



Fair Value of Pancasila in the Framework of Criminal Code Renewal

Yuni Priskila Ginting^{1*}, Franciscus Xaverius Wartoyo^{1**}

¹ Faculty of Law, Universitas Pelita Harapan, Indonesia

* yuni.ginting@uph.edu

** 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 Current Indonesian criminal law is obsolete because it does not consider Indonesia's philosophical, sociological, and cultural values and does not follow the changing mindset of modern criminal law.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 codification of laws that live in society is regulated specifically for public awareness of the potential for the law that can be used as a reference for regional regulations. 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

A. 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.¹ 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

¹ Arsyad Aldyan and Abhishek Negi, “The Model of Law Enforcement Based on Pancasila Justice,” *Journal of Human Rights, Culture and Legal System* 2, no. 3 (2022): 179, <https://doi.org/10.53955/jhcls.v2i3.51>.

Pancasila.² 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 by 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.³

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

² Hwian Christianto, "Pembaharuan Makna Asas Legalitas," *Jurnal Hukum & Pembangunan* 39, no. 3 (2017): 347, <http://dx.doi.org/10.21143/jhp.vol39.no3.1512>.

³ Barda Nawawi Arief, *Tujuan & Pedoman Pemidanaan (Perspektif Pembaharuan & Perbandingan Hukum Pidana)* (Semarang: Pustaka Magister, 2017), 11.

ideological basis the state of Indonesia which guarantees the unity and integrity of the Indonesian nation entering the era of globalization.⁴

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.⁵ 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.

Pancasila as the basis for governing the state government and the basis for regulating the administration of the state must be internalized in the formation of laws and regulations. The new Criminal Code is one of the government's efforts to develop a national criminal law recodification system that aims to replace the old Criminal Code as a legal product of the Dutch East Indies colonial government. The policy for the formation of the Indonesian National Criminal Code can be the foundation for building the Indonesian national criminal law system as a manifestation of the desire to realize the mission of decolonizing the colonial legacy of the Criminal Code, the democratization of criminal law, consolidating of criminal law, and adaptation and harmonization of various legal developments that have taken place, both as a result developments in the field of knowledge of criminal law as well as developments in

⁴ Iwan Nugroho, "Nilai-Nilai Pancasila Sebagai Falsafah Pandangan Hidup Bangsa Untuk Peningkatan Kualitas Sumber Daya Manusia Dan Pembangunan Lingkungan Hidup," *Jurnal Konstitusi* 3, no. 2 (2010): 108, <http://publishing-widyagama.ac.id/ejournal-v2/index.php/jk/article/view/321>.

⁵ Barda Nawawi Arief, *RUU KUHP Baru Sebuah Restrukturisasi/Rekonstruksi Sistem Hukum Pidana Indonesia* (Semarang: Badan Penerbitan Universitas Diponegoro, 2012), 32.

values, standards and living norms and developments in the life of the Indonesian legal community as well as a reflection of responsible national sovereignty.

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.⁶ 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.⁷ 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.

⁶ Abdurahman, *Aneka Masalah Hukum dalam Pembangunan di Indonesia* (Bandung: Alumni, 1979), 10.

⁷ Ramsen Marpaung and Tristam Pascal Moeliono, "Perbandingan Hukum antara Prinsip Habeas Corpus dalam Sistem Hukum Pidana Inggris dengan Praperadilan dalam Sistem Peradilan Pidana Indonesia," *Jurnal Wawasan Yuridika* 5, no. 2 (2021): 224, <http://dx.doi.org/10.25072/jwv.v5i2.494>.

B. Discussion

B. 1. Material Legality and Formal Legality of Criminal Law Reform After the Promulgation of the New Criminal Code

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 "subsystem", and 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.⁸

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.⁹

⁸ Mohammad Ekaputra and Abul Khair, *Sistem Pidana Di Dalam KUHP Dan Pengaturannya Menurut Konsep KUHP Baru* (Medan: USU Press, 2010), 29.

⁹ Jimly Asshiddiqie, "Peradilan Etik dan Etika Konstitusi," *In Perspektif Baru tentang 'Rule of Law and Rule of Ethics' & Constitutional Law and Constitutional Ethics* (Jakarta: Sinar Grafika, 2014), 16.

