdisciplinary*" by Prof. Amin Abdullah (Abdullah, 2022). In this book, Prof. Amin tries to describe the journey of Islamic thought until it reached the phase of normativity which caused stagnation of thought confined to the text. It is hoped that multidisciplinary, interdisciplinary and transdisciplinary approaches will be able to free academics to enrich and maximize knowledge. This approach is very suitable if applied in combining hermeneutic-based text interpretation techniques with formal legal law in reading or interpreting the new Criminal Code.

The next research is "*Interpretation of the Constitutional Court in the Protection of Constitutional Rights Economy, Social and Cultural*" by Dr. Nallom Kurniawan et al (Kurniawan et al., 2019). This research is the result of an analysis of the Constitutional Court's decisions from 2008 to 2018 regarding economic, social and cultural rights. This research aims to identify the characteristics of judicial review decisions and identify the methodological steps taken by the Constitutional Court in constitutional interpretation. This

research will be used as a basis and reference in looking at the standardization and parameters used by the Constitutional Court in providing decisions through its interpretation.

The next research is “Legal Interpretation of Evil Conspiracies in Article 132 Paragraph (1) as Bijzondere Delneming of Articles 55 and 56 of the Criminal Code Based on Law Number 35 of 2009 concerning Narcotics” by Reza Rizki Fadilah (Fadillah, 2021). This research found that there were differences in legal interpretation in cases handled by law enforcement. This difference creates controversy among law enforcers. So, parameters and standardization are needed in interpreting the law in the cases handled for realizing the objectives of the law itself, namely legal certainty, justice and benefit.

Based on the explanation above, to date there has been no research that has attempted to formulate standards and parameters for interpreting the Criminal Code through a hermeneutical lens. Therefore, this research tries to fill this empty space. The research references that have been mentioned are the most relevant and up-to-date research that can be found and will be used as reference material in this research.

This research is a type of qualitative research using library data. It is called library research because the data regarding legal interpretation and the formation of standards and parameters are obtained from library materials. The data analysis that will be used is a text analysis method with a multidisciplinary, interdisciplinary and transdisciplinary approach to science. This approach is used for the following reasons: *First*, to accommodate various perspectives in determining standards and parameters of legal interpretation. *Second*, to produce academic products that can be used in various situations and conditions. *Third*, to free interpretations that are confined to the text alone.

The primary source in this research is authoritative and original data such as official government documents containing the New Criminal Code which was passed into law on December 6 2022 by the DPR RI (DPR and President of the Republic of Indonesia, 2022), including the draft academic text regarding the Draft Law on the Book of the Republic of Indonesia. Criminal Law (KUHP) (National Legal Development Agency, 2015). Meanwhile, secondary data is supporting data that comes from various sources. Such as academic works that study hermeneutics, legal hermeneutics, and methods of legal interpretation. Next is official news or reports (printed or electronic) *up to date* which contains explanations, criticisms, and input regarding the newly passed Criminal Code. Official statements from government institutions or related office holders discussing the new Criminal Code are also included in secondary data.

Based on the background above, the problem that this research wants to answer is what is the understanding and urgency of legal hermeneutics? What are the standardization and parameters of legal hermeneutics? What is an example of the application of legal hermeneutics in the interpretation of the new Criminal Code?

2. RESEARCH METHOD

This research is a type of qualitative research using library data. It is called library research because the data regarding legal interpretation and the formation of standards and parameters are obtained from library materials. The data analysis that will be used is a text analysis method with a multidisciplinary, interdisciplinary and transdisciplinary approach to science. This approach is used for the following reasons: *First*, to accommodate various perspectives in determining standards and parameters for legal interpretation. *Second*, to produce academic products that can be used in various situations and conditions. *Third*, to free interpretations that are limited to the text alone. The primary source in this research is the New Criminal Code which was passed into law on 06 December 2022 by the DPR RI, Draft Academic Text of the Draft Law on the Criminal Code (KUHP). Next is up to date

news or reports (printed or electronic) which contain explanations, criticism, and input regarding the newly passed Criminal Code. An official statement from a government agency or relevant office holder discussing the new Criminal Code. The secondary data that will be used in this research is in the form of academic works that study hermeneutics, legal hermeneutics, and methods of legal interpretation.

3. RESULTS AND DISCUSSION

A. Understanding and Development of Hermeneutics

Hermeneutics, etymologically, comes from ancient Greek, namely the verb "hermēneuein" which means to interpret and the noun "hermēneia" which means interpretation. This term has three basic meanings: conveying something with words, explaining a situation, and translating a foreign language. Hermeneutics was originally related to the figure of Hermes in Greek mythology, whose task was to convey the messages of the gods and goddesses in human language so that they could be understood. In historical development, hermeneutics has not only been used to interpret the will of gods, but also to interpret authoritative texts, such as holy books, dogma, or religious writings (Palmer, 2005).

