

## COUNTRIESVOORTGEZETTE HANDLING IN SOME CIVIL LAW SYSTEM COUNTRIES

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### **Abstract**

*Comparison of laws between countries will provide a broad picture of the similarities and differences of each country. However, comparing criminal law is not just looking for similarities and differences between the criminal law of other countries and the criminal law in force in Indonesia. More than that, it is to know and understand criminal law in detail in other countries. In this case, it should be used as comparative input in forming and developing national criminal law to reform federal criminal law. The institution of concurrent acts in criminal law is not recognized in countries that adhere to the Anglo-Saxon or the standard law system. On the other hand, in countries that adhere to the continental European system or the civil law system, institutions recognize concurrent actions. Countries that recognize direct travel are Germany, the Netherlands and Indonesia. Although based on the history of continuing efforts originating from Germany, Germany does not place continuing actions in the Criminal Code, but only in jurisprudence. Meanwhile, the Netherlands regulates continuing activities in Article 56 of the Criminal Code, and according to the concordance principle of the Indonesian Criminal Code, it also governs the declaration of conformity as contained in Article 64 paragraph (1) of the Criminal Code.*

**Keywords:** *Comparison, Continuing Actions, Voortgezette Handeling, Civil Law System*

### **INTRODUCTION**

Comparison of criminal law is closely related to the politics of criminal law. The politics of criminal law has become the will of national rules which originate from the values and aspirations of a nation itself.<sup>1,2</sup> In essence, the political problems of criminal law are not only related to statutory techniques but also related to comparative studies. Hermann Mannheim stated that :<sup>3</sup>

*"...this is needed in the interest of a more scientific and efficient as well as a more democratic administration of criminal justice... It is true that scientific of dealing with crime are superior to apurely empirical and amateurish approach, it is equall true that a system of international cooperation and comparative studies is greatly superior to a narrowly nationalistic system. While the former broadens the basis of our scientific knowledge, the latter leads to parochialism and complacency. An international outlook is equally indispency, however, in the interest of democracy, which means, perhaps more than anything else, an atmosphere of open mindedness and willingness to learn from others. Democracy and internationalism go together... Aloofness and in all too ready belief in the superiority of the particular legal system to which we have grown accustomed, untested by any knowledge of foreign laws and methods, are not only bad politics but also undemocratic. International aspects, thus are bound to becoming an integral part of social reconstruction. All this does not imply blind imitation of other laws. As the author has pointed out elsewhere, there are obvious limits to what nations can learn from one another in this field. The decisions should be based, however, not on ignorance but on the most complete knowledge*

<sup>1</sup> Stuntz, W. J. (2001). The pathological politics of criminal law. *Mich. L. Rev.*, 100, 505.

<sup>2</sup> Heinz, J. P., Gettleman, R. W., & Seeskin, M. A. (1969). Legislative politics and the criminal law. *Nw. UL Rev.*, 64, 277.

<sup>3</sup> *Criminal Justice and Social Reconstruction*, Roulodge & Kegan Paul Ltd. London;1949.

*obtainable. The purpose of comparative study of criminal law and criminology may simply be to improve our own national laws and penal methods. For the training of the lawyer it is certainly indispensable. It may also be our aim, however, to bring about an assimilation and greater uniformity of the criminal law and penal methods throughout the world...."*

The rules of each country certainly have differences, so there needs to be an agreement in seeking equality that is enforced as international law.<sup>4</sup> Therefore, to examine continuing actions (vorgezette handeling), a comparative study is described in Germany, France and the Netherlands, based on considerations of concurrent acts in criminal law that are not recognized in countries that adhere to the Anglo-Saxon system or the standard law system.<sup>5-6</sup> In these countries, criminal accumulation occurs if someone commits several criminal acts. The background of his thinking is that a person who commits several criminal acts must undergo punishment sequentially and is not entitled to enjoy a reduced sentence. On the other hand, in countries that adhere to the continental European or civil law system, this joint action institution limits extreme criminal imposition.<sup>7-8</sup> The assumption is that when someone commits a criminal act, the state should immediately punish him for preventing further actions from occurring.

### RESEARCH METHOD

This study uses a normative approach. The normative legal process is legal research by filtering literature or secondary data as a basis for analysis by examining law and literature on the subject.<sup>9</sup> <sup>10</sup> Data were collected and analyzed based on the German Criminal Code, the French Criminal Code, the Dutch Criminal Code and the Indonesian Criminal Code. This study is limited to the regulation of continuance in the criminal law of each country. With existing secondary data, researchers will only focus on problems appropriate to the research topic.