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".¹⁰ 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".¹¹ 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.

¹⁰ Sari Mandiana, "Konsepsi Pertanggungjawaban Pidana Sebagai Sistem Normatif," *Jurnal Hukum PRIORIS* 5, no. 2 (2016): 135, <https://trijurnal.lemliit.trisakti.ac.id/prioris/article/view/559>.

¹¹ Gatot Sugiharto, "Relevansi Kebijakan Penetapan Pidana Kerja Sosial dalam Sistem Pidana di Indonesia," *Jurnal Ilmu Hukum Novelty* 7, no. 1 (2016): 85, <http://dx.doi.org/10.26555/novelty.v7i3.a3936>.

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.¹²

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.

The new Criminal Code departs from the premise of mono-dualistic balance in the sense of paying attention to the balance of two interests between the interests of society and individual interests. Because it departs from the principle of monodualistic balance, the concept retains two very fundamental principles in criminal law, namely the principle of legality and the principle of guilt. The old Criminal Code only formulated the principle of legality, the concept of the 1993 Criminal Code formulated these two principles explicitly.¹³ The old

¹² Sri Endah Wahyuningsih, "Urgensi Pembaharuan Hukum Pidana Materiel Indonesia Berdasarkan Nilai-Nilai Ketuhanan Yang Maha Esa," *Jurnal Pembaharuan Hukum* 1, no. 1 (2014): 19, <https://jurnal.unissula.ac.id/index.php/PH/article/view/1457>.

¹³ Johny Krisnan, "Sistem Pertanggungjawaban Pidana dalam Perspektif Pembaharuan Hukum Pidana Nasional" (Tesis Universitas Diponegoro, 2008), 11, <http://eprints.undip.ac.id/17989/>.

Criminal Code had the concept of expanding its formulation by acknowledging the existence of the enactment of living law (unwritten law/customary law) as the basis for the deserving punishment of an act if the act has no equal or is not regulated in law.¹⁴ The expansion of the formulation of the principle of legality and the nature of unlawfulness cannot be separated from the premise of the principle of balance (between individual interests and community interests, between legal certainty and justice, between formal and material legal criteria/sources). Such thinking is new when compared to the new Criminal Code.

The concept of formulating the principle of guilt explicitly is a new aspect in the concept of the New Criminal Code. This concept expressly acknowledges the principle of error, but in certain cases provides for the possibility of deviations or exceptions as known in the Common Law System; namely the doctrine of strict liability or "Strict Liability" and surrogate liability or Vicarious Liability. The adherence to strict liability and the adherence to vicarious liability are also new things because so far, they have not been recognized in the current Criminal Code.¹⁵ Exceptions or deviations from a principle cannot be seen as a contradiction but can also be seen as a complement. In addition to the formulation of the general principle of guilt as stated above, the concept also emphasizes a principle that only criminal acts that are committed intentionally can be punished. If an act committed by negligence will be declared a crime, then this must be stated explicitly in the formulation of the offense concerned. Thus, the concept of viewing intent and negligence is essentially an element of criminal guilt/responsibility, not an element of delict. Another new thing is the formulation of general provisions regarding accountability for consequences.

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, and consistent with the principles. Welfare promotion policies must be woven and placed in a careful and integrated social plan

¹⁴ I Made Widnyana, *Hukum Pidana Adat Dalam Pembaharuan Hukum Pidana* (Jakarta: Fikhati Aneska, 2013), 15.

¹⁵ Panji Purnama and Febby Mutiara Nelson, "Penerapan E-Court Perkara Pidana Sebagai Salah Satu Upaya Terwujudnya Integrated Judiciary dalam Sistem Peradilan Pidana di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 10, no. 1 (2021): 99, <https://doi.org/10.33331/rechtsvinding.v10i1.661>.

to prevent unwanted access, especially those related to crime.¹⁶ 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.¹⁷

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

¹⁶ Muhammad Fajar Septiano, *Pidana Kerja Sosial Sebagai Alternatif Pidana Penjara Jangka Pendek* (Malang: Fakultas Hukum Universitas Brawijaya, 2014), 19.

¹⁷ Sigit Sapto Nugroho, *Membumikan Hukum Pancasila Sebagai Basis Hukum Nasional Masa Depan* (Solo: Iltizam, 2016), 7.

