

Implementation of Pancasila Value in Criminal Law Renewal

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Abstract. Long before the Dutch ships came to Indonesia, Indonesia was not in a legal vacuum, many kinds of laws already existed, such as customary law and customary law. For almost a century the Criminal Code has been in force in Indonesia, through Law Number 1 of 1946, Wetboek van Strafrecht (WvS) was enforced with several adjustments and applied nationally through Law no. 73 of 1958. WvS in its development was influenced by the French Penal Code (CP) because the last country occupied the Netherlands for approximately three years. However, the reception of colonial law also took place in the land of the windmill. Pancasila is the highest source of law in Indonesia and the development of the national legal system, especially the Indonesian criminal law system, should use legal values based on Pancasila. It must be absorbed into the formation of Pancasila criminal law. The approach method used is a normative juridical approach, a normative juridical approach is used to analyze the Indonesian Criminal Law System and the Indonesian Legal History of the Criminal Code, and Pancasila values as the basis of Indonesian philosophy. Criminal law must be sourced from Pancasila because Pancasila is the source of all sources of law in Indonesia and Pancasila are values that live in society. Pancasila values must be used as a source of criminal law in Indonesia because the values contained in each Pancasila are a reflection of the Indonesian people themselves.

Keywords: law; criminal; Pancasila

1 Background of Study

Long before the Dutch ships came to Indonesia, Indonesia was not in a legal vacuum, and various laws already existed, such as customary law, which is the original law of Indonesia, where the values contained in it are the original values of the Indonesian people.

For almost an epoch the Criminal Code has been in force in Indonesia, through Law Number 1 of 1946 Wetboek van Strafrecht (WvS) which was enforced with several adjustments and applied nationally through Law Number 73 of 1958. WvS improvement was influenced by the French Penal Code (CP) because the last country occupied the Netherlands for approximately three years.

During the Dutch occupation of Indonesia, native Indonesians and foreign eastern groups were subject to customary law, while European groups were subject to Dutch law (Article 163 IS).

Customary law takes place in line with the development of existing traditions and society. It is because customary law was born as a truth recognized by the community from the deposit of the community's morality. Today, the practice of customary law in indigenous peoples often

raises questions such as whether the legal rules are still relevant to be used to regulate and resolve problems that arise from interactions within the customary law community.

The development of Indonesian criminal law generally cannot be separated from the condition of Indonesian society during the kingdom, Dutch colonialism, and after independence. Indonesian criminal law began to be modernized when the Dutch entered Indonesia, with such conditions the laws that were in force and used in the period before or after that developed in society without the legitimacy of the Dutch government known as customary law.

The ethical and moral values shared by all societies and nations are defined as "a truth" which is based on the content of what values are considered appropriate or inappropriate, appropriate or inappropriate, right or wrong, good or bad, and which are considered fair and unfair. These values must be used as the underlying soul, outlook, and ideals of the life of society, nations, and countries, and the 'truth' must be held, realized, and carried out without coercion. In other words, it must be based on consciousness.

Departing from this, it is not an exaggeration to say that good law is a law that is formed based on values accepted by society as living truth. If the law is formed from these things, the law will be implemented without coercion or carried out with full awareness.

After reviewing the concept of the rule of law in Indonesia, it was found that the basic idea of establishing a legal state in Indonesia has been regulated in the 1945 Constitution and this cannot be separated from the existence of Pancasila as the root of the state. Pancasila is the soul of the Indonesian nation, the highest source of law and the views of the Indonesian nation. Pancasila is interpreted as the soul of the nation because Pancasila is the philosophy of the Indonesian people, the philosophy itself contains the meaning of the thought "de zin van Wereld en leven" (which means the world and life). Pancasila's philosophy is accepted and recognized as the Indonesian philosophy that no longer needs to be questioned. Therefore, all actions and efforts to construct the Indonesian country and nation must come from Pancasila, on the grounds of law, education, economy, arts, and nationhood.

Pancasila as a way of life for the Indonesian people provides an illustration of how God relates to humans, humans to each other, and the universe to humans whose core belief is centered on the position of the individual human being in the universe and society.

The concept of a state of law *rechtsstaat* that applies to countries that adhere to the civil law legal system and the concept of the rule of law adopted by countries that follow the common law legal system are not in line with the conditions and spirit of the Indonesian people. As previously explained, the Indonesian nation upholds Pancasila as its national philosophy of life, and the concept of a state of law which can be said to be the concept of a state of law that is by the conditions and spirit of the Indonesian nation is the Concept of the State of Law of Pancasila. It was because the state of Pancasila law was born not because of a conflict with the absolutism of the existing rulers or kings as was the background of *rechtsstaat* and the rule of law, but because the Indonesian people wanted liberation from Dutch imperialism and colonialism at that time.