In the modern era, hermeneutics developed as a broader method of interpretation. Philosopher Friedrich Schleiermacher introduced hermeneutics as an art and science of understanding that goes beyond methods of interpreting religious or philological texts. For him, interpretation is a dialogue between the reader and the text, and the principles of understanding are universal for all types of texts. Therefore, hermeneutics is not just a method, but a condition for understanding meaning in any context.

This thought was continued by Wilhelm Dilthey, who made hermeneutics the methodological basis for the human sciences (*Geisteswissenschaften*), such as art, history, literature, anthropology and law. According to Dilthey, these sciences require a different approach from the natural sciences because they involve humans as both subjects and objects of knowledge. Therefore, to understand the expression of human life, including in law, requires a deeper interpretation of the subject of humanity itself. This approach then developed more radically with the emergence of phenomenology and existentialism pioneered by Edmund Husserl and Martin Heidegger. For Heidegger, hermeneutics is no longer just about methods of interpretation, but more about the existential understanding of humans in their everyday existence. Heidegger introduced the concept of "Dasein" or "being there," which describes humans as beings who exist in space, time, and with other beings. In his book **Being and Time** Heidegger calls this hermeneutics Dasein hermeneutics, namely the study of the way humans is in the world (Palmer, 2005).

Paul Ricoeur, in the development of modern hermeneutics, returned the focus to the theory of symbolic and textual interpretation. According to Ricoeur, texts such as the Bible, literary works, myths, and even laws, are collections of signs that have hidden meanings and must be interpreted. He emphasized the importance of 'unpacking' the symbols in the text to find deep meaning. In Ricoeur's view, hermeneutics is a process of uncovering the hidden meaning behind texts, which does not only apply to religious texts, but also legal texts, dreams, or other cultural symbols. Hermeneutics, thus, becomes more than just a method of interpretation, but an attempt to understand how meaning is formed, hidden, and revealed in various contexts of human life (Weruín et al., 2016).

B. Legal Hermeneutics in Legal Interpretation

1. Legal Hermeneutics

Although hermeneutics initially developed in philosophical circles, its ideas have extended to various other fields, including law, where it faces the challenge of interpreting legal texts. In this case, law is considered a social construction that requires continuous interpretation. The idea that law is a text that needs to be interpreted shows that understanding of law is never static, but is always dynamic and depends on the historical, social and political context in which it develops (Leyh, 2008).

Several important figures in legal hermeneutics have contributed various ideas about how the law should be interpreted. Peter Goodrich, for example, emphasizes that legal texts are political discourse embedded in a particular historical context and must be understood based on their role as a means of legitimation. This approach highlights how law is never neutral or independent of power; instead, law is often used to maintain the power and legitimacy of existing political authorities. Thus, legal interpretation in Goodrich's view is not only a matter of understanding the words in the law, but also understanding how the law functions in perpetuating power structures (Goodrich, 1987).

Another figure, Francis Lieber, offered a more technical approach by formulating scientific principles in legal interpretation. Lieber attempted to provide a more systematic guide to interpreting the law, with the hope that legal interpretation could become more objective and reliable. However, although Lieber attempted to make legal interpretation more scientific, the hermeneutical approach as a whole recognizes that legal interpretation is never completely objective. On the other hand, every legal interpretation is always influenced by the social, cultural and political context that surrounds it (Lieber, 1880).

Drucilla Cornell offers a more normative view of legal hermeneutics. He argues that legal interpretation must not only serve to understand legal texts technically, but must also lead us to a deeper understanding of justice. In his view, legal interpretation must be able to achieve what he calls "the Good," namely justice in a moral and ethical sense. More than simply understanding and interpreting law as text, Cornell argued that law should be seen as a promise of salvation capable of providing justice for society. Thus, Cornell's approach reflects the belief that law has a moral dimension that must always be taken into account in every legal interpretation (Cornell, 1999a).

David Hoy goes further by linking hermeneutics to the concrete practice of judicial decision making. In Hoy's view, justice in legal practice can be further enhanced through a hermeneutical approach. This happens because the hermeneutic approach recognizes that interpretation is always bound by certain traditions and contexts, and that the meaning of legal texts is never separated from the interpretation given by judges or other legal authorities. Thus, according to Hoy, hermeneutics opens up space for a richer and more diverse understanding of law, which can ultimately produce more substantive justice (Hoy, 2012).

Through this long journey, the basic assumption behind the development of legal hermeneutics is that law, as a social construction, is a text or discourse that always needs to be interpreted. This means that the law is never final or completely clear. On the contrary, the meaning of law is always open to debate and reinterpretation in accordance with changing social and political conditions. Thus, hermeneutics rejects the view that law is something static and can be understood in a completely objective and neutral way. On the contrary, every legal interpretation is always influenced by the context in which the law operates.