### RESULTS AND DISCUSSION

#### Continuing Deeds in the German Penal Code

Strafgesetzbuch (StGB) or the German Criminal Code consists of 2 (two) main sections, namely the General Section (Allgemeiner Teil) and the Special Section (Besonderer Teil).<sup>11</sup> The General Section (Allgemeiner Teil) regulates general matters consisting of 5 (five) chapters (Chapter), while the Special Section (Besonderer Teil) regulates various criminal acts and their definitions and punishments, which consists of 30 (thirty) chapters, with a total of Article number 358.<sup>12</sup>

*Strafgesetzbuch* (KUHP Jerman) mengatur gabungan tindak pidana dalam Bagian Umum Bab 3 tentang penetapan pidana untuk beberapa pelanggaran (*Festsetzung von Strafen für mehrere Straftaten*) Pasal 52 sampai Pasal 55 sebagai berikut:

#### *Title 3*

#### *Fixing of penalties for multiple offences*

#### *Section 52*

#### *Several offences committed by one act*

<sup>4</sup> Shaw, M. N. (2017). *International law*. Cambridge university press.

<sup>5</sup> Poudret, J. F., & Besson, S. (2007). *Comparative law of international arbitration*. Sweet & Maxwell.

<sup>6</sup> Kahn-Freund, O. (1974). On uses and misuses of comparative law. *Mod. L. Rev.*, 37, 1.

<sup>7</sup> Amiruddin, M. (2017). Perbandingan Pelaksanaan Euthanasia Di Negara Yang Menganut Sistem Hukum Eropa Kontinental Dan Sistem Hukum Anglo Saxon. *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah dan Hukum*, 4(1), 83-102.

<sup>8</sup> Nurhardianto, F. (2015). Sistem Hukum dan Posisi Hukum Indonesia. *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam*, 11(1), 33-44.

<sup>9</sup> Soekanto, S. (2007). Penelitian hukum normatif: Suatu tinjauan singkat.

<sup>10</sup> Singer, J. W. (2008). Normative methods for lawyers. *UCLA L. Rev.*, 56, 899.

<sup>11</sup> zum Strafgesetzbuch, M. K. (2016). StGB, Band 2: §§ 38-79b StGB, 3. Auflage, CH Beck.

<sup>12</sup> Maknun, L., & Rani, F. H. (2020). Perbandingan Konsep Penerapan Mediasi Penal Dalam Penyelesaian Perkara Pidana Di Indonesia Dan Negara Lain. *Lex Librum: Jurnal Ilmu Hukum*, 6(2), 119-129.



- (1) *If the same act violates more than one criminal statute or the same criminal statute more than once, only one penalty is imposed.*
- (2) *If more than one criminal statute has been violated, the penalty is determined according to the statute which provides for the most severe penalty. The penalty may not be more lenient than the other applicable statutes permit.*
- (3) *Under the conditions of section 41, the court may separately impose a fine in addition to a sentence of imprisonment.*
- (4) *Additional penalties, incidental legal consequences and measures (section 11 (1) no. 8) must or may be imposed if one of the applicable statutes so requires or allows.*

### **Section 53**

#### **Joinder of offences**

- (1) *If a person has committed several offences, all of which are to be adjudicated at the same time, and that person has incurred more than one sentence of imprisonment or more than one fine, an aggregate sentence is imposed.*
- (2) *If a sentence of imprisonment concurs with a fine, an aggregate sentence is imposed. The court may, however, impose a separate fine; where a fine is to be imposed in such cases for more than one offence, an aggregate fine is imposed.*
- (3) *Section 52 (3) and (4) applies analogously.*

### **Section 54**

#### **Fixing of aggregate sentence**

- (1) *If one of the penalties for the individual offences is imprisonment for life, an aggregate sentence of imprisonment for life is imposed. In all other cases, the aggregate sentence is fixed by increasing the most severe individual sentence incurred and, in the case of different kinds of penalties, by increasing the sentence which is most severe in nature. The person of the offender and the individual offences are considered in their totality.*
- (2) *The aggregate sentence may not exceed the sum of the individual sentences. In the case of determinate sentences of imprisonment, it may not exceed 15 years and in the case of a fine 720 daily rates.*
- (3) *Where an aggregate sentence is to be formed of a sentence of imprisonment and a fine, one daily rate corresponds to one day's imprisonment for the purpose of calculating the sum of the individual sentences.*

