

RESTORATION OF PANCASILA VALUES AGAINST CRIMINAL LAW REFORM STRATEGY IN INDONESIA POLITICAL PERSPECTIVE OF ISLAMIC LAW

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Abstract: Criminal law is identical as miserable law, considering that criminal law is a means of last resort. Even though in its application, punishment must still prioritize the humanitarian element. Criminal law in Indonesia requires reform, because the substance of the Criminal Code is outdated and no longer in accordance with the objectives of criminal law as a means of protection and public welfare. This normative legal research uses a statutory and conceptual approach with prescriptive analysis techniques. The results of the research show that the Draft Criminal Code uses pro-Pancasila ideas and strategies as the philosophy of the Indonesian nation. Various forms of reform such as criminal alternatives, the development of the idea of balance, even the recognition of customary law which, although not written, upholds religious values, morality and humanity. Legal politics based on Pancasila, ideally contained in the formation of the concept of Indonesian criminal law, is an important substance and becomes a framework for the nation's morality from the threat of continued development of crime as a result of the evolving era.

Keywords: Political Law, Criminal Law Reform, Pancasila

Abstrak: Hukum pidana identik sebagai hukum yang menyengsarakan, hal ini mengingat hukum pidana merupakan sarana pengobat terakhir. Meskipun dalam penerapannya, pemidanaan harus tetap mengedepankan unsur kemanusiaan. Hukum pidana di Indonesia memerlukan pembaharuan, karena substansi KUHP telah usang dan tidak lagi sesuai dengan tujuan hukum pidana sebagai sarana perlindungan dan kesejahteraan masyarakat. Penelitian hukum normatif ini menggunakan pendekatan perundang-undangan dan konseptual dengan teknik analisis preskriptif. Hasil penelitian menunjukkan bahwa Rancangan Kitab Undang-Undang Hukum Pidana menggunakan ide-ide serta strategi pro-Pancasila sebagai falsafah bangsa Indonesia. Berbagai bentuk pembaharuan seperti alternatif pidana, pengembangan ide keseimbangan, bahkan pengakuan atas hukum Adat yang sekalipun tidak tertulis, menjunjung tinggi nilai religius, moralitas dan kemanusiaan. Politik hukum dengan berasaskan pada Pancasila, idealnya terkandung

dalam pembentukan konsep hukum pidana Indonesia, merupakan substansi penting dan menjadi kerangka moralitas bangsa dari ancaman terus berkembangnya kriminalitas sebagai dampak dari zaman yang terus berkembang.

Kata Kunci: Politik Hukum, Pembaharuan Hukum Pidana, Pancasila

INTRODUCTION

Attitudes in response to social change move quickly, critically not with the conditions of national law, both in terms of law enforcement, and law in substance. Criminal Law is one of the objects of study that is never finished discussing, given the changing times that continue to demand improvements through improvements. Criminal law in Indonesia, aims as one of the subsystems of community protection and a means to make society prosperous, but in Indonesia it does not show the expected results. Legal certainty and justice is the most relevant offer to be applied in this country. As an action to respond to the legal conditions in Indonesia, which are still closely related to western culture, it acts as a correspondence between the Dutch for their colonies, thus requiring laws to be accordance with the values of the Indonesian nation.¹

It is time to reform the criminal law through a new draft of the Criminal Code, compiled with a value approach. What is considered good and disgraceful in society that fulfills the elements of a criminal act, and what actions should be punished nationally.² Sustainable legal development is a necessity, moreover, apart from the continued advancement of human civilization, crime and crime are actually growing. Barda Nawawie Arief argues that in building or updating the law, one must adjust the dynamics in people's lives³

Until now, there are several reasons why criminal law in Indonesia needs reform. The criminal law in question is especially closely related to the aspects contained in the Criminal Code (WvS/Wetboek van Strafrecht) inherited from the colonial era which was declared to be enforced as positive law in Indonesia based on Law no. 1 of 1946 jo. Law No. 73 of 1958. The

¹ Yaris Adhial Fajrin dan Ach Faisol Triwijaya, "Arah Pembaharuan Hukum Pidana Indonesia di Tengah Pluralisme Hukum Indonesia," *Jurnal Penelitian Hukum dan Pendidikan* Vol 18 No 1 (2019): 4.

² I Dewa Made Suartha, "Pergeseran Asas Legalitas Formal ke Formal dan Material

dalam Pembaharuan Hukum Pidana Nasional," *Yustisia* Vol 4 No 1 (April 2015): 238.

