

# Implementation of the Legality Principle in the Criminal Justice System of Indonesia

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## Abstract:

### Purpose:

The legality principle, a fundamental concept in Indonesian criminal law, underpins the legal framework for societal order. Originating from historical roots, it ensures justice, human rights protection, and transparent law enforcement. Article 1 Paragraph 1 of the Criminal Code solidifies its significance in Indonesian positive law. By examining the historical evolution, implications, and challenges of the legality principle, this article aims to deepen the comprehension of its impact on Indonesian criminal law. The ultimate goal is to contribute to a just and effective judicial system.

### Methodology:

This study employs standard research methods, including a legal literature review and analysis of court decisions, to explore the application of the legality principle in the Indonesian criminal justice system.

### Findings:

The principle enshrined in Article 1 Paragraph (1) of the Criminal Code emphasizes that punishment must align with pre-existing laws. It prohibits retroactive application and analogy use and ensures adherence to formal legal principles. In the Indonesian context, the legality principle is crucial for protecting citizens' rights, maintaining justice, and upholding societal values. Its application intersects with legal concepts like "nulla crimen sine lege," highlighting its significance in shaping the nation's legal landscape.

### Implication:

The study highlights key findings on legal principles in the Indonesian criminal system, emphasizing the centrality of the legality principle, a formalistic approach, and ongoing efforts to integrate material aspects. Challenges include incorporating customary law and potential conflicts between legal systems.

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## INTRODUCTION

Legality principles of criminal law are the principle of law. The principle of law is fundamental, and therefore, it is one of the essential principles of criminal. This principle of legality contains rules regarding whether an activity can be considered criminal. When transferring the principles of law into legal Science, the normative task is initially to create norms for the behavior of a person, which can be classified as a crime (Crime) or not (Fitri et al., 2022). However, the ruler also uses the principle of law in its development to arbitrarily decide Legal Policy. It is one indication of the problem of tyranny in the rule of law (Fitri et al., 2022).

The Indonesian penal system is integral to the legal framework governing social life and public order. As a country of law, Indonesia has a complex and structured criminal justice system that deals with various criminal issues that arise in society. One of the principles underlying the criminal justice system is the legality principle. This principle has long historical roots and is essential for maintaining Justice, protecting human rights, and for law enforcement to proceed according to transparent and fair rules.

The application of the legality principle in Indonesian criminal law is essential, given the various changes and legal developments in the country's history. Social, political, and cultural changes influenced the development of criminal law, including applying the legality principle. Therefore, it is essential to understand the legality principle and its impact on criminal law to make it more fair and efficient (Situngkir, 2018).

The legality principle is the basic principle of criminal law and the basis for the application of criminal law; in Indonesian positive law, the legality principle is known as Article 1 Paragraph 1 of the Criminal Code (Sudibyo & Rahman, 2021). The legality principle is fundamental in the Indonesian criminal justice system because it guarantees legal certainty and protects human rights. In the Indonesian criminal justice system, applying the legality principle is the cornerstone of the court in deciding a case. Therefore, understanding the principle of legality is fundamental in the Indonesian criminal justice system (Sudibyo & Rahman, 2021).

As a background, it is necessary to understand that the legality principle is not a new concept but the result of a long history of legal thought. This principle is rooted in the concept of human rights and the philosophy of law developed over the centuries. Understanding the importance of legal certainty, order, and personal protection against abuse of power became the philosophical basis of the legality principle. In addition, the foundations of our Constitution have significantly influenced the development of the legality principle in criminal law. Article 28i paragraph (1) of the 1945 Constitution states that "everyone has the right to be tried by an independent and impartial court for his actions and mistakes. "In this context, judicial independence and legal provisions are the main factors that explain the relationship between the legality principle and the criminal justice system in Indonesia (Sudibyo & Rahman, 2021).

In addition, this is implemented in the criminal justice system of our country because, along with the changing times, social demands, and the development of legal Science, this principle develops and adapts. The changes included revisions to laws, court decisions, and the public's broader understanding of criminal Justice (Nurmala, 2021).

