

Contradiction Of The Concept Of Statute Criminal Act And Living Criminal Act (New Criminal Code Perspective)

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Article	Abstract
<p>Keywords: Contradiction; Statute Criminal Act; Living Criminal Act.</p> <p>Article History Received: Oct 28, 2024; Reviewed: Dec 26, 2024; Accepted: May 14, 2025; Published: May 26, 2025.</p>	<p><i>The 'Statute Criminal Act' is regulated in Article 1 paragraph (1) and Article 12 of the New Criminal Code. In contrast, the 'Living Criminal Act' is regulated in Article 2 and Article 597 of the New Criminal Code. The benchmark in Article 1 paragraph (1) of the New Criminal Code is contrary to the Criminal Law, strengthened by Article 12 paragraph (1) of the New Criminal Code. The benchmark for Article 12 paragraph (2) of the New Criminal Code must be 'against the law' or 'contrary to existing laws in society'. Meanwhile, the 'Living Criminal Act' in benchmark Article 597 paragraph (2) of the New Criminal Code contradicts the 'Living Criminal Act'. The legal issue in this article is that there is a contradiction between the benchmarks for the 'Statute Criminal Act' and the 'Living Criminal Act', and whether the same criteria can be used for two different concepts of action. This research is doctrinal research, with a statute approach and a conceptual approach to obtain primary and secondary legal materials and analyze problem formulations using prescriptive analysis. The results of the study show that there is an internal contradiction in the concept of 'Criminal Act' because it contains contradictory benchmarks, and there is an external contradiction in 2 (two) different concepts between the 'Statute Criminal Act' and the 'Living Criminal Act' but using various benchmarks. We give rise to a legal concept that needs to be more coherent. The regulation of 'living law', further regulated in Regional Regulations, is expected to balance the principles of 'modern' criminal law in the applicable laws and regulations to avoid weaknesses in legal loopholes.</i></p>



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A. INTRODUCTION

Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) provides provisions regarding the existence of the Legality Principle, which is still maintained through Article 1 paragraph (1), which reads, "There is not a single act that can be subject to criminal

sanctions and/or action, except with the power of criminal regulations in laws and regulations that existed before perpetrator commit the action.” However, the New Criminal Code currently provides an exception to the Legality Principle by confirming the source of punishment, apart from statutory regulations, also through 'living law' (Malau, 2023). The polemic regarding the emergence of the concept of 'living law' in the reform of the Criminal Code shows that such a legal concept has not yet been fully implemented. This is because there are still many legal loopholes, such as inconsistencies in regulations, legal emptiness, as well as the public's uneven understanding of the term 'living law' (Pawana, 2023).

One of them is that there is a related contradiction regarding the benchmarks for the 'Statute Criminal Act' and 'Living Criminal Act' based on Living Law (for simplicity, from now and referred to as the Living Criminal Act). Article 1 paragraph (1) and Article 12 of Law Number 1 of 2023 (New Criminal Code) define the idea of the 'Statute Criminal Act' while Article 597 and Article 2 explain the concept of 'living criminal law.' Article 1 paragraph (1) of the New Criminal Code stipulates, "No act can be subject to criminal sanctions and/or action, except on the strength of criminal regulations in laws and regulations that existed before we committed the act". This provision is an embodiment of the Principle of Legality. The explanation of Article 1 paragraph (1) of the New Criminal Code confirms the existence of the Legality Principle, namely "This provision contains the principle of legality, that an act is a 'Criminal Act' if it is contrary to statutory regulations". The statutory regulations in this provision are Regional Laws and Regulations. Criminal regulations containing criminal threats and/or actions must exist before the 'criminal act' is committed. Criminal legislation may not apply retroactively (non-retroactive principle).

The principle of legality in Article 1, paragraph (1) of the New Criminal Code, contains at least 3 (three) meanings, namely: (a) 'lex temporis delicti' (the criminal legislation applied is the legislation at the time the criminal act was committed); (b) the non-retroactive principle ('lex praevia'), that criminal legislation is prohibited from being applied retroactively; and (c) the principle of non-analogy. It's just that Article 1 paragraph (2) of the New Criminal Code explicitly emphasizes the prohibition on analogies by determining "in determining the existence of a 'Criminal Act' the use of analogies is prohibited." This provision implies that non-analogy is no longer a legal principle but has become a legal requirement.

