

# The Interpretation of the Crime of Simulacra in the Concept of the Criminal Law Reformation

*by Sahat Maruli Tua Situmeang*

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# **1** The Interpretation of the Crime of Simulacra in the Concept of the Criminal Law Reformation

Sahat Maruli Tua Situmeang

Faculty of Law  
Universitas Komputer Indonesia  
[sahat@email.unikom.ac.id](mailto:sahat@email.unikom.ac.id)

**1** **Abstract**—How exactly the existence of the criminal law reformation in its reality, and the positive criminal law in Indonesia (KUHP) can solve the crime of simulacra problematics. To support this study, the author uses the juridical normative approach, by analysing the problems through the legal norms within the code of laws, as an effort to actualize the building of an equitable legal security. The creation of legal provisions, which put the crime of simulacra as a part of the regulations, is expected to be a reference for the law enforcement and justice seekers to quell the crime. The crime of simulacra is interpreted as an organized crime and done on purpose by setting up the victims, wrapped them in a story or occurrences through certain naratives in the media.

**1** **Keyword**—*Crimminal Law, Crime of Simulacra, Law Reform.*

## I. INTRODUCTION

The interpretation of simulacra according to Jean Baudrillard is a sign or symbol created in the media or in the culture to perceive the reality through the media, simulacra is an imaging that is no longer on the map, inherited and done by models that are perceived as real, although in reality, without something that really happens in reality is a crime done deliberately and done by conditioning through some kind of a set up done by certain party wrapped as a story or event by using narratives in the media [1]. The crime of simulacra is one of the crimes that needs a serious attention and needs to take part in the criminal law reformation. The conceptualization of a law enforcement is not limited to merely implementing the positive law, but also the creation of the positive law as a part of the law reformation. In the criminal law reformation, one of the pushing factors of change is the development of the information technology, it demands human activities to be done faster, transparently and borderlessly [2], thus today the crime is possible to be done All of these types of crimes can be committed remotely, without the need for perpetrator and victim to be co-located or even, in some circumstances, to have any contact at all with each other [3]. The criminal law plays a very fundamental role to facilitate a progressive change in the society, since it's a process where the law evolve to reach a unanimous voice in terms of value and people needs [4]. The criminal law reformation as a part of the penal policies is something that has been strived by various parties, either it's law and legal practitioners, scholars, or the government through the legislation of the criminal code designation (RUU-KUHP) to actualize an equitable legal security for the people. The law enforcement in the criminal justice system

must run properly in accordance with its functions dan goals, and the efforts to reform the criminal law must continue its development.

The reformation of the criminal law has been growing since the 18th century on to the France Revolution and attracted Montesquieu's attention (1689-1775) in his book "Espirito de Lois" where he opposed the authoritarianism and the vast as well as brutal punishments [5]. JJ Rousseau (1712-1778) also was very vocal on fighting against the vast brutality brought on the criminals [6]. Indonesia has been upholding the human rights, and has been doing it in accordance with the national visions by reforming the criminal law since the application of Wetboek van Strafrecht voor Netherlands Indie a legacy from the Dutch-Indie government, up to the time of Wetboek van Strafrecht which later known as the Criminal Code in Indonesia (1918-2013). The Indonesia government has been doing a reformation to its justice court institution and its other legal institutions [7], however the reformation of the criminal code that takes place in Indonesia today is very limited and left behind the development of the people and the development of the technology. In this particular circumstance, seen from the facts and reality of it, to create legal positive norms or regulations is something that needs to be put in attempt immediately [8].

**1** By this journal, the author intends to question the reality existence of the criminal law reformation, and how the existence of the positive criminal law in Indonesia (KUHP) is able to solve the problematics of simulacra in Indonesia.

## II. METHOD

The research method used for this study is a method of normative juridical, which was done by analysing through the legal norms within the code of laws in Indonesia. This study is a part of doctrinal law study, as it studies the legal doctrines and the principles on the book as they are on the court precedents.

The typology of the study is descriptive analysis and the goal is to describe, to inventory and to analyse the concrete conditions about the legal development in regards to the crime of simulacra in the Indonesian criminal law. The secondary data used in the research were gathered from the primary sources in the form of legal codes. The data will be analysed by examining them to the criminal codes in Indonesia.

