**APPLICATION OF FAIR VALUE OF PANCASILA IN THE FRAMEWORK OF CRIMINAL LAW RENEWAL**

**Yuni Priskila Ginting, Franciscus Xaverius Wartoyo**

Fakultas Hukum, Universitas Pelita Harapan

[yuni.ginting@uph.edu](mailto:yuni.ginting@uph.edu), [franciscus.wartoyo@uph.edu](mailto:franciscus.wartoyo@uph.edu)

**Abstract**

Pancasila is the ideological foundation of the Indonesian state that guarantees the unity and integrity of Indonesians entering the era of globalization. Current Indonesian criminal law is obsolete because it does not consider Indonesia's philosophical, sociological and cultural values ​​and does not follow the changing mindset of modern criminal law. Social policy must be woven into and placed in a carefully integrated social plan, especially to prevent unwanted access related to crime. Indonesian criminal law will continue to apply colonial values ​​that are not based on Pancasila values. The basic idea of ​​Pancasila's balance is based on the religious moral paradigm, the human paradigm, the nationality paradigm, the democracy and wisdom paradigm, and the social justice paradigm. Justice is an abstract value that must be realized in the form of legal norms to realize these values ​​in social life without ignoring religious law, customary law, and Western law. This does not correspond to the value contained in Pancasila.

**Keywords:** Pancasila, Justice, Criminal Law Renewal

1. **Introduction**

Indonesia is a country that has the pillars of Pancasila and the 1945 Constitution. All laws and regulations that apply in this country must be under Pancasila and the 1945 Constitution. Pancasila is the philosophy and basis of the unitary state of the Republic of Indonesia. Pancasila and the 1945 Constitution are core values. Pancasila is the highest source of law in this republic, so the underlying laws and regulations must be based on the values of Pancasila. The first commandment of Pancasila is "Belief in One Supreme God". The sound of the first commandment indicates that the Indonesian people know the existence of God. Therefore, the legal value of social life is based on God's teachings and religious values.

Indonesian criminal law is a legacy of colonial law when the Dutch colonized Indonesia. If Indonesia declared itself as an independent country on August 17, 1945, Indonesian criminal law would be a product of the Indonesian state itself, but this idealism does not correspond to reality. Indonesian criminal law still uses the criminal law adopted from the Netherlands. Politically and socially, the enactment of this colonial criminal law poses problems for the Indonesian people. The discourse on the concept of the Pancasila method has long been the subject of debate. Endless discourses have been discussed in various academic and scientific forums. The definition of a rule of law in Indonesia is different from the notion of a rule of law and a rule of law. The concept of the rule of law in Indonesia has characteristics and characteristics that are based on the spirit and soul of the Indonesian nation, namely Pancasila.[[1]](#footnote-1)

Pancasila can be found in Article 4 of the Preamble to the 1945 Constitution, which clearly states that Pancasila is the basis or basic norm of the unitary state of the Republic of Indonesia. The natural consequence of Pancasila is the rejuvenation of all legal norms. Therefore, all laws and regulations must be based on the values ​​of Pancasila, and the implementation of norms in law enforcement must be in line with justice based on Pancasila. Legal personality is the point of view of legal personality that applies to society. For Indonesians, the legal character of Indonesians is Pancasila. Therefore, Indonesian law is different from other laws, there is a legal character which is the most important part of national development techniques, the philosophy of Pancasila is the basis of life and determines the political direction of the Indonesian people, and a value system based on Pancasila as the ideological basis the state of Indonesia which guarantees the unity and integrity of the Indonesian nation entering the era of globalization.[[2]](#footnote-2)

Current criminal law does not specify the concepts adopted by the law regarding the definition of crime and criminal liability. This situation often creates controversy and creates differences in the enforcement of Indonesian criminal law. [[3]](#footnote-3) Most Dutch criminal law teachers are fundamentally influenced by the monistic view that the issue of "responsibility" is essentially part of "criminal activity". This means it will automatically be held accountable in cases of "criminal activity". Criminal law is a set of laws that regulate crime and punishment (basic criminal law), criminal methods (formal criminal law), and the execution of the crime itself (criminal law). Criminal law (KUHP) has become the main source of substantive criminal law, especially in Indonesia. The Criminal Code is known to have been in effect since January 1, 1918, but the claim that the Indonesian Criminal Code is the parent of the Indonesian Criminal Code was created by the Dutch, including ancient Dutch values and ideas. Therefore, the current Indonesian criminal law is outdated because it does not incorporate Indonesian philosophical, sociological, and cultural values and does not follow the changing mindset of modern criminal law.