Legal problems arise with the construction of Article 12 of the New Criminal Code: (paragraph 1) that "Criminal acts are acts which by statutory regulations are threatened with criminal sanctions and/or action"; then (paragraph 2) that "To be declared a 'Criminal Act',

an act that is threatened with criminal sanctions and/or action by statutory regulations must be unlawful or contrary to living criminal law, then in paragraph 3, that "Every 'criminal act' is always against the law, unless there is a justification."

In Article 1, paragraph (1) of the New Criminal Code there is an important phrase, namely 'except for the power of criminal regulations in laws and regulations that existed before the act was committed'. The article's explanation emphasizes that the qualification and benchmark for a 'criminal act' is because it is contrary to criminal law (contrary to statute criminal law), not based on other reasons.

The benchmark for 'Statute Criminal Act,' namely 'contrary to statute criminal law,' is the same and congruent with the benchmark in Article 12 paragraph (1) of the New Criminal Code, that 'Criminal Act' is an act that is threatened by criminal sanctions by statutory regulations. and/or actions; as an act prohibited by criminal law.

The phrases in Article 12 paragraph (1) and paragraph (2) of the New Criminal Code should receive a more comprehensive explanation, but Article 12 of the New Criminal Code only states 'it is clear'. It raises a crucial issue, namely the essence of the meaning of 'must be against the law' (against the law) or 'contrary to living laws in society' (contrary to living criminal law), so this article focuses on the issue of contrary to living criminal law.

Article 597, paragraph (1) of the New Criminal Code stipulates: "Every person who commits an act which, according to the laws existing in society, is declared a prohibited act, is threatened with a criminal act." This provision means that the benchmark for the Living Criminal Act is 'contrary to living criminal law.

Thus, the benchmark for 'Criminal Acts' in Article 1 paragraph (1) of the New Criminal Code is strengthened by Article 12 paragraph (1) of the New Criminal Code which states that 'Criminal Acts' are acts contrary to Living Criminal Laws. A benchmark contradiction arises with the provisions of Article 12 paragraph (2) of the New Criminal Code: "To be declared a criminal act, an act that is threatened with criminal sanctions and/or action by statutory regulations must be unlawful or contrary to existing law. public".

The construction of Article 12 paragraph (1) and paragraph (2) of the New Criminal Code emphasizes that the benchmark for 'Statute Criminal Act' is (a) contrary to statute criminal law, (b) is against the law, and (c) contrary to living criminal law. In another concept, the 'Living Criminal Act' is the benchmark because it is 'contrary to living criminal law.

Due to the problems related to the concept of 'Criminal Act' in the New Criminal Code, which is considered to contain ambiguity and contradiction, it is, therefore, necessary to provide an explanation or explanation regarding the actual concept of 'Criminal Act', so that these regulations can be implemented and applied without weakening enforcement Law. The formulation of criminal concepts based on 'Customary Law' must be based on the paradigm that this is done solely to respect and accommodate the existence of customary law itself (A. Harahap, 2018; Sugiarto & Purwanto, 2024). If the 'customary crime concept' is implemented correctly, it is feared that Customary Law, which is the 'living law in society' (the living law), will become 'the dead law' (Utama, 2020; Zain, 2023).

Based on the background described above, the problem is that there is ambiguity and contradiction in the concept of the 'Statute Criminal Act' with the benchmark contrary to living criminal law. The problem is 2 (two) different concepts of action, namely 'The Statute Criminal Act' and 'The Living Criminal Act. The legal issue in this article is the contradiction of benchmarks in the concept of 'Statute Criminal Act' and 'Living Criminal Act), related to the existence of benchmarks contrary to living criminal law.

B. METHOD

This article uses Doctrinal Research, using a Legislative Approach, namely an approach using legislation and regulations in using a statute Approach not only looking at the form of statutory rules but also examining the content material (Marzuki, 2021), and a Conceptual Approach, namely The approach taken is not to depart from existing legal rules by building concepts from views and doctrines that have developed in legal science (Marzuki, 2021). This approach is to obtain relevant primary and secondary Legal Materials. Based on existing legal materials, an analysis of the problem formulation was then carried out using Prescription Analysis.