### III. RESULT AND DISCUSSION

#### A. Thought Design

Crimes can be found since the time we wake up, for example a husband snarling his wife, parents hitting their kids, a master to their maid or to their neighbour over a misspeaking. Crimes can also be happen in a small circle also in a national circle. Even a country as an institution through its repressive tools is possible to do a crime, just as a theory argued by Dom Helder Camara about spiral of violence, he argued by explaining how three forms of violence; personal violence, institutional violence, and structural violence, they are injustice, civil rebellion violence, and repression from the state. According to Dom all the three is correlating to each other, the emergence of one violence is followed by another violence and then followed by another violence [9].

In the sense of formal judicial, a crime is a form of deed that is opposing the human morality, harms the society, asocial and violates the law and legal codes. Sociologically, a crime is an expression, an act, a behaviour, that is economically, politically, and socio-psychologically harms the society, violates the norms, and assaults people's safety (whether it's embodied in the code or the one that hasn't). A criminal law format is indeed designed to solve every single type of violation or violence within the people, and people strive to go out and solve the problems of crime by variety of methods like creating institutions, such as Police Institution, Judiciary Institution, or Court Institution, the ones that are empowered to handle the crimes. Aside from the efforts of eradicating the crimes have been developing, it is needs to be admitted that the crimes (through the perpetrators) are creating new holes and their protections are still there to keep their existence. Therefore, men or institutions are demanded to keep the law reformation going as an effort to reduce the crimes.

What does it take to reconstructed all of those? We are certainly need to construct the understanding, to understand the crime itself to take the crime's cloth and analyse parts deeply about the crime itself. What have we caught all this time about the reality of crime, even when it's covered behind the people's interests, since a crime is a crime. The problem is the media only show the crimes that are caught by the camera, and they are only tiny part of the crimes that occur in the reality. There are crimes that are left unexposed or perhaps not allowed to be exposed or even unreachable by the journalists skills. This kind of crime is a part of a certain category of crimes; certain perpetrators and certain victims; certain ways and certain methods; certain locations and certain plannings, and this type of crime is organized by certain powers. This crime performed in the form of simulation, a simulation of crime that is. The crime simulation is a crime that is created or organized by certain parties by using certain imagings (imagology) narration techniques (narrative), this crime is presented through certain medias, that it makes the reality and truth behind it as if the one that is presented by the media. Even if the representation is merely a product of manipulation from the media, thus, the crime will always find a comfortable nest through creation of an image that is deliberately created by certain power and then emerges as a fantasmogaria [10]. Fantasmogaria is an appearance and a disappearance of real and imaginary

images and figures, as an impact of effects that are created by the media technology like movie, television, computer, or the internet. The crime runs into fantasmogaria therefore what is real is gone, yet the imaginary stays (imaginary crimes). This phenomenon, even though doesn't drown the crime itself but between the victim and the perpetrator the gap becomes bias, it's not clear who is the bad guy and who is the victim. The product of this crime happens many times. When the crime goes hand in hand with the power, it discovers a perfect image, it performs falsity to the people, not the real crime. Reality mention above is the crime of simulacra which means that the crime of simulacra is not a spontaneous thing, yet it's planned, completed and incited, facilitated mainly for the purpose of airing, ambiguously related to the real source of the subject. The crime of simulacra done by some people e.g. people with power, or the ones who used to have the power, or certain groups, based on certain scenarios. The goal is to create an image, that all the crime is an act to overthrow the current legitimate government, this what makes every crime lives comfortably in the simulacra [11]. Jean Baudrillard argues that the simulacra are symbols and signs created in the media or in the culture to perceive the reality through the media. Simulacra is an imagery that is no longer on the map, inherited and done by models that are perceived as something that comes from the reality [12]

The reality of the crime of simulacra as mentioned above needs a respond, juridically, sociologically, and philosophically, so in the end the formulation and regulations that regulates the crime of simulacra can be discovered. The new legal norm (New KUHP) must be able to read define the act of simulacra in its criminal interpretation and determine the sanction for the action. All this long, the national criminal code (KUHP), is powerless when it's faced with the actions of simulacra. The case of Marsinah for example, a labour from CPS factory in East Java. Another case, the case Bank Mandiri that was not investigated properly, the new order rulers were not possible to be touched by the law, The Head of the Parliament couldn't be touched by the criminal law, so was a persecutor, or a judge. This condition of simulacra, and creates the opinion that the law only applies to poor and powerless people. The author's observation in regard to the crime study and criminal law, that law many times dramatized and engineered, therefore there were many crimes that were really are crimes couldn't be exposed for the public.