2. Hermeneutics, Law, and Text

Hermeneutics in a legal context not only offers a perspective on how law should be interpreted, but also introduces the idea that law itself can be viewed as a text. In this view, law as a text is not just a collection of written regulations or laws, but rather a discourse full of meaning that is formed through interactions between the text, the interpreter, and the social context. This approach highlights the importance of understanding law as a dynamic and living entity, which continues to develop as societal conditions change.

When we discuss law as text, we must consider several interrelated dimensions. First, law as a text has a unique structure and language. Legal language is often complex and can be interpreted in many different ways. This creates challenges for interpreters, including judges and lawyers, who must bridge the literal meaning of the text with the context in which the law is applied.

Second, legal texts are not separated from the historical and cultural context in which they were born. Law reflects the values, norms, and social forces that exist at a particular time (Kelsen, 1967). Therefore, when we read legal texts, it is important to consider the historical background behind them. This shows that understanding legal texts cannot be separated from analysis of the social and political conditions that shape them.

In "Law's Empire" (Dworkin, 1986), Ronald Dworkin views law as a complex text that consists not only of established rules, but also includes underlying moral principles and values. Dworkin argues that law should be understood as a broader narrative, in which judges and legal practitioners act as active readers and interpreters. He emphasized that legal interpretation depends not only on the text of the law, but also on the social context and relevant principles of justice. Dworkin criticizes the view of legal positivism which sees law as simply a collection of rules, emphasizing the importance of moral principles in legal interpretation. In other words, for Dworkin, law as a text requires a hermeneutical approach, where the interpreter must consider the meaning, purpose and context of the law, rather than just relying on literal interpretation. This approach makes it possible to achieve more substantial fairness in legal practice.

Furthermore, law as a text also means that legal interpretation is a process that involves many actors. In the interpretation process, various perspectives and experiences will influence how legal texts are understood. This creates space for dialogue and discussion that allows multiple meanings and interpretations to emerge. David Hoy, with his views on the practice of judicial decisions, highlights how judges as interpreters can bring their background and values to legal interpretation, which then influences the outcome of a legal case (Hoy, 1978).

On the other hand, Drucilla Cornell invites us not only to look at legal texts from a technical point of view, but also to consider the moral and ethical implications of such interpretations. Law as a text, in his view, has the potential to create greater justice, as long as its interpretation is directed towards achieving higher values. This shows that legal texts, when interpreted appropriately, can function as a tool for upholding social justice and correcting existing injustices (Cornell, 1999b).

By understanding law as a text that is always open to interpretation, we realize that the process of legal interpretation is never complete. Each generation, each social change, and each emergence of new values brings a new context that influences the way the law is understood and applied. In this case, hermeneutics provides a framework that allows us to critically explore the relationship between legal texts, social context, and larger values of justice. As a result, law as a text becomes a tool

that not only defines rules and norms, but also becomes a means of understanding and overcoming complex social dynamics.

3. Legal Hermeneutics as a Method of Legal Discovery

Through the discussion above, we understand that the study of legal hermeneutics can be understood as a method of interpreting legal texts. In this case, the correct interpretation of legal texts must always be related to the content of the legal rules, both express and implied, as well as to the sound of the law and the spirit of the law itself.

According to Gadamer, there are three conditions that must be met by an interpreter (Gadamer, 2004): first, intellectual subtlety which refers to the accuracy of understanding; second, subtlety of explicandi which is related to the accuracy of the explanation; and third, the subtlety of the application which is related to the accuracy of the application. Thus, many experts in law, social sciences and philosophy think that legal hermeneutics is a very appropriate and practical alternative for understanding existing normative texts (see Fanani, 2014).

The second meaning of legal hermeneutics is closely related to the theory of legal discovery. This is seen in the framework of the hermeneutical spiral circle, which describes the reciprocal process between rules and facts. In this case, hermeneutics explains that a person must qualify the facts in the frame of existing rules, as well as interpret the rules in the frame of these facts. Hermeneutics as a method of discovering law through the interpretation of legal texts is the main topic in every study of legal hermeneutics. The substance of hermeneutic philosophy itself is about the nature of understanding or understanding something. This is a philosophical reflection that analyzes the conditions of possibility for all human experience in interacting with reality, including in terms of understanding and interpretation.

Regarding this, B. Arief Sidharta emphasized that in the context of hermeneutical philosophy, especially in understanding or interpreting something, the interpreting subject cannot start this effort from point zero. Every individual is born into a world that is a product of history that continues to develop, where they experience a historical process. This tradition contains values, insights, understanding, principles and behavioral patterns that were formed throughout the course of history (Sidharta, 2007). Thus, each subject, regardless of their own will, always finds themselves within a tradition that existed before they were born. Through interaction with the world around them, individuals absorb and absorb the content of these traditions, which form a pre-understanding of everything. This pre-understanding takes the form of prejudices that are determined before all elements of the situation are thoroughly examined, which also shapes the individual's horizon of view.

