



THE WESTERN LEGAL SYSTEM IN INDONESIAN CRIMINAL PROCEDURAL LAW REFORM: A GLOBALIZATION AND LEGAL POLITICS PERSPECTIVE

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ABSTRACT

In the field of law, the influence of globalization is reflected in the legal politics of procedural law reform, which is currently still in the form of legislation draft. This study aims to analyze the influence of globalization on the reform of Indonesian criminal procedural law in relation to national legal politics. This research is normative legal research, which focuses on studying library materials. Based on the results of a comprehensive study, the Draft Criminal Procedure Code includes a new system originating from the Western legal system, such as an adversary system in court trials. Adopting the adversary system into the Draft Criminal Procedure Code is a very revolutionary legal and political reform of the criminal procedural law. Various challenges will be faced along with the adoption of the new legal system. Changes in the legal culture of law bearers are also a key variable in the success or failure of a Western legal system implementation. Although the concept of the Criminal Procedure Code is colored by the Western legal system, it does not conflict with national legal politics because it reflects universal legal principles, namely equality.

A. INTRODUCTION

Criminal procedural law in Indonesia is currently regulated in Law Number 8 of 1981 concerning Criminal Procedural Law (Criminal Procedure Code). Criminal Procedure Code is the masterpiece of the Indonesian nation to replace the previous criminal procedural law, *Herzien Inlandsch Reglement*

(H.I.R), a Dutch colonial heritage. The law is more than 40 years old, so it is considered out of date. There are several reasons why the Criminal Procedure Code in Indonesia must be totally updated, such as society's development and legal needs. The rapid pace of technological change in the last few decades has led to drastic changes in the way we interact, communicate, and access information.¹ The development of increasingly sophisticated technology has given rise to new challenges, especially regarding the right to privacy. Such thing affects the types and modes of crime,² the ratification of several international conventions such as the International Covenant on Civil and Political Rights (ICCPR), and globalization. There are several weaknesses in the current criminal procedural law, which result in law enforcement not being implemented optimally to meet the expectations of justice seekers. In its implementation, the Criminal Procedure Code contains various weaknesses.³ There are several problems in the practice of handling criminal cases that originate from the incompleteness of the provisions of the Criminal Procedure Code.

Even when compared with H.I.R, the Criminal Procedure Code is much better because it places more emphasis on protecting the human rights of suspects and defendants. The Criminal Procedure Code has provided detailed arrangements regarding the protection of the rights of suspects and defendants. However, there are still provisions that are not in accordance with the mandate of the ICCPR. The Criminal Procedure Code authorizes law enforcers to make detentions for a sufficiently long period of time (the total time from the investigation stage to the cassation hearing at the Supreme Court is 400 days). Meanwhile, Article 9, point 3 of the ICCPR confirms that " Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release." The United States interprets as soon as possible (promptly), which is two twenty-four hours. In Europe, it is generally interpreted as a maximum of twenty twenty-four hours except for terrorism, which is 6 (six) days or 1 (one) day of arrest plus 5 (five) days of detention (Academic Manuscripts of the Criminal Procedure Code, 2012).

Criminal procedural law is not a static law but a dynamic law.⁴ This is in line with the expert's opinion, which states that the theory of static law is that

¹ Rr. Dijan Widiowati. "An Effective Legal Implementation Against Cyberbullying Perpetrators Among Adolescents." *Jurnal Pembaharuan Hukum* 10, no. 3 (2023): 413.

² Denny Suwondo. "The Legal Protection of Personal Data in the Perspective of Human Rights." *Law Development Journal* 5, no. 4 (2021): 420.

³ M. Zen Abdullah. "Urgensi Perlunya Pembaharuan Hukum Acara Pidana Nasional di Indonesia yang Lebih Responsif." *Jurnal Ilmiah Universitas Batanghari Jambi* 20, no. 1 (2020): 282.