Criminal law enforcement all this time tend to be more conservatives and put forward the values of legal positivism philosophy, thus the enforcement is very stiff and does not really look like what the people's expected all this time, one of them is the disharmonization of values in principles with the values that live among the people; it does not suitable to the moral values, since justice is the main virtue in life, thus justice and truth are two things that can't be compromised [13]; and doesn't get along with human rights, Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more.

Everyone is entitled to these rights, without discrimination. [14]. With the purpose of peace in social life the implementation must consider the aspect of humanity that needs to be protected according to the national law or even the international law in this case the legitimacy of the international law is demanded to provide protections for the people [15], where that justice is not just conceptual as what's written in the regulations, that usually shown by stating the phrase "severely sanctioned". Herbert L. Pecker argues that imposing a criminal sanction indiscriminately and coercively will cause the criminal medium as "the main threat" [16]. Related to that, then our national criminal law must have a space to reform its enforcement system. In the reformation of the criminal law, one of the triggering factors is the vastness of the development of the information technology that demands human activities to done faster, transparent, and borderless [17]. That is why these days, the criminal law reformation as a part of Penal Policy is a science as well as it is an art which goal is to ensure that the regulations in national law is formulated better [18], has been strived by various parties, either it's law and legal practitioners, scholars, or the government through the ongoing legislation of the criminal code formulation [19]. However, in the implementation the reformation of the criminal law today is only oriented to the criminal codes. The failure of this law reform in Indonesia caused by the rejection of parties related, where the regulation will be opposing the political interests of the politicians [20]. Therefore, the author questioning the meaning of the law reform.

The idea of the criminal law reformation, especially related to the crime of simulacra in terms of reformation of the Indonesia criminal code (KUHP) today, is an interesting problem to initiate and discuss in the science rooms regularly. From the aspect of the policies in reforming the criminal law, the concept arrangement of the new criminal code is only based on the aspect of needs and social demands to do a reformation and to change the old criminal code (Wetboek van Strafrecht) inherited by the Dutch colonial. So in regards to the idea of "penal reform" that in its essence is a part of the bigger idea, that is to build and formulate the national legal system. The criminal law reform can be done by revisioning, fixing, adding, reducing, and completing the legal provisions that already exist or adding the new ones.

Comes from the fact and the theory that one of the source of the national law is Adat Law, then in the effort to portraying the reality of the crime simulacra that is connected to the idea of reforming the criminal law it is precise if it's based on the customary (Adat) views local richness and wisdom. Local wisdom should be the basis of establishment of the criminal reformation, therefore the criminal law that's being formulated reflects the social values, culture and structure of Indonesia people. The Adat criminal law needs to be studied deeply to be able to play its role as a source of the national criminal law that can sustain the execution of the reformation in law. As what Eugen Ehrlich argues, what separates the positive law and living law:

"The positive law can be effective only when it corresponds to the living law : that is, when legal codes are

based on underlying social norms, or real life. In other words, law is to be understood as part of the social order." [21]

The basic approach in the framework of forming the national criminal law is also considering the aspect of extra juridical, that is the sense that man in the in his social context suits the social condition of Indonesia people. In this case, J.E. Sahetapy comes up with his SOBURAL concept an acronym for social (social), budaya (culture), structural (structure), it must rooted in the people where crimes exist, without denying the universal aspects and elements [22].

About the essence of Indonesia man in the context of its relation with the people of Indonesia that put forward the balance has been discovered by some scholars whether it's Indonesian or International scholars. Ter Haar describes the people of Indonesia as a relationship among men, supernatural powers, goods, and other things in this world that according the cognitive of that people considered normal, and as an absolute condition to live happily and harmonically which is balance (evenwicht), since people and men are a combination of relationships [23].