This viewing horizon determines an individual's perception of everything registered in their viewing space. In the dynamics of the interpretation process, both pre-understanding and horizons of view can experience shifts, which can broaden and deepen understanding of the subject. This shift allows individuals to discover new things as well as previously unseen aspects. The process of interpretation takes place in a circle of understanding known as the hermeneutic circle, which is a back-and-forth movement between parts and the whole. In this context, each part can only be understood properly in the context of the whole, and conversely, the whole can only be understood based on understanding the parts that make it up (Fanani, 2014).

This circle of understanding is made possible by the horizons of view and pre-understanding that have been formed through individual interactions with their traditions. By starting from a pre-understanding within the framework of the

perspective of the text to be understood, the interpreter tries to find the meaning of the parts, then connect them to understand the whole. The results of this understanding are then transferred back to the parts, and this process continues until a complete and precise understanding is achieved. Hermeneutics provides a philosophical foundation for legal science, connecting the ontological and epistemological aspects of legal science.

When applying legal knowledge in resolving legal problems, such as in court, interpretation is carried out not only on the juridical text, but also on the reality that gave rise to the legal problem, including determining the relevant facts and their juridical meaning. The development of legal science focuses on the interpretation of juridical texts to extract the legal rules implicitly contained therein, as well as determining their meaning and areas of application. Juridical texts as legal products determine the behavior that individuals should carry out or avoid in certain contexts.

The formation of juridical texts occurs within the framework of the perspective of law makers who respond to the realities of society that require regulation. In an effort to extract legal rules from the text, the interpreter operates within the framework of his or her pre-understanding and horizon of view, bound to the time and conditions when the interpretation is carried out. Every interpretation of a juridical text involves a hermeneutic circle process where there is a meeting between two horizons: the horizon of the juridical text and the horizon of the interpreter. The combination of these horizons can produce a new understanding of existing legal rules.

The subjectivity of interpretation results can be minimized, because interpretation must always refer to legal ideals, fundamental human values, and the applicable legal system. Interpretation products must also be open to rational review of the underlying arguments in legal forums. Through rational dialogue, it is hoped that an acceptable interpretation product can be produced, namely one that can be justified rationally based on the strength of the argument. In this way, the resulting interpretation will have strong intersubjective applicability.

Hermeneutics attempts to explore meaning by considering various horizons, including the text horizon, the author's horizon, and the reader's horizon (Faiz, 2002). By paying attention to these three horizons, efforts to understand or interpret can become activities of reconstructing and reproducing the meaning of the text, as well as tracing how the text was produced by the author and what content he wanted to convey. An interpreter also tries to regenerate the meaning according to the situation and conditions when the text is read.

C. Legal Hermeneutics, Standards and Parameters of Legal Interpretation

1. Between Standards and Parameters

Standards in the context of legal interpretation refer to the criteria or measures used to determine the validity or quality of a legal argument. This standard serves as a guide for judges, lawyers, and other legal interpreters in assessing whether an action, decision, or legal document meets certain requirements. For example, in evaluating the evidence in a case, the standard often used is "*beyond reasonable doubt*" in criminal cases, which requires prosecutors to prove that there is no reasonable doubt about the defendant's guilt. This standard establishes the level of clarity and certainty that must be achieved to decide a case.

Meanwhile, parameters in legal interpretation are more related to the factors or elements that influence the assessment of a legal issue. Parameters cover various aspects that can influence legal decisions, such as the social, cultural and political context in which the law is applied. Parameters also include elements such as social

norms, the objectives of legal regulations, and the effects of implementing these laws on society. In this context, parameters serve as a framework for assessing the relevance and impact of a legal decision.

The main difference between standards and parameters lies in their function and implementation. Standards tend to be more rigid and measurable, while parameters are more flexible and contextual. Standards can be interpreted as minimum limits that must be met in legal interpretation, while parameters function to provide a broader analytical framework. In practice, legal interpreters often have to consider both of these aspects simultaneously to reach fair and appropriate decisions.

In many cases, the application of standards and parameters can complement each other. For example, in cases where a judge must decide whether a law is discriminatory or not, the judge will use established constitutional standards to assess the law's legality. However, judges will also consider parameters that include the relevant social and cultural context, including the impact of the law on affected groups.

When examined more deeply, it can be seen that standards and parameters also have implications for the legal system itself. A good legal system requires clear standards to ensure fairness and consistency in law enforcement. However, flexibility in parameters allows the law to adapt to social changes and societal dynamics. In other words, standards provide structure and certainty, while parameters provide nuance and context.

Along with the development of society and the complexity of legal issues that arise, legal interpreters must continuously evaluate existing standards and parameters. This involves critical reflection on how standards are applied and whether the parameters used are still relevant. Sometimes, parameters deemed irrelevant can lead to unfair results if not reviewed. In this case, legal interpreters have a responsibility to ensure that legal interpretation is not only based on existing standards, but also considers parameters that can provide more substantive justice.

