

CRIMINAL POLICIES: PREPARATIONS OF CRIMINAL ACTS AS AN OFFENSE IN THE INDONESIAN CRIMINAL CODE (KUHP)

Mukhlis R¹, Fitri Wahyuni²

¹Fakultas Hukum Universitas Riau

e-mail: mukhlis@lecturer.unri.ac.id

²Fakultas Hukum Universitas Islam Indragiri

e-mail: fw160586@gmail.com

Abstract

The topic of preparations for criminal acts needs to be regulated in the new Criminal Code, as it is not explicitly addressed and is only mentioned in sections that regulate specific criminal acts. This study involved normative legal research, with qualitative analysis performed on data derived from secondary sources. To more successfully protect the public from the threat of serious criminal actions like terrorism, murder, treason, and others, regulations on the definition of criminal acts as offenses in the new Criminal Code were required. The only way in which preparations for criminal acts can be penalized is if the law explicitly provides for it. It implies that not all attempts at committing crimes can be punished; instead, only plans to commit crimes that are thought to pose a serious threat to public safety, law and order, or social welfare, such as preparations to commit murder, treason, or acts of terrorism, are eligible for punishment. The elements outlined in the law must be met before committing a criminal act. Thus, only behaviors that demonstrate a distinct and serious intention to commit crimes—such as setting up facilities, obtaining information, organizing activities, or carrying out similar activities intended to create the conditions for the commission of a crime—can be classified as preparation for crimes. Instead, all other behaviors related to criminal activity cannot be classified as preparation for criminal acts.

Keywords: *Preparations of Criminal Acts; Offense; KUHP.*

INTRODUCTION

Indonesia is a nation that upholds the law. Under Article 1, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), Indonesia was proclaimed a nation that upholds the rule of law. This statement expresses the nation's strong desire to ensure the enforcement of equal standing under the law, which is characterized, among other things, by the establishment of a legal framework that guarantees everyone's right to justice (justice for all) and their equal treatment before the law. (Arliman S et al., 2022). Indonesia has the authority to control all aspects of social life in the country, as it is a legal state grounded in Pancasila and the 1945 Constitution. The rule of law is one of the rights and

regulations that the whole community is required to abide by. The goal of a peaceful society is greatly aided by regulations that govern human lifestyles. The proverb *ibi sociétés ius* is therefore recognized by the law. The existence of law is rooted in society and the interpersonal connections among its members. (Wahyuni et al., 2021). It also governs which behaviors are considered infractions and crimes under the law.

The term "criminal acts" refers to behaviors that are illegal under the law because they violate societal norms. There are various categories into which criminal acts might be classified, including conspiracies, attempts, preparations, and executions. Criminal acts vary in terms of their legal status and repercussions



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(Montolalu, 2016). The act of preparing a criminal act refers to any activity taken by the offender to set up a location, obtain information, plan an action, or take similar steps to establish an environment in which a criminal act can be committed. The first type of criminal activity is preparation for a crime, which has not yet reached the trial stage (Irawan, 2022).

The preparation for illegal activities was not explicitly regulated in the previous Indonesian Criminal Code (KUHP); instead, it was merely mentioned in a few articles that regulated specific criminal acts, such as preparation for robbery, treason, and murder. Conversely, Article 15 of the new Criminal Code generally governs the planning of criminal conduct and stipulates that it is punishable only if specifically provided for by law. Additionally, the new Criminal Code establishes the maximum criminal threat for the preparation of criminal acts as half of the maximum fundamental criminal threat for the crime in question. Alternatively, if the crime in question includes a life sentence or the death penalty, the maximum criminal threat is 10 years. (Jayanti, 2023).

The regulation on the preparation of criminal acts in the new Criminal Code gives rise to several legal issues, including questions concerning its objectives and underlying justifications, the criteria and limitations for punishable preparation of criminal acts, the relationship between preparation and other criminal offenses that already stand as independent crimes, the proportionality and consideration of criminal sanctions imposed for preparatory acts, as well as the implications and impacts of such

regulation on crime prevention efforts, the protection of human rights, and the maintenance of legal certainty. (Putri & Pratiwi, 2023). From the perspective of objectives and justification, this regulation is a preventive measure adopted by the state to safeguard fundamental legal interests before serious crimes are committed. However, it raises simultaneously philosophical debates, given that criminal law is, in principle, repressive in nature and traditionally operates only after a concrete criminal act has occurred. (Hamzah, 2023).