Indonesian state is the material source of Pancasila.¹⁸ 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.¹⁹ 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, and the 1945 Constitution of the Republic of Indonesia which reflects Pancasila. Then, instrumental values are 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.²⁰ 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.

¹⁸ Yusdiyanto Yusdiyanto, "Makna Filosofis Nilai-Nilai Sila Ke-Empat Pancasila Dalam Sistem Demokrasi Di Indonesia," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 10, no. 2 (2016): 222, <https://doi.org/10.25041/fiatjustisia.v10no2.623>.

¹⁹ Syamsul Fatoni, "Pembaruan Hukum Pidana Melalui Aktualisasi Nilai-Nilai Pancasila Berorientasikan Pendekatan Religius," *Ahkam: Jurnal Hukum Islam* 3, no. 1 (2015): 44, <https://doi.org/10.21274/ahkam.2015.3.1.41-64>.

²⁰ Galuh Faradhilah Yuni Astuti, "Relevansi Hukum Pidana Adat Dalam Pembaharuan Hukum Pidana di Indonesia," *Pandecta: Research Law Journal* 10, no. 2 (2015): 199, <https://doi.org/10.15294/pandecta.v10i2.4953>.

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.²¹ 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.²² 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 and 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,

²¹ Erasmus A T Napitupulu and AKSM Genoveva, "Hukuman Tanpa Penjara: Pengaturan, Pelaksanaan, dan Proyeksi Alternatif Pemidanaan Non Pemenjaraan di Indonesia." Institute for Criminal Justice Reform (ICJR), 2019. <https://icjr.or.id/hukuman-tanpa-penjara-pengaturan-pelaksanaan-dan-proyeksi-alternatif-pemidanaan-non-pemenjaraan-di-indonesia/>.

²² Hanafi Arief and Ningrum Ambarsari, "Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia," *Al-Adl: Jurnal Hukum* 10, no. 2 (2018): 175, <https://doi.org/10.31602/al-adl.v10i2.1362>.

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, if the Indonesian people still recognize "witchcraft" as something that is believed to exist. In criminal law reform, the interests of society are considered 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.²³ 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.²⁴ 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 principle of legality in the Criminal Code has expanded the view that regulates the application of laws that live in society, which results in a person being punished without any regulatory laws and regulations. The law that lives in society varies in the community of one region with other regional communities or with one indigenous community and another indigenous community.²⁵ So that in the sentencing process using the law that lives in society will be difficult. Laws that live in society can be very diverse and can be obtained from various

²³ Mokhammad Najih, "Indonesian Penal Policy: Toward Indonesian Criminal Law Reform Based on Pancasila," *Journal of Indonesian Legal Studies* 3, no. 2 (2018): 152, <https://doi.org/10.15294/jils.v3i02.27510>.

²⁴ Asshiddiqie, "Peradilan Etik dan Etika Konstitusi," 18.

²⁵ Gabrielia Febrianty Shofiana, "Philosophy, Pancasila and modern technology," *Yuridika* 29, no. 2 (2014): 139, <https://doi.org/10.20473/ydk.v29i2.363>.

sources, therefore it is necessary to study further what kind of law is used as a benchmark for laws that live in society according to the new Criminal Code. the legal category that lives in society is customary law, but the explanatory part is only an interpretation that can or cannot be obeyed.

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.²⁶ 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 by 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.²⁷ 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

²⁶ Satjipto Rahardjo, *Ilmu hukum*, ed. oleh Awaludin Marwan (Bandung: Citra Aditya Bakti, 2012), 34.

²⁷ Kadek Agus Sudiarawan, Putu Edgar Tanaya, and Bagus Hermanto, "Discover the legal concept in the sociological study," *Substantive Justice International Journal of Law* 3, no. 1 (2020): 94, <https://doi.org/10.33096/sjijl.v3i1.69>.

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.²⁸

Law enforcement policies. Criminal law reform must be in line with socio-political values. This means that the country, which 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.

²⁸ Jimly Asshiddiqie, *Penguatan Sistem Pemerintahan Dan Peradilan* (Jakarta: Sinar Grafika, 2015), 22.