C. RESULTS AND DISCUSSIONS

1. Essence and Benchmarks of the Concept of 'Statute Criminal Act'

Article 1, paragraph (1) of the New Criminal Code states, "No act can be subject to criminal sanctions and/or action, except on the strength of criminal regulations in laws and regulations that existed before the act was committed." Article 1 paragraph (1) of the New Criminal Code is: "This provision contains the Principle of Legality which determines that an act is a Criminal Act if it is determined by or based on statutory regulations. The statutory regulations in this provision are Regional Laws and Regulations. The principle of legality is

a basic principle in criminal law. Therefore, laws and regulations containing criminal threats must exist before committing a criminal act. It means that criminal provisions may not apply retroactively. Thus, a criminal act must be preceded by law (D. F. R. Harahap & Rachmad, 2024; Subaidi & Afrizal, 2023). Meanwhile, 'new' provisions regarding punishment in the law cannot be used to criminalize someone who committed a criminal act before the law was enacted (Setyawan, 2023).

Article 1, paragraph (1) of the New Criminal Code embodies the Principle of Legality as one of the most important legal principles in criminal law and criminal justice. The Principles of Legality, Statute Criminal Acts, and Statute Criminal Law are unified. The Legality Principle only regulates all criminal acts prohibited and regulated by Criminal Law. Ontologically, the Legality Principle only contains criminal acts and criminal legislation, which are the primary support for the Legality Principle. The principle of legality requires the existence of criminal acts and criminal legislation as its substance (Setyawan, 2021; Setyawan & Rhiti, 2022).

Essentially, the Legality Principle is 'nullum crimen sine poena legali' (there is no crime without a crime based on or according to criminal law), according to Van der Donk's opinion (Loqman, 2004). The same thing was also conveyed by Hazewinkel Suringa, that 'geen delelict, geen straf zonder een voorafgaande strafbepaling' (no offense, no crime, without prior criminal law provisions) (Andi, 2008). Jerome Hall stated: "nulla poena sine lege has several meanings. In a narrower connotation of that specific formula, no person shall be punished except within compliance with a statute that a penalty for criminal behavior. Employed as nullum crimen sine lege, the prohibition is that no conduct shall be held criminal unless it is specifically described in the behavioral circumstance element of a penal statute (Hall, 1937). (in short, no person can be punished except according to the law that criminal penalties exist). The implication of 'nullum crimen sine lege', no act can be punished unless it is specifically explained in the elements of the act in the criminal law). Then Moeljatno interpreted the Principle of Legality as no act is prohibited and punishable by crime if it is not specified in advance in legislation (Moeljatno, 2008).

The chapter on proportionality of criminal offenses and penalties (the principle of legality and proportionality of criminal acts and criminal sanctions), also states the exact idea regarding the Principle of Legality. Article 49 paragraph (1) of the European Union Charter stipulates: "No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense under national law or

international law at the time when it was committed” (in short: no one is found guilty of committing a criminal offense until the act is prohibited at the time the act is committed).

The principle of 'nullum crimen sine poena legali' (there is no crime without a crime according to law) means that there cannot be any action that can be punished with a crime if it is not prohibited by law. Criminal acts and penalties must first be regulated by law (Simanjuntak et al., 2024). In a *argumentum a contrario*, any act (even if it causes harm to the victim) will not be criminally prosecuted, as long as it is not prohibited by law. This principle is in line with the provisions of Article 1, paragraph (1) of the New Criminal Code.

Apart from the opinions expressed above, some opinions expand the aspects of the Principle of Legality, as stated by JE. Sahetapy is as follows (Usfa, 2006):

- a. Cannot be punished except based on criminal provisions according to law;
- b. There is no application of criminal law based on analogy;
- c. There should be no unclear offenses;
- d. Penal provisions do not apply retroactively; and
- e. There are no other penalties except those specified by law.

Meanwhile, according to Schaffmeister there are 7 (seven) aspects of the Principle of Legality, namely (Schaffmeister et al., 1995):

- a. Cannot be punished except based on criminal provisions according to law;
- b. There is no application of criminal law based on analogy;
- c. Cannot be punished simply based on habit;
- d. There must be no unclear formulation of the offense (*lex certa* requirements);
- e. There is no retroactive power of criminal provisions; and
- f. (f)There are no other penalties except those specified by law; and
- g. Criminal prosecution only in the manner prescribed by law.