The study of the implementation of Pancasila reform, starting with the applicable criminal law, which is outdated and characterized by liberal and individualistic thinking, is based on the principle of inexcusableness. The purpose of criminal law is not only to retaliate but also to bring about justice for victims and perpetrators of crimes through the law.[[4]](#footnote-4) The principle of balance in the concept of criminal law reform stipulates that criminal law requirements are limited not only to the existence of "crimes" and "errors" or "criminal responsibility", but also to the purpose of sentencing. Lawrence M. Friedman explained that the effectiveness and success of law enforcement are the three elements of the legal system which is called legal system theory. Laws that claim depend on the legal structure, legal substance, and legal culture. The legal system refers to law enforcement officers, corporations refer to corporations, and legal culture is a living law that is protected by the local community.

Based on this explanation, the problem discussed in this article is the application of the fair value of Pancasila in criminal law reform. The reform of the criminal justice system is inseparable from the idea/policy of developing a national legal system based on the ideal values of community life for Pancasila. This means that national criminal law reform is also motivated and needs to be relevant/consistent with the basic ideas of Pancasila, including a "balance of values/ideas/specimens". Therefore, the research outlined in this article aims to identify and analyze the application of Pancasila values in criminal justice reform. This article uses a normative legal research methodology. The data collected is secondary data from qualitative analysis.

1. **Discussion**

**B.1. Material Legality and Formal Legality of Criminal Law Reform**

According to Barda Nawawi Arief, the Draft Criminal Code is essentially an attempt to reform/reconstruct/reconstruct the entire criminal system contained in the Criminal Code (WvS) inherited from the Dutch East Indies era. "Reconstruction" means "modification" and is very close to the meaning of "reconstruction" which means "reconstruction". Therefore, the draft criminal law aims to reorganize the structure of the national criminal justice system. Ordinary bill drafting is partial/fragmentary; generally, only regulates specific/certain offenses, is still tied to the parent system (WvS) which is no longer intact, is only a "sub system", does not build/reconstruct a "criminal law system". Drafting the Draft Criminal Code: Comprehensive/Integrated/Integrated, covering all aspects/fields. Having a system/pattern and assembling/rearranging (reconstructing/reformulating) an integrated "design and construction" of the national criminal justice system.[[5]](#footnote-5)

The current Criminal Code comes from Wetboek van Strafrecht voor Nederlandsch-Indië (S.1915 No. 732) which was declared valid in Indonesia based on the Act. No. 1/1946 Jo. Act. No. 73/1958. In general, the Criminal Code consists of general rules and special rules. General rules are contained in Book I of the Criminal Code as the parent of criminal legislation, while special rules are contained in Books II and III of the Criminal Code as well as legislation outside the Criminal Code. Regarding the phenomenon of criminal law, the general rules have not changed significantly, but in the sense of many deviations from the general rules, with the development of non-criminal law, special rules are developing very rapidly. Criminal Law The first book of criminal law. Therefore, the Draft Criminal Code is a law that answers the need for a codified and integrated draft criminal law that aims to achieve and implement the integration, of justice, truth, order, and legal certainty. Respect the balance of national, public, and private interests in the 1945 Constitution of the Republic of Indonesia and the Constitution of the Republic of Indonesia.[[6]](#footnote-6)

From the perspective of the legal system, which consists of "substantive law", "legal structure", and "legal culture", which includes the renewal of "substance of criminal law", which includes renewal of material criminal law (KUHP and laws outside the Criminal Code), criminal law formal law (KUHAP), and criminal law enforcement, renewal of the "criminal law structure" especially reform or arrangement and legal institutions/institutions, management/management systems and mechanisms. Facilities/infrastructure to support the prison system and renew the "criminal justice culture". These include questions on legal awareness and behavior, legal education, and knowledge of criminal law. The definition of the "criminal justice system" can also be seen from the perspective of law enforcement and criminal justice. From a functional perspective (results/functions/procedures), criminal law is the entire system for the function/operation/realization of criminal law, namely the entire system that regulates criminal law enforcement. Can be defined as. Forced or operated specifically to avoid criminal sanctions.