Furthermore, defining clear criteria and limitations for the punishability of preparatory acts is crucial to prevent excessive criminalization (overcriminalization), as not all preparatory conduct poses a real or immediate danger to society. Therefore, the law must explicitly limit the types of criminal acts whose preparation may be subject to punishment, particularly those related to extraordinary crimes (such as terrorism, treason, and offenses against state security. (Irawan, 2022; A. Jamil, 2023).

Moreover, the relationship between the preparation of criminal acts and other independent offenses, such as conspiracy or criminal attempt, creates the potential for normative overlap. This situation may result in legal uncertainty if clear conceptual boundaries regarding the elements and scope of each offense do not accompany it. (Laia & Laowo, 2022). From the standpoint of sentencing, the application of the principle of proportionality is essential to ensure that the criminal sanctions imposed for preparatory acts do not exceed the degree of culpability and danger posed by the

conduct, given that preparation remains at an early stage and has not yet produced concrete harmful consequences. (Rembang & et al., 2021).

On the other hand, this regulation also has implications for the protection of human rights, particularly concerning the potential violation of the presumption of innocence and the right to individual liberty if law enforcement is carried out arbitrarily. Consequently, the enforcement of provisions governing the preparation of criminal acts must be conducted cautiously and selectively. It must be firmly grounded in the principles of legality and legal certainty, so that efforts to combat crime do not come at the expense of human rights protection (Prabowo & Yustika, 2020; Saoh, 2022).

RESEARCH METHODS

This study employed a normative legal research method, focusing on laws and regulations as the primary objects of analysis. Normative legal research aims to produce legal arguments that serve as the basis for assessing the validity and appropriateness of a legal event. (Soekanto et al., 2003). In addition, this study adopts a descriptive-analytical approach, which provides a general overview followed by a systematic, factual, and careful explanation concerning preparation as a criminal act. (Ibrahim, 2006).

The data used in this study are secondary data obtained through library research by examining various scholarly works and literature related to the research problem, or the legal materials under review. (Marzuki, 2017). The secondary data consist of three types of legal materials: primary legal materials in

the form of binding and applicable laws and regulations relevant to the object of the study; secondary legal materials derived from legal literature, research findings, journal articles, and scientific research reports; and tertiary legal materials, which include data obtained from legal dictionaries, the Great Dictionary of the Indonesian Language, and legal encyclopedias. (Soekanto et al., 2003).

The collected data are subsequently analyzed qualitatively. The stages of analysis begin with data collection, followed by data processing and data presentation. Finally, conclusions are drawn using deductive reasoning to address the research problems.

RESULTS AND DISCUSSION

1. Reasons and Objectives for Regulating the Preparation of Criminal Acts as an Offense in the New Criminal Code

The regulation of the preparation of criminal acts as an offense in the new Criminal Code (KUHP) is formulated to provide stronger protection for society against the threat posed by serious crimes, such as terrorism, murder, treason, and other grave offenses. By criminalizing preparatory acts, law enforcement authorities can take preventive and repressive measures at an early stage, before the criminal act is committed and causes greater harm. In addition, this regulation aims to deter individuals who may commit criminal acts, encouraging them to abandon their intentions or reconsider their actions.

From a theoretical perspective, this approach is consistent with the concept of prevention-oriented criminal law, which

emphasizes that criminal law functions not only to punish acts that have already occurred but also to prevent crimes that pose serious threats to legally protected interests. (Muladi & Arief, 2010). In the context of extraordinary crimes, such as terrorism and offenses against state security, preventive measures that criminalize preparatory stages are considered proportional and rational, given the magnitude of potential harm that may arise if such crimes are successfully carried out. (Hamzah, 2023).

Furthermore, the regulation of preparatory acts is intended to address legal gaps in the former Criminal Code, which lacked a clear normative basis for law enforcement authorities to take action against preparatory conduct that already demonstrated clear criminal intent (*mens rea*) (Jamil, 2023). With the introduction of this regulation, law enforcement is expected to become more effective and targeted, without having to wait for the actual commission of a crime, while still maintaining a balance between the protection of society and the protection of human rights through the application of the principles of prudence and proportionality (Mandagi et al., 2021).

According to Hamzah (2023) The regulation of the preparation of criminal acts as an offense in the new Criminal Code has a philosophical foundation rooted in the promotion of justice and humanity in the application of law. He argues that preparatory acts reflect criminal intent (*mens rea*) and pose inherent dangers to society, thereby necessitating anticipation and prevention through appropriate legal sanctions. At the same time, preparatory acts are considered conduct that can still be halted

and corrected, allowing offenders to be treated humanely and given opportunities for rehabilitation.