³ Any Ismayawati, "Pancasila sebagai Dasar Pembangunan Hukum di Indonesia," *Yudisia Jurnal Pemikiran Hukum dan Hukum Islam* Vol 8 No 1 (2017): 54–55.

basis of the Criminal Code inherited from the Dutch era is included in the category of family/continental legal system (Civil Law System) which emphasizes western ideology in the form of individualism, liberalism and individual rights. According to Sudarto, the reason for the importance of carrying out the first reform was due to political reasons, namely that the feasibility of Indonesia as an independent country to have a national Criminal Code, and to be proud of itself. Then sociological reasons, related to legal norms in the Criminal Code which must reflect Indonesian cultural values, and practical reasons that *Wetboek van Strafrecht voor Nederlands Indie* is written in Dutch and has several different interpretations.

The concern is that if the WvS Criminal Code continues to be used as a rule, it is a means for shifting indigenous Indonesian cultural values, which have a family style, are full of ethics and uphold religious values to a liberal and individual ideology. For example, what is being discussed is the regulation of adultery committed by unmarried men and women, and there is no regulation as an offense or crime in the Criminal Code, even though this kind of action is a violation of social norms and religious norms that apply in

society even up to the present time. this reform.

The Indonesian state is independent and developing in accordance with what is stated in the Preamble to the 1945 Constitution, and the First Precepts of Pancasila, which means that Indonesia's independence is thanks to the blessing of the Almighty Creator. Article 29 of the 1945 Constitution of the Republic of Indonesia clearly states that: (1) The State is based on the One Supreme Godhead, (2) The State guarantees the independence of each resident to embrace their respective religions and to worship according to their religion and beliefs. This is precisely what underlies the concerns of criminal law reformers in Indonesia to include Religious and Social norms as the strongest foothold and foundation so that criminal law in Indonesia can be immediately renewed.⁴ In addition to religious norms which are the highest foundation, there are also four precepts that reflect the upholding of the norms of decency, humanity, justice, unity and tolerance. This is reflected in every article of Pancasila. Pancasila must be used as the basis of the nation's philosophy, meaning that all the pulse and breath of the life of the nation and state use this basis, including the development of the National Legal System.

⁴ Sri Endah Wahyuningsih, "Urgensi Pembaharuan Hukum Pidana Materiel Indonesia Berdasarkan Nilai-Nilai

Ketuhanan Yang Maha Esa," *Jurnal Pembaharuan Hukum* Vol I No 1 (April 2014): 17.

Based on the provisions of religious norms and the first precepts of Pancasila, Hartono Mardjono argues that the consequences that must be met are (a) It is a must for the state not to make rules or policies that are contrary to the basis of faith in God Almighty, (b) The state is obliged to draw up rules and regulations. and or policies as the implementation of a sense of faith in God Almighty⁵. Excavation of the values of Pancasila and the study of its analysis if it is included in material criminal law is a mandatory thing to do. Law is a means of social control, juridical control, and political control, by making the three integrated in order to be able to protect the subjective rights of the community.⁶ Meanwhile, in the renewal of Indonesian criminal law, legal politics has an effect, namely (1) the implementation of existing legal provisions, (2) the development of laws that have the core of updating existing legal provisions and which are considered obsolete by establishing new legal provisions as consequences of community development, (3) Emphasizing the functions of law enforcement, implementing and supervisory

agencies and their members, and (4) There is a need to increase legal awareness in the community according to the perception of policy-making groups.⁷

Meanwhile, in the reform of criminal law in Indonesia, legal politics has an effect, namely (1) the implementation of existing legal provisions, (2) the development of laws that have the core of reforming existing and obsolete legal provisions by forming new legal provisions as consequences of community development, (3) affirmation of the functions of law enforcement agencies, executors and law advisors and their members, and (4) There is a need to increase legal awareness in the community according to the perceptions of the group of policy stakeholders. The idea of renewal with whatever forms of reform is preferred, so that it can accommodate the anxiety about the shift in the noble values of the nation due to the imposition of the colonial inherited material criminal law. This paper is a research that will examine (1) how the future restoration of the values of Pancasila in Indonesian Criminal Law, and (2) the politics of law in the draft law on criminal law.

⁵ M. Abdul Kholiq, "Implementasi Nilai-Nilai Hukum Pidana Islam dalam Konteks Ke-Indonesiaan (Kajian tentang Pembaharuan KUHP Nasional)," *Jurnal Hukum* Vol 8 No 17 (2001): 48.