The relationship between standards and parameters in legal interpretation creates an important dynamic. On the one hand, strict standards can limit legal interpretation, but on the other hand, broad parameters can add complexity. To achieve balance, legal interpreters must have a good understanding of both and be able to apply them harmoniously. This is a particular challenge, especially in cases involving human rights, where there is often a clash between established legal standards and dynamic social parameters.

Standard	Parameter	Legal Hermeneutics
Test legal validity	Influence factors	Harmonization between law and moral ethics
Rigid and measurable	Flexible – contextual	
Minimum threshold that must be met	Relevance and impact framework	
Legal certainty	Context analysis	

Through the discussion regarding the legal standards and parameters above, we can formulate what the standards and parameters of legal interpretation are through the lens of legal hermeneutics.

2. Standardization and Interpretation Parameters with a Legal Hermeneutics Approach

In order to understand and interpret the new Criminal Code, standardization and systematic parameters are needed. A legal hermeneutic approach can provide a clear and effective framework to ensure that the interpretation of legal norms is carried out consistently, accurately and relevantly. This standardization and parameters include several important stages that interpreters must go through, which include text analysis and legal context, contextual interpretation, methodology, dialogue between the text and the interpreter, principles of justice and humanity, evaluation and validity testing.

In legal research, the hermeneutic approach is a very relevant method for understanding and interpreting legal texts. Hermeneutics, as a theory and methodology for interpretation, invites us to explore the hidden meanings behind the words and phrases contained in statutory regulations. This method emphasizes the importance of context, both historical and social, in the legal interpretation process. To be able to understand a legal text thoroughly, the first step that needs to be taken is to understand the text itself. This involves an in-depth analysis of the language used in the law, including the terms chosen and the sentence structures that make up those norms.

When analyzing legal texts, it is important to understand the historical context in which they were created. Historical and cultural background can provide valuable insight into the lawmaker's original intentions. For example, laws issued at a certain time often reflect the social and political conditions that existed at that time. Therefore, an interpreter must place the legal text in a broader context to be able to grasp its true meaning.

After understanding the text and its historical context, the next step is to interpret it in a broader context. This includes an analysis of the social and cultural norms that were in effect at the time the law was enacted. In this regard, it is important to consider how social changes can influence the understanding of legal texts. For example, changes in societal values over time can lead to new interpretations of existing laws, so that they remain relevant and responsive to societal needs.

The interpretive methods used in the hermeneutic approach are also very diverse. Grammatical interpretation is a method that focuses on the literal meaning of words and phrases contained in legal texts. In this interpretation, the interpreter tries to understand the meaning of words according to their use in everyday language. However, grammatical interpretation is not always enough, because sometimes the literal meaning can be misleading if the broader context is not taken into account. Therefore, systematic interpretation is important. In this method, the interpreter connects legal texts with other legal principles to ensure consistency in interpretation.

Apart from that, teleological interpretation is also very crucial in the hermeneutical approach. This method tries to find the goals behind legal regulations, namely the intentions that law makers want to achieve. By understanding the purpose of law, interpreters can find a deeper meaning that is relevant to the current societal context. For example, if a law is enacted to protect human rights, an interpretation that focuses on that goal will help the interpreter to adapt the application of the law according to the development of prevailing human values.

The process of interpreting law using a hermeneutic approach cannot be separated from the interaction between the interpreter and the text. The interpreter must actively engage in dialogue with the text, asking questions and exploring the meaning behind the written words. This requires interpreters to have a reflective attitude towards their own understanding. The interpreter's personal biases and perspectives can influence

the results of the interpretation, so awareness of these biases is very important to produce more objective and fair interpretations.

The principles of justice and humanity must also be the main considerations in legal interpretation. Good interpretation does not just focus on the written word, but also considers the impact of that interpretation on individuals and society. Thus, legal interpretation must be in line with the principles of justice and human rights. Interpreters are expected to always consider the basic values in society that can influence their decisions.

After the interpretation is carried out, it is important to test and validate the results of the interpretation. One way to do this is to apply interpretation to real cases. By seeing how the interpretation functions in practice, the interpreter can evaluate its consistency and relevance. Feedback from the public and legal experts is also very important in this process. Including the views of others can enrich perspectives and provide further validation of the resulting interpretation.

In conclusion, the hermeneutic approach to legal interpretation offers an in-depth and contextual method for understanding legal texts. By analyzing texts critically, considering the historical and social context, and applying various interpretive methods, interpreters can explore the deeper meaning of existing laws. This approach not only produces more accurate interpretations, but also ensures that the law remains relevant and responsive to societal developments.