### **Section 55**

#### **Subsequent fixing of aggregate sentence**

*Sections 53 and 54 also apply to a convicted person who has had a sentence imposed by final judgment if that person is convicted of another offence committed prior to the earlier conviction before the original sentence is enforced, barred by the statute of limitations or remitted. The earlier conviction is the judgment in those proceedings in which the underlying findings of fact were last examined. Additional penalties, incidental legal consequences and measures (section 11 (1) no. 8) imposed in the earlier decision are to be upheld to the extent they have not been rendered moot by the new decision.*

Based on the provisions of Article 52 to Article 55 Strafgesetzbuch (German Criminal Code) regulates the combination of criminal acts if :

- (1) One criminal act violates more than one provision of the law (Article 52 paragraph (1)) or;
- (2) One criminal act violates the same criminal law more than once (Article 52 paragraph (1));
- (3) One person commits several criminal acts, all of which must be tried at the same time, and that person has been sentenced to imprisonment for more than one or more than one fine (Article 53 paragraph (1)).

Thus, continuing actions or voortgezette handeling are not regulated in the provisions regarding concurrent acts in the German Criminal Code. However, the legal institution of direct action or voortgezette handeling historically originated in Germany.<sup>13</sup> According to Jan Rammelink, lawmakers in Germany form legal institutions through jurisprudence. Furthermore, it was conveyed that discussing rechtelijke handlungseinheit (juridical unity) about what is meant by "such a connection" (het zodanige verband), where the Hoge Raad requires that the act must be a manifestation of a forbidden decision of will (HR Jun. 11 1894, W 6516; Oct. 19, 1931, NJ 1932, 1319). Furthermore, Hoge Raad also requires that the act must be of the same type (gelijksortig), which is then interpreted as having to be rubricated under the same criminal provisions.<sup>14</sup>

#### **Continuing Acts in the French Penal Code**

The French Criminal Code (Code Penal) is a critical Criminal Code to study. Judging from legal history, the Code Penal was in force in the Netherlands until 1886.<sup>15-16</sup> *Wetboek van Strafrecht* (WvS) The Netherlands, born in 1881, became the equivalent of WvS Dutch East Indies, born in 1918 and still shows French influence.

The Systematic Code Penal consists of 4 (four) books, which the Dutch later changed to 3 (three) books.<sup>17</sup> The Penal Code consists of Book I: Criminal Crimes (Severe Crimes, Minor Crimes) and their consequences. Book II: Persons with Criminal Responsibility, Executable and Accountable for Crime (Against Serious Crimes) and Delit (Minor Crimes). Book III: Crime (Severe Crimes) and Delit (Minor Crimes) and their crimes. Book IV: Contravention (Violations) and Criminals.

Before Book I, the Penal Code began with "General Provisions" consisting of 5 (five) articles. Article 1 and Article 2 regarding the definition of three types of punishment, namely: Crime, Delit and Contravention. Article 3 concerning "Trial", which is different is that the attempt to commit an offence is regulated in the article in the question itself; it is not held in general like Article 53 of the Indonesian Criminal Code, so if it is not expressly stated that the attempt to commit the offence is punishable, then it cannot be punished. Article 4 regulates the principle of legality, and Article 5 handles combined offences (concurus), which states as:

Article 5:

"The imposition of punishments for several crimes (serious crimes) or delit (minor crimes) is the heaviest punishment of all the penalties that can be applied. To arrive at such a penalty, if the principal sentence has been reduced by amnesty, only the punishment that remains after deduction has been reduced<sup>18</sup> and not the original crime that is seen for the purpose of concurus."

The concurus regulated in Article 5 is handled, that only the heaviest penalties are imposed. If there is a reduction, the remaining penalty will be applied.<sup>19</sup>

There are 3 (three) classifications of offences in the Penal Code, namely Crime, Delit and Contravention, which are also elaborated into 3 (three) types of crimes, namely those that are forfeit of rights and heinous for Crime, those that are corrective for Delit and those that are regulating for Contravention.

<sup>13</sup> Eddy O.S Hiariej, *Prinsip-Prinsip Hukum Pidana*, Cahaya Atma Pustaka, Yogyakarta, 2014, hlm. 346

<sup>14</sup> Jan Rammelink, *Hukum Pidana, Komentar atas Pasal-Pasal Terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana Indonesia*, PT. Gramedia Pustaka Utama, Jakarta, 2003, hlm. 571

<sup>15</sup> Cafritz, E., & Tene, O. (2002). Article 113-7 of the French Penal Code: The Passive Personality Principle. *Colum. J. Transnat'l L.*, 41, 585.