If simplified, the aspects stated by the experts above can be summarized as:

- a. Only criminal law can qualify criminal acts,
- b. The necessity of using criminal law in force at the time the act was committed (*lex temporis delicti* or existing criminal laws) to prosecute an act, so that it is prohibited to apply criminal laws that come into effect later (*ex post facto* laws) or to apply criminal laws retroactively (non-retroactive principle),
- c. It is prohibited to qualify criminal acts and criminal threats outside what is formulated by statute, which is known as the principle of non-analogy,

- d. The main source of criminal law is criminal law, and
- e. Criminal law must be formulated clearly and firmly (*lex certa*).

About criminal law, which is the source of criminal law, Schaffmeister are of the opinion that the government's authority to impose criminal penalties, according to the Legality Principle contained in Article 1 Sr (Dutch Criminal Code) and Article 1 Sv (Dutch Criminal Procedure Code), is solely based on Constitution. Criminal law reactions to disgraceful acts may only be carried out if criminal regulations (read: criminal law) can be applied to the act (Schaffmeister et al., 1995). Andi Hamzah thinks that if an act is prohibited or neglect of something is required and is punishable by crime, then the act or neglect must be stated in the criminal law (Andi, 2008). These two opinions emphasize how criminal law is the only source of criminal law and the legal basis for prosecuting and punishing an act (criminal).

In this case, Loebby Loqman agrees that 2 (two) things can be drawn as conclusions from the formulation of the Principle of Legality, namely (Loqman, 2004):

- a. If a prohibited act or omission of something is required and punishable by crime, then the act or omission must be stated in the criminal law;
- b. These provisions may not apply retroactively, as indicated in Article 1, paragraph (2) of the (Old) Criminal Code.

The Principle of Legality does not give rise to any legal protection if the realization of this principle only results in the cruel exercise of power being transferred from the exercise by Judges to legislators (Mandiana, 2016). Viewed from a political-legal perspective, the Principle of Legality must be linked to the definition of law, which was developed by criminal law theorists at that time (Loqman, 2004). By writers at that time, the meaning of the law was explained using the concept of 'social contract', which is a central theme of the rational school of natural law. The 'social contract' paradigm entered almost all criminal law theories then. These thoughts are also seen in Beccaria, Lacretelle, Brissot de Warville, Marat, and others. However, these writers thinking about the social contract by these writers is still primitive and undifferentiated (Loqman, 2004).

This thinking about the social contract also shows a change in thinking about legal order, which was previously based on theocratic thoughts, to legal order based on anthroponomics. Social contract thinking contains the idea that social relations and legal relations are not required by nature or ordained by God, as previously thought, but that humans solely make these rules (Loqman, 2004).

The legal, political dimension of the Legality Principle is not merely a guarantee of legal protection for the people from the arbitrariness of the authorities, but rather:

- a. Shifting the cruel exercise of judicial power (by judges during the Ancien Regime) into the hands of legislators;
- b. Changes in the criminal law order have been made from previously based on theocratic thoughts to an anthroponomic order created by humans rationally. So, human rationality is the essence of the legal order.

Based on the explanation above, it is necessary to remind us all not to overly believe in criminal law. The excessive belief that criminal law automatically guarantees the protection of individual citizens' rights is a disproportionate attitude. Who can guarantee that legislators formulate criminal laws based on, for, and on behalf of, the individual rights of citizens? Who can guarantee that legislators can clean up the criminal laws they make free, especially from the interests of influential individuals and groups?

Essentially, the meaning contained in the Principle of Legality is that only criminal legislation can qualify an act as a criminal act, as well as a criminal threat (Isima, 2022; Sudibyo & Rahman, 2021). Making criminal laws is the authority of the legislative power. The legislative institution has the authority to qualify criminal acts and criminal threats.