D. Implementation Interpretation Standards and Parameters in the New Criminal Code

1. Text Analysis and Legal Context Article 2 Paragraph (2) of the New Criminal Code concerning Customary Law

The text of Article 2 paragraph (2) must be studied in depth to understand the author's aims and objectives law-invite. The phrase "law that lives in society" indicates recognition of norms that develop in society, including customary law that existed before the ratification of the new Criminal Code. However, this term can also cause ambiguity. What is meant by "living law"? Are customary laws in each region considered the same? Are there certain limits or criteria to determine which

customary law can be punished? These questions need to be answered so that the application of this article can be carried out clearly.

Furthermore, this text implies the existence of equality between positive law and customary law, which suggests that violations of customary law can be treated the same as violations of positive law. However, challenges arise in determining the appropriate type of sanctions for violations of customary law. Without a clear definition, law enforcement can be discriminatory, depending on the law enforcer's interpretation of the customary laws that apply in the local community.

It is important to look at the legal context in which this article is applied. Customary law has become an integral part of the legal system in Indonesia, and in many regions, customary law is recognized as a valid norm and regulates community behavior. In many cases, customary law has strong legitimacy and is recognized by local communities, so that customary law enforcement can function as a more accommodating dispute resolution tool compared to positive law which is often considered more rigid.

However, historical and cultural context also needs to be considered. Indonesia has very rich ethnic and cultural diversity, with a variety of different customary legal systems. This causes challenges in generalizing the application of this article throughout Indonesia. For example, customary law in Bali may be very different from customary law in Papua. Therefore, an important question that arises is how law enforcers can apply this article fairly and consistently in various regions that have different customary law characteristics.

The social and political context also influences the acceptance of customary law in the legal system. In some cases, customary law is seen as a tool to strengthen cultural identity, while in other cases, customary law is seen as an obstacle to modernization and the development of positive law. Therefore, it is important to consider how the application of Article 2 paragraph (2) can contribute to the dialogue between customary law and positive law, as well as how these two legal systems can complement each other.

2. Contextual Interpretation of Article 2 Paragraph (2) of the New Criminal Code concerning Customary Law

First, it is important to define what is meant by customary law. Customary law is often defined as the norms, customs and practices that develop in a particular community and are recognized as rules that regulate individual behavior in that society. However, not all norms existing in society can be immediately considered as valid customary law. To be considered customary law, these norms must meet several criteria, such as:

- a. Sustainability: Customary law must have existed and been implemented in society for a certain period of time. This shows that these norms have been accepted and used as guidelines in social interactions.
- b. Community Compliance: Customary law is usually supported by community consensus. Society should consider those norms as binding rules, so they are ready to obey and uphold them.
- c. Official Recognition: In some cases, customary law may be officially recognized by the government or legal institutions, which provides additional legitimacy to its application. This is important because official recognition can help ensure justice in law enforcement.

Understanding this definition is crucial because it can influence how customary law is interpreted and applied in criminal cases. Law enforcers must be careful in

determining which norms are included in the category of customary law that can be subject to criminal sanctions, so that law enforcement is not haphazard.

Furthermore, contextual interpretation also requires an understanding of how customary law is applied in daily practice. Customary law is often an alternative for communities in resolving disputes. For example, in some communities, if a dispute arises, the community may prefer to resolve it through customary mechanisms rather than through formal legal processes. This shows that customary law has the power to reduce conflict and maintain social harmony.

However, in implementing customary law, there are challenges of its own. There are times when customary law conflicts with the principles of positive law, especially in terms of protecting human rights. For example, some customary practices may be considered discriminatory or unfair by modern legal standards. Therefore, enforcement of Article 2 paragraph (2) must be carried out very carefully, ensuring that the application of criminal sanctions for violations of customary law does not violate the principles of justice and human rights.

3. Methodological Interpretation of Article 2 Paragraph (2) of the New Criminal Code concerning Customary Law

Methodological interpretation of Article 2 paragraph (2) of Law no. 1 of 2023 concerning the Criminal Code (New Criminal Code) is an important step in understanding how customary law is applied in the context of Indonesian national law. This approach includes normative and sociological analyzes that help explain and assess the clarity, consistency and relevance of customary law in positive legal systems.

The first step in the normative approach is to analyze the legal text of Article 2 paragraph (2). This article states that individuals who violate "laws that live in society" can be subject to criminal sanctions even though these actions are not regulated in the new Criminal Code. It is important to explore the definition and interpretation of the phrase "living law," as well as the limitations that may exist regarding violations of customary law.

The phrase "living law" indicates recognition of customary law as a valid norm in society. However, without a clear definition, there is a risk of subjective law enforcement. Therefore, an in-depth analysis of this term needs to be carried out, so that there is a consistent understanding regarding which norms are considered valid customary law.

The principle of legality is one of the pillars of criminal law which states that there is no criminal act without clear regulations. Enforcement of criminal sanctions for violations of customary law must be in accordance with this principle. In this context, law enforcers need to ensure that the customary law norms applied have received recognition and legitimacy from the community and do not conflict with applicable positive legal provisions.