Pancasila is the best supply of regulation in Indonesia, and the improvement of the countrywide criminal system, specifically the Indonesian crook regulation system, makes use of criminal values primarily based totally on Pancasila. Since it's far those Pancasila values should be absorbed into the formation of the Pancasila crook regulation.

2 Problem Formulation

The formulation of the problem raised in the background above is:

1. Why does Indonesian criminal law have to be sourced from the values of Pancasila as the spirit of the nation?
2. To what extent can the values of Pancasila be used as a source of Indonesian criminal law?

3 Result and Discussion

3.1 Pancasila as the Spirit of the Nation

Indonesian customary criminal law, which is spread across various customary law units, is a reflection of the original civilization of the Indonesian people who had practiced their customary law. In the realm of the mind that is communalism and religious-magical, humans occupy a central position. Its position in the cosmos is always balanced, and awake and when faced with disturbances, it is immediately restored. Customary law has dynamic regulations, where each regulation arises, develops, and then disappears, this is because changes in regulations are directly proportional to changing times and changes in the law that are influenced by changes in the sense of justice of the people.

The theory of the nation's soul is based on a consideration that the jowa of the nation influences the philosophy of a country so that each nation has a national spirit and a distinctive philosophy that is different from the philosophy of other nations. The birth of legal theory as the soul of the nation has experienced a very long historical journey. The theory of the nation's soul arose as a response to Hegel's concept of the "universal idea" (universal soul) by Gustav Hugo which stated that there was no "universal soul", but that there was a "nation's soul".

Law can live and develop in society so that all legal products that are born must be directed according to the personality and soul of a nation. The law that will be made or aspired to (izs constituendzzm) in Indonesia must refer to the personality and soul of the Indonesian nation which contains the philosophy of Pancasila, each of which is closely related and cannot be separated from one another. This theory was chosen because there are differences between the souls of the Indonesian nation and the souls of other nations so it can be seen as a comparison between the values contained in Pancasila and the values contained in criminal law which are inherited from foreign nations.

Therefore, criminal law must be sourced from Pancasila because Pancasila is the highest source of law in Indonesia and it contains values that live in society.

Here are some reasons why Indonesian law must be rooted in Pancasila:

- a. Because Pancasila is the source of all sources of law in Indonesia
- b. Customary law comes from the original law of the ancestors
- c. Pancasila is the values of the people/society itself
- d. What Bungkarno's founding father stated become that the authentic values of Pancasila had been determined in society
- e. Soekarno's discovery related to the basic values of Indonesian society is that Pancasila is mentioned which are the 5 pearls of the bowels of the archipelago which is also the character of the Indonesian nation, meaning that Pancasila is born from the soul of the Indonesian nation itself.

3.2 Values of Pancasila as the Source of Law

Pancasila is the legacy of the genius of the archipelago that changed born from the circumstance of its herbal environment, specifically the land of the seas dotted with islands (archipelago). As a legacy of the genius of the archipelago which additionally displays the character of the sea that cleans and absorbs without polluting its environment, except its breadth, it may accommodate all styles of range and sizes.

The first vice president of Indonesia, Mohammad Hatta, described the Indonesian people's view of life based on the nature of the sea, which in essence the character of the nation is formed by the sea that surrounds it and the spirit of the nation is influenced by the waves breaking on its shores. Therefore, residents who live on the shores of the day-to-day will experience the influence of nature is not infinite. The arrival of foreign nations in Indonesia to carry out trade has taught the ancestors of the Indonesian nation many things and provided instructions about what is included in valuable goods and how the trade works. Intense interactions with foreign nations such as Hindi people, Arabs, Chinese, and many others, sharpened the character of the ancestors of the Indonesian people and made our nation a friendly host. As a nation with a seafaring soul, the spirit of unyielding and fearless conquering the oceans always burns the soul.