⁴ Apri Listiyanto. "Pembaharuan Sistem Hukum Acara Pidana." *Rechts Vinding* 2 (2017): 3.

law is a system of norms that applies the law in its resting state. Meanwhile, dynamic legal theory is the process of creating laws and applying laws that run. What is important is that the process itself is governed by law.⁵ As part of positive law, each law is static and cannot keep up with societal developments.⁶ It is universally recognized that reform of our current system of law and criminal procedure is necessary. The criminal justice system is complex, managed by all levels of government and shaped by multiple actors. Reforms can be appropriately directed at making criminal law enforcement more effective in achieving the primary goal of crime prevention while at the same time safeguarding individual liberties,⁷ societal liberties, and other valued social goals.⁸ Regulations related to criminal procedural law, both in national and international contexts, are also developing rapidly. Reform of Indonesia's criminal procedural law is necessary and cannot be postponed any longer.

Law reform plays a fundamental role in facilitating progressive change in society, as it is the process by which law develops to achieve unanimity between the values and needs of society.⁹ The law always moves dynamically, following the development of society and keeping it in line with the pace of development of science and technology. Legal products are constantly changing and changing according to the times and changes in society because the law is not in a vacuum. Thus, it can also be said that the law as a service to the needs of the community must be updated so that it is actually up to date with the needs of the community being served.¹⁰ In the continuous law reform, Pancasila must still be the frame of mind and the source of its values.

Efforts to reform criminal procedural law cannot be separated from the influence of globalization. The world feels smaller, and globalization in the economic, financial, and trade fields is also impacting the legal sector. No country can shut itself tightly from these changes. The drafters of the Criminal Procedure Code realized that efforts to reform the law also need to learn from the legal system of Western countries, which are considered good and in accordance with the needs of law enforcement in Indonesia. In imitating the Western legal system, of course, it must be carried out carefully and based on

⁵ Hans Kelsen. *Teori Hukum Murni: Dasar-Dasar Ilmu Hukum Normatif* (Bandung: Nusamedia, 2019), 26.

⁶ A. Zainal Abidin Farid. *Hukum Pidana* (Jakarta: Sinar Grafika, 1995), 113.

⁷ Barack Obama. "The president's role in advancing criminal justice reform." *Harvard Law Review* 130, No. 3 (2016): 814.

⁸ Russell M. Coombs. "Criminal Law Reform and the Law Reviews." *William and Mary Law Review*. 13 (1971): 159.

⁹ Hannah McGuire. "Indonesian Law Reform and the Promotion of Justice: An Analysis of Law Reform in the Post-Soeharto Period." *Brawijaya Law Journal* 3, no. 1 (2016): 67.

¹⁰ Moh. Mahfud. *Membangun Politik Hukum, Menegakkan Konstitusi* (Depok: RajaGrafindo Persada, 2017), 54.

in-depth academic studies. It is thus important that there are no problems or obstacles during its implementation.

The reform of criminal procedural law in Indonesia is closely related to the country's legal politics. The purpose and reasons for the enactment of a particular regulation can be referred to as legal politics. Legal politics is a legal policy or official line (policy) regarding law that will be enforced either by making new laws or replacing old ones to achieve state goals. Thus, legal politics is a choice about the laws that will be enforced and the laws that will be repealed or not enforced, all of which are intended to achieve the goals of the state as stated in the Preamble of the 1945 Constitution.¹¹ Thus, through legal politics, the state makes a draft and plans for the development of national law in Indonesia. Thus, through legal politics, the state makes a draft and plans for the development of national law in Indonesia.

Incorporating the Western legal system into the Indonesian criminal procedural law system is part of national legal politics. The use of part of the adversarial system by the Draft Criminal Procedure Code,¹² is a legal policy that must be based on strong and comprehensive considerations of philosophical values, namely the values contained in Pancasila. Pancasila functions as a margin of appreciation, providing signs that must be considered in efforts to reform the criminal procedural law. The function of legal politics is to provide an explanation of how the law should be formed in accordance with the goals of the state (in the Preamble of the 1945 Constitution) and developments in the international world (globalization). Based on the description in the introduction above, the following legal issues can be formulated: how is the influence of globalization on the reform of the Indonesian criminal procedural code and the relationship between the Western legal system and national legal politics in criminal procedure code reform.