The meaning of the Principle of Legality is a logical consequence of the basic ideas that constitute the substance of the Principle of Legality, namely: (a) protecting the rights of individual citizens by limiting the power of the authorities (including judges) and (b) regulating restrictions through criminal law instruments. This basic idea is transformed into the essence of the Principle of Legality, namely guaranteeing the protection of individual citizens' rights by limiting rulers' power and judges' criminal law instruments. As a logical consequence of the basic idea and essence of the Principle of Legality, the Principle of Legality carries out 2 (two) functions: a protection function and a limitation function. The protection function is carried out to protect the rights of individual citizens from the arbitrary power of the authorities, including judges, and the limitation function is carried out to limit the power of the authorities (including judges) so that it is not arbitrary. Analyzing the basic idea, essence, and function of the Principle of Legality, essentially there are 2 (two) objectives of the Principle of Legality, namely: (a) protecting the rights of individual citizens, and (b) limiting the power of the authorities (including judges). If summarized further, in fact, the main aim of the Principle of Legality is to protect the rights of individual citizens. It can be said that the Legality Principle is a safeguard for the protection, respect,

and enforcement of human rights, which requires limits to the punishment of someone (Sukirno, 2018).

Based on the analysis of the meaning, basic ideas, essence, function, and objectives of the Legality Principle, it can be concluded that criminal law is. Criminal law is the only instrument to limit the power of authorities (including judges) to protect the individual rights of citizens (Elta & Yoserwan, 2023; Irmawanti & Arief, 2021). Criminal law is the foundation of criminal law and criminal justice. Criminal law is the only source of criminal law. The significance of criminal law is at the level of the necessity of criminal law in criminal law and criminal justice. It can be said that criminal law is the only identity and character of criminal law and criminal justice. It is impossible to build a criminal law system and criminal justice system without criminal law (Ternando et al., 2023). So, an adage can be built, namely: "There is no criminal law system and no criminal justice system without criminal law".

Several criminal law experts have opinions about various aspects of the Legality Principle. There is an opinion that in the tradition of the Civil Law System, there are 4 (four) aspects of the Principle of Legality that are strictly applied, namely: (a) Legislative regulations (law), (b) retroactivity (retroactivity), (c) *lex certa*, and (d) analogy.

Regarding these four aspects, Roelof H. Haveman stated that although it might be said that not every aspect is that strong on its own, combining the four aspects gives a more accurate meaning to the principle of legality (Zakaria, 2019). These four aspects are a powerful combination to provide the true meaning of the Principle of Legality. The entire description of the Principle of Legality, criminal legislation, and criminal acts emphasizes that the benchmark for 'a Statute Criminal Act is contrary to statute criminal law'.

Article 1, paragraph (1) of the New Criminal Code, has a critical phrase: 'except for the power of criminal regulations in laws and regulations that existed before the act was committed'. The provisions of this article emphasize the characteristics or qualifications of a 'Criminal Act' (Statute Criminal Act), and the power of criminal regulations in existing laws and regulations prohibit this act. Thus, it is clear that the benchmark for the 'Statute Criminal Act' is 'contrary to statutory criminal law'. This is in line with Article 12 paragraph (1) of the New Criminal Code: "Criminal acts are acts that are threatened by criminal sanctions and/or action by statutory regulations." The provisions of this article emphasize that the benchmark for 'Statute Criminal Act is 'contrary to statute criminal law'.

However, Article 12 paragraph (2) of the New Criminal Code states that: "To be declared a criminal act, an act that is threatened with criminal sanctions and/or action by statutory regulations must be unlawful or contrary to living criminal law, in fact giving rise to strange constructions, in the form of contradictions and inconsistencies. If Article 1 paragraph (1), in conjunction with Article 12 paragraph (1) of the Criminal Code, clearly states that the benchmark for 'Statute Criminal Act' is 'contrary to statute criminal law', but Article 12 paragraph (2) of the New Criminal Code also emphasizes that the benchmark for a 'Statute Criminal Act' is 'must be against the law' or 'contrary to living criminal law'.

Thus, through Article 12 paragraph (2), violations of 'laws that exist in society' are constructed separately or as intersections with the element of 'against the law'. This means that the aspect of 'against the law' is no longer absolute in determining a criminal act. Even though no 'unlawful' element (either formally or materially) is found in the perpetrator's actions, the action can still be considered a 'criminal act' if it is contrary to the 'laws that exist in society'. This is based on Article 12 of the New Criminal Code, which uses the phrase 'law that lives in society' as an alternative basis for the concept of 'against the law'.