This perspective demonstrates that the criminalization of preparatory acts is not solely punishment-oriented, but also emphasizes prevention and the protection of legally protected interests. From the standpoint of modern criminal law philosophy, this approach aligns with the balance principle, which seeks equilibrium between societal protection and the protection of individual rights. (Muladi & Arief, 2010). By viewing preparation as an early and correctable stage, criminal law is afforded space to operate more humanely through proportional and educational sanctions, rather than purely repressive ones. (Arief, 2011).

Moreover, this regulation reflects the application of the *ultimum remedium* principle, whereby criminal punishment for preparatory acts should be employed as a last resort when non-penal measures—such as guidance, supervision, or warnings—are no longer effective in preventing crime. (Sudarto, 2013). Accordingly, the imposition of criminal sanctions for preparatory acts must be selective and cautious to avoid undermining the values of humanity and justice that the regulation seeks to uphold.

Meanwhile, Jamil (2023) contends that the regulation of preparatory acts in the new Criminal Code aims to fill legal gaps and adapt criminal law to contemporary developments. He notes that preparatory acts were not explicitly regulated in the previous Criminal Code, resulting in uncertainty in law enforcement. In the era of globalization and digitalization, preparatory acts have

become increasingly frequent and complex, necessitating more adaptive legal regulation.

Similarly, Syamsudin (2023) Argues that the regulation of preparatory acts has a sociological objective, namely, aligning criminal law with societal values and interests. He emphasizes that actions with the potential to cause serious harm to society—particularly in crimes involving narcotics, terrorism, state security, and corruption—require legal attention. Public participation in prevention, reporting, and countermeasures against preparatory acts is also considered essential.

Based on these views, it can be concluded that the regulation of preparatory acts in the new Criminal Code aims to address legal gaps, enhance societal protection, adapt criminal law to contemporary developments, and align it with societal values and interests. This regulation is expected to support law enforcement, human rights protection, and legal certainty in Indonesia. (Mandagi & et al., 2021). Normatively, its existence strengthens the function of criminal law as an instrument of legal protection (*rechtsbescherming*), particularly in addressing serious crimes with wide-ranging and complex impacts on security and social order. (Muladi & Arief, 2010).

Nevertheless, the effectiveness of regulating preparatory acts largely depends on the clarity of normative formulation and the consistency of its application by law enforcement authorities. Without clear limitations and measurable parameters, such regulation risks expanding criminalization in a manner inconsistent with the principles of legality and legal certainty (*nullum crimen sine lege certa*) (Arief, 2011).

Therefore, the application of provisions on preparatory acts must consistently consider proportionality and prudence to prevent abuses of authority that may infringe individual rights (Sudarto, 2013).

From a human rights perspective, this regulation must be balanced with adequate oversight and accountability mechanisms to ensure that crime prevention efforts do not compromise fundamental rights, such as personal liberty and the presumption of innocence. Thus, the regulation of preparatory acts in the new Criminal Code will achieve its ideal objectives only if implemented selectively, proportionally, and in harmony with the substantive justice values prevailing in society. (Prabowo & Yustika, 2020).

2. Criteria and Limitations of Punishable Preparatory Acts in the New Criminal Code

Preparatory acts may only be subject to criminal punishment if explicitly regulated by law. This means that only preparation related to crimes endangering public safety, legal order, or societal interests—such as murder, treason, terrorism, and other serious crimes—may be sanctioned. (Ulfa & et al., 2017).

Preparatory acts must meet specific legal elements. Not all conduct related to criminal offenses can be classified as preparation. Preparation is limited to acts that clearly and intentionally demonstrate an intent to commit a crime, such as preparing tools, gathering information, formulating plans, or other actions aimed at creating conditions for the commission of a crime. (Thon, 2016). Emphasizing the element of intent (*dolus*) is essential to distinguish criminal preparation from

neutral actions or mere thoughts, which are not punishable under the principle of legality (*nullum crimen sine culpa*) (Sudarto, 2013).

In addition, preparatory acts must have a direct and concrete connection to the intended offense, allowing them to be clearly distinguished from attempts or lawful everyday activities. The absence of a clear causal relationship between preparatory acts and the planned crime may lead to legal uncertainty and excessive criminalization (overcriminalization) (Rembang & et al., 2021). Therefore, the proof of intent and the purpose at the preparatory stage must be conducted carefully and based on objective facts that are legally accountable. (Laia & Laowo, 2022).

Accordingly, the regulation and enforcement of preparatory acts as an offense require strict standards of proof and clear normative boundaries to ensure that law enforcement remains aligned with the principles of prudence, human rights protection, and legal certainty. (Arief, 2011).