According to Soekarno, which he conveyed in his speech, on the night before June 1, after he contemplated and reopened the historical trajectory of this nation, he found a passion that surged in the souls of the people and then prayed for guidance to Allah SWT so that he would be given answers to questions about the basis of the state that he wanted to establish the foundation of Indonesia's independence day

Based on the explanation that has been presented above, the values of Pancasila must be embedded in social, national, and state relations, and no conflict is allowed against them. The following is a description of the values of Pancasila in the life of society, nation, and state:

a. The First Precepts of Pancasila, The One Godhead

God Almighty must be the basis of human action in carrying out the life of society, nation, and state. The state guarantees the freedom of its citizens to embrace religion and belief under their beliefs. On the other hand, atheism and Communism are strictly prohibited in Indonesia because they believed in God. Indonesians have a handle in formulating values about things that are right and wrong, good and bad, just and unfair, worthy and unworthy, moral and immoral based on human thoughts towards God.

In building the criminal law system in Indonesia, it must be in line with Pancasila values, including the Pancasila values contained in the first principle. In the formation of the law, we must respect each other's social life even though it has some differences.

b. The Second Precept of Pancasila, Just and Civilized Humanity

As a normative framework, this second precept contains an imperative obligation or normative human obligation to live or act fairly and civilly. Adab shows a spiritual attitude as a noble creature of God, while fair shows behavior that reflects a civilized human being.

To create a just criminal law as reflected in the second precepts of Pancasila under the guidance of divine values that lead to the ideals of the state, all humans must be equal and must respect humanity. Legal reforms must reflect the values of Pancasila regarding the opportunities and threats to humanity in the reality of globalization. Pancasila must be used as a principle of human civilization and the Indonesian nation.

c. The third precept, Indonesian Unity

This precept outlines the boundaries for personal interests and every Indonesian citizen must be able to control himself so that he does not only pursue personal interests when the interests of the state and nation demand it. In regulation enforcement, for example, judges making choices do now no longer best be aware of prison factors but additionally philosophical and sociological factors in addition to the viable results in their choices, so that their choices do now no longer damage the cohesion and integrity of the Indonesian nation.

Because Indonesia is a large nation that embodies the glory of the civilization of the archipelago. So in building a nation that is following its identity which is commensurate with the quantity of its diverse population, it must reflect the values of Pancasila which are included in the third principle of Pancasila regarding the unity of Indonesia. Each group is required to have a national commitment by upholding the national consensus as reflected in Pancasila which has elements that unify the nation.

d. The fourth precept is Pancasila, Democracy Led by Wisdom of Wisdom in Deliberation/Representation.

This precept shows a line that should not be violated in society, nation, and state. All Indonesian people must exercise restraint, obey the law, maintain discipline, and respect, and obey all people's decisions taken based on the constitution and democracy.

A multicultural country like Indonesia can become much stronger if it stands on a government management platform that can guarantee balance, not only demanding the fulfillment of individual and community rights but also requiring cooperation to develop social solidarity to build a more advanced law as reflected in the four precepts of Pancasila.

e. The fifth precept, Social Justice for All Indonesian People.

This precept provides direction for the growth of awareness of each individual as a social being and upholds justice with others as fellow citizens. This precept provides an understanding that justice is not limited to individual justice (liberal) but justice that also pays attention to the sense of social justice in the life of the nation, state, and society.

The fourth precept (Popularity) and the fifth precept (Justice from Pancasila cannot be separated. The linkage of these precepts as a series of principles of "Socio-Democracy" a just and prosperous society is the ideal of the Indonesian nation, criminal law enforcement must be based on Pancasila values as reflected in the fifth precept of criminal law must provide the nature of justice for the community, this fifth precept is the most concrete embodiment of the principles of Pancasila. Therefore, if we want to build the realization of a prosperous nation society, we must apply these Pancasila values to criminal legal reform.

The direction and points of morality in the nation and state based on Pancasila can be described as follows:

First, based on the nature of Pancasila's thought, sacred (religious) values are affirmed as the basis of ethics and spirituality (which are vertical-transcendental) as the ethical basis for living as a nation and State. In this case, Indonesia is not an extremely secular state that seeks to separate "religion" and "state" and limits the role of religion in the private/community sphere. To play a public role that is relevant to strengthening social ethics, the State is expected to protect and develop religious life in line with nature. Pancasila. But at the same time, Indonesia is also not a religious state that only represents one element of religion and allows that religion to govern the country. As a country that is shaded by multi-religious and multi-faith residents,

the Indonesian state is expected to be able to limit itself equally from all religions /beliefs, protect all religions/beliefs, and must be able to develop politics independently and independently of religious dictates.

The rationality of the Pancasila realm of thought has been justified theoretically and comparatively. Based on the contemporary theory of "public religion" which rejects the thesis of "separation" and "privatization and supports the thesis of "differentiation." In this theory, there is no need to separate the roles of the state and religion, but rather a distinction should be made. With a provision called "twin tolerances" in which both parties, namely religion and the state, must understand each other's boundaries and authority.

