

## **Pancasila and the Objectives of the Development of Indonesian Criminal Law**

**Amirul Mukminin Suryoprobo**

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail:  
[AmirulMukmininSuryoprobo.std@unissula.ac.id](mailto:AmirulMukmininSuryoprobo.std@unissula.ac.id)

**Abstract.** *For the Indonesian people, the development of national law needs to be carried out not only to follow/cope with developments in society, but the development of national law must be carried out by the Indonesian people because the current law - especially criminal law - is largely a legacy of the colonial government. As an independent country, developing laws that are in accordance with state principles is a must. This requirement is stated in the Indonesian constitution, namely the 1945 Constitution. Therefore, legal development, which is a series of processes from rule breaking then followed by rule making, contains an understanding that what must be done in legal development is not only changing the texts of the articles in the law. -law but more than that changes the spirit of the law itself so that it conforms to the ideology of the Indonesian nation, namely Pancasila. Basically, the development of national law is to reconstruct the law so that it is in accordance with the soul or personality of the Indonesian nation, as well as in an effort to keep up with developments in society and. Therefore, the development of national law should be based on the values that exist in society, which are believed to be true and binding on society, meaning that they serve as guidance in life. Based on this, in carrying out the development of national law it must be based on the principles contained in Pancasila values because Pancasila values are actually the crystallization of religious values and traditional values which are believed to be true by the Indonesian people and is a guide to life.*

**Keywords:** *Criminal; Religious; Value.*

### **1. Introduction**

Sustainable legal development is a necessity that must be carried out by a nation in keeping up with the development of society and the development of crime, because basically the development of crime always follows the development of society itself. According to Barda Nawawi Arief, legal development must always be adjusted to the dynamics of life (Roeslan Saleh, 1984: 41). In this context, the study of legal reform is a generational study (Barda Nawawi Arief, 2009: 2). Furthermore,

that legal reform/development is essentially a sustainable reform/development (sustainable reform/sustainable development) (Barda Nawawi Arief, 1994: 15/ Jay A. Sigler, 1981: 269). According to M. Mahfud MD, legal products are always changing and being changed in accordance with the development of 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 servant of the needs of society must be updated so that it is up to date with the needs of the society being served (M. Mahfud MD: 2006). These statements show that law is always in the process of becoming because law is in motion.

In carrying out legal development, a guideline is needed so that the legal development can support the achievement of national goals. The renewal of the National Legal System that has been wanted to be realized is the National Legal System based on Pancasila. According to Sudarto, it is explained that the Indonesian state in implementing its legal policy is based on the philosophical basis of the State, namely Pancasila and the 1945 Constitution (Sudarto, 1983: 20 / Moeljatno, 1985: 14). Satjipto Rahardjo stated that the Pancasila Philosophy, along with the objectives stated in the Preamble to the 1945 Constitution, is the framework of reference for the development of a new legal system (Satjipto Rahardjo, 2009: 9). Pancasila contains religious, humanistic and democratic values. According to Ismail Saleh, by making Pancasila the basis for the development of the national legal system, there should be no conflict of values between written and unwritten law in the Indonesian legal system (Ismail Saleh, 1987: 38).

Pancasila is a cultural treasure of Indonesia because the values have existed since Indonesian history, namely during the Kutai kingdom, the Sriwijaya kingdom and the Majapahit kingdom. The values of Pancasila that have existed since Indonesian history must be applied to the development of law in Indonesia (Teaching Materials for Pancasila Education Course, 2013).

The Criminal Code in force in Indonesia still uses the Criminal Code/WvS (*Wetboek van Strafrecht voor Nederlandsch Indie*) a legacy of the Dutch colonial era and has been implemented since January 1, 1918 (based on S.732.19150) with a background of individualism and liberalism philosophy that is different from the views and concepts of the values of the nation's life (Wahyuningsih, 2018). The Indonesian nation has succeeded in carrying out legal reform of the constitution on a large scale. The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) originally only included 71 provisions, after four amendments, it contained 199 provisions. This change is not only editorial, but also a change in a very fundamental paradigm of thought. Legal reform, has an ideal meaning that continues with the formation and renewal of laws left over from the Dutch colonialists, namely the Criminal Code, Civil Code, and Commercial Law as well as procedural law and its judicial system so that the Indonesian nation has its own product legal system.