Therefore, this article examines the application of legal principles in the Indonesian criminal justice system more deeply. This article describes the nature of this process's legal principles, its development history, and its implementation's implications and challenges. In addition, this article highlights recent developments and critical issues related to the principle of law in the context of Indonesian criminal law. We hope that a deeper understanding of this legal principle will lead to a better understanding of how it affects the criminal justice system in Indonesia and its role in ensuring Justice and effective policing in the country (Nurmala, 2021).

## METHODS

This study used standard research methods. This research analyzes legal documents, laws, court decisions, and other legal literature to understand certain legal aspects. Standard research methods can be used (Amiruddin & Asikin, 2018).

1. Legal Literature Review. Analysis of legal texts and relevant legal literature to understand how the Indonesian criminal justice system regulates the legality principle.
2. Analyzing court decisions. Reviewing court decisions related to applying the legality principle in criminal cases. It helps to understand how the court understands and applies this principle in practice (Amiruddin & Asikin, 2018).

## RESULTS AND DISCUSSION

**History of the legality principle in Indonesia.** In ancient Roman times, it was considered a crime, and the King decided the type of Crime; there were no clear rules about what was considered a crime and the punishment. It was considered cruel and was primarily based on the personal opinion of the King. Therefore, (based on the social contract) prevents the king/ruler from acting arbitrarily against his people. This principle was first mentioned in Article 8 of the Proclamation Law (1789), passed during the French Revolution.

In addition, Napoleon added the legality principle to Article 4 of the Criminal Code and continued WvS Nederland 1881 Article 1 with WvSNI 1918 Article 1. Article 1 Paragraph (1) of the Code of Criminal Procedure regulates legality principle as follows: an act cannot be punished other than based on the provisions of the criminal law in force before the act is committed. Recht continued his work in the *Lehrbuch des peinlichenis nullum dictum nulla poena Siena praevia lege poena* (nothing criminal, no previous criminal law) on the theory of psychological coercion (Amiruddin & Asikin, 2018).

The application of provisional criminal law involves the application of criminal law from different points of view. When an act included in the definition of a criminal offense (forgery) is committed before the enactment of the relevant legislation (Willems, 2018), then not only his actions can be prosecuted, but the person concerned can also be fined, this is a mandatory provision of the law. An act regulated in law. According to Article 1 Paragraph

(1) of the Criminal Code, the basic concept of legality is based on the *nullum dictum nulla poena sine praevia lege penal*, which can be understood as follows: There is no criminal act or Crime. Criminal money.

So, the application of *adaqium* turned out to be similar to *nulla poena sine*, on the one hand emphasizing political principles so that people believe the government is not negligent. On the other hand, this approach focuses on the same legal principles between procedural and criminal law, with the primary objective of creating regulations to protect individuals and the police. Regulations bind the police, and their approach mainly emphasizes criminal law. So, the definition of each Crime and its punishment under existing legislation (Willems, 2018).

The logical consequence of the rule of law means that all aspects of State Life must be based on law. The placement of this article in the Constitution means that, according to the principle of *lex superior derogat legi inferio*, no provision can contradict it. In a state of law, the legality principle is the foundation of the state. With this principle of legality, the *rechstaat* is the same as the *maachstaat* and legal certainty will be achieved. The Criminal Code and Criminal Procedure Code generally regulate criminal law in Indonesia. Since its promulgation through Law No. 8 of 1981, it is evidenced by the Indonesian criminal code (Willems, 2018).

**Definition of Legality Principle.** An act cannot be punished in any other way based on the criminal code in force before the act, particularly on the subject part of the Crime. Unlike other legal principles, this legal principle is clearly stated in the law. Lawyers believe the law principle needs to be more specific (Maulidiana et al., 2020).

Furthermore, according to Tongat, Article 1 Paragraph (1) of the criminal code means that the criminal provisions of the law can only be applied to crimes that occur after the entry into force of the criminal provisions of the law, ie. The provisions of the Criminal Code apply only to the foreseeable future.

The principle of law states that no activity is prohibited or threatened as an offense unless it is determined in advance by law. It is commonly known in Latin as *nullum delictum nulla poena sine praevia lege*. (No crime, no crime without prior consent). According to Wirjono Projodikoro, the Latin word *nullum dictum nulla puna sine praevia lege punali* means a criminal act that has no criminal law without criminal sanctions (Maulidiana et al., 2020).

