

THE CRIMINAL LAW SYSTEM IN INDONESIA FROM THE PERSPECTIVE OF PANCASILA

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ABSTRACT

Since the implementation of Law Number 1 of 1946, Indonesia's Criminal Code has witnessed continuous reforms in material criminal laws, formal criminal laws, and criminal law enforcement. These three components are interconnected, necessitating comprehensive reform. The 2012 Criminal Code Bill aimed at achieving sentencing goals and brought about three types of updates. The first type includes main punishments like imprisonment, cover-up punishment, supervision punishment, fine punishment, and social work punishment. The second type specifically entails the death penalty. The third type comprises additional punishments such as revocation of rights, confiscation of goods or invoices, judge's decision announcements, renewal of criminal sanctions for losses, and fulfillment of local customary obligations. Criminal punishment theories emphasize improvement and prevention from an instrumental perspective. Punishment serves as an instrument to achieve goals beyond itself, like rehabilitating offenders or protecting society. The nature of punishment must align with these objectives, rendering punishment valuable in the pursuit of those ends. However, instrumental theory also allows for alternative means if more efficient. For Indonesia, the essence of law according to Pancasila emphasizes godliness, humanity, unity, democracy, and fairness. Pancasila serves as an ethical benchmark for being a complete Indonesian human being, adhering to Indonesian laws, and guiding behavior toward others and the environment. As society evolves, the law must remain dynamic and adaptable to societal needs. An appropriate legal system in Indonesia should be grounded in the values and culture of the nation, particularly Pancasila, the nation's foundational philosophy. The national legal system must align with Pancasila's ideals to maintain harmony and justice in the Indonesian state.

Keywords: *criminal law, concept, pancasila*

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INTRODUCTION

Legal science is essentially a normative science about "human and societal concepts/insights", so in the Indonesian context, "Indonesian/National Law" means "normative science about the concept of social life (in) Indonesia". When associated with the term in the Preamble of the 1945 Constitution, it can be said that Indonesian Law is "a normative science regarding the concept of 'free national life' in Indonesia which contains very broad aspects, namely all aspects of social/national/state life (including aspects of 'ipoleksosbud')". The development of National Law Science is closely related to the understanding and nature of "legal science" which is "normatieve maatschappij wetenschap", namely "normative science of social relations" or "normative (reality) social relations science" so that legal science is "normative science (das Sollen) about reality (das Sein), or "normative science of reality (das Sein). According to Barda Nawawi Arief, if what the National Legal System aspires to is the Pancasila Legal System, then it is appropriate to study and develop the Criminal Law System (which contains the values) of Pancasila, namely criminal law that is oriented toward the values of "Godhead", criminal law which is "just and civilized humanity", criminal law that contains the values of "unity" (among other things: does not differentiate between ethnicity/group/religion, prioritizing common interests), criminal law imbued with "populist values led by wisdom". wisdom in deliberations" (among other things prioritizing the

interests/welfare of the people, wisely/deliberative/family conflict resolution), and criminal law that has “social justice”. This is a big problem that is challenging and has not been resolved. 4 The development of a national legal system (criminal law) must be rooted in the noble values of Pancasila which are contained in Pancasila so that it is in accordance with the spirit of the nation (*volkgeits*). Laws that grow and develop from society by integrating noble values in society, in turn, will be able to give birth to laws that are aspirational and accommodative in accordance with the mainstream of society (Dewantara, 2017).