B. RESEARCH METHODS

This research adopts a normative legal method. Normative legal research that focuses on the study of library materials is a research method that involves the analysis and interpretation of various legal documents that form the basis of a legal system. The library materials used consist of two main types: primary legal materials and secondary legal materials. Primary legal materials are legal sources that have direct power and authority in the legal system, such as constitutions, laws, executive decisions, and court decisions. Analysis of primary legal materials helps understand the structure and basic principles governing a law. Meanwhile, secondary legal materials include

¹¹ Mahfud. *Membangun Politik Hukum*, 5.

¹² Robert R. Strang. "More adversarial, but not completely adversarial: Reformasi of the Indonesian Criminal Procedure Code." *Fordham International Law Journal* 32, no. 1 (2008): 188.

textbooks, journals, and legal dictionaries. This material provides a deeper understanding of the interpretation, application, and legal developments that occur in the field. Researchers can complement their understanding of specific legal issues by utilizing secondary legal materials and gaining new insights that enrich their analysis.¹³

C. RESULT AND DISCUSSION

1. Globalization and Criminal Procedure Code Reform

The term globalization today is a jargon that is very popular in various circles. Globalization in various fields of life forces policy makers in various countries to incorporate global aspects into development strategies in the fields of economy, law, socio-politics, culture, and science and technology. This needs to be done so that these countries have a comparative and competitive advantage in various fields. Globalization is not something new; the spirit of European enlightenment in the Middle Ages, which encouraged the search for a new world, can be categorized as a current of globalization. The industrial and transportation revolutions in the XVIII century were also the drivers of globalization; their speed and reach distinguished them from the flows of globalization in the last decades.¹⁴

Globalization is usually considered to be only related to the economy, which involves global relations. However, globalization is not only about economic interdependence but also the problem of the transformation of time and space in human life. Events that occur in distant places, whether related to the economy or not, affect society directly and immediately compared to any previous time. This is inseparable from the services of the communication revolution and the spread of information technology.¹⁵

Globalization is a contemporary trend in humans, companies and institutions to expand their reach a nation or civilization, towards participation and identification with the world community.¹⁶ The impact of globalization affects various areas of life. There is a tendency for the emergence of countries without borders (the ends of nation state). Globalization leads to a process where people in the world can reach one another or be connected to each other in all aspects of their lives, whether in culture, economics, politics,

¹³ Morris L. Cohen and Kent C. Olson. *Legal research in a nutshell* (St. Paul, Minnesota: West Academic Publishing, 1996), 3.

¹⁴ Ahmad Khumaidi Ja'far. "Pengaruh globalisasi terhadap pembangunan hukum ekonomi di Indonesia." *ASAS: Jurnal Hukum Ekonomi Syariah* 2, no. 2 (2010): 16.

¹⁵ Setyo Utomo. "Pengaruh pembangunan di era globalisasi terhadap pemenuhan hak asasi manusia atas lingkungan hidup yang baik dan sehat." *Jurnal Pembaharuan Hukum* 1, no. 3 (2014): 260.

¹⁶ Michael D. Pendleton. "A New Human Right-The Right to Globalization." *Fordham International Law Journal* 22, no. 5 (1998): 2052

technology or the environment.¹⁷ This situation cannot be allowed to continue without norms or rule of law.¹⁸

In the global era, the existence of law is considered important because changes in various fields require the existence of norms or rules of law that can provide direction to noble ideals, such as when the idea of trade liberalization was first born, namely wanting economic equality and prosperity for the world community, which until now was considered unfair due to the practice of colonialism. Without clear legal rules, globalization will turn into a free market, because those who will control the economy and market mechanisms are those who are relatively strong. If this is the reality, then globalization will only give birth to a new era of colonialism.¹⁹

Globalization has accelerated in the last few decades as a process of intensifying awareness of the world as a legal entity. The enormity of the flow of globalization sociologically has a very fundamental impact on determining the direction and pattern of change as well as the social structure of society. In the context of legal development, our task is not only to respond to the Indonesian legal system but also to be able to position ourselves and carry out our roles in the midst of a global situation.²⁰ Law globalization will cause developing country regulations regarding investment, trade, services, and other economic fields to approach those of developed countries. Legal globalization will cause developing countries' regulations regarding investment, trade, services, and other economic fields to approach developed countries.²¹