The Indonesian nation is an independent nation, it should have its own national product law to meet the needs of the new state law, namely National Law in accordance with the ideals and values contained in Pancasila. The government and many universities have held various scientific activities on a local and national scale to formulate the development of national law. Legal experts are also like that, many have proposed a national legal profile, but national law still uses Dutch law.

## **2. Research Methods**

This study uses normative or doctrinal legal research methods. Doctrinal research is research that describes systematic explanations of regulations that flow into a certain legal category, analyzes the relationship of regulations to explain the difficulties of the area and allows for future development estimates. The approach used is conceptual. Legal research with this conceptual approach starts from doctrines and views that develop in legal science.

## **3. Results And Discussion**

Development in the legal field is one of the most important areas of development, this is because the law seen from its function not only functions as a social guard against various forms of behavior, especially in the development process, but the law also has the ability to make social changes which are the functions of law in making various changes or social engineering. In addition to these two functions, legal development is also aimed at efforts to provide legal protection to the community in order to create a sense of peace, comfort, security and public order, where there is active community involvement and participation in the development process based on human rights values.

The development of law in Indonesia is closely related to the process of making laws or regulations as Indonesia uses the common law legal system, namely written law, the development of law in Indonesia in developing written law should include legal values that live in society to be arranged in such a way and then enforced so that they become public norms (law making process), then the process of implementation and enforcement (law enforcement) that allows the law to be enforced and developed into a process of building life. After that, the law works in society (living law in action), both in the process of fostering and developing legal awareness in society that allows the law and legal system that are built to obtain social support in a broad sense (legal awareness).

### **3.1. Pancasila as the Philosophy of Indonesian Development**

The Indonesian legal system is the Pancasila national legal system. Because all laws in Indonesia must be based on Pancasila. As the foundation of the Indonesian State, Pancasila is the source of all sources of law in Indonesia. Pancasila means that the legal position of Pancasila is placed at the highest position in law (Grundnorm) in Indonesia, although Indonesia has still used Dutch law since independence, the position of Pancasila in this case is a guideline and direction for every Indonesian nation in formulating and perfecting all laws in Indonesia. Seeing

the law that continues to change and follow the development of society, every change that occurs will always be adjusted to the aspirations of the Indonesian people who refer to Pancasila.

For the Indonesian nation, the development of national law needs to be carried out not only to follow/face the development of society, but the development of national law must be carried out by the Indonesian nation because the current law - especially criminal law - is mostly a legacy of the colonial government. As an independent country, the development of law in accordance with the foundation of the state is a must. This requirement is stated in the constitution of the State of Indonesia, namely the 1945 Constitution. Therefore, the development of law which is a series of processes from rule breaking then continued with rule making contains an understanding that what must be done in the development of law is not only changing the texts of the articles in the law but more than that changing the spirit of the law itself so that it is in accordance with the ideology of the Indonesian nation, namely Pancasila.

In relation to the national goals which are the ideals of the entire Indonesian nation, the law used must be in accordance with the ideals and values of the Indonesian nation, because the law that can be enforced and is effective is the law that is in accordance with the values of a nation. The law that is in accordance with the values and soul of the Indonesian nation is the law that is based on the ideology of the Indonesian nation, because ideology is the crystallization of the values of a nation that are believed to be true.

The ideology of the Indonesian nation is Pancasila, so making Pancasila a legal ideal is a necessity. Pancasila as the source of all sources of law has been established since Indonesia first gained independence, namely since the Pancasila principles were included in the opening of the 1945 Constitution as the basis of the state. Reforming criminal law based on Pancasila values is expected to achieve Pancasila justice, namely divine justice, humane justice, democratic justice, nationalistic justice and social justice. Pancasila justice which is realized in the category of the five types of justice is a form of real justice (substantive justice), not just formal justice (Barda Nawaawi Arief, 2011:30). This is based on the consideration that the current law only produces formal justice so it needs to be updated so that the purpose of the law to realize real justice can be achieved.