C. 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. The need for renewal of criminal law in Indonesia is due to the emergence of problems related to the obsolescence of the old Criminal Code to the development of problems that arise in the midst of people's lives. Renewal of criminal law in the new Criminal Code, namely consisting of a balance of the principles of legality and the principle of error, a balance of the principles of formal and material legality and the nature of against formal and material law, guilt and criminal responsibility, reasons for the criminal write-off, corporate responsibility, sentencing guidelines, types of crimes and acts and The Problem of the Number and Duration of Criminal Cases. 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 to the values contained in Pancasila.

REFERENCES

Laws and Regulations

The 1945 Constitution of the Republic of Indonesia.
MPRS Decree No. XX/MPRS/1966 concerning DPR-GR Memorandum on the Source of the Laws of Indonesia and the Hierarchy of Indonesian Legislation.

MPR Decree No. V/MPR/1973 concerning the Review of MPRS Resolutions.

MPR Decree No. IX/MPR/1978 concerning the Need to Amend Article 3 of MPR Resolution number V/MPR/1973.

Law Number 1 Year 1946 concerning The Indonesia Criminal Code.

Books

- Abdurahman. *Aneka Masalah Hukum dalam Pembangunan di Indonesia*. Bandung: Alumni, 1979.
- Arief, Barda Nawawi. *RUU KUHP Baru Sebuah Restrukturisasi/Rekonstruksi Sistem Hukum Pidana Indonesia*. Semarang: Badan Penerbitan Universitas Diponegoro, 2012.
- Arief, Barda Nawawi. *Tujuan & Pedoman Pemidanaan (Perspektif Pembaharuan & Perbandingan Hukum Pidana)*. Semarang: Pustaka Magister, 2017.
- Asshiddiqie, Jimly. *Penguatan Sistem Pemerintahan Dan Peradilan*. Jakarta: Sinar Grafika, 2015.
- Asshiddiqie, Jimly. "Peradilan Etik dan Etika Konstitusi." In *Perspektif Baru tentang 'Rule of Law and Rule of Ethics' & Constitutional Law and Constitutional Ethichs'*. Jakarta: Sinar Grafika, 2014.
- Ekaputra, Mohammad, dan Abul Khair. *Sistem Pidana Di Dalam KUHP Dan Pengaturannya Menurut Konsep KUHP Baru*. Medan: USU Press, 2010.
- Nugroho, Sigit Sapto. *Membumikan Hukum Pancasila Sebagai Basis Hukum Nasional Masa Depan*. Solo: Iltizam, 2016.
- Rahardjo, Satjipto. *Ilmu hukum*. Diedit oleh Awaludin Marwan. Bandung: Citra Aditya Bakti, 2012.
- Septiano, Muhammad Fajar. *Pidana Kerja Sosial Sebagai Alternatif Pidana Penjara Jangka Pendek*. Malang: Fakultas Hukum Universitas Brawijaya, 2014.
- Widnyana, I Made. *Hukum Pidana Adat Dalam Pembaharuan Hukum Pidana*. Jakarta: Fikhati aneska, 2013.

Journal Article

- Aldyan, Arsyad, and Abhishek Negi. "The Model of Law Enforcement Based on Pancasila Justice." *Journal of Human Rights, Culture and Legal System* 2, no. 3 (2022): 178–90. <https://doi.org/10.53955/jhcls.v2i3.51>.
- Arief, Hanafi, and Ningrum Ambarsari. "Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia." *Al-Adl: Jurnal Hukum* 10, no. 2 (2018): 173–90. <https://doi.org/10.31602/al-adl.v10i2.1362>.
- Astuti, Galuh Faradhilah Yuni. "Relevansi Hukum Pidana Adat Dalam Pembaharuan Hukum Pidana di Indonesia." *Pandecta: Research Law Journal* 10, no. 2 (2015): 195–214. <https://doi.org/10.15294/pandecta.v10i2.4953>.
- Christianto, Hwian. "Pembaharuan Makna Asas Legalitas." *Jurnal Hukum & Pembangunan* 39, no. 3 (19 Juli 2017): 347–375. <http://dx.doi.org/10.21143/jhp.vol39.no3.1512>.
- Fatoni, Syamsul. "Pembaruan Hukum Pidana Melalui Aktualisasi Nilai-Nilai Pancasila Berorientasikan Pendekatan Religius." *Ahkam: Jurnal Hukum Islam* 3, no. 1 (2015): 41–64. <https://doi.org/10.21274/ahkam.2015.3.1.41-64>.