Satjipto Rahardjo stated the government had tried to take many initial steps to respond to the internationalization of the law, including in the economic law sector; ²² the government has issued regulatory and deregulation policy packages several times. It must be admitted that in principle, regulation/deregulation efforts, which incidentally are the locomotive of economic capitalization, are faced with strong Indonesian nationalism and Indonesian economic citizenship, which is adhered to by the constitution and Indonesian society. This paradoxically different vision and policy character has given rise to the ambiguity in the direction of Indonesia's current legal (economic) development. Unsurprisingly, developed countries accuse it of being a half-hearted policy.

¹⁷ Budi Winarno. *Globalisasi Wujud Imperialisme Baru Peran Negara dalam Pembangunan* (Yogyakarta: Tajidu Press, 2004), 39.

¹⁸ Satjipto Rahardjo. "Pembangunan Hukum Di Indonesia Dalam Konteks Global." *Perspektif* 2, No. 2 (1997): 5.

¹⁹ Endang Sutrisno. *Bunga Rampai Hukum & Globalisasi* (Bogor: In Media: 2014), 86-87.

²⁰ Rahardjo. "Pembangunan Hukum Di Indonesia." 6.

²¹ Erman Rajagukguk. "Peranan Hukum Dalam Pembangunan Pada Era Globalisasi." *Jurnal Hukum* 11, no. 6 (1999): 114.

²² Rahardjo. "Pembangunan Hukum Di Indonesia." 7.

The current process of nationalization has not yet been completed, but a new process known as the process of globalization has entered its doorstep. This process has more essence as an economic and socio-cultural process than merely a political process, incidentally a political process inspired by the spirit and understanding of nationalism, with its non-negotiable aspirations to create national unity under the control of strong legal leadership. However, now reality has increasingly turned such ideals into mere illusions. Now, the development of life no longer stops at the course of the process of integrating local communities into national units but continues on to the process, which is increasingly ongoing.²³

Globalization has two main characteristics: first, increased concentration and monopoly of various resources and economic power by transnational companies as well as by global companies and funds. If in the past a multinational company only dominated a product, today a large transnational company specializes in producing and selling various kinds of products and services in increasingly diverse fields. It is even predicted that these transnational companies will produce a wider variety of products depending on market demand in the countries where they operate. Second, in the policies and mechanisms for making national policies. National policies (which cover the social, economic, cultural, and technological fields) that are currently under the jurisdiction of a government and the people in one territory of the nation state are shifting to being under the influence or being processed by international agencies or large corporations of economic actors, international finance.²⁴

Andrew Clapham is also concerned about the dramatic effects of globalization, namely causing fragmentation and disintegration. This is stated in the paper as follows: the effects of globalization can also bring fragmentation and disintegration. The diminishing power of the state and its capacity for control in the economy and not infrequently in political matters is producing a shift of culture. Economic markets, markets for goods, and systems for the interchange of technology and knowledge are very rapidly becoming global. Cultures, however, are taking a different and sometimes opposite path.²⁵

Since the late 1980s, the transformation of legal systems in developing countries has coincided with what has been referred to as globalization. Globalization has indeed become one of the main driving factors in the efforts

²³ Soetandyo Wignjosoebroto. *Pluralisme Hukum dalam Kehidupan Global Hukum dalam Masyarakat: Perkembangan dan Masalah* (Malang: Bayu Media, 2008), 237.

²⁴ Martin Khor. *Globalisasi Perangkap Negara-Negara Selatan* (Yogyakarta: Cidelaras Pustaka Rakyat Cerdas, 2002), 11.

²⁵ Andrew Clapham. "Globalisation and the rule of law." *Review-International Commission of Jurists* (1999): 23.

of developing countries to change their legal systems.²⁶ Globalization as a process has indeed accelerated in the last few decades. Still, the actual process has been going on since long ago solely because of the predisposition of human beings to live together in one area. Because of that, they are conditioned to relate and establish relationships with each other.