If the customary law in question is unclear or not regulated in legal provisions, then the application of criminal sanctions can be considered to violate the principle of legality. Thus, it is important to create clear and measurable guidelines regarding the types of customary law violations that can be subject to sanctions, so as not to cause confusion or injustice among the community.

Normative analysis also includes evaluating the relationship between customary law and positive law. There are times when customary law norms and positive law

can complement each other, but there are also situations where the two conflict. Therefore, it is necessary to carry out an in-depth study to determine the extent to which customary law can be integrated into the positive legal system.

In some cases, recognition of customary law can strengthen the justice and effectiveness of the law. For example, in resolving disputes in rural areas, customary law is often considered closer to the values and norms held by local communities. However, if customary laws conflict with basic principles of human rights or justice, law enforcement must consider this aspect to ensure that justice is not compromised.

A sociological approach involves understanding how customary law functions in everyday practice. Customary law is often an alternative dispute resolution that is more accepted by society compared to formal legal processes. In this context, law enforcers need to understand the social dynamics surrounding the application of customary law, including how communities recognize and implement customary law in their lives.

Case studies in several communities can provide insight into the acceptability of customary law. For example, observing the dispute resolution process carried out through customary law mechanisms can show how far the community respects and obeys customary law. This is very important to evaluate the effectiveness of customary law as a norm that regulates individual behavior in society.

In some communities, customary law serves as a very effective dispute resolution system. For example, if a dispute occurs, the community may prefer to resolve it through customary deliberation rather than through formal courts. This shows that customary law has the potential to reduce conflict and maintain social harmony.

However, law enforcers need to pay attention to how the application of criminal sanctions for violations of customary law can affect social stability. If the customary law applied is not recognized or accepted by the community, then the enforcement of criminal sanctions can cause dissatisfaction and new conflicts in the community.

4. Dialogue between the text and the interpreter in Article 2 Paragraph (2) of the New Criminal Code concerning Customary Law

In the context of criminal law, "judges" play a central role as the main interpreters of existing articles. When a judge is faced with a case involving Article 2 paragraph (2), he must understand that this article does not only talk about the formal rules written in the Criminal Code, but also about the law that exists in society, namely customary law. The challenge is that customary law is often unwritten and varies between regions. Therefore, judges cannot only rely on the text of the law, but must also carry out a dialogue with the "social and cultural reality" in which customary law applies.

Judges must test whether the customary norms deemed violated meet formal legal standards that can be applied in a modern justice system. In interpreting, judges can consider whether the application of customary law is in accordance with "the principles of justice, human rights and legal certainty". This means, even though customary law is recognized, judges cannot apply customary norms that violate individual constitutional rights, such as the right to fair and equal treatment before the law.

Dialogue between texts and interpreters must also involve an understanding of "indigenous peoples" and the values they uphold. In the context of Article 2 paragraph (2), the punishment of a person on the basis of a violation of customary law must be based on a clear "social consensus" in that community. It is not enough

for judges to refer to customary norms that only apply to one small group without wider recognition in society. An interpretation that is too narrow or too broad of customary law can result in legal uncertainty.

Interpreters, whether judges, academics or legal practitioners, must be actively involved in dialogue with traditional leaders and community figures to understand the applicable norms comprehensively. This dialogue process is important so that the interpretation of customary law is not carried out unilaterally and can reflect substantive justice for all parties involved.

Indonesia is a country with legal pluralism, where state law and customary law often coexist. The dialogue between text and interpreter must take this complexity into account. Customary laws may differ from one region to another, and these differences must be handled carefully. Proper interpretation requires a deep understanding of how customary norms develop and how they are applied in line with national law. In the context of Article 2 paragraph (2), interpreters must ensure that the diversity of customary law does not create injustice for individuals who may not be familiar with customary norms in a particular area.

5. Principles of Justice and Humanity in the Interpretation of Article 2 Paragraph (2) of the New Criminal Code

Justice is the main foundation in every legal system. In the context of Article 2 paragraph (2), the justice in question must include formal justice (procedural justice) and substantive justice. The principle of formal justice relates to clear and transparent legal procedures. For example, whether a defendant accused of violating customary law has equal access to legal defense and whether the court process is carried out in accordance with procedural standards regulated by law.

In implementing Article 2 paragraph (2), the challenge is how to ensure that the application of customary law is carried out fairly and consistently. Customary laws are often unwritten and can vary between communities. Without clarity regarding what constitutes a customary violation, there is a risk that individuals could be unfairly punished. To fulfill the principles of justice, the application of customary law in the criminal realm must ensure that every person on trial understands the rules being violated, has the opportunity to defend himself, and is tried under a clear legal system.

In addition, substantive justice requires that the customary law applied also reflects higher values of justice. This means, even though customary law is recognized, its application must not conflict with broader principles of justice such as equality, non-discrimination and protection of vulnerable groups. For example, the application of customary law which tends to be discriminatory against women or minority groups can be seen as contrary to substantive justice.