The effort to renew the Criminal Code (KUHP) is motivated by the history of Dutch colonialism in Indonesia. In the past, the Netherlands imposed its country's Criminal Code on its colonial countries, including Indonesia (formerly known as the Dutch East Indies) (Maryani, 2013). As a legacy of colonialism whose implementation was forced on Indonesia, the Criminal Code is currently felt to be incompatible with the spirit of the Indonesian nation and needs to be reformed. In order to have a criminal law that is in accordance with the characteristics of the Indonesian nation, Muladi is of the opinion that the renewal of material criminal law needs to pay attention to the operational characteristics of material criminal law in the future. For example, material criminal law must be structured within the framework of a national ideology; paying attention to aspects related to the human condition, nature, and Indonesian traditions; able to adapt to universal tendencies that grow in the association of civilized society; think about preventive aspects; and must be responsive to developments in science and technology in order to increase the effectiveness of its function in society (Sitorus et al., 2023). Various reforms to the maximum amount of fines in the Criminal Code have been carried out several times, but this has not made fines free from criticism. The maximum limit for the determination of fines which is carried out partially and the absence of certain patterns indicates that the purpose of reforming fines is unclear and does not have a clear philosophical basis and guidelines. In addition to the main punishment, the Criminal Code also recognizes additional punishments, namely crimes that add to the principal sentence imposed (Arief, 2018). This crime cannot stand alone, except in certain cases such as confiscation of certain items. This additional sentence is optional, meaning that it can be imposed, but does not have to. The development of criminal sanctions in Indonesia raises questions about the nature of punishment. As a nation that has a Pancasila philosophy, criminal sanctions must be carried out using the Pancasila perspective to formulate what is good and right for the people of Indonesia (Kursinar, 2012). Various reforms to criminal sanctions in Indonesia have never been separated from controversies that have been influenced by developments in humanity, especially regarding the renewal of criminal sanctions proposed in the 2012 Criminal Code Bill. As a nation that has Pancasila as its philosophy of life, criminal sanctions are part of the criminal law system which cannot be separated from it (Bo'a, 2018). of the Pancasila-oriented national legal system which contains a balance between religious morals (divinity), humanity (humanistic), nationality, democracy, and social justice (Barda, 2010). Therefore, in renewing criminal sanctions, it is necessary to study and explore values.

METHOD

This research, it is specific to the descriptive-analytical nature of the type of doctrinal or normative juridical research. The research is descriptive-analytical in nature which means that this paper will describe the problems that occur with a normative analysis regarding the reform

of the Indonesian criminal justice system in the future (Adami Chazawi, 2010). The research approach used is the statutory and case approach. The statutory approach refers to Indonesian laws and regulations in which there are Pancasila values such as the 1945 Constitution of the Republic of Indonesia, the Law on Judicial Powers, the Law on the Prosecutor's Office. Then approach the case by looking at conditions in society regarding cases of people in conflict with the law. This research relies on secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials obtained through library research as a data collection technique, which is then analyzed using qualitative analysis techniques to get real conclusions (Fathurokhman, 2008).

RESULTS AND DISCUSSION

Position of Pancasila in the Renewal of Sanctions

Goodness can only be realized if there is human love for each other, and this love will only be realized if there is justice. Conditions of justice will be formed if there is a law that will be a means for administering love to others. Thus, the law should be based on reason. If the law is structured so that it can bind human actions, the law must be fair and guide humans toward the ultimate goal, namely goodness. In the relationship between social interaction and the enactment of the law, there is a tendency to defend oneself, a tendency to live in a society, a tendency to obtain the truth, and a tendency to act based on reason's decisions (Krisnayudha, 2017). The four forms of enforceability of the law are very relevant to the essential characteristics of Pancasila which by nature places humans as creatures of the one God who aspires to human existence, as creatures who unite with their environment based on a sense of brotherhood, and as creatures who must live together and will to create social justice for the people of Indonesia. Indonesia as a system contains a collection of different people, but one because of its unity by eliminating ethnic, religious, racial, and inter-group differences in various aspects. Pancasila is the ideology (belief) of the Indonesian nation that wants Indonesian people to be Godly, and humane, unite people with their humanitarian ideals, converse with other humans, and be fair as the basis for ideals of justice (Kunantiyorini, 2018). It is Pancasila that can be the benchmark for being called a "complete Indonesian human being". The essence of law according to Pancasila for the extended family of the Indonesian nation is a law that is Godly, humane, prioritizes the unity and glory of Indonesia, is democratic, and of course fair. In addition, Pancasila is an ethic that is a benchmark for being called a "complete Indonesian human being". A complete Indonesian human being is a human being who fulfills his Indonesian laws. This Indonesian law also guides the Indonesian people in behaving and acting, both towards each other and their environment. In line with the development of human civilization, law is not static, but dynamic in nature which is continuously influenced according to the needs and wishes of society (Pitriyantini et al., 2018). An appropriate legal system in Indonesia is a legal system that is based on the values of life and culture of the Indonesian nation, namely Pancasila which the founding fathers have determined as the basic philosophy of the nation and state. Thus, the order of the national legal system must refer to the legal ideals (*rechtsidee*) of Pancasila. Several legal experts gave their opinion regarding the characteristics of the national legal system based on Pancasila. According to Prasetyo, the national legal system that is in accordance with the values that live in