In the field of law, globalization has resulted in the harmonization of the national legal system. Globalization has forced States wishing to become members of a globalized international community to have the same legal rules.²⁷ According to Francis Snyder, in the future, domestic jurisdiction will be more internationalized in the field of law.²⁸ Globalization has influenced everything, such as crime, criminals, and the victim, the process of committing a crime, the trial method, reasons to prove a claim, criminalization and decriminalization, and criminal policy.²⁹

Westernization of the legal system is also unavoidable in efforts to reform the Criminal Procedure Code in Indonesia. In efforts to reform national law, it cannot be separated from the legal politics of a country. The Criminal Procedure Code Bill incorporates several systems originating from the Western world, such as the adversary system, the right to remain silent, and preliminary examining judges. This is, of course, interesting to analyze from a legal-political perspective. The purpose and reasons for enacting a particular regulation can be referred to as legal politics.

Understanding the dynamics of globalization with all its dimensions, globalization will also have an impact on law. Globalization of law will cause developing country regulations regarding investment, trade, services, and other economic fields to approach those of developed countries (Convergency). According to Ralf Michaels, the impact of globalization in legal thinking seems to be very limited, and this is due to various reasons, including that globalization is generally accepted as a new concept by society, which is still considered a vague concept in public discourse.³⁰

In this era of globalization, developed countries are in a superior position to developing countries in all aspects of life, especially the economic sector. In the field of law, the influence of the legal systems of developed

²⁶ Hikmahanto Juwana. "Law and Development under Globalization. The Introduction and Implementation of Competition Law in Indonesia." *Paper Forum of International Development Studies*, 2004. 2.

²⁷ Hikmahanto Juwana. "Reform of Economic Laws and its Effects on the Post-crisis Indonesian Economy." *The Developing Economies* 43, no. 1 (2005): 80.

²⁸ Francis G. Snyder. "Economic Globalisation and the Law in the Twenty-first Century." *The Blackwell Companion to Law and Society* 624 (2004): 625.

²⁹ Shirin Ahmadi Dastjerdi and Abbas Sheikholeslami. "The effect of globalization on the national criminal law systems." *Library Philosophy & Practice* (2019): 4.

³⁰ Ralf Michaels, "Globalisation and Law: Law Beyond the State." In *Law and Social Theory*, ed. Reza Banakar and Max Travers (Oxford: Hart, 2014), 287.

countries, especially the United States with its Anglo-American system, is very visible in various regulations in developing countries. Developing countries must adjust the legal system of developed countries solely so that their economic interests can be achieved. In the field of law, globalization has resulted in the harmonization of the national legal system. Globalization has forced countries that wish to become members of a globalized international community to have the same number of legal rules.

The process of globalization that goes hand in hand with capitalism and liberalism cannot be prevented in the life of the people of the state due to the fact that territorial areas have experienced a borderless process so that the regulations formed in the laws and regulations that are enacted are often influenced by values that contain liberalism. The norms that are formed must still refer to the view of life as a nation and state, state ideology, and the source of all applicable legal sources, namely Pancasila is *Weltanschauung*, the philosophical basis on which the state and state ideology of the Indonesian nation state is based. Every nation-state needs a *Weltanschauung*, or the philosophical foundation of the nation and state. On this philosophical basis, the vision, mission, and goals of the country are formulated. Without it, the country moves without guidelines. For this reason, Pancasila must be seen as a whole as a "national guideline" as well as "national standards, norms, and principles which also contain at the same time human rights and human responsibility."³¹

2. Legal Politics as a Guidance in Reforming the Criminal Procedure Code

Legal materials or products can always change and be changed according to the era of development and changes in society because the law is not in a vacuum. Thus, it can also be said that the law, as a service to the needs of the community, must be updated to meet the needs of the community it serves.³² The Criminal Procedure Code is also inseparable from the need for total reform, bearing in mind the circumstances and environmental conditions that have changed a lot. Efforts to reform the Criminal Procedure Code are, of course, based on the results of an evaluation of the contents of the norms of criminal procedural law that are currently in force. Provisions of the Criminal Procedure Code that are considered to contain weaknesses or are incomplete or unclear must be corrected so that law enforcement can be carried out as best as possible.