Second, based on the nature of thinking Pancasila, universal values of humanity originating from God's law, natural law, and human social nature (which are horizontal) are considered important as the basis of political ethics in state life in world relations. The broad national principle towards world brotherhood is developed through externalization and internalization. Externally, the Indonesian people use all their abilities and wealth to freely and actively participate in the implementation of a world order based on independence, eternal peace, and social justice. Internally, the Indonesian people recognize and respect the basic rights of citizens and residents of foreign countries. The ethical basis as a prerequisite for this universal brotherhood is "fair" and "civilized". The commitment of the Indonesian people to uphold human values is very visionary and precedes the "Universal Declaration of Human Rights" which was declared in 1948. Theoretically-comparatively, the way of externalization and internalization in developing a just and civilized humanity places Indonesia's vision in a mixture of "political idealism" and "political realism" perspectives that focus on national interests in international relations.

Third, by the nature of Pancasila's thought, the actualization of human ethical values must first be firmly rooted in the social circle of Indonesian society before reaching further world relations. In internalizing these values of human brotherhood, Indonesia is a unitary state that transcends the understanding of groups and individuals. The unity of the Indonesian nation's diversity is managed based on the concept of nationality which emphasizes unity in diversity, and diversity in unity which in the slogan of the Indonesian state is stated by the expression "Bhinneka Tunggal Ika". On the one hand, there is a cosmopolitanism perspective that seeks to find common ground for all the pluralism crystallized in the basis of the state (Pancasila), the Constitution, and all its legislative derivatives, a unitary state, the language of unity, and other national symbols. On the other hand, there is a pluralist perspective that accepts and provides living space for differences, such as various religions/beliefs, regional cultures and languages, and certain political units as a legacy of cultural traditions.

Based on the above, Indonesia has a principle and a strong vision not only to unite the diversity of society in the renewal of joint political groups but also to provide opportunities so that the diversity of society cannot be separated from the roots of tradition and history. In the literacy of national theories, the understanding of Indonesian nationality resembles an "ethnosymbolist" perspective, which combines a "modernist" perspective that emphasizes the novelty of nationalism, with a "primordial" and "perennial" perspective that sees the continuity of the old elements in nationalism.

Fourth, under the nature of Pancasila's reflection, the embodiment of the values and ideals of divinity, humanity, and nationality must hold tightly to the sovereignty of the people through the spirit of deliberation guided by wisdom. Indonesia's deliberative democracy has the essence of strengthening people's sovereignty when political freedom is intertwined with economic equality and fostering good relations within the framework of "consensus consensus". In principle, deliberation to reach consensus is not made by minority power groups in the political

elite and businessmen or majority groups, but by upholding the ability to think rationally, deliberatively and the wisdom of every society indiscriminately led by wisdom.

The Indonesian-style consultation is a visionary idea that focuses on consensus and reconciliation in political and economic democracy. This concept of democracy preceded what Joseph M. Bessette in 1980 called the "deliberative democracy" model and has parallels with the concept of "social democracy" (social democracy).

Fifth, based on the nature of thinking Pancasila, the values of divinity, humanity, and the ideals of the nation, as well as deliberative democracy, have the full meaning as long as social justice is achieved. In one case, the embodiment of social justice should reflect the ethical imperatives of the other four precepts. In other circumstances, the credibility of the implementation of Pancasila can be measured by the realization of social justice in the life of the nation. Pancasila's vision of social justice is the fulfillment of physical and mental needs, the balance of the role of humans as individual beings (institutionalized in the market) and social beings (institutionalized in the state) increases, besides that Pancasila also has the vision to balance the service of political and civil rights with cultural, social rights, and economics. In an atmosphere of socio-economic life marked by various social inequalities, economic competition is placed on cooperative competition based on the principle of kinship, production units that are vital and affect the livelihood of many people are controlled by the state. The earth and water and the natural resources they contain are managed by the state and used for the greatest prosperity of the people. Each economic entity has its role in realizing social justice that fosters a spirit of kinship as a whole. In empowering individuals (the market), the state plays a role in providing the basic principles of law, regulations, facilities, social engineering, and providing social security.