Indonesian society is the national legal system based on Pancasila which includes the following values:

- a. Belief in the one and only God
The formation of law in Indonesia must be based on divine or religious values. In addition, the law must guarantee freedom of religion and must not prioritize one religion and exclude other religions.
- b. Just and civilized humanity Every law formation must have guarantees and respect for human rights.
- c. Unity of Indonesia Law must pay attention to the unity and integrity of the nation and state. The formation of law must not trigger division (disintegration) of the nation and state.
- d. Democracy led by wisdom in representative deliberations The formation of law must be based on democratic values that involve all elements in the country, including the government, legislature, and society.
- e. Social justice for all Indonesian people The formation of national law must aim to provide justice and welfare for all Indonesian people.

A legal system based on Pancasila can provide a balance between conflicting values in society. The legal system must be able to provide balance points in the state's efforts to carry out development which changes very quickly and will eliminate the old balance, both in relations between individuals and groups in society. In addition, the national legal system will create legal harmonization and eliminate legal system pluralism so that a harmonious national legal system in the sense of harmony, balance, and consistency, and avoiding conflicting legal norms with other legal norms can be formed.

Concepts and Forms of Criminal Sanctions in accordance with the Philosophy of Pancasila and Its Prospects in the Reform of the Penal System in Indonesia

Philosophy of Benefit Punishment

John Andenaes was supported by John Andenaes who stated that punishment must be able to have benefits in the form of preventing the perpetrator from committing a crime (special preventive), preventing the general public from committing a crime (general preventive), and giving effect to strengthening morale. society and encourage law-abiding behavior (Rifai, 2017). Another opinion states that punishment aims to frighten (deter) the perpetrators of crimes. This goal is given so that perpetrators are deterred from committing crimes, to the community so that other people are afraid to commit crimes and to long-term goals so that harmony in people's lives can be maintained (Antonius & Manullang, 2007). The concept of punishment is conveyed through the concept of restorative justice which places a higher value on the direct involvement of the parties. Victims are able to restore an element of control, while perpetrators are encouraged to assume responsibility as a step in correcting the wrongs caused by the crime and in building their social value system. Active community involvement strengthens the community itself and binds the community to values of respect and mutual love between people. The government's role is substantially reduced in monopolizing the judicial process today. Restorative justice requires cooperative efforts from the community and government to create conditions where victims and perpetrators can reconcile conflicts and repair their wounds (Wulandari, 2021). Restorative justice returns conflict to the parties most

affected, such as victims, perpetrators, and the interests of their communities, and gives priority to their interests. Restorative justice also emphasizes human rights and the need to recognize the impact of social injustice and in simple ways to restore rather than simply giving perpetrators formal or legal justice and victims not getting any justice (Zulfa, 2014). Restorative justice also seeks to restore victims' security, personal respect, dignity, and more importantly, a sense of control. The various purposes of punishment stated above are not written in the Criminal Code but implicitly convey several purposes of punishment. The Criminal Code states that the judge considers aggravating circumstances (giving convoluted statements, not regretting his actions, and being absent) and mitigating circumstances for the defendant (the defendant is young, polite in the trial process, admits and regrets his actions, and has never been convicted before).