According to Satjipto Rahardjo, with the emergence of the Indonesian legal system, customary law must be considered as a fact that lives in society. Thus, customary law is a determining factor, both in terms of the formation and application of law in Indonesia. In this case Pancasila no just an idea that must be realized in society, also acts as a realien, which is the fundamental norm that becomes a measuring tool or a filter on what can be accepted by Indonesian legal order [24]. It is clear that human life in society is not only regulated by law (positive) but also by other social rules which are not legally coded (positive). These rules are religious rules that have been accepted as an adat (adat sabana adat), habits including adat, propriety or positive morality and politeness [25].

#### *B. Existence of Criminal Law Renewal in Reality*

The discussion of reforming criminal law in Indonesia today only leads to renewal as a legal reformation only. Reform or renewal like this only tends to limit itself to the renewal of the codes or the articles and paragraphs that already exist in the legislation only, it is part of the legal positivism which argues that the norms that are legally valid in society are only come from only recognized sources (such as legislative or court) [26], and it seems like it does not question its ideological paradigm. This way of reformation, keeps limiting ourselves to mere positivistic perspectives. Even though legal understanding of legal positivism and only bound to the rules is not able to capture the truth because it does not want to see and acknowledge it. In legal positivism, law as a complex regulatory institution has been predicted to be a simple, linear, mechanistic, deterministic, especially for professional purposes. In the context of Indonesian law, such doctrines and legal teachings are still dominant, which belongs to the Schuyt legism. Because legism sees the legal world only through the telescope of the codes to then judge the events. The dominant behaviours are to see and understand the law as logically rational, filled with neatness and rational orderliness [27].

From the discussion above, it is clear that freedom, equality and equality in obtaining the opportunity promised by the law are only so true in their abstract norms and in a mere theoretical rhetoric. In fact the actors in the legal life are not equal from the same opportunity to get into the system to claim access rights into the system to claim the rights promised.

The essence of the realist doctrine in law reform is read clearly in the words of a judge Oliver Wendel Holmes that he thinks in this real life: Law has not been logic: it is experience [28], that law is not a closed normative text system. Maintaining the purity of the law by covering itself from the influence of its contexts is an effort that is not only futile but also unrealistic. Which is the main thought of Holmes in his Law Reform that a judge (Every Judge) is responsible for formulating the law through his decisions. So it is not the logic of the judge that is used to mathematical-deductively logic from the foundations of the premise called the formal legal precedent, but what must put forward is the sake of its certainty. The ability of the judge to grasp the meaning that he considers as a truth as influenced by the values that he adheres, his personal background, and his tendency of choices.

That's what a judge should put forward when it comes to making a decision and that's what should be done in creating a law. A judge who knows deeply the social aspects, the history, the economy in legal problematics is a judge who capable to fulfil his functions as he should. All of it goes to the direction of the legal goals and merits. Law Reform is much broader than Legal reform. Law here is not interpreted narrowly as codes (*Ius Constitutum*: Legal norms that have obtained their form, which are specifically in positive legal codes), but Law is defined as a product of sovereign political activity, driven by their straightforward economic interests also inspired and / or referred to social norms and / or cultural ideal values. If Legal Reform launched by Mochtar Kusumatmadja, then Law Reform (at least) has been voiced by Satjipto Rahardjo, with his progressive legal theory. In his various writings, he asserted that it is not the Law that has a special place in the law reform, but the way of thinking, thinking, the paradigm idea that underlies the renewal. This idea is better known by Satjipto Rahardjo as Progressive Law. This progressive law enforcement, first of all, is based on concerns about the low contribution of law in Indonesia in contributing to enlightening this nation to get out of the crisis, including the legal crisis. [29] A little from the description above, is to talk about the meaning of legal renewal both as a process and as a product. It can be concluded, the renewal of law as a process we call the Law Reform, while the renewal of law as a product we call it Legal Reform.