This analysis concerns the benchmarks for the 'Statute Criminal Act', namely 'contrary to statute criminal law' and 'contrary to living criminal law'.

2. Essence and Benchmarks of the Concept of Living Criminal Act

Article 597 of the New Criminal Code is included in Chapter XXXIV, entitled "Criminal Acts Based on Laws that Live in Society". Article 597 paragraph (1) of the New Criminal Code: "Every person who commits an act which, according to the laws existing in society, is declared a prohibited act, is threatened with a criminal offense." This provision means that the act is a prohibited act because it is 'contrary to living law'. The benchmark for this act is 'contrary to living criminal law'.

The existence of 'Living Criminal Law' and 'Living Criminal Act' must be linked to Article 2 of the New Criminal Code, namely:

- (1) The provisions as intended in Article 1 paragraph (1) do not reduce the validity of the law existing in society which determines that a person deserves to be punished 'even though the act is not regulated in this Law'.
- (2) The laws that live in society as intended in paragraph (1) apply in the place where the law lives and as long as they are not regulated in this Law and are in accordance with the values contained in Pancasila, the 1945 Constitution of the

Republic of Indonesia, human rights, as well as general legal principles recognized by the people of nations.

- (3) Government Regulations regulate provisions regarding procedures and criteria for determining laws that exist in society.

The explanation of Article 2 of the New Criminal Code states: (1) What is meant by 'law that exists in society' is customary Law which determines that someone who commits a specific act deserves to be punished. The living Law in this article relates to unwritten laws that are still valid and developing in Indonesia's society in Indonesia. To strengthen the implementation of laws that exist in society, Regional Regulations regulate these Customary Crimes. (2) In this provision, what is meant by 'applicable in the place where the law lives' is that it applies to every person who commits a Customary Crime in that area. This paragraph contains guidelines for establishing customary criminal law whose validity is recognized by this Law. (3) The Government Regulations in this provision are guidelines for regions in establishing laws that live in society in Regional Regulations.

Analyzing Article 2 paragraph (1) of the New Criminal Code, the phrase "the provisions as referred to in Article 1 paragraph (1) do not reduce the validity of existing laws in society which determine that a person deserves to be punished even though the act is not regulated in this Law", means that The application of the Legality Principle does not reduce the application of 'living criminal law').

The provisions of Article 2 of the New Criminal Code have implications for expanding the interpretation of the existence of the Legality Principle, which was previously regulated in the Old Criminal Code. From previously only being based on the Principle of Formal Legality, currently the New Criminal Code provides an entry point for the application of the Principle of Material Legality (Utama, 2020).

Paying close attention to the concept of 'law that lives in society' in the Elucidation of Article 2 paragraph (1) and paragraph (2) of the New Criminal Code, that 'law that lives in society' is Customary Law, as the basis for the appropriateness of punishment for certain acts. It takes the form of unwritten law, which is still valid and developing in people's lives in Indonesia. Its application is where the law applies, whether local or local, where the Customary Crime Act applies.

In Article 2 paragraph (2) of the New Criminal Code, the phrase 'law that lives in society as intended in paragraph (1) applies in the place where the law lives and as long as it is not regulated in this Law and is by the values contained in Pancasila, The 1945

Constitution of the Republic of Indonesia, human rights, as well as general legal principles recognized by the people of nations", means that: (a) 'laws that live in society' are in the environment of that place, are local (local) in nature, so there are many environments where 'living criminal law' applies; (b) must remain in 'unwritten' form; and (c) 'living criminal law' must not conflict with 'the values contained in Pancasila', the 1945 Constitution, human rights, as well as 'general legal principles recognized by the people of nations.

The values contained in Pancasila, the 1945 Constitution, human rights, and general legal principles recognized by the people of nations are critical norms (touchstones) for the enactment of 'laws that live in society'. As long as the 'law that lives in society' does not conflict with the 'values contained in Pancasila, the 1945 Constitution, human rights', as well as general legal principles recognized by the community of nations, then the 'law that lives in society' has the power to apply.