Based on some previous understanding, experts or jurists argue that the principle of law, which in Latin is known as *nullum delictum, nulla puna sine praevia lege punali*, means that no other criminal offense can be punished. Law according to the current legislation, the first already exists (Maulidiana et al., 2020).

**The Meaning of the Legality Principle in Law.** According to Article 7 Paragraph (1) of the law, an act cannot be punished in any way other than by legislation. This principle is divided into three parts, namely *Nulla poena sine lege* (no crime without the rule of law), *Nulla poena sine crimine* (no crime without Crime), and *Nullum crimen sine poena legal* (no crime without law). Crime under the law). The three meanings of the legality principle have two consequences: the Prohibition of the use of analogy (non-analogy principle) and the need to use the criminal law in force when the act was committed. It means criminal law is prohibited retroactive (non-retroactive principle) (Khasan, 2017).

The law has seven aspects. First, he can only be punished according to the criminal provisions of the legislation. Secondly, the Criminal Code does not apply analogies. Third, you cannot punish based on habit alone. It means that following standard rules only sometimes leads to Crime. Fourth, the words in the Crime and the basis of *lex certa* should not be interchanged (Faisal, 2014). Fifth, the criminal law is not retroactive. It is called the irrevocable principle of criminal law. Sixth, there are no other sanctions than those prescribed by law. In this sixth case, the judge is not authorized to impose crimes other than those prescribed by law. The seventh, particularly the last, can only be processed under the conditions prescribed by law. It means that the entire criminal process, from investigation to execution, must be based on the law; the law in question is the law formally. In other words, the lower legislative body should not regulate criminal proceedings (Hendry, 2020).

**Legal Basis Legal Basis Principle.** The legality principle is found in Article 1 Paragraph 1 of the Criminal Code: "An act cannot be punished except under the provisions of the criminal law laws and regulations in force before the act is committed." The legality principle means that there is no violation or punishment until there is a law that regulates it. Meanwhile, there are three ways to apply the legality principle in Indonesian criminal law (Volker, 2014).

1. In the case of less dangerous punishments, Sharia allows the legality principle to be applied to such punishments. Shara only gives judges the choice of punishment that can be chosen, namely the punishment by the criminal case it handles (Volker, 2014).

2. Regarding the punishment threatened by community service, Sharia gives freedom to apply the legality principle in determining the type of punishment. Cause criticism of him (Volker, 2014).

At first, criminal law actively used the first method (Islamic criminal law) for all criminal acts. However, this made judges reluctant to give severe punishments for crimes that were not too severe because the Criminal Code included serious and minor crimes. Therefore, positive criminal law applies a different approach (in Islamic criminal law), which is to limit the right of judges to choose a punishment and establish a generally accepted level of punishment (Hafizah et al., 2022).

**1. Nullum Sine Poena.** The issue of legality is in connection with the failure to prosecute the perpetrators of extraordinary crimes and the failure to protect the interests of victims of extraordinary crimes. It is time to reexamine the legality principle as the basis of punishment and introduce the nullum crimen sine poena principle (Heger, 2021).

**2. Nulla Crimen Sine Leg.** Nulla crimen sine lege means "there is no crime without law." It is a fundamental principle of criminal law, which means that a person cannot be punished for an act that did not constitute a criminal offense when committed (Volker, 2014).

The principle of "nulla crimen sine lege" has been codified in many legal systems worldwide, including the German penal code called "nullum crimen, nulla poena sine lege." It is also a fundamental principle of International Criminal Law established in the Rome Statute of the International Criminal Court (Moura, 2023).

This principle has been the subject of much debate and analysis in the legal field, especially in the context of International Criminal Law. Some scholars argue that the principle requires a limited interpretation, while others prefer a broader interpretation, given the evolving nature of international law (Volker, 2014).

Generally, the principle of "nulla crimen sine lege" is the cornerstone of criminal law and protects individuals from arbitrary punishment by ensuring they can only be punished for certain acts. It was a crime at the time they did it.

**3. Prae Positum Delictum.** Prae Positum Delictum is a Latin term that means "offense has been committed." Legally, this is a situation where a person is accused of an offense not by his actions but by his status or position (Mokhtar, 2005).