⁶ Kartono Kartono, "Politik Hukum Judicial Review di Indonesia," *Jurnal*

Dinamika Hukum Vol 11 (Februari 2011): 3.

⁷ M. Ilham F. Putuhena, "Politik Hukum Perundang-Undangan : Mempertegas Reformasi Legislasi yang Progresif," *Jurnal Rechtvinding* Vol 2 No 3 (Desember 2013): 384.

METHODS

This legal research uses a qualitative normative juridical method that focuses on the study of the principles and norms of criminal law based on Pancasila, in terms of legal politics. This means that the legal politics studied is the legal politics contained in the draft criminal law code. This issue is important to study because it is so popular in the community, indicated by the many pros and cons that arise as a result of the public's low understanding of the legal politics contained in the Draft Criminal Code. The statute approach is carried out with the support of prescriptive descriptive analysis. The data is based on primary legal materials in the form of various laws and regulations related to research and secondary legal materials in the form of books and journals as complementary.

RESULT AND DISCUSSION

The idea of criminal law reform in Indonesia is based on Pancasila

Until now, the positive law that applies in Indonesia comes from elements of Western Law,

Customary Law and Islamic Law. All three apply with their respective portions and have their respective dimensions. Criminal law still refers to classical western law and does not include elements of customary law and religious law. The values contained in the ground norm have not been fully felt in the application of criminal law, so that the idea of criminal law reform that is oriented to the values of Pancasila, as the nation's philosophy, emerged.⁸ Meanwhile, the basic values contained in Pancasila are still normative and abstract in their interpretation, so it is necessary to translate into instrumental values so that their benefits and explicit meanings are felt.⁹ Meanwhile, the basic values contained in Pancasila are still normative and abstract in their interpretation, so it is necessary to translate into instrumental values so that their benefits and explicit meanings are felt.¹⁰ From a political point of view, it is normal for the Republic of Indonesia to be free from colonialism to have the Criminal Code created by the nation's children. If it is felt, then the Criminal Code made by one country which is forced to be applied in another country, is a form of colonialism, considering

⁸ Wahyu Widodo, "Implementasi Nilai-Nilai Luhur Pancasila Sebagai Dasar Negara dalam Membangun Sistem Hukum Pidana Nasional," *Jurnal Ilmiah CIVIS* Vol IV No 2 (Juli 2014): 628.

⁹ Wahyuningsih, "Urgensi Pembaharuan Hukum Pidana Materiel Indonesia

Berdasarkan Nilai-Nilai Ketuhanan Yang Maha Esa," 22.

¹⁰ Ira Alia Maerani, "Implementasi Ide Keseimbangan Dalam Pembangunan Hukum Pidana Berbasis Nilai-Nilai Pancasila," *Jurnal Pembaharuan Hukum* Volume II No 2 (Mei - Agustus 2015): 331.

the values and departing from a different culture.

Second, when viewed from a sociological point of view, the regulation of criminal law is a reflection of the political ideology of a particular nation, where the law develops. This means that criminal law is the place for the values and culture of the nation¹¹. The criminalization of an act can also depend on collective values and views in the community, relating to something good, truth, and benefit or vice versa. Public views on morality and religion have an important position for the formation of criminal law. After Indonesia's independence, this country should have had one original state-made criminal law provision, but this is not an easy matter. Long discussions are always carried out and produce basic ideas of balance in criminal law. The concept of the reformed Criminal Code is being drafted and is entering its 6th decade. As the fundamental law in Indonesia, Pancasila has an important role in the formation of a balance value in the reform of Indonesian criminal law, this can be seen by the existence of thoughts¹²:

1. Monodualistic balance, between the interests of the wider community and individual

interests. This means that criminal law as public law with the intention of providing protection to the public interest is obliged to pay attention to the rights of the perpetrators of criminal acts as human beings.

2. Balance between the protection of the interests of perpetrators of criminal acts (the idea of individualization) and victims of criminal acts. Criminal law should not only be reintroduced against the perpetrators of criminal acts by degrading their position when dealing with legal proceedings, but the rights of victims must also be assigned a regulatory position in criminal law, considering that the victims are actually the ones who suffer the most and suffer the most losses. That is why arrangements for the recovery of the condition of victims or their families are also needed and included in clear regulations.

3. Balance between objective (action) and subjective (person / mental attitude) or *daad-dader strafrecht's* ideas. Criminal law is not only to be positioned as a criminal act, but also as a condition for guiding it, this means that not everyone who acts against the law in criminal law will definitely be convicted.