In this sense, the criminal justice system is the same as the law enforcement system, which consists of a subsystem. Substantive criminal law subsystem, formal criminal law subsystem, and prison law subsystem. The three subsystems are an inseparable part of the criminal prosecution system or the criminal system because criminal law cannot be specifically operated/enforced by just one of these subsystems. This definition of criminal law/criminal law can be called "functional criminal law/criminal law" or "criminal law/criminal law that is broadly formulated”.[[7]](#footnote-7) In terms of substantive norms, the criminal/criminal law system can be defined as the entire system of substantive criminal rules/norms for the implementation of punishment: or substantive criminal rules for enforcement/imposition. The whole system of norms and their enforcement. criminal: According to this understanding, all existing criminal law laws and regulations, and specific non-criminal laws, essentially consist of "general rules" and "special rules". General provisions are contained in Book I of the Criminal Code, and specific rules are contained in Books II and III of the Criminal Code as well as in Special Laws outside the Criminal Code.

So far, the Prosecutor's Office has fought and must impose criminal sanctions if the crime is regulated by statutory provisions. The principle of legality which is perfected in Article 1 Paragraph 1 of the Criminal Code makes the principle of legality more sacred than other principles of criminal law. Criticism of the principle of legality is expressed because the principle of legality is so strictly applied that it cannot meet the needs of the community and even sacrifices the interests of the community. Since 1933, Germany has authorized judges to treat such acts as criminal offenses if they are detrimental to German society. Even in Russia, the principle of legality no longer applies after 1926. So far, many Pancasila values have been violated by the firmness of legality.[[8]](#footnote-8)

The act of gathering and adultery is strictly prohibited by the Indonesian people based on the One Godhead, but the law can take any action because the text of the criminal law states that it is not a prohibited act. In the formulation of the criminal provisions regulated in Article 284 paragraph (1) number 1 letter and number 2 letter b of the Criminal Code, the law has required the knowledge of the perpetrators, namely that the provisions stipulated in Article 27 Burgerlijk Wetboek apply to themselves or apply to a man with whom a woman has committed adultery. Given the weaknesses and criticisms of the firm formal legality principle, it needs to be adjusted and balanced with the material legality principle which expands the unwritten legal provisions and existing laws in society. The expansion of the legality principle from the formulation as in Article 1 (1) of the Criminal Code is also based on national legislative policies (laws) that came out after independence.

Concerning guidelines/standards/indicators to determine which substantive sources of law can be used as sources of law, these guidelines/standards/signs are general laws adhered to by values and/or Pancasila, formulated if they are still valid, consistent with the principles. Welfare promotion policies must be woven and placed in a careful and integrated social plan to prevent unwanted access, especially those related to crime.[[9]](#footnote-9) Moreover, given that crime itself is inherently part of human culture, one of the strategic solutions for crime prevention is recognized by increasing cultural resistance. There is also agreement that, especially when defining crime, it is relative, depends on the attitudes and policies of the ruler, and is closely related to cultural patterns and values, as well as societal rules and structures. And, although crime is universal, it remains justified that there are exceptions to all the rules that are inseparable from culture and the structure of society. As a result of a detailed and in-depth investigation and discussion, all the elements of the above expression can be used as criteria for determining what actions should be taken as a reasonable crime.

**B.2. Application of Pancasila Values in Criminal Law Reform**

Pancasila is a set of noble values that are embraced in life itself and become the basis for regulating human interaction in personal and community life with the natural environment. With Pancasila as a way of life, the Indonesian people know the direction to achieve and can identify and solve the problems they face properly so that Pancasila is not affected by the problems they face. Crystallization of values rooted in the nation's culture that lives in Indonesian society and is supported by its people. Pancasila in this position is often referred to as the philosophical foundation or nationality. Pancasila is the core value and norm that governs the administration of the state or government. As a result, the actions, and controls of all governments, especially the laws and regulations of all countries, are explained and derived from the values of Pancasila. Therefore, Pancasila is the source of all sources of law.[[10]](#footnote-10)

The position of Pancasila is the basis of the Unitary State of the Republic of Indonesia and is stated in the Preamble to the 1945 Constitution of the Republic of Indonesia, paragraph IV, MPRS Decree No. XX/MPRS/1966 in conjunction with TAP No. V/MPR/1973 and Decree No. IX/MPR/1978. Pancasila as the ideology of the Indonesian nation is essentially not the result of the thoughts and thoughts of a person or group of people like other ideologies. However, Pancasila was adopted from the perspective of the Indonesian state itself, and the Indonesian state is the material source of Pancasila. Ideology is a belief/doctrine/theory that is well organized and systematic and equipped with implementation instructions to answer and solve problems faced by society, the state, and the state. Pancasila as an ideology is not rigid and closed, but open, dynamic, and positive, and can always adapt to the dynamics, science, and technology, as well as the social developments of the times.[[11]](#footnote-11) The openness of the Pancasila ideology does not mean changing the core values it contains but making its insights clearer and sharpening new topics that continue to develop in response to the demands of the times.