As a way of life, Pancasila is a crystallization of the values that are alive and believed to be true by the Indonesian people and become a guideline for behavior in the nation and state. Based on Pancasila as the way of life of the Indonesian people, it is a necessity that Pancasila is the basis for the development of national law.

Law in Indonesia plays an important role in the development process. Regional differences make each region only highlight its system and do not realize the importance of sustainable development of the unity of the Pancasila ideology which is very important for the country. Currently, Indonesian law has not shown

legal developments that are in accordance with expectations and a sense of justice, because the law at this time is still less in favor of the interests of the people, many laws are made only to protect the interests of individuals and groups, and the law does not implement the values that live in society such as Pancasila, because Pancasila is a philosophical reason that exists in Indonesian society (Hartono, 2012).

Efforts to implement the values of life in society are the obligation of every community awareness in order to realize state law in the fair and democratic development of the state legal system to form aspirational laws and regulations, on justice and truth serving the interests of the people and nation within the framework of the Unitary State of the Republic of Indonesia. Systemic legal development is a development that is carried out comprehensively and reviewed continuously following the development of the times. In the development of legal reform, changes to laws and regulations must be made on the grounds that colonial legacy laws are not in accordance with the development of society, both do not contain certainty, justice, truth, and do not pay attention to customary values. Living according to Pancasila.

Legal system reform is a joint development of a legal system that is no longer in accordance with the nation state. Law is a part / subsystem of the legal system consisting of "legal substance", "legal structure" and "legal culture". Thus, if the renewal and development of the legal system is implemented, it must be built through the reform of "legal substance", reform of "legal structure" and renewal of "legal culture".

Legal development in Indonesia is not only about improving the law and improving the legal system, but law enforcement must be upheld by exploring the legal culture, made from the values contained in Pancasila and legal ideals in the form of moral ideals, individual freedom, nation, humanity, peace, political ideals and state goals and reflecting the values of community life in the values contained in Pancasila.

### **3.2. The Role of Pancasila in Criminal Law Reform in Indonesia**

Pancasila is the foundation of the Indonesian state as stated in the 1945 Constitution. Pancasila has an important role in legal reform in Indonesia because it is the ideological foundation for the formation of laws and public policies in Indonesia. Pancasila is the foundation of the Indonesian state as stated in the 1945 Constitution. Pancasila has an important role in legal reform in Indonesia because it is the ideological foundation for the formation of laws and public policies in Indonesia.

Pancasila is the source of all sources of law, so that all legal provisions including in efforts to reform the law, especially criminal law must make Pancasila the source. This brings consequences in the reform of criminal law must also reflect and contain the values of the principles in Pancasila.

Criminal Law is a set of legal rules that regulate criminal acts and punishment (substantive criminal law), regulate the criminal case process (formal criminal law) and the implementation of the punishment itself (executory criminal law). Specifically concerning substantive criminal law in Indonesia until now, the main source is the Criminal Code (KUHP). While it is known that the Criminal Code actually originated from the *Wetboek van Strafrecht voor Nederlandsch Indie* (effective since January 1, 1918), so it is undeniable that the Indonesian Criminal Code as the parent of Indonesian criminal law regulations was created by the Dutch, which contains Dutch values and old thoughts. Therefore, it is clear that the Indonesian Criminal Code that is currently in force certainly does not contain philosophical, sociological or Indonesian cultural values and is clearly outdated, because it does not follow changes in modern criminal law thinking.