Post-independence Indonesia has a Pancasila philosophy so the purpose of punishment must be adjusted by prioritizing the principles of punishment in the view of Pancasila philosophy which is carried out in accordance with the culture adopted by the Indonesian people by paying attention to the following principles. 1) Recognition of humans as creatures of God Almighty so that the form of punishment may not conflict with religious beliefs or beliefs held by the people of Indonesia. Punishment against a person must be directed at awakening the faith of the convict so that he can repent and become a human being of faith and obedience. In this case, sentencing must function as a mental development of the convicted person and transform the convict into a religious person (Dwidja Priyatno, 2005).

The Concept of Criminal Sanctions in the 2012 Criminal Code Bill and Comparison with the Criminal Code of Other Countries.

Efforts to reform the implementation of prison sentences began to be improved after Indonesian independence. The prison system which has been used as a system for treating prisoners has become another system that is more in line with the Indonesian nation compared to the previous system as a legacy from Dutch colonialism. The system that is considered to succeed in replacing this system is a system that is in accordance with the personality of the Indonesian nation, namely a system based on Pancasila. A prison system that treats convicts as prisoners, not as members of society (Kittichaisaree, 2003). The prison system prioritizes the revocation of independence and the maintenance and orderliness of the institution rather than fostering convicts to become a good society. The prison system uses a philosophy of retaliation and imprisonment in the form of suffering and torture. Rehabilitation as a goal of punishment began to develop in the 19th century to improve offenders. The basic considerations used are that the prison system and its implementation are colonial products that are no longer suitable for the conditions of an independent Indonesia, so they must be adapted to the social system of the Indonesian state. The renewal began with the introduction of the term "correctional" by Dr. Saharjo in 1963. He said that correctional is the goal of imprisonment so correctional institutions contain a lot of resocialization values. In addition to the main punishment, the Criminal Code also regulates additional punishment, namely additional punishment so that the purpose of sentencing can be achieved. Additional punishments are referred to in Article 10 of the Criminal Code in part chapter II which consists of (a) revocation of certain rights, (b) confiscation of certain items, and (c) announcement of a judge's decision. Seeing its name, it is clear that this additional sentence is only to add to the principal sentence imposed (Ardiyanto

et al., 2020). Regarding the implementation of decisions in the form of fines, the Criminal Procedure Code (KUHP) only regulates in 1 article, namely Article 273 paragraph (1) which reads if a court decision imposes a fine, the convict is given a period of 1 month to pay the fine, except in the decision of the express examination procedure which must be paid immediately. In that paragraph, the period can be extended for a maximum of 1 month. However, it should be remembered that if a fine is imposed with a substitute for imprisonment as a substitute, the convict can pay half of the fine and the other half is served as a prison sentence.

Pancasila in the life of the nation and state is the philosophy and ideology of the Indonesian nation and state. The values contained in Pancasila come from the Indonesian nation itself, namely the values of customs, culture, and religious values. Through the BPUPKI and PPKI sessions on August 18, 1945, Pancasila was ratified as the basis of the state philosophy (Philosophische Grondslag) of the Republic of Indonesia. Based on the position of Pancasila, Pancasila is a basic value and norm to regulate the state government/state organizers. Therefore, the entire implementation and administration of the state, especially the state laws and regulations, are spelled out and derived from the values of Pancasila (M.Ali Mansyur, 2005:3-4). According to M.Ali Mansyur (2005: 6), Pancasila as the basis of the state is a national legal philosophy that should have an imperative nature, namely that Pancasila is used as the basis and direction for the development of a national legal philosophy and becomes a reference in the preparation, guidance, and development of a consistent and relevant legal philosophy. with the values of Pancasila itself (M.Ali Mansyur, 2005:66). From several explanations about the position of Pancasila, shows that as the basis of the state philosophy, Pancasila is the source of all sources of law for the Indonesian nation. Put forward by Soerjanto Poespowardjo (1996:44), Pancasila is the philosophy of the state, therefore Pancasila is a normative basic value for the entire administration of the Republic of Indonesia. Based on this opinion, it is inevitable that in establishing a regulation that is the basis for carrying out the life of the nation and state, it is necessary to use Pancasila values as a philosophical foundation. Apart from being the basic philosophy of the Indonesian nation, Pancasila is also the Indonesian nation's way of life, namely a guide to all activities or activities of life and life in all fields. This means that all the behavior and actions of every Indonesian human being must be imbued with and are the emanation of all the Pancasila precepts because Pancasila as a *weltanschauung* is always a unity, one cannot be separated from another; the whole of the precepts in Pancasila is an organic unity (Pranoto et al., 2019). The same explanation about Pancasila as the basis of state philosophy was also put forward by Noor MS Bakry (1994:66). According to him, Pancasila is essentially divided into two groups, namely materially and formally. Materially, Pancasila is the nation's philosophy of life which can be internalized as the soul of the nation, the personality of the nation, the means of the nation's life goals, the nation's view of life, and the nation's way of life. Formally Pancasila is the basis of state philosophy, namely as the source of all sources of Indonesian state law and also as the noble agreement of the Indonesian people in the state.