The problem is, is there a relatively comprehensive and consistent legal idea regarding the substance of Pancasila, the 1945 Constitution, human rights, as well as 'general legal principles recognized by the people of nations' which can be used as critical norms (touchstones) for the implementation of 'laws that live in society'. It will lead to failure in practice to examine the 'laws that live in society' based on comprehensive legal ideas in Pancasila, the 1945 Constitution, human rights, as well as general legal principles recognized by the community of nations. Should the preparation of subsequent criminal legislation be based on the values contained in Pancasila, the 1945 Constitution, human rights, and general legal principles recognized by the community of nations?

The next problem is the existence of 'living criminal law'. This needs to be linked to Article 2 paragraph (3) of the New Criminal Code: "Provisions regarding the procedures and criteria for determining laws that exist in society "are regulated by Government Regulations"; Explanation of Article 2 paragraph (3) of the New Criminal Code: "Government regulations in this provision are guidelines for regions in determining laws that live in a society in Regional Regulations"; as well as an Explanation of Article 2 paragraph (1) of the New Criminal Code: "To strengthen the implementation of laws that exist in the community, Regional Regulations regulate these Customary Crimes".

It is essential to pay attention to the diction: 'Government Regulation', 'Local regulation', 'set', 'arrange', and 'strengthen.' Is the function of the Government Regulations and Regional Regulations the nature of 'positive law' to enact 'living criminal law' as a

constitutive (forming) function or simply as an 'ascertaining', constating, declarative function, as a statement confirming that the existence of customary law remains as is.

If it turns out that the Government chooses the 'enact' policy, so that "the term positive law connotes statutes, i.e., law that has been enacted by an authorized legislature" (a term positive law which means legislation, namely legislation enacted by a body competent legislative authority), meaning that the Government has established a constitutive function, namely forming Positive law, so that 'living criminal law' has changed substantially and become written law, namely statutory criminal law. If this policy is implemented, namely implementing 'positive law' and 'living criminal law', then there will be 'Contradictio in terminis' (conflict in meaning), 'Conceptual Gap', and even 'Conceptual Contradiction', which has the implication of emasculating 'living criminal law', even eliminating the entity of 'living criminal law' as an unwritten law that is so respected by Article 2 of the New Criminal Code.

Returning to the issue of the characteristics and benchmarks of the 'Living Criminal Act', all the analysis related to Article 597 and Article 2 of the New Criminal Code clearly and unequivocally shows that the characteristics and benchmarks of the 'living criminal act' are 'contrary to living criminal law'.

Thus, the concept Livig Criminal Act means that criminal law enforcement is no longer limited to actions prohibited by law (*mala prohibita*). However, current criminal law enforcement can also touch on actions not regulated in criminal legislation (unwritten law) and include the provisions of 'laws that live in society' (customary criminal law) (Setyawan, 2023). Thus, Article 2 paragraph (1) of the Criminal Code can also have implications for being an 'opportunity' to impose criminal penalties based on violations of 'living law' and become a support for the idea of 'living law' in criminalizing acts that not regulated in statutory regulations (unwritten law).

3. Benchmark Contradictions

Requires a comprehensive analysis of the benchmarks 'contrary to statutory criminal law' and 'contrary to living criminal law' in 'Statute Criminal Act,' as well as the benchmark 'contrary to living criminal law' in 'Living Criminal Act.'

First, it is necessary to understand the term contradiction. According to KBBI, First, it is necessary to understand the term contradiction. According to KBBI, contradiction is a conflict between two things that are very opposite or contradictory (Lembaga Studi dan

Advokasi Masyarakat, 2005). According to the Oxford Dictionary, “contradiction is a combination of statements, ideas, or features of a situation that are opposed to one another”; “the proposed new system suffers from a set of internal contradictions” (Oxford University Press, 2024) (a contradiction is a combination of contradictory statements, ideas, or characteristics of a situation; ' a system that experiences a series of internal contradictions). *Contradiction is the fact of something being the complete opposite of something else or very different from something else, so that one of them must be wrong*”; a contradiction in terms: a combination of words that is nonsense because some of the words suggest the opposite of some of the others (Cambridge University Press and Assasment, 2024). According to Cambridge Dictionary: “A contradiction: (a) a proposition, statement, or phrase that asserts or implies both the truth and falsity of something; (b) a statement or phrase whose parts contradict each other; (c) logical incongruity; and (d) a situation in which inherent factors, actions, or propositions are inconsistent or contrary to one another” (Merriam-Webster, 2024).