Preparatory acts must be carried out intentionally. The offender must consciously and voluntarily plan the criminal act, not as a result of negligence, error, or coercion. Preparation represents an early stage that has not yet reached the stage of attempt; therefore, its criminal sanctions are lighter than those imposed for attempts. (Rembang & et al., 2021). Emphasizing intent (*dolus*) reinforces that criminal law may only address conduct reflecting a real and concrete *mens rea*, rather than mere mental attitudes or potential intentions not yet manifested in action. (Sudarto, 2013).

The distinction between preparation and attempt is crucial to maintaining proportionality in sentencing. At the preparatory stage, conduct remains within the planning phase. It has not yet reached the commencement of execution (begin *van uitvoering*), resulting in a lower level of danger than attempts closer to the offense's realization (Montolalu, 2016). Consequently, lighter punishment for preparatory acts reflects an effort to align sanctions with the degree of fault and risk involved.

Furthermore, this regulation serves as a preventive instrument, allowing offenders to abandon their intentions before a crime is committed. In this context, punishment for preparatory acts serves not only as a means of retribution, but also as an early warning mechanism intended to encourage voluntary behavioral change. (Arief, 2011). Therefore, the application of provisions on preparatory acts must consistently consider prudence and the protection of human rights to avoid exceeding the bounds of substantive justice.

Preparatory acts constitute an independent offense and do not depend on the completion of the principal crime. Accordingly, an individual may be punished for preparation even if the intended crime has not occurred. This concept underscores that criminal law is not solely result-oriented, but also concerned with the level of danger and potential harm inherent in conduct that demonstrates clear criminal intent. (Hamzah, 2023). By recognizing preparation as an independent offense, the state is granted authority to intervene at an early stage to prevent more serious crimes with broader impacts.

Nevertheless, recognizing preparation as an independent offense requires caution in its application. Without clear normative limits, punishing conduct that has not produced tangible harm risks violating the principles of legality and legal certainty, particularly regarding assessments of danger and culpability (Arief, 2011). Therefore, strict and objective proof of intent and direct linkage between preparatory conduct and the planned crime is essential to avoid excessive criminalization. (Laia & Laowo, 2022).

Moreover, preparatory acts must be conceptually distinguished from attempts and conspiracy. This distinction is necessary to prevent overlapping legal provisions and ensure consistency in law enforcement. Consequently, the regulation of preparation as an independent offense will only be effective and just if applied proportionally and in harmony with the objectives of societal protection and human rights protection. (Rembang & et al., 2021).

Preparatory acts differ from other independent offenses, such as conspiracy. Preparation does not require cooperation or agreement with others, but may be established solely through the offender's intent and actions. Therefore, preparatory acts cannot be combined with other offenses unless a clear and concrete connection exists between them. (Laia & Laowo, 2022).

The new Criminal Code applies the principles of proportionality, subsidiarity, and individualization in determining criminal sanctions for preparatory acts. These principles aim to ensure that punishment is imposed reasonably, proportionally, as a last resort, and in

accordance with the individual circumstances of the offender. (Saoh, 2022).

While this regulation has the potential to contribute to crime prevention through early intervention positively, it also carries risks to the protection of human rights. Accordingly, its implementation must be conducted cautiously, proportionally, and in compliance with prevailing legal principles. (Syaputra, 2016).

CONCLUSIONS

The regulation of the preparation of criminal acts as an independent offense in the new Criminal Code (KUHP) represents a normative response to the need to protect society from serious crimes with potentially wide-ranging impacts. By criminalizing preparatory acts, criminal law strengthens its preventive function, addresses legal gaps in the previous Code, and adapts to contemporary social and technological developments. This approach reflects a shift toward prevention-oriented criminal law, which prioritizes crime prevention and the protection of legal interests while upholding the values of justice and humanity. However, its effectiveness depends on selective and proportional application, supported by clear normative limits and adequate oversight to prevent excessive criminalization and violations of legal certainty and human rights.

Under the new Criminal Code, preparatory acts are punishable only if they are expressly regulated by law, are carried out intentionally, demonstrate a clear *mens rea*, and have a direct and concrete link to the planned offense. Not all preliminary or neutral actions may be

classified as criminal preparation. As an independent offense, criminal preparation emphasizes assessing danger and potential harm rather than actual outcomes, while punishment must remain proportionate, subsidiary, and individualized. With clear boundaries and strict standards of proof, the regulation of preparatory acts can function effectively as an early prevention mechanism without undermining human rights or substantive justice.

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