Likewise, the opinion expressed by Notonagoro (2013: 3) at the time of awarding Doctor Honoris Causa to the President of the Republic of Indonesia Ir. Soekarno, that Pancasila does not only have meaning and benefits in providing answers to questions about the origin of the country, the nature of the country, the goals of the country, and the duties of the state and attitudes, but Pancasila is also a guide for determining attitudes and giving forms to a state that can be accounted for scientifically. knowledge. In this case, Pancasila is scientifically a

guideline in the nation and state for the people of Indonesia. Based on the view that Pancasila is a guideline in the life of the nation and state, Mubyarto (2013: 3) said that all people in Indonesia must adapt and implement Pancasila principles in all areas of life. Implicitly, Mubyarto's opinion said that Pancasila is the source of all legal sources that regulate the life of the nation and state for the entire Indonesian nation. Pancasila as the nation's view of life consists of a series of noble values that constitute a comprehensive insight into life itself. As a way of life, Pancasila functions as a frame of reference for managing personal life as well as in interactions between people in society and the natural surroundings. In addition, Pancasila functions as a guide and direction for the Indonesian people in all activities and activities of life and life in all fields (Darji Darmodiharjo, 1991: 16-17). The basic values of the Indonesian nation which have become the nation's way of life, are crystallized in the form of values in the Pancasila precepts, therefore Pancasila should be placed as a filter in legal development to deal with all the impacts of globalization as a result of the development of science and technology. Starting from the opinion of Muladi (2007: 30) who said that Pancasila is a filter in transforming global values in national life because globalization cannot be accepted unanimously, then in responding to the development of science and technology the use of values in the precepts becomes very important as a filter. As it is known that the development of science and technology has made a world without borders, any information from anywhere can be directly received by Indonesian people, while not all developments and information that exist can be accepted or can be applied in the life of the Indonesian nation.

CONCLUSION

Basically, the development of national law is to carry out legal reconstruction so that it is in accordance with the soul or personality of the Indonesian nation, as well as in an effort to keep abreast of developments in society and science and technology. Therefore, the development of national law should be based on values that live in society, which are believed to be true and binding on society, meaning that they become guidelines in life. Pancasila values because the values of Pancasila are actually the crystallization of religious values and customary values which are believed to be true by the Indonesian people and become a way of life. The meaning of the concretization of Pancasila values really needs its role in law enforcement so that it really becomes the means of development and renewal of society that we hope for and can uphold the law as implied in the full content of Pancasila. The condition of the Indonesian criminal justice system which has not yet achieved a sense of community justice has made the law enforcement system seen by the public no longer as a place for seekers of complete justice. For example, the imposition of a guilty verdict on Asyani's grandmother is a manifestation that the criminal justice system has not yet achieved a sense of justice for society and is considered unable to apply the values contained in Pancasila, especially human values. In terms of reforming the Indonesian criminal justice system in the future, a change is needed in the Indonesian criminal justice system that is oriented towards the 1945 Constitution of the Republic of Indonesia and Pancasila values starting from the structural sub-system, the substantial sub-system, and the cultural sub-system.