The implementation of the Pancasila ideology is publicly known to have three levels of values: core values ​​that have not changed, the 1945 Constitution of the Republic of Indonesia which reflects Pancasila. Then, instrumental values a means to realize basic values ​​that always respond to circumstances, actual values ​​in the form of actual values ​​from actual implementation in life, which can change. time according to existing developments. Pancasila, which is considered the source of all legal professions in the legal profession, is just jargon, not yet consistent and inconsistent. This is because there is no implementation framework for this concept, as it is known that there are two sources, namely substantive sources, and formal sources. Sources of substantive law are various materials that are processed into formal law. Formal sources of law are laws and regulations officially formed by the state because of processing substantive legal sources. Formal legal sources can be an eclectic product (a mixture of complementarities) from various substantive legal sources such as religion, culture, anthropology, customary law, and foreign law. Clear group. Religious law, customary law, and other laws of social life do not have to be independent laws but are quite eclectic with other substances.

Increasing the value of justice in assessing Pancasila as the source of the ideals of the Indonesian state law provides coherence and direction of thoughts and actions in the dynamics of the life of the nation and state. Legal ideals are ideas, intentions, inventions, and legal ideas or legal meanings, which essentially consist of three components: justice, convenience, and legal certainty. The ideal of law appears in the minds and minds of the people as a product of the integration of life views, religious beliefs, and social realities. Therefore, Indonesian laws and regulations are based on and need to be based on legal ideals. Against three conflicting fundamental values, namely justice, convenience, and legal certainty for the community. As reflected in the strict provisions, if the legislative system prioritizes legal certainty, the value of justice, and the will of the legal community, it will change, and its existence will be difficult to trace. In addition to the devaluation of the judiciary that prioritizes legal certainty as stipulated in the law, the usefulness of the law for the surrounding community is also felt. Prioritizing the value of legal certainty was the result of serious reflection by European jurists in the 18th century, after which legal certainty was needed to ignore industrialization and the growing development of Europe. Legal certainty is not an automatic legal product. From a socio-historical point of view, the issue of legal certainty arises with the capitalist economic production system. Unlike the previous production system, the latter is based on efficiency calculations. Everything is calculated clearly and safely, and you need to calculate the number of items produced, their costs, and selling prices.

When changing criminal law, it must be based on religious moral concepts. Religious values need to be reflected in criminal norms. All norms developed must refer to religious values or norms officially recognized by Indonesia. The need to regulate the crime of adultery and cohabitation in the draft criminal law must be measured by religious moral values, not by the most correct modern view. Criminal justice reform must respect and protect human rights. It is important to think with more human judgment. Crimes that are no longer retaliatory, but more resilient, must be developed (to protect society) while perpetuating certain serious crimes.

Criminal justice reform must be able to respect and pay attention to the values ​​that exist in all societies. It is important to include a "magic" provision in the draft criminal code to avoid vigilantism. It is not the result of formulated witchcraft (material offenses) but the prohibition against committing acts that are categorized as witchcraft (formal offenses) that must be formulated. With a note as long as the Indonesian people still recognize "witchcraft" as something that is believed to exist. In criminal law reform, the interests of society are taken into account without neglecting individual interests. Even though the criminal law bill recognizes capital punishment, life imprisonment, and imprisonment because it aims to protect the interests of the public, these crimes still pay attention to changes in the behavior of prisoners. To be able to turn a strange prisoner. The death penalty cannot be executed until 10 years have passed, and if the inmate's behavior improves, the sentence should be commuted to life imprisonment.[[12]](#footnote-12) Criminal law reform must ensure equal protection of the law and limit the arbitrariness of power. In the draft law on criminal law and criminal procedure, the role of judges as judicial institutions is important as an administrative and balancing form of supervision. Judges can condone certain crimes committed under certain conditions. Pancasila must be the breath of life for everyone in Indonesia. The Indonesian people should be proud to have Pancasila. It is not Pancasila that makes Pancasila a political tool to maintain the power that must be criticized, ignored, or abandoned because of the political experiences of the old and new orders.