Apart from justice, humanitarian principles must also be considered in the interpretation of Article 2 paragraph (2). This principle relates to respect for human rights and individual dignity. In the context of criminal law, humanitarian principles require that sanctions given are not arbitrary, excessive or inhumane.

The application of customary law in the criminal realm must be carried out with great care so as not to violate the basic rights of the individual accused. Customary laws that are repressive or involve corporal punishment, for example, must be assessed for compliance with internationally recognized human rights standards and the Indonesian constitution. Humanitarian principles require that punishment must be proportionate to the offense committed, and must not cause unnecessary suffering.

Apart from that, the principle of humanity also demands that the legal process take place in a fair and transparent manner, where the defendant receives protection from inhumane acts. This includes the right to adequate treatment during the judicial process and afterward, as well as the right to a trial free from discrimination, whether based on gender, ethnicity, religion or other social background.

In interpreting Article 2 paragraph (2), it is important to find a balance between recognition of customary law and protection of individual rights. Customary law is an important part of the culture and traditions of Indonesian society, but it must not be applied by ignoring the constitutional rights of every citizen. For example, if the customary law implemented in a region does not provide equal protection for women or children, then enforcement of that law can be seen as contrary to the principles of justice and humanity upheld by national and international law.

The interpretation of Article 2 paragraph (2) must always pay attention to the principle of proportionality, where minor customary violations must not be punished excessively. For example, violations of customs related to norms of politeness or social customs should not be punished with serious crimes, because this is contrary to humanitarian principles which emphasize respect for individual dignity.

6. Evaluation and Validity Test in the Interpretation of Article 2 Paragraph (2) of the New Criminal Code

After interpreting, the next step is to evaluate whether the interpretation is in line with generally accepted legal principles. For example, the principle of legality (*nullum crimen sine lege*) is one of the main foundations in modern criminal law which demands that criminal acts must be clearly regulated in written law. Article 2 paragraph (2) which permits punishment on the basis of customary law must be evaluated against this principle. Sentencing based on customary norms that are not written down or are not widely known by the community has the potential to violate the principle of legality and create legal uncertainty.

In addition, the evaluation must consider whether the interpretation of this article could have a discriminatory impact. Customary law varies in different regions, and its application can vary. If customary law is applied unevenly, there is a risk of injustice, where individuals in one area can be punished on the basis of customary law, while in another area they cannot. Therefore, interpretive evaluation must ensure equality and fairness in its application.

Article 2 paragraph (2) also needs to be tested in terms of its constitutionality. In this examination, the interpretation of the article must be compared with the principles regulated in the 1945 Constitution, especially regarding the right to legal certainty and protection of human rights. Any legal norms that conflict with the constitution can be considered invalid. This test is important to ensure that the interpretation of Article 2 paragraph (2) does not violate the basic rights guaranteed by the constitution, such as the right to be treated equally before the law and the right to a fair trial.

Apart from that, it is necessary to evaluate the practical impact of the interpretation and application of Article 2 paragraph (2). Will this interpretation create legal uncertainty for society? How will judges and law enforcement officials apply unwritten customary law norms in daily judicial practice? This validity test ensures that legal interpretation is not only correct from a theoretical perspective, but can also be applied effectively in the criminal justice system.

3. CONCLUSION

The conclusions answered in this research are, *First*, Through the dynamics of the ratification of the new Criminal Code, hermeneutics plays an important role in reinterpreting articles which some people consider to be controversial articles. Hermeneutics as a method *re-interpretation* Law offers a more dynamic way of reading by harmonizing law and moral ethics. *Second*, through the first analysis, this research found standards and parameters that can be used in the legal interpretation process, including: analysis of legal texts and contexts, contextual interpretation, methodology, dialogue between texts and interpreters, principles of justice and humanity, evaluation and validity testing.

Third, standards and parameters of legal interpretation are used in the study Article 2 Paragraph (2) of the New Criminal Code concerning Customary Law. In the interpretation carried out by the researcher, it was found that the application of legal interpretation standards and parameters to Article 2 Paragraph (2) of the New Criminal Code concerning Customary Law emphasizes the importance of balance between respect for local wisdom and conformity with national legal principles. This article recognizes the existence of customary law, but with the condition that its application must not conflict with public order and the values regulated in the Criminal Code. In interpreting article This, a legal hermeneutic approach is needed that considers the historical, social and cultural context of customary law and ensures harmony with the main goal of national law, namely creating justice and order. This shows that customary law can be accommodated, but remains under the control of broader national legal norms.

4. ACKNOWLEDGMENTS

We would like to thank the Directorate of Research, Technology and Community Service, Directorate General of Higher Education, Research and Technology, Ministry of Education and Culture, Research, and Technology for this research funding grant for the Affirmation Beginner Lecturer research scheme in 2024.

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