¹¹ Erfandi, "Implementasi Nilai-Nilai Pancasila dalam Pembangunan Sistem Hukum Pidana di Indonesia," *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* Vol 1 No 1 (Juni 2016): 30.

¹² Otto Yudianto, "Karakter Hukum Pancasila dalam Pemabaharuan Hukum Pidana Indonesia," *DIH Jurnal Ilmu Hukum* Vol 12 No 23 (Februari 2016): 40.

4. The need for a balance between legal certainty, flexibility and justice. The principle of legality that applies and has an influence on the thought of the purpose of criminal law is pure legal certainty, but the reality that exists in the judicial process, the order of decisions is based on upholding the principle of justice. It is not that easy to uphold legal certainty with justice, where the two often tug-of-war. Therefore, the existence of legal elasticity in the framework of legal usefulness needs to be realized so that it becomes a balancing tool between legal certainty and justice, even though in the draft Criminal Code, the mandate is more emphasized on justice, especially justice according to the conscience of the community.

5. Balance between national values and global / international / universal values. In terms of principle, Indonesian criminal law enforces Indonesian territory, so that the values of the Indonesian nation must be reflected in the draft Criminal Code and Criminal Law in Indonesia. Apart from national values, Indonesian Criminal Law must also be able to adapt to international criminal developments. International issues in upholding human rights, gender, international agreements must be guided as a balance to local

wisdom. Likewise, on the other hand, future human rights must not conflict with local wisdom and the original morality of the nation.

The reality that Indonesia implements several legal systems shows the plurality of the state in law since the days of the Dutch East Indies. Customary law has been in effect since the days of the kingdom, and is still adhered to from generation to generation until the reform era, because the culture that exists in this society has given birth to customary law. Even so, customary law is also influenced by the existence of Islamic law, especially in terms of Islamic civilization, but this condition is inversely related, because in the WvS KUHP, this religious value is still rarely implemented.¹³

Barda Nawawi Arief revealed,¹⁴ that there are 5 (five) paradigms in the development of criminal law in Indonesia based on the basic idea of Pancasila, namely:

- a. Divine Paradigm (moral-religious)
- b. Humanistic paradigm (humanistic)
- c. Paradigm Nationality (unity / nationalistic)
- d. The populist / democratic paradigm

¹³ Fais Yonas Bo'a, "Pancasila sebagai Sumber Hukum dalam Sistem Hukum Nasional," *Jurnal Konstitusi* Vol 15 No 1 (Maret 2018): 39.

¹⁴ Barda Nawawi Arief, "Beberapa Aspek Pengembangan Ilmu Hukum Pidana

(Meyongsong Generasi Baru Hukum Pidana Indonesia), Pidato Pengukuhan Jabatan Guru Besar Pada Fakultas Hukum Universitas Diponegoro," 1994.

e. Social Justice Paradigm

The Criminal Law Reform Conference in 1999, mentions that there are at least 9 (nine) strategies for renewal ideas, and the author tries to correlate them with 21 (twenty one) strategies elaboration of the results of discussion of the 2019 Criminal Law reform conference in Thailand which focuses heavily on discussing health and crime. consisting of:

1. Restorative Justice (Restorative Justice), alternative settlement of cases apart from penalties and informal courts

Policy makers, practitioners and other professionals involved in criminal justice must promote and use restorative justice processes in a safe, effective and evidence-based manner. Countries that still retain the death penalty must move progressively toward its abolition. The application of the death penalty must uphold fair trial standards and make efforts to improve conditions for detainees in prison. Countries need to collect data and information on the needs of older prisoners and address them explicitly in strategy and policy documents, with a focus on safety, health care needs, and rehabilitation. Early release mechanisms should be adopted and used for older detainees.

Rehabilitation and reintegration initiatives should be implemented as soon as possible upon entry, and should address the root causes of

individual detainees' violations. Initiatives should include holistic measures, such as education, vocational training, employment, medical care, and social and psychological services. Prison work programs must be well paid and working conditions safe, and programs should ensure that prisoners acquire employability skills, with a view to their successful reintegration. The use of non-custodial sanctions, especially for minor and nonviolent offenses, should be expanded to enable offenders to keep their jobs, support their families, compensate victims and provide accountability to society. Non-custodial sanctions should address the root causes of the offense, be gender sensitive, and replace prisons rather than broaden the net of criminal justice control.