The Indonesian nation must recognize and re-understand the history of this country by making Pancasila the guideline and way of life of the Indonesian nation. Pancasila values aim to guide the actions of the nation, state, and society, including efforts to change laws, particularly criminal justice reform. Therefore, in reforming Indonesian criminal law, it must have its legal character, namely the legal character of Pancasila. Pancasila needs to reflect the principle of balance in Indonesia's efforts to reform criminal justice. The concept of balance in criminal law reform can be seen in the existence of a single dualistic concept of balance between public interest/public interest and individual/individual interest. This means that criminal law as public law aims to protect the interests of the public and must also pay attention to the rights of criminals as human beings.[[13]](#footnote-13) The balance between the perpetrators of the crime (the concept of individualization) and the protection of the interests of the victims of crime. Criminal law should not only be based on perpetrators who are considered minors in the process, but the rights of victims are also regulated in criminal law because victims are victims because they are the ones who suffer the most and suffer the most. done. The most suffering and the most hurt. Therefore, care is needed to restore the condition of the victim and his family.

The balance between objective and subjective elements. Criminal law not only considers criminal activity as a prerequisite for punishment but does not have to be punished for every person who commits a crime. Even if you commit a criminal act, you must assume the negligence of the criminal. When someone commits a murder (a crime), it feels like a violation of justice, but the person has a mental illness. Therefore, the formulation of the crime is the existence of crime and error. The balance between legal certainty, flexibility/elasticity/flexibility, and justice. The application of the principle of legality leads to the idea that the purpose of criminal law is to guarantee legal certainty, but the reality of law enforcement practice is also beneficial for justice. Judges' decisions always begin "for justice", not "for legal certainty". But he acknowledged that justice and legal certainty were "like a pendulum". Emphasizing justice can reduce legal certainty but emphasizing legal certainty (which is currently happening in Indonesia) will damage the sense of justice. Therefore, even though the draft criminal law stipulates the obligation to prioritize justice over legal certainty, legal elasticity in the form of legal interests is needed to balance justice and legal certainty.

A balance between domestic values and global/international/universal values. Indonesian criminal law in principle must be applied in Indonesian territory, and Indonesian national values must be reflected in Indonesian criminal law, but Indonesian criminal law must also be able to adapt to international developments. Even though Indonesia's human rights are established by Indonesia, namely human rights are accompanied by human rights, the value of universal human rights must be placed under the regulation of Indonesian criminal law. This idea of balance needs to be embodied in the norms set out in the updated criminal law provisions. In general, criminal law reform can be interpreted as an effort to reorganize and reform criminal law by social policies, and core values of socio-political, socio-cultural, and socio-philosophical Indonesian society which are part of criminal law.[[14]](#footnote-14)

Law enforcement policies. Criminal law reform must be in line with socio-political values. This means that the country, which was proclaimed its independence on August 17, 1945, must be independent or free from colonial law products. Independence does not only mean the expulsion of a colonized country but at one time changing the products (laws) of the colonized countries that are not by Indonesian national values into appropriate laws. replaced. Indonesia, by the people. The Indonesian state must be able to produce legitimate products that contain the core values of the Indonesian state (Pancasila). All consistent legal products and the Pancasila state itself must reflect values to achieve the goals of the Indonesian state, namely declaring an independent state and recognizing Pancasila as the source of all domestic laws and ideologies. Therefore, reforming Indonesian law (criminal law) requires continuous and serious efforts.

1. **Conclusion**

Indonesian criminal law will continue to apply colonial values ​​that are not based on Pancasila values. The basic idea of ​​the balance of Pancasila is based on the moral representation of religion (divinity), the representation of humanity, the representation of nationality, the representation of democracy and wisdom, and the representation of social justice. Because the concept of balance is the idea of ​​reforming criminal law in Indonesia, which is not included in criminal law, it is necessary to seek reform of criminal law and replace criminal law with the aim of a value system. Pancasila as the ideal source of the Indonesian constitution must be used as a guide and reference for criminal justice reform. Pancasila wants to contribute to the dynamics of the state and the life of the nation. Pancasila is used as a way of life that can establish relationships and directions for thinking and acting. Legal ideals are ideas, intentions, inventions, and ideas about the law or its legal meaning, and consist of three elements. Justice, convenience, and legal certainty, which are acceptable, are then improved. Justice is an abstract value that must be realized in the form of legal norms to realize these values ​​in social life without ignoring religious law, customary law, and Western law. This is not by the values ​​contained in Pancasila.

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