Thus, the meaning of contradiction is (1) the existence of two things that contradict each other, (2) an internal contradiction in a particular concept, (c) if there is an internal contradiction in a concept, then one of them is wrong, (d) factors, an action or proposition attached to a concept that turns out to be contradictory.

The true meaning of contradiction is inconsistency. In argumentum a contrario, something is inconsistent, there must be a contradiction in it. The statement is true: "We say that a statement, or set of statements, is logically consistent when it involves no logical contradictions. A logical contradiction is the conjunction of a statement S and its denial not-S. In logic, it is a fundamental law- the law of non-contradiction- that a statement and its denial cannot both be true at the same time” (Varzi, 2014) (translation: a statement, or a series of statements, is logically consistent if it does not contain logical contradiction. Logical contradiction is the conjunction of a statement S and its negation not-S. Logically, it is a basic law - the law of non-contradiction - that a statement and its denial cannot both be true at the same time) is definitely an inconsistency.

‘Analyzing the existence of benchmarks in the concept of ‘Statute Criminal Act’ and ‘Living Criminal Act’, there are 2 (two) contradictions in the concept of these acts, namely (1) the existence of benchmark contradictions on ‘Statute Criminal Act’, and (2) there are contradictions in benchmarks on ‘Statute Criminal Act’ and ‘Living Criminal Act’. Thus, there are 2 (two) contradictions, namely: (1) internal contradiction in the concept of ‘Statute

Criminal Act', and (2) external contradiction between 'Statute Criminal Act' and 'Living Criminal Act'.

Firstly, in the concept of 'Statute Criminal Act', it turns out that there are at least 2 (two) contradictory benchmarks, namely 'contrary to statute criminal law' and 'contrary to living criminal law'. It doesn't make sense, on the one hand, the benchmark for 'Statute Criminal Act' is 'contrary to statute criminal law', as the essence of the Principle of Legality; while on the other hand, the benchmark for 'Statute Criminal Act' is 'contrary to living criminal law', which should not be a benchmark for 'Statute Criminal Act', but the domain of 'Living Criminal Act'. This situation illustrates the existence of two conflicting things, there is an internal contradiction in the concept of 'Statute Criminal Act', of course the main concept is wrong, because it contains contradictory benchmarks. Essentially, in the concept of 'Statute Criminal Act' there are 2 (two) benchmarks that contradict each other and mutually confirm each other.

Secondly, there is the same benchmark, namely 'contrary to living criminal law', which is actually used by 2 (two) different concepts of action, namely 'Statute Criminal Act' and 'Living Criminal Act') In principle, benchmarks are a reflection of the substance and characteristics of a concept (Tjandra, 2012). Bearing in mind that the benchmark 'contrary to living criminal law' is a characteristic of 'Living Criminal Act', then if the same benchmark is also the substance and character of the concept different acts, namely 'Statute Criminal Act', will definitely give rise to ambiguity, overlap and conflict between the concepts of acts.

D. CONCLUSION

Based on the entire analysis, it can be concluded that: (1) there is an internal contradiction in the concept of 'Statute Criminal Act', because it contains benchmarks that contradict each other, namely on the one hand using benchmarks 'contrary to statute criminal law', but on the other hand it also uses diametrically different benchmarks, namely 'contrary to living criminal law', (2) there is an external contradiction between 2 (two) concepts of action which are different, namely 'Statute Criminal Act' and 'Living Criminal Act', but use the same benchmark, namely 'contrary to living criminal law'. It gives rise to a legal concept that is less coherent because it is not comprehensive and consistent.

Due to this contradiction, it is hoped that the regulation of the concept of 'living law', which will be further regulated in future Regional Regulations, can be carried out carefully

and carefully so that in its preparation it can contain balance and harmony, especially of 'customary law' itself which in one side or the other, it can be ensured that there is no diametric conflict with the principles of 'modern' criminal law which have been regulated in statutory regulations.

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