³¹ Siswono Yudo Husodo. "Konsep Negara Kesejahteraan dalam Pembangunan Sistem Kenegaraan Indonesia." *Seminar Nasional dalam rangka Dies Natalis Univeersitas Pancasila*. Jakarta, 2004: 7.

³² Andrew. "Globalisation and the rule of law." 30.

According to Marc Galanter, there are several characteristics of modern law, including:³³

- a. The regulations used are uniform and steady in their application
- b. The law is transactional (not determined by status).
- c. The administrative organization is bureaucratic.
- d. The legal system is open for improvements, in the sense that it is not sacred and rigid.

With reference to Galanter's opinion, the Criminal Procedure Code can be categorized as a modern law because it is very open to reform in accordance with the demands of the needs of the community and the development of the era. The drafters of the Criminal Procedure Code conducted a lot of studies on the criminal procedural law system of Western countries, which are identified as developed countries, such as the United States, for material for reforming Indonesia's criminal procedural law. The question is, what is the urgency of looking at the criminal procedural law system of Western countries. Is there an urgent need to borrow the Western criminal procedure law system to remedy the various deficiencies of Indonesia's current criminal procedure law? Indeed, there is a tendency in legal reform efforts in developing countries to be oriented towards the legal system of Western countries as a basis for improving the legal system. In fact, from the cultural, value, and institutional aspects, it is not certain that the Western legal system is suitable to be applied in developing countries like Indonesia. Each country must have a basic state philosophy that is used as the basis for the practice of state life, including its legal system.

From what is presented in the academic text of the Criminal Procedure Code Bill, it is clear that the drafters are trying to modernize the Indonesian Criminal Procedure Code by adopting systems in other countries which actually come from different legal families, namely Anglo-American in the form of a trial model that leads to an adversarial system. The courage of the Drafting Team for the Criminal Procedure Code to include an adversarial system is a progressive and revolutionary step, considering that the old Criminal Procedure Code adhered to an inquisitorial system originating from the Continental European legal family. Indonesia, as a former Dutch colony, inherited the legal system of its colonizing country, namely Continental Europe.

In Indonesia, too, people quickly perceive concepts that actually have origins that are not rooted in the country itself as something that has universal

³³ Marc Galanter. "The modernization of law." *In Modernization: The dynamics of growth*, ED. Myron Weiner (New York: Basic Books, 1966), 153.

reach and power, and therefore, there is no need to doubt their application and use here. The rule of law (ROL), along with all its supporting tools, such as due process, is a concept that does not originate from the country itself. Using the lens of law sociology to observe the ROL concept will show that it is an ethnocentric concept, meaning that it is bound to a particular cultural area and values and, therefore, is an expression of the cultural attitudes of that region. If we assume that the concept of ROL can simply be used in Indonesia, then we have actually ignored the social foundations and philosophies on which the concept was built. In general, it can be said that the concept of ROL is a conceptualization of the law order of a liberal society.³⁴

Since the end of the Second World War, and especially after the end of the Cold War, the American legal system has arguably been the most influential legal system in the world. American influence on other countries' legal systems have ranged from general influences on jurisprudential approaches to law (e.g., legal realism and pragmatism, law and economics, rights discourse, and so on) to influences on specific areas of law. This undeniable American influence on other legal systems has led a number of commentators, both in the United States and abroad, to suggest that a large number of legal systems, both at the national and international levels, may gradually come to resemble or imitate the American legal system and thus became Americanized.³⁵ The desire to instill the identity of Pancasila in the body of laws and regulations in Indonesia is not just an emotional demand and an attitude of being unsympathetic to a liberal or socialist legal system but has (supposedly) been a demand of the Republic of Indonesia, as a constitutional state with an ethnic, geographical, and ethnic background, social, economic and political differences from developed countries, especially western countries. The motivation for forming national laws and regulations above needs to be increased and maintained because currently, in the third world, there is a tendency to imitate Western legal models, even though the social and cultural risks are (to be) great too. Traditional cultural values often hinder third world countries want to apply the legal model as found in the West,³⁶ and morality is higher than the law itself.³⁷

³⁴ Satjipto Rahardjo. *Hukum, Pembangunan, dan Pendidikan Hukum Di Indonesia* (Jakarta: Lembaga Penerbit Fakultas Ekonomi Universitas Indonesia, 2006), 32.