<sup>16</sup> Sherry, A. H. (1961). *The French Penal Code*.

<sup>17</sup> Orland, L., & Cachera, C. (1995). Corporate crime and punishment in France: Criminal responsibility of legal entities (Personnes Morales) under the new French criminal code (Nouveau Code Penal). *Conn. J. Int'l L.*, 11, 111.

<sup>18</sup> Sarpy, L. (1960). Concurus: Interpleader in Louisiana. *Tul. L. Rev.*, 35, 531.

<sup>19</sup> Stuckenberg, C. F. (2005). A Cure for Concurus Delictorum in International Criminal Law?.



The classification of crimes that are deprivation and inflammation are divided into 2 (two), namely in Article 7 and Article 8, as follows:

Article 7: Criminal loss of rights and heinous is :

1. Death penalty;
2. Hard work for life;
3. Exile;
4. Heavy work for a limited period;
5. Single confinement.

Article 8:

A heinous crime is :

6. Disposal;
7. Loss of civil rights.

Furthermore, the criminal classification for Delit, namely:

1. Imprisonment for a specific time in the house of correction;
2. Loss of civil, and personal rights for a specific time;
3. Fines.

In addition to the sanctions mentioned above, other sanctions for Crime and Delit are restrictions on freedom of movement regulated in Articles 44 to 50.

Book II of the Penal Code on criminal liability begins with "Inclusion". Book II also regulates insane people. Because of absolute necessity as a reason for abolishing crimes, children who are not yet mature (limited to the age of 13 only), as well as people who are elderly (over 70 years), will not be subject to exile but replaced with life imprisonment.

Book III of the Penal Code begins with Title I concerning Serious Crimes and Minor Crimes Against Public Order. Title I is subdivided into Chapter I, into severe crimes and minor crimes against state security, Chapter II on serious crimes and petty crimes against the constitutional charter, and Chapter III on serious crimes and minor crimes against public order. Furthermore, Title II consists of Chapter I on severe and petty crimes against people and Chapter II on crimes against property.

Book IV of the Penal Code concerning Contravention (Violations) and Criminals consists of Chapter I concerning crimes and Chapter II concerning violations and punishments. Penalties for violations are criminal penalties, fines and criminal confiscation of particular confiscated objects. Based on the systematic description of the Penal Code (French Criminal Code) above, it is clear that the Concursus regulated in Article 5 is handled simply, that only the heaviest of all penalties is imposed. If there is a reduction, the remaining penalty will be applied. This differs from the Criminal Code in force in Indonesia, where the provisions regarding Concursus vary. Because the Concursus regulated in Article 5 of the Penal Code is regulated simply, the Penal Code does not recognize continuing actions (*voorgezette handeling*) as held in Article 64 paragraph (1) of the Indonesian Criminal Code.

#### **Continuing Actions in the Dutch Criminal Code**

The Dutch Criminal Code 1886, as the parent and primary source of the Indonesian Criminal Code, is currently a modification of the criminal law which has undergone several amendments.<sup>20</sup> The history of this codification began when Napoleon Bonaparte of France colonized the Netherlands in 1795-1813. On February 1, 1808, a criminal law book was enacted in the Netherlands under *Crimineel Wetboek voor het Koninkrijk Holland* (Penal Code for the Kingdom of Holland). This Criminal Code did not last long because three years later, on March 1, 1811, the Kingdom of the Netherlands joined itself to the French Empire. From that moment on, the French Criminal Code 1810 was also enforced in the Netherlands; however, after the Netherlands proclaimed its independence from the French colony in 1813, a new round of codification of the Dutch penal code was initiated, which was independent, although still oriented towards the French Criminal Code. Several revisions were made to the Dutch Criminal Code until 1870. In 1827 the Dutch Criminal Code Bill was drafted and discussed in Parliament. However, this bill failed to be approved because

<sup>20</sup> De Haan, J. (2002). The new Dutch law on euthanasia. *Med. L. Rev.*, 10, 57.

of its similarities to the French Criminal Code and the Dutch Criminal Code of 1809. The second Dutch Criminal Code bill was proposed in 1839, when the role of university academics in the Netherlands was getting bigger, especially after A. E. J. Modderman, who in 1863 compiled his dissertation with the title *De Hervorming van onze Straftwetgeving (The Reform of Our Criminal Legislation)*.<sup>21</sup> His ideas were then poured into the Dutch Criminal Code Bill when he chaired the committee for forming the 1870 Dutch criminal law as the forerunner to the 1886 Dutch Criminal Code.