For example, a person may be charged with a criminal offense only because he has a specific job or belongs to a particular group, whether he committed an unlawful act or not. The concept is often associated with strict accountability, in which a person can be held accountable for a crime even if they did not intend to commit it. However, it is essential to note that the use and interpretation of these terms may vary depending on the legal system and context (Batricevic, 2015).

**4. Lex Stricta.** Lex Stricta is a Latin term meaning "strict law." It refers to a legal principle that requires strict adherence to the content of the law without considering the intent or spirit behind it. The law must be applied precisely as written, without interpretation or deviation. This principle is often associated with formalism, in which the form of the law is more important than its substance. The use and interpretation of this term may vary depending on the legal system and context (Broomhall, 2015).

**Implementation Of Legality Principle in The Indonesian Criminal System.** The importance of guidelines for regulating the life of society and the implementation of legislation in society is a very urgent issue. Therefore, the task of criminal law, in particular, is to protect legal benefits (life, body, honor, property, independence) from harmful acts. Determination of criminal punishment is the primary goal of creating criminal law, Dasar. The legal basis for implementing criminal law is also the foundation for general legal purposes, including ensuring a sense of Justice for citizens, including the legality principle (nullum dictum, nulla poena sine lege), clearly stated in the provisions. According to the Criminal Code. 1 Paragraph 1 of the Criminal Code as a criminal circumstance means: First, "nothing" is prohibited, and there is no criminal threat unless the law specifies otherwise (Broomhall, 2015). That is, an act regulated by law is considered valid. Second, "determine the validity or not of the act." Wrong or not, analogies (qiyas) cannot be used. "This means that one of the consequences of the acceptance of the formal legal principle, as referred to in Paragraph (1), is the Prohibition of using the principle of "formal legality of similarity" to determine the validity or not of the principle. It is an illegal activity. Third, the Prohibition of application " of criminal regulations (effective principle). The Prohibition on the application of criminal provisions is very logically contained in the principle of law regarding provisions that no one can be punished (Broomhall, 2015).



Examples demonstrate principles contrary to the values of Indonesian society according to the principles of official law. According to this principle, it is enough to observe the written provisions to determine that an act constitutes an offense or Crime (Krismanto, 2005). Therefore, if an act is not regulated in a deed, it cannot be considered a violation of the law. This insult has nothing to do with feelings or legal values. Acts considered inappropriate, dishonorable, or contrary to or in line with the Justice (values) of the Indonesian people (Rahayu, 2014).

In the context of Indonesian society, the view that only relies on "normative" legalism in promoting the principle of legal certainty is not in line with social values because Indonesian society also recognizes unwritten law as the basis for deciding whether something has been done. Suitable or not, regardless of whether such actions are considered illegal. On the other hand, the unwritten rule also becomes a "measure" to determine whether an act can be classified as a criminal offense (Ratnasari et al., 2021).

## CONCLUSION

Based on the results of the study, the following conclusions can be drawn regarding the application of legal principles in the Indonesian criminal system:

1. The legality principle is a fundamental principle in criminal law, which requires that an act can only be considered a criminal offense if provided for by law.
2. Applying legal principles in Indonesia mainly focuses on the formal aspects of the law, which requires strict adherence to each letter without considering its purpose or spirit. This approach is often associated with the idea of formalism. However, there are attempts to expand the meaning of the legal principles in the Indonesian criminal code to include material aspects of the law, taking into account the intent and spirit of the law. It is seen as a way to modernize and reform the criminal justice system in Indonesia.
3. The expansion of legal principles in the Indonesian criminal code faces particular challenges, including the need for local governments to promulgate regulations that incorporate customary criminal law and the risk of conflict. Conflicts and conflicts between different legal systems.

**Advice.** Based on the results of the study, the following recommendations can be given regarding the application of legal principles in the Indonesian criminal system:

1. There needs to be a balance between the formal aspects of the law that require strict adherence to the content of the law and the substantive aspects that take into account the purpose and spirit of the law. It can be achieved by extending the meaning of the legal principles in the Indonesian criminal code to include material aspects of the law.
2. Challenges faced in applying legal principles need to be addressed, such as the need for local governments to promulgate regulations that integrate customary law and the risk of conflict.

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