Because Pancasila is a reflection of the Indonesian people, in the formation of criminal law in Indonesia, Pancasila should be used as a reference. Pancasila values can be used as a source of Indonesian criminal law in every Pancasila principle:

- 1) Each of the precepts in Pancasila is a reflection of the Indonesian people themselves;
- 2) The first precept of God Almighty means that every article in the Law and the Criminal Code, should be oriented to the divine precepts as a barater for the manufacture of UU/KUHP products in Indonesian criminal law;
- 3) The second precept of civilized humanity in every article of the Law or the Criminal Code must refer to the second principle of Pancasila;
- 4) The third principle of Indonesian Unity is a value that must be used as a barometer in every article and law or Indonesian Criminal Code with the concept of the Pancasila Criminal Law;
- 5) The fourth precept of the people who are led in deliberation and representation must be able to be used as a law or the Criminal Code as a system of Pancasila criminal law;
- 6) The fifth precept of social justice for all Indonesian people must also be used as the basis for making laws or the Criminal Code which must be reflected in every Indonesian criminal law regulation;
- 7) That because Pancasila is the basic value of the Indonesian people themselves, it is only natural that laws or other regulations should refer to the highest source of law in Indonesia, namely Pancasila.

4 Conclusion and Recommendation

Criminal law must be sourced from Pancasila because Pancasila is the highest source of law in Indonesia. In addition, Pancasila is a deposit of the living values of the Indonesian people, therefore, it is highly emphasized the importance of the rules or norms that will be formed must reflect the philosophy of life of the Indonesian nation.

The Pancasila values can be used as the source of Indonesian criminal law, as each of its precepts contains the essence of the life and spirit of the Indonesian nation. Therefore, Pancasila values must be used as a source of criminal law in Indonesia because the values contained in each Pancasila are a reflection of the Indonesian people themselves.

References

- [1] Dr. M. Ali Zaidan, S. M. (2015). *Menuju Pembaharuan HUKUM PIDANA*. Jakarta: Sinar Grafika.
- [2] Dr. Yopi Gunawan, S. M. (2015). *PERKEMBANGAN KONSEP NEGARA HUKUM & NEGARA HUKUM PANCASILA*. Bandung: PT. Refika Aditama.
- [3] Drs. Slamet Sutrisno, M. S. (2006). *FILSAFAT DAN IDEOLOGI PANCASILA*. Yogyakarta: CV. ANDI OFFSET.
- [4] Hamzah, P. D. (2012). *PERBANDINGAN HUKUM PIDANA BEBERAPA NEGARA*. Jakarta: Sinar Grafika.
- [5] Ilham Bisri, S. M. (2004). *Sistem Hukum Indonesia Prinsip-Prinsip & Implementasi Hukum Indonesia*. Jakarta: Raja Grafindo.
- [6] Kusuma-Atmadja, M. (2011). *Mochtar Kusuma Atmadja dan Teori Hukum Pembangunan Eksistensi dan Implikasi*. Shidarta.
- [7] Latif, Y. (2011). *NEGARA PARIPURNA Historitas, Rasionalitas, dan Aktualitas Pancasila*. Jakarta: PT. Gramedia.
- [8] Leonard, T. (t.thn.). *Pembaharuan Sanksi Pidana Berdasarkan Falsafah Pancasila Dalam Sistem Hukum Pidana Di Indonesia*.
- [9] Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2005
- [10] Prof. Dr. Achmad Ali, S. M. (2009). *Menguak Teori Hukum (legal theory) dan Teori Peradilan (judicialprudence)*. Jakarta: Kencana .
- [11] Prof. Dr. H. Muchsin, S. (2005). *IKHTISAR HUKUM INDONESIA*. Jakarta: Badan Penerbit IBLAM.
- [12] Prof. Dr. H. Romli Atmasasmita. (2020). *Moral Pancasila Hukum dan Kekuasaan*. Bandung: PT. Refika Aditama .
- [13] Prof. Dr. Sudikno Mertokusumo, S. (2011). *TEORI HUKUM*. Yogyakarta: Universitas Atma Jaya.
- [14] Prof. Dr. Teguh Prasetyo, S. M. (2014). *FILSAFAT, TEORI, & ILMU HUKUM Pemikiran Menuju Masyarakat yang Berkeadilan dan Bermartabat*. Jakarta: PT RAJA GRAFINDO PERSADA.
- [15] Ronny H. Soemitro, *Metodologi Penelitian Hukum*, Jakarta, Ghalia Indonesia, Jakarta, 1983.
- [16] Selznick, P. N. (2011). *HUKUM RESPONSIF*. Nusamedia.
- [17] Yudi Latif, "NEGARA PARIPURNA Historisitas, Rasionalitas, dan Aktualitas Pancasila" PT Gramedia Pustaka Utama (Jakarta, 2011).