REFERENCES

- Adami Chazawi. (2010). Pelajaran Hukum Pidana Bagian 1. In *Pelajaran Hukum Pidana Bagian 1*. Raja Grafindo Persada .
- Antonius, C., & Manullang, E. F. M. (2007). *Pengantar Ke Filsafat Hukum*. Kencana Prenada Media Gorup, Jakarat.
- Ardiyanto, S. D., Soponyono, E. S., & Sulchan, A. (2020). Judgment Considerations Policy In Decree Of The Court Criminal Statement Based On Criminal Destination. *Jurnal Daulat Hukum*, 3(1). <https://doi.org/10.30659/jdh.v3i1.8409>
- Arief, B. N. (2018). Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan. In *Kencana Prenada Media Group*.
- Barda, N. (2010). *Hukum Pidana*. Raja Grafindo Persada.
- Bo'a, F. Y. (2018). Pancasila sebagai Sumber Hukum dalam Sistem Hukum Nasional. *Jurnal Konstitusi*, 15(1). <https://doi.org/10.31078/jk1512>
- Dewantara, A. W. (2017). Diskursus Filsafat Pancasila Dewasa Ini. *Filsafat Pancasila*.
- Dwidja Priyatno. (2005). Kapita Selektta Hukum Pidana. *STBH Pres*.
- Fathurokhman, F. (2008). Menerobos Kekakuan Legalitas Formil dalam Hukum Pidana. *Jurnal Hukum Progresif*, 4(1), 22–35.
- Kittichaisaree, K. (2003). *International Criminal Law*. Oxford University Press.
- Krisnayudha, B. (2017). *Pancasila Dan Undang-Undang*. Kencana.
- Kunantiyorini, A. (2018). Pancasila sebagai Sumber Hukum dalam Sistem Hukum Nasional Pancasila as the Source of Law in the National Legal System. *Jurnal Konstitusi*, 15(1).
- Kursinar. (2012). Pancasila Sumber Dari Segala Sumber Hukum di Indonesia. *Media Komunikasi FPIPS*, 11(3).
- Maryani, D. (2013). Krisis Kepemimpinan Di Indonesia Ditinjau Dari Pancasila (Diskursus Filsafat Pancasila Dewasa Ini). *Journal of Chemical Information and Modeling*, 53(9).
- Pitriyantini, P. E., Suardana, I. W., & Antara, I. W. (2018). Pancasila Sebagai Paradigma Politik Hukum Di Indonesia. *Majalah Ilmiah Untab*, 15(1).
- Pranoto, A., Darmo, A. B., & Hidayat, I. (2019). Kajian Yuridis Mengenai Perampasan Aset Korupsi Dalam Upaya Pemberantasan Tindak Pidana Korupsi Menurut Hukum Pidana Indonesia. *Legalitas: Jurnal Hukum*, 10(1). <https://doi.org/10.33087/legalitas.v10i1.158>
- Rifai, E. (2017). An analysis of the death penalty in indonesia criminal law. *Sriwijaya Law Review*, 1(2). <https://doi.org/10.28946/slrev.Vol1.Iss2.44.pp191-200>
- Sitorus, B. R., Hakim, A., & Jannah, M. (2023). Gratification of Ticketing and Accommodation Facilities by the Former Deputy Chairman of the Kpk Reviewed Law Number 19 of 2019 Concerning the Second Amendment to Law Number 30 of 2002 Concerning the Corruption Eradication Commission. *Journal of Social Research*, 2(4). <https://doi.org/10.55324/josr.v2i4.822>
- Wulandari, C. (2021). Dinamika Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia. *Jurnal Jurisprudence*, 10(2). <https://doi.org/10.23917/jurisprudence.v10i2.12233>
- Zulfa, E. A. (2014). Konsep Dasar Restorative Justice. *Makalah Untuk Pelatihan Hukum Pidana Dan Kriminologi “Asas-Asas Hukum Pidana Dan Kriminologi Serta Perkembangan Dewasa Ini”*, Oleh FH Universitas Gadjah Mada Dan MAHUPIKI, Yogyakarta, 23–27.