### *C. The Existence Of Indonesian Positive Criminal Law (KUHP) In Resolving Simulacra Crime Problems*

What is a crime? The answer (so far) always leads to the view that crime is a cultural or biological product. Although this answer is not a satisfactory answer, most lawyers and most criminologists agree with this view. A person is a bad person because the law calls him a criminal. Evil because of poverty, evil because of ignorance, evil because it is already

evil, is a view which substance is the same as the opinion above. There are so many evil labels that are easily attached to certain actions that the rules call crime, for example theft, rape, robbery and fraud. The qualification of the action is clear and pegged, so to see whether the act is evil or whether there are only elements in the rule. However, this is not the case if an act is carried out by important people who have certain authority under the pretext of supporting regulations. The act becomes difficult to qualify as a crime, even though the act can cause various moral and material losses. Such a thing is considered normal (at least according to some people) because rules usually refer to other people, not to law enforcement or rule makers. Hit street vendors in the name of law and order, persecute thieves to gain recognition, manipulate evidence to win cases, kill for security and many other similar models. this is called "false sense of normalcy", wrong actions but are considered normal. We can call this view a classic and positivistic view of crime.

Criminality or crime is not a hereditary event (inheritance, inheritance), nor is it a biologically inherited. Crime can be done by anyone, both women and men, can take place at the age of children, adults and elderly. Crime can be done consciously; that is thought planned and directed to a certain purpose consciously true. But it can also be done in a semi-conscious manner, for example driven by great impulses, plagued by powerful coercive compulsions (compulsions), and by obsessions. Obsession is a mind that cannot be eliminated, a picture of coercion, as if being chased by an evil ghost. Crime can also be done while not being aware at all, for example having to fight and being forced to retaliate to attack, resulting in a murder incident [30]. This perspective is believed to be able to reveal the meaning of evil to its roots, namely the hidden meaning behind evil. Crime semiotics do not view crime as only a formal meaning or an official point of view about crime, but sees the nature of evil behind power. Crimes must be recognized as symbolic meanings rather than mere formalistic meanings. Therefore, formal claims from the thinkers and positivists should be abandoned. This is in line with the opinion of Peter L. Berger that to reveal the meaning of evil one needs to be passionate to "see through", which is an underground activity to reveal the reality of evil. This view is called a critical view, which, according to Mead, is "a kind of human ability to create and manipulate symbols" [31]. Look critically as explained by I.S. Susanto is tantamount to critical thinking, which is thinking through a critical approach. A critical approach is a perspective or frame of mind that aims to study the processes that humans do in building their world. This is a critical defense of the dogmatism of science. To support that view, something different needs to be done to reveal the reality of crime, which might be the answer to the use of the method of "deconstruction" and "reconstruction".

After a little analysis about crime, now what is it meant by the crime simulacra? Simulacra crime is a crime that is intentionally created or engineered by certain parties, through imaging technology and narrative techniques, and presented through certain media, so that the reality of evil and the truth (truth) behind it, as if as it only the one that appears in the media. In fact, the representation is the result of manipulation presented through the media. Thus,

simulacra crime is a crime that lives and develops at the level of the image, which is not related in its entirety (even fully) to the real reality, but not entirely fiction. It contains facts (facts): the fact that there were people killed, robberies, rapes against women, ninja attacks at night, witch doctors, aircraft hijackings. However, in the simulacra the crime of the facts is packaged through certain images, so that it no longer represents the truth of Criminality or the crime is not a hereditary event (inheritance), nor is it a biological inheritance. Crime behaviour can be done by anyone, both women and men, can take place at the age of children, adults and elderly. Crime can be done consciously; that is thought planned and directed to a certain purpose consciously true. But it can also be done in a semi-conscious manner, for example driven by great impulses, plagued by powerful coercive compulsions (compulsions), and by obsessions. Obsession or obsession is a mind that cannot be eliminated, a picture of coercion, as if being chased by an evil ghost. Crime can also be done while not being aware at all, for example having to fight and being forced to retaliate to attack, resulting in a murder incident [30]. This perspective is believed to be able to reveal the meaning of evil to its roots, namely the hidden meaning behind evil. Crime semiotics does not view crime as only a formal meaning or an official point of view about crime, but sees the nature of evil behind power. Crimes must be recognized as symbolic meanings rather than mere formalistic meanings. Therefore, formal claims from the thinkers and positivists should be abandoned. This is in line with the opinion of Peter L. Berger that to reveal the meaning of evil needs to be passionate to "see through", which is an underground activity to reveal the reality of evil. This view is called a critical view, which, according to Mead, is "a kind of human ability to create and manipulate symbols" [31].