³⁵ Maximo Langer. "From legal transplants to legal translations: The globalization of plea bargaining and the Americanization thesis in criminal procedure." *Harvard International Law Journal* 45 (2004): 5.

³⁶ Satjipto Rahardjo. *Pemanfaatan Ilmu Sosial bagi Pengembangan Ilmu Hukum* (Yogyakarta: Genta Publishing, 2010), 47.

³⁷ Faizal Kurniawan et al., "Justice as a Meta Value of Corrective Justice in Providing Restitution for Unjust Enrichment: A Study on Rules, Norms, Principles, and Foundation." *Jurnal Hukum* 39, no. 2 (2023): 200.

The tendency of developing countries to imitate the Western legal system can be seen in the Criminal Procedure Code Bill, where several concepts originate from the Western legal system, particularly the Common Law or Anglo-American systems. One of the Western legal systems referred to by the Criminal Procedure Code Bill is the adversarial trial model. The adversarial system originates from the common law tradition, which is growing rapidly in Anglo-American countries, especially the United States. The American legal system is an adversarial system.³⁸ The adversarial system is a more democratic and liberal conception, while the inquisitorial system is more authoritarian and non-liberal.³⁹

The adversarial system thrives in the United States, a country with a very strong liberal and individual ideology. The adversarial system is very suitable in the United States but not necessarily suitable in Indonesia, which adheres to the ideology of Pancasila, which adheres to religious communal values. The values contained in Pancasila are in stark contrast to the characteristics of the adversarial system, which emphasizes personal freedom when resolving disputes in court. The character of the battle in resolving disputes, which is strongly attached to the adversarial system, is in stark contrast to the culture of Indonesian society, which prioritizes deliberation in resolving every problem. The inclusion of the Western legal system in reforming a law, especially the Criminal Procedure Code, will certainly raise pros and cons. Furthermore, the question arises whether the Western legal system, especially the adversary system, is in accordance with legal politics in Indonesia.

The process of national law reform is related to the legal politics of a country. The purpose and reasons for the enactment of a particular regulation can be referred to as legal politics. Legal politics is a legal policy or official line (policy) regarding law that will be enforced either by making new laws or replacing old ones to achieve state goals. Thus, legal politics is a choice of laws to be enforced and laws to be repealed or not enforced, all of which are intended to achieve the goals of the state as stated in the Preamble of the 1945 Constitution.⁴⁰

According to Sunaryati Hartono, Indonesian legal politics, on the one hand, cannot be separated from the social and traditional reality that exists in Indonesia itself. On the other hand, as a member of the world community, Indonesian legal politics cannot be separated from reality and international legal politics. Thus, the factors that will determine legal politics are not solely

³⁸ Justin Fong. "Bringing Guns to a Gun Fight: Why the Adversarial System is Best Served by a Policy Compelling Attorneys to Ethically Mine for Metadata." *Washington University Jurisprudence Review* 7, no 5 (2014): 107.

³⁹ Maximo. "From legal transplants." 6.