The Dutch Criminal Code consists of 3 (three) books, namely Eerste Boek Algemene Bepalingen (First Book on General Provisions) Article 1 to Article 91, Tweede Boek Misdrijven (Second Book on Crime) Articles 92 to Article 423 and Deerde Boek. Overtredingen (Third Book on Violations) Article 424 to Article 479. First Book consists of 9 (nine) chapters, Second Book consists of 31 (thirty one) chapters, and Third Book consists of 9 (nine) chapters.

The systematics of the Dutch Criminal Code places the combined teachings of criminal acts regulated in Chapter VI Article 55 to Article 63 as follows :

#### **Titel VI**

#### **Confluence of criminal offenses**

##### **Article 55**

- (1) *If a fact falls within more than one penalty provision, only one of those provisions is applied, in the case of a difference in the one where the heaviest main punishment has been imposed.*
- (2) *If a special punishment provision exists for a fact that falls within a general sentence, it is only eligible.*

##### **Article 56**

- (1) *If there are several facts, although each in itself constitutes a crime or offense, in such a way that they must be regarded as one continuous action, only one penalty provision is applied, in the case of difference between the one where the heaviest main punishment has been imposed.*
- (2) *Similarly, only one penalty clause is applied in case of forgery of currency or currency and the use of the object against which the forgery or currency has been committed.*

##### **Article 57**

*In the event of overlapping of facts that are to be regarded as isolated acts and result in more than one offense on which similar main penalties are imposed, one penalty will be imposed.*

*The maximum of this penalty is the total of the highest penalties imposed on the facts, but - as far as the prison sentence or detention is concerned - no more than a third above the highest maximum.*

##### **Article 58**

*In the event of overlapping of facts which are to be regarded as isolated acts and which result in more than one crime on which disparate main penalties have been imposed, any of these penalties may be imposed, but these may - in so far as imprisonment and detention are concerned - together in duration. do not exceed a third more than a third.*

##### **Article 59**

*In case of conviction to life imprisonment, no other penalties can be imposed than the disqualification of certain rights, confiscation of already seized objects and publication of the court order.*

##### **Article 60**

<sup>21</sup> Fred B. Rothman, *The Dutch Penal Code*, translated by Louise Rayar and Stafford Wadsworth Colorado, 1997. Hlm.2



*In the cases of Articles 57 and 58, the following provisions apply to additional penalties: the penalties of disqualification from the same rights shall be resolved in one penalty, in the duration of the imposed main punishment or main penalties for at least two and no more than five years, or in the event of no capital punishment other than a fine, in one punishment of at least two and up to five years; the penalties of disqualification from different rights are imposed separately and without reduction for each offense; the penalties for forfeiture of certain objects are imposed separately and without reduction for each offense; the replacement custodial penalties may not exceed the maximum, determined in Article 24c, third paragraph.*

#### **Article 60a**

*In the case of concurrence in the manner referred to in Articles 57 and 58, the measure referred to in applies that the replacement custodial penalties may not exceed the maximum stipulated in Article 24c, third paragraph*

#### **Article 61**

- (1) *The relative severity of dissimilar main penalties is determined by the order of Article 9.*
- (2) *Where the judge has been given the choice between two main penalties, only the heaviest of those penalties will be taken into account in the comparison.*
- (3) *The relative severity of similar main punishments is determined by the maximum.*
- (4) *The relative duration, both of dissimilar and similar main punishments, is also determined by the maximum.*

#### **Article 62**

- (1) *In the event of concurrence in the manner referred to in Articles 57 and 58 either of offenses with offenses or of violations with each other, for each violation a penalty shall be imposed without penalty.*
- (2) *The replacement custodial penalties may not exceed the maximum, determined in Article 24c, paragraph 3 for crimes and violations or for violations.*

#### **Article 63**

*If a person, after being sentenced, is declared guilty of a crime or committed a crime for that punishment, the provisions of this title shall be applied in case of a penalty.*

Based on the provisions of Article 55 to Article 63 above, the combined criminal acts in the Dutch Criminal Code consist of the following :