The renewal of criminal law must be in accordance with socio-cultural values, meaning that in the renewal of criminal law it must:

1. able to understand the feeling of justice in society.
2. able to contain the cultural values of the community by paying attention to customary law and religious law that live in the community. This has the logical consequence that unwritten law must continue to be explored and developed and can be used as a source of law in criminal law, of course not all provisions of customary law must be enforced, but customary law that does not conflict with the values of Pancasila or values that apply universally

Meanwhile, Criminal Law Reform must be in accordance with Socio-Philosophical values, and has consequences in that efforts to reform criminal law must be able to realize legal ideals, namely:

1. Protecting all elements of the nation for the sake of integrity (integration);
2. Realizing social justice in the economic and social fields;
3. Realizing people's sovereignty (democracy) and the rule of law (nomocracy);
4. Creating tolerance on the basis of humanity and civility in religious life;

In addition, it is clear that socio-philosophical values in the context of criminal law reform must be interpreted as efforts to reform criminal law must remain based on the values of Pancasila as an ideology or philosophy or outlook on life of the Indonesian nation.

The values of Pancasila, which are the philosophy of the Indonesian nation, must be reflected in the reform of criminal law, namely:

1. **FIRST PRINCIPLE:** In the Reform of Criminal Law must be based on religious morals. Religious values must be reflected in criminal norms. All norms to be formulated must refer to religious values or norms that are officially recognized by the State of Indonesia. The need to regulate the crimes of adultery and cohabitation in the draft Criminal Code must be measured by religious moral values, not referring to modern views that seem to be the most correct.

2. **SECOND PRECIPLE:** In Criminal Law Reform, human rights must be respected and protected. Thinking about more humanistic punishment is important. Punishment that is no longer retributive (revenge) but more restorative (development) needs to be continuously developed while maintaining certain severe punishments (death penalty and modified life imprisonment) as an effort to protect society.
3. **THIRD PRINCIPLE:** In the Reform of Criminal Law, it must respect and be able to accommodate the values that live in every society. The provisions on "black magic" are important to consider in the draft of the Criminal Code as an effort to avoid vigilante actions. It is not the consequences of black magic that are formulated (material offenses) but the prohibition of committing acts that are categorized as black magic (formal offenses) that must be formulated. With the note that as long as Indonesian society still recognizes "black magic" as something that is believed to exist.
4. **FOURTH PRINCIPLE:** In the Reform of Criminal Law, the interests of society are considered without ignoring the interests of individuals. The purpose of punishment is to protect the interests of society, so that in the draft of the Criminal Code, the types of death penalty, life imprisonment and imprisonment are still recognized, but these punishments also pay attention to changes in the behavior of convicts (prisoners), so that convicts who have changed for the better can have their sentences changed (modification of sanction). The death penalty cannot be carried out before 10 years, and if the convict changes his behavior for the better, then the death penalty must be changed to life imprisonment and so on.
5. **FIFTH PRINCIPLE:** In the Criminal Law Reform, it must provide equal legal protection and limit arbitrary power. In the draft Criminal Code and the draft Criminal Procedure Code, the role of judges as a judicial body becomes important as a form of check and balance or supervision of the executive body (police and prosecutors). Judges can pardon certain crimes committed under certain conditions, such as the case of Mbok Minah who stole cocoa, due to poverty.

Pancasila must become the breath of life for every person in Indonesia. The Indonesian nation must be proud to have Pancasila. It is not Pancasila that should be blamed, ignored, or even discarded because of the political experience in the Old Order and New Order eras that made Pancasila a political tool to maintain power. The Indonesian people must be aware and re-understand the history of this nation's founding by making Pancasila the guideline and outlook on life of the Indonesian nation. The values of Pancasila should be the guideline for the behavior of the nation, state and society, including in efforts to reform the law, especially the reform of criminal law. Thus, in the reform of Indonesian criminal law, it must have its own legal character, namely the legal character of Pancasila.

#### **4. Conclusion**

Basically, the development of national law is to reconstruct the law to suit the spirit or personality of the Indonesian nation, and in an effort to follow the development of society and. Therefore, the development of national law should be based on the values that live in society, which are believed to be true and bind society, meaning they become a guide in life. Based on this, in carrying out the development of national law, it must be based on the principles contained in the values of Pancasila because the values of Pancasila are actually the crystallization of religious values and customary values that are believed to be true by the Indonesian nation and become a guide to life.

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