⁴⁰ Kurniawan et al. "Justice as a Meta Value." 200.

determined by what we aspire to or depend on the will of lawmakers, practitioners, or theorists alone but are also determined by the reality and legal developments in other countries and developments in international law.⁴¹

Philosophically, the Criminal Procedure Code Bill makes Pancasila the main source of law; this is emphasized in the philosophical basis that Pancasila is the Ursprungsnorm, the source of all legislation in Indonesia, especially the second precept, which is directly related to the Criminal Procedure Code, namely "just and civilized humanity." By reading the philosophical basis of the Criminal Procedure Code Bill, from a political perspective, the law has fulfilled the requirements as stated by Moh. Mahfud that the politics of legal development must be based on Pancasila as the basis for achieving state goals.⁴²

It is a fact that cannot be denied that issues related to human rights have become universal values. This value is reflected throughout the world in such a way that this value no longer belongs to and is the monopoly of the modern Western world but belongs to humanity as a whole. The culture and values of law and justice among nations are getting closer. This is a result of the mutual independence of the people of the nation from one another. So, it is very difficult to say that someone has been exposed to the values of liberalism or individualism, especially those concerning universal values.⁴³

The reform of Indonesian criminal law essentially means a reorientation and positive criminal law reform seen from the concepts of the central values of the Indonesian nation (from socio-philosophical, socio-political, and socio-cultural aspects) which underlie social policy, criminal policy, and law enforcement policy law in Indonesia.⁴⁴

The provisions of the Criminal Procedure Code contain universal principles. This means that this principle can be found in criminal procedural law in the country, either in Civil Law or Common Law. Principles such as the independent judiciary, non-self-incrimination, the presumption of innocence, speed trial, equality before the law, legal counsel, fair trial, and Liberty are universal. These principles are also fundamental principles in the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights, which most countries in the world, including Indonesia, have ratified. Indonesia, as a country participating in the convention, is obliged to

⁴¹ Sunaryati Hartono. "Perspektif Politik Hukum Nasional Sebuah Pemikiran." *Jurnal Hukum & Pembangunan* 10, no. 5 (1980): 468.

⁴² Mahfud. *Membangun Politik Hukum*, 5

⁴³ M. Yahya Harahap. *Pembahasan Permasalahan dan Penerapan KUHAP* (Jakarta: Sinar Grafika, 2014), 28.

⁴⁴ Barda Nawawi Arief. *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana* (Bandung: Citra Aditya Bakti, 1998), 112.

apply it to the national legal system, particularly the provisions of the Criminal Procedure Code.

The western legal system, especially adversarial system that relies on individualistic ideology and liberalism, is not suitable to be applied in Indonesia, which has a national philosophy and view of life based on Pancasila. However, as explained in the previous section, with regard to the provisions of the Criminal Procedure Code, there are principles that are universal. This means that this principle is not only found in Western countries with individualism and liberalism but also in countries outside of that understanding. The principle of protecting the human rights of suspects/defendants is regulated in the norms of criminal procedural law, both in common law/anglo-american and civil law countries. The adversary system upholds the principle of equality among human beings. The values of equality are also embraced by Pancasila as the ideology of the Indonesian state. In adopting the Western legal system, especially the adversary system, it must be carried out carefully, choosing a system that is in accordance with the noble values of Pancasila.

D. CONCLUSION

Globalization in all walks of life also influences the process of legal reform in a country. Globalization has forced countries that wish to become members of a globalized international community to have the same set of laws. The influence of legal globalization is clearly visible in the reform of Indonesian criminal procedural law. The Criminal Procedure Code is more than 40 years old and is considered to be no longer in accordance with the developments and legal needs of society, so it needs to be reformed and replaced with a completely new law (total penal reform). The Draft Criminal Procedure Code includes a new system that leads to an adversarial system in court proceedings. The adversarial system is a system that comes from the common law family, especially Anglo-American. Indonesia, as a former Dutch colony, adheres to an inquisitorial system, which is a typical civil law legal system. From a legal and political perspective, the reform of criminal procedural law must be based on Pancasila as the *Ursprungsnorm*, the source of all legislation in Indonesia, especially the second precept, which is directly related to the Criminal Procedure Code, namely "just and civilized humanity." The Criminal Procedure Code must be based on Pancasila values by using its function as a margin of appreciation contained in the Pancasila precepts. Reading the philosophical foundations of the Criminal Procedure Code Bill from a legal and political perspective has fulfilled the requirements that legal development politics must be based on Pancasila as the basis for achieving state goals. Pancasila, as the basis for achieving the goals of the state, gave birth to guiding principles of law.

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