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Simulacra crime, in a certain form, is a reality of second hand (second hand reality), namely the use of images of violence or crime in the past, which is then recycled to explain an incident of crime or violence in the present. For example, images of violent rape against women in a past event are used to explain current events. Simulacra thus conceals the truth (truth) of a crime event, by showing to the surface an artificial form of simulation. The truth about evil is wrapped in a mask of its image, which is in fact false and artificial [33]. Terror, crime, riots, brutality, violence is intentionally created by certain parties (such as rulers or former rulers) based on certain scenarios by the simulacrum machine. The aim is to create a negative image to the legitimate government. Simulacra crime is a form of multi-purpose crime, which can be used for various purposes. It can be seen as a way to produce chaos and insecurity in the community. Various forms of crime by certain groups, can

be seen in this simulacra framework. They create scenarios, for example about threats (nijas, terrorists, magic spells) in society, which creates insecurity and fear. The threat raises suspicion among community groups, resulting in social consolidation in society. Evil is created by killing a member of the community (for example, a servant or teacher of the Koran, ninja, witchcraft) as a way of creating a formulation of the reality and simulacra of truth - the politics of kitsch. The politics of Kitsch is a political tendency that is rich in intensity, but poor in creativity; which uses popular and cheap signs, symbols, and images in order to lead the thoughts and expressions of the general public (which is not critical) towards an image or theme of violence or crime, such as the dangers of fundamentalism, the threat of extremism, even though the threat of fundamentalism and extremity itself not as great as described, or even none at all. The politics of Kitsch, thus can only flourish in an uncritical society, which accepts the image as truth, which understands the sign as reality. Simulacra crime is a subtle and hidden form of crime - or able to hide itself behind the image of crime - by maximizing the sophistication of the technology, the complexity of management, and the wealth of semiotic images in order to hide the evil behind the interests of certain parties. Simulacra is thus a crime that uses masks and violent images to hide itself. As in economics, in politics there are various forms of political simulacra, as Baudrillard pointed out in his book *The Transparency of Evil*. One form of simulacra is the political simulacra, which is the manipulation of crime (for example by rulers or certain social groups), so that everything seems to happen naturally. Crime seems to be purely carried out by the community, even though behind the scene, it operates a large scenario for certain political or economic interests. Social conflict is created in such a way (in the form of incitement, issue, terror, intimidation), so that the reality of the crime that arises from the conflict seems to take place naturally. In fact, the reality that we consider to be real is actually nothing more than a false designation [34].

Efforts to overcome the crime simulacra are absent from our criminal law or at least the law apparatus does not have the sense / sensitivity and courage to fight the crime of simulacra. Our law enforcement officers are smart, smart, educated, it is impossible for them to not seeing it..

Indonesia Criminal Code (KUHP), in chapter XXVII, article 413 to Article 437 regulates the crime of office, but the fact in Bulog corruption case could be eradicated by Article 51 of the Criminal Code regarding office orders. This is a proof that the existing legal provisions are still overlapping and can be interpreted freely and the existing government has not succeeded in making changes to the provisions of the current criminal law. Simulacra crimes will continue to exist when there is no legal will and the political will of the authorities to exercise control, while the main function of prosecution affirms very clearly that crime control is done by controlling crime which is by arresting and prosecuting the perpetrators of a crime in order to control crime in a legal way and ensures that the community to avoid doing it [35].

#### IV. CONCLUSION

The existence of the reformation of criminal law in Indonesia, tends to only emphasising on the absent of legality. So far the national criminal law has not clearly regulated the crime simulacra. In the framework of reforming the criminal law, criminal law thinkers, the government (executive, legislative, judiciary), activists of social institutions, academics and intellectuals, legal practitioners, and all Indonesian people must dare to demand, reform and replace the laws that are no longer breathe the national breath. We must dare to make a legal reformation. Dare to get out of the tradition of legal justice and penetrate into the concept of social justice as the next alternative.

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