1. A person with one act commits several criminal acts (Article 53);
2. A person commits several acts, each of which constitutes a crime, but with the existence of a relationship between one another, they are considered as a unit so that it is called "one continuous act" (voortgezette handeling) (Article 56);
3. A person commits several acts, and each of these actions is regulated by one rule and qualifies as an independent crime (Article 57, Article 58 and Article 70 of the Criminal Code). Specifically, the teaching of continuing actions (voortgezette handeling) it is regulated in Article 56, which reads:

- (1) *If there are several facts, although each in itself constitutes a crime or offense, in such a way that they must be regarded as one continuous action, only one penalty provision is applied, in the case of difference between the one where the heaviest main punishment has been imposed.*
- (2) *Similarly, only one penalty clause is applied in case of forgery of currency or currency and the use of the object against which the forgery or currency has been committed.*

According to Jan Rummelink<sup>22</sup> That the romantic concursus arrangement in Article 55 (1) WvS based on thinking that more than one crime forms a natural unit of action (handling), one event seen from the point of view of criminal law occurs at the same time and one place (same place). Rummelink further revealed that legislators were not satisfied with just these criminal provisions. Therefore, in the conditions of Article 56 WvS, legislators regulate continuous actions, which expressly do not refer to one but refer to more than one action (gebeuren), provided that one step with other activities must be bound to each other (in zodanige verband) and is seen as a continuing action. In addition, only one penal provision will be applied, but the unity of action underlying this choice is a juridical construction.<sup>23</sup>

The continuing actions in Article 56 of the Dutch Criminal Code are the same as the continuing actions regulated in Article 64 paragraph (1) of the Indonesian Criminal Code because it was this Dutch 1886 Criminal Code which, on the concordance principle, was enforced in Indonesia when Indonesia became a Dutch colony. Therefore it is no stranger to the similarities between the Dutch and the Indonesian Criminal Code when compared.

### Continuing Actions in the Indonesian Criminal Code

Tracing the history of criminal law in Indonesia, it is known that the Indonesian Criminal Code originates from *Wetboek van Strafrecht voor Nederlandsch-Indie* (*Staatsblad* 1915: 732).<sup>24-25</sup> After Indonesia became independent in 1945, the *Wetboek van Strafrecht* was still valid based on Article II of the Transitional Rules of the 1945 Constitution. Based on Law Number 1 of 1946 concerning Criminal Law Regulations (State Gazette of the Republic of Indonesia II Number 9), *Wetboek van Strafrecht voor Nederlandsch-Indie* is referred to as the Criminal Code and is stated to apply to the islands of Java and Madura, while other areas will be determined later by the President. Efforts to realize the existence of a criminal law unit for the entire territory of the Unitary State of the Republic of Indonesia, de facto could not be recognized because there were Dutch occupied areas as a result of Dutch military actions I and II for which the *Wetboek van Strafrecht voor Nederlandsch-Indie* (*Staatsblad*) still applies to these areas. , 1915: 732) with all its changes. Since then, it can be said that after independence in 1945, there was a dualism of criminal Law in force in Indonesia. This situation lasted until 1958 with the promulgation of Law Number 73 of 1958. The Law stipulated that Law Number 1 of 1946 concerning The Criminal Law Regulations with all amendments and additions apply to the entire territory of the Unitary State of the Republic of Indonesia. Thus, a uniform material criminal law applies to all of Indonesia, which originates from the Law that came into force on March 8, 1942, namely *Wetboek van Strafrecht voor Nederlandsch-Indie* from now on referred to as the Criminal Code.<sup>26</sup> Therefore the Dutch Criminal Code (Ned. WvS) is most important to study in a comparison of criminal law in Indonesia because the Indonesian Criminal Code (WvSI) originates from the Dutch Criminal Code (Ned. WvS).<sup>27-28</sup>

<sup>22</sup> Jan Rummelink, *Hukum Pidana, Op.Cit*, hlm. 570-571

<sup>23</sup> Sebagai contoh Rummelink menyebutkan HR 30 Juni 1913, NJ 1913, 1097, W 9519. *Arrest* ini berkenaan dengan kasus seorang tukang pos di Vaals. Dalam surat tersebut iabtemukan satu formulir toto (*Wettzettel*). Tukang pos yang bersangkutan mengambil formulir tersebut dan menukarnya dengan lembar kertas lain. Perbuatan pertama yang ia lakukan adalah melanggar ketentuan Pasal 372 (membuka surat oleh tukang pos), kedua adalah pelanggaran ketentuan Pasal 373 (mengganti isi surat). *Hoge Raad* disini ternyata menolak penerapan ketentuan Pasal 56, karena baik perbuatan maupun ketentuan pidana yang bersangkutan tidak dapat dikategorikan sebagai sejenis.