- Mandiana, Sari. "Konsepsi Pertanggungjawaban Pidana Sebagai Sistem Normatif." *Jurnal Hukum PRIORIS* 5, no. 2 (2016): 135–47. <https://trijurnal.lemnit.trisakti.ac.id/prioris/article/view/559>.
- Marpaung, Ramsen, and Tristam Pascal Moeliono. "Perbandingan Hukum antara Prinsip Habeas Corpus dalam Sistem Hukum Pidana Inggris dengan Praperadilan dalam Sistem Peradilan Pidana Indonesia." *Jurnal Wawasan Yuridika* 5, no. 2 (2021): 224–48. <http://dx.doi.org/10.25072/jwy.v5i2.494>.
- Najih, Mokhammad. "Indonesian Penal Policy: Toward Indonesian Criminal Law Reform Based on Pancasila." *Journal of Indonesian Legal Studies* 3, no. 2 (2018): 149–74. <https://doi.org/10.15294/jils.v3i02.27510>.
- Nugroho, Iwan. "Nilai-Nilai Pancasila Sebagai Falsafah Pandangan Hidup Bangsa Untuk Peningkatan Kualitas Sumber Daya Manusia Dan Pembangunan Lingkungan Hidup." *Jurnal Konstitusi* 3, no. 2 (2010): 107–28. <http://publishing-widyagama.ac.id/ejournal-v2/index.php/jk/article/view/321>.
- Purnama, Panji, and Febby Mutiara Nelson. "Penerapan E-Court Perkara Pidana Sebagai Salah Satu Upaya Terwujudnya Integrated Judiciary dalam Sistem Peradilan Pidana di Indonesia." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 10, no. 1 (2021): 97–116. <https://doi.org/10.33331/rechtsvinding.v10i1.661>.
- Shofiana, Gabrielia Febrianty. "Philosophy, Pancasila and modern technology." *Yuridika* 29, no. 2 (2014): 139–48. <https://doi.org/10.20473/ydk.v29i2.363>.
- Sudiarawan, Kadek Agus, Putu Edgar Tanaya, and Bagus Hermanto. "Discover the legal concept in the sociological study." *Substantive Justice International Journal of Law* 3, no. 1 (2020): 94–108. <https://doi.org/10.33096/sjjil.v3i1.69>.
- Sugiharto, Gatot. "Relevansi Kebijakan Penetapan Pidana Kerja Sosial dalam Sistem Pemidanaan di Indonesia." *Jurnal Ilmu Hukum Novelty* 7, no. 1 (2016): 83–95. <http://dx.doi.org/10.26555/novelty.v7i3.a3936>.
- Wahyuningsih, Sri Endah. "Urgensi Pembaharuan Hukum Pidana Materiel Indonesia Berdasarkan Nilai-Nilai Ketuhanan Yang Maha Esa." *Jurnal Pembaharuan Hukum* 1, no. 1 (2014): 17–23. <https://jurnal.unissula.ac.id/index.php/PH/article/view/1457>.
- Yusdiyanto, Yusdiyanto. "Makna Filosofis Nilai-Nilai Sila Ke-Empat Pancasila Dalam Sistem Demokrasi Di Indonesia." *FIAT JUSTISIA: Jurnal Ilmu Hukum* 10, no. 2 (2016): 221–412. <https://doi.org/10.25041/flatjustisia.v10no2.623>.

Thesis or Dissertations

- Krisnan, Johny. "Sistem Pertanggungjawaban Pidana dalam Perspektif Pembaharuan Hukum Pidana Nasional." Thesis, Universitas Diponegoro, 2008. <http://eprints.undip.ac.id/17989/>

Website Content

- Napitupulu, Erasmus A T, dan AKSM Genoveva. "Hukuman Tanpa Penjara: Pengaturan, Pelaksanaan, dan Proyeksi Alternatif Pemidanaan Non Pemenjaraan di Indonesia" Institute for Criminal Justice Reform (ICJR), 2019. <https://icjr.or.id/hukuman-tanpa-penjara-pengaturan-pelaksanaan-dan-proyeksi-alternatif-pemidanaan-non-pemenjaraan-di-indonesia/>.