<sup>24</sup> Bing Siong, H. (1961). *An outline of the recent history of Indonesian criminal law* (p. 84). Brill.

<sup>25</sup> Ramadani, S., Danil, E., Sabri, F., & Zurnetti, A. (2021). Criminal law politics on regulation of criminal actions in Indonesia. *Linguistics and Culture Review*, 5(S1), 1373-1380.

<sup>26</sup> Penjelasan RKUHP September 2019

<sup>27</sup> De Haan, J. (2002). The new Dutch law on euthanasia. *Med. L. Rev.*, 10, 57.

<sup>28</sup> Radu, S. (2020). Introductory Discussions on the Dutch Criminal Code. *Acta Universitatis Danubius. Administratio*, 11(1).





Continuing actions (voortgezette handeling) in the Criminal Code are part of a combination of criminal acts. The Criminal Code recognizes 3 (three) types of combined criminal acts as stated in title VI regarding combined criminal acts (*Samenloop van Strafbare Feiten*)<sup>29</sup>:

1. A person with one deed commits several criminal acts, which in legal science is called "a combination of one act" (eendadse samenloop) and is regulated in Article 63 of the Criminal Code.
2. A person commits several acts, each of which constitutes a crime, but with the existence of a relationship between one another, they are considered as a unit so that it is called "one continuous act" (voortgezette handeling) and is regulated in Article 64 of the Criminal Code.
3. Someone does some actions that have nothing to do with one another. Each of these acts is regulated by one rule and qualifies as an independent crime. This legal science is called "a combination of several actions" (meerdaadse samenloop) and is regulated in Article 65, Article 66 and Article 67.

The act continues as regulated in the provisions of Article 64 of the Criminal Code, which is one of the types of *Samenloop van Strafbare Feiten*. Continuing actions as stipulated in the provisions of Article 64 paragraph (1) of the Criminal Code, namely if there is a relationship between the several behaviours in such a way that these behaviours must be considered as continuing actions, even though each of these behaviours is a crime or violation, then only one criminal provision is applied, and if there is a difference, then what is applied is the criminal provision that carries the heaviest principal penalty.

Apart from the current Criminal Code, the construction of continuing actions can be seen in the September 2019 revision of the RKHUP regulated in Book One concerning General Rules, Chapter III, Part Five concerning Accompaniment, Article 126, which states:"

- a. If concurrent criminal acts are interconnected so that they are seen as continuing actions and are subject to the same penalty, only 1 (one) sentence will be imposed.
- b. If the concomitant criminal acts referred to in paragraph (1) are subject to different punishments, only the heaviest principal sentence is imposed.

Based on the construction of Article 126 of the RKUHP above, in principle there is no difference from the structure of Article 64 paragraph (1) of the Criminal Code. The construction of Article 64 paragraph (1) of the Criminal Code in the RKUHP is divided into 2 (two) paragraphs by not mentioning the word "offences and crimes" because the RKUHP no longer distinguishes the classification of violations and crimes but uses "Criminal Acts".

In addition, paragraph (2) and paragraph (3) of Article 64 of the Criminal Code is not included in Article 126 of the Criminal Code, where paragraph (2) mentions that it is considered a continuing act against a person who counterfeits or damages currency, and uses goods falsified or tampered with, and in paragraph (3) of Article 64 of the Criminal Code states that continuing actions can be used as a basis for aggravating criminal convictions only expressly as stipulated in Article 64 paragraph 3 of the Criminal Code, namely in the case of minor crimes contained in Articles 364 (petty theft), 373 (minor embezzlement), 379 (minor fraud), and 407 paragraph 1 (damage to light goods) which are committed as continuing actions are subject to criminal rules for ordinary crimes, meaning that what is imposed is Article 362 (theft), 372 (Embrace), 378 (Fraud) or 406 (Destruction of goods).

Based on the description of the arrangements and the position of continuing actions in the criminal laws of several countries, namely the German Criminal Code, the French Criminal Code, the Dutch Criminal Code and the Indonesian Criminal Code, the comparison can be explained as follows :

**Table 1.** Comparison of the Teachings of Continuing Actions in the German Criminal Code, the French Criminal Code, the Dutch Criminal Code and the Indonesian Criminal Code.

KUHP	Continuing Action Position	Combined Criminal Acts
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<sup>29</sup>Loebby Loqman, *Percobaan, Penyertaan dan Gabungan Tindak Pidana*, Universitas Tarumanegara UPT Penerbitan, Jakarta, hlm.111

<p>Jerman</p>	<p>1. Do not regulate continuing actions 2. Lawmakers in Germany who form this legal institution through jurisprudence. (HR 11 Juni 1894, W 6516; 19 Okt. 1931, NJ 1932, 1319).</p>	<p>1. The combination of criminal acts is regulated in the General Part of Chapter 3 Concerning Festsetzung von Strafen für mehrere Straftaten, Article 52 to Article 55 2. Provisions for combined criminal acts: a. One criminal act violates more than one statutory provision (Article 52 paragraph (1)) or; b. One criminal act violates the same criminal law more than once (Article 52 paragraph (1)); b. c. One person commits several criminal acts, all of which must be tried simultaneously, and that person has been sentenced to imprisonment for more than one or more than one fine (Article 53 paragraph (1)).</p>
<p>Prancis</p>	<p>Does not regulate continuing actions</p>	<p>1. Combined criminal acts in Book II concerning Persons with Criminal Responsibility, Executable and Accountable for Crime (Against Serious Crimes) and Delit (Minor Crimes), namely in Article 5. 2. The combination of criminal acts is regulated. Only the heaviest of all penalties is imposed. If there is a reduction, the remaining penalty will be applied.</p>
<p>Belanda</p>	<p>Continuing actions are regulated in Article 56</p>	<p>1. In Book One, Chapter VI Concerning Samenloop van strafbare feiten, Articles 55 to 63; 2. A person with one act commits several criminal acts (Article 53); 3. A person commits several acts, each of which constitutes a crime, but with the existence of a relationship between one another, they are considered as a unit so that it is called "one continuous act" (voortgezette handeling) (Article 56); 4. A person commits several acts, each of which is regulated in one rule and qualifies as an independent crime (Article 57, Article 58 and Article 70 of the Criminal Code).</p>
<p>Indonesia</p>	<p>a. Continuing actions are regulated in Article 64 paragraph (1) of the Criminal Code;</p>	<p>1. The Combination of criminal acts is regulated in Book One concerning General Provisions for Title VI, Article 63 to Article 70 2. Recognize 3 (three) types of combinations of criminal acts a. Combination is one act regulated in Article 63 of the Criminal Code. b. The action continues, regulated in Article 64 of the Criminal Code. b. c. Combination of several actions; and regulated in Article 65, Article 66 and</p>


		Article 70 of the Criminal Code.
	b. The action continues in Article 126 of the RKUHP	<p>a. The Combination of criminal acts is regulated in Book One concerning General Rules Chapter III concerning Punishment, Crime and Action, Articles 125 to Article 131.</p> <p>b. Recognize 3 (three) types of Combinations of criminal acts.</p> <p>a. The Combination is one act; regulated in Article 125 RKUHP.</p> <p>b. The action continues, regulated in Article 126 RKUHP.</p> <p>c. Combination of several actions; and regulated in Article 127 to Article 131 of the RKUHP.</p> <p>c. There are only 2 (two) paragraphs in the construction of Article 126 RKUHP regarding Continuing Actions.</p>

### CONCLUSION

This study concludes that countries recognising continuing actions are Germany, the Netherlands and Indonesia. Although based on the history of continuing efforts originating from Germany, Germany does not place continuing activities in the Criminal Code, but only in jurisprudence. Meanwhile, the Netherlands regulates continuing actions in Article 56 of the Criminal Code, and according to the concordance principle of the Indonesian Criminal Code, it also governs the declaration of conformity as contained in Article 64 paragraph (1) of the Criminal Code.

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- [23] Jan Rummelink, *Hukum Pidana, Op.Cit*, hlm. 570-571.
- [24] For example, Rummelink cites HR 30 June 1913, NJ 1913, 1097, W 9519. This arrest concerns the case of a postman in Vaals. In the letter, he found a toto form (Wettzettel). The postman concerned took the form and exchanged it for another sheet of paper. The first action he committed was a violation of the provisions of Article 372 (opening the letter by the postman), and the second was a violation of the provisions of Article 373 (changing the contents of the letter). The Hoge Raad here turned out to reject the application of the provisions of Article 56 because neither the actions nor the criminal provisions in question could be categorized as similar.
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