2. Alternative Detention and Alternative Means in the handling of juvenile delinquency

Pre-trial detention should be used as a last resort and only when necessary and proportionate. Legal aid and assistance should be provided and, where bail is used, this should be determined according to each defendant's circumstances. The use of non-custodial measures should be increased and states should develop effective systems to help ensure that detainees no longer spend time in pretrial detention than is required by law.

The number of offenses that attract a life sentence or a de facto life sentence should be reduced, in line with the principle of proportionality. States must take steps to abolish life sentences without parole, which can never meet basic human rights standards. All forms of life imprisonment must be prohibited as punishment for offenses committed under the age of 18.

Drug policies should be evidence-based and include decriminalization of minor offenses, proportionality of sentences, and non-custodial alternatives to incarceration. Measurement of drug policy outcomes must include the impact on human rights, health, peace, and security and development. There are clear and explicit international standards of justice for children that must apply in all contexts, including for children (allegedly) involved in terrorist or violent extremist offenses. Children should be detained only as a last resort, and there is growing evidence about the effectiveness of diverting children from formal justice processes - as much as possible should be done.

3. Overcoming Violent Crime

Strategies to prevent and manage violent extremism in prisons must be proportionate and build on international standards and the application of the Nelson Mandela Rule. Prison staff must be trained to respond appropriately

and rehabilitation programs should adopt a multi-agency approach.

4. Reducing the Prison Population and proper Prison Management

Prison overcrowding needs to be addressed as a key factor affecting the physical and mental health of detainees and staff. States should put in place measures to strengthen crime prevention, decriminalize minor offenses, review the proportionality of sentences and increase the use of alternatives to imprisonment. States should review the proportionality of punitive policies and practices. Mandatory minimum sentences should be stopped - in particular for nonviolent crimes - and alternative uses of prison terms should be promoted and strengthened.

When women are convicted, courts must consider the context of the crime, as well as any experiences of victimization or care responsibility. States should ensure that prison policies and practices are consistent with the Bangkok Rules. States should closely monitor the representation of foreign nationals and people of ethnic minorities and racial or Indigenous backgrounds in the criminal justice system. They should review the policy or practice of punishment to determine whether the sentences are discriminatory, and develop specific measures to meet the

rehabilitation and reintegration needs of these detainees.

Placement decisions for LGBTI detainees should keep them safe and avoid further marginalization based on sexual orientation or gender identity. LGBTI prisoners should be provided with adequate access to medical care and counseling and any protective measures should not limit their rights.

Staff must be carefully selected, well trained (both before and during their service), and fully supported so that they can perform to the highest professional standards. They should also be held accountable, and staff found to have violated laws or policies should be subject to disciplinary proceedings and, where appropriate, criminal proceedings. Contact with the outside world is essential for the rehabilitation and reintegration of prisoners. Since it is a right rather than a privilege, withholding or providing such contact should not be used as a reward or punishment. Letters, telephone calls and other forms of long-distance and technology-based communication should not be used as a substitute for in-person visits. Reform of the criminal justice and prison system should be a priority for the international community in its efforts to assist conflict and post-conflict societies. Reforms should

focus on re-enforcing the rule of law and on treating detainees according to international standards, including the Nelson Mandela Rules and the Bangkok Rules.

The various aspects above are general steps that must be made concrete in Indonesian criminal law instruments. Pancasila as a view of the nation's life with various series of noble values which is a comprehensive insight into the life of the nation and is able to flexibly adapt itself to the times¹⁵.

5. Participation of civil society in penal reform

Civil society organizations working in prisons and advocating for criminal justice and prison reform need to operate in a safe space, free from attack and without the imposition of unnecessary or arbitrary restrictions. States must ensure a safe and enabling environment for civil society that is supported by a strong national legal framework and which is based on international human rights law.

States must ensure the safety of prisoners and staff at all times, including by improving prison conditions and investing in dynamic security approaches. Countries that have not ratified the Optional Protocol to the Convention against Torture must

¹⁵ Ismayawati, "Pancasila sebagai Dasar Pembangunan Hukum di Indonesia," 57.

do so. All countries should avoid the use of solitary confinement whenever possible and take steps towards its complete elimination.

In addition, technological innovations provide many opportunities to improve the functioning of the criminal justice system and support the rehabilitation of detainees. It should not be used in a way that reduces human contact for detainees or violates their right to privacy. The provisions above are an outline in the strategy for legal reform in the world, with a more detailed explanation, based on the values of Pancasila. The strategy above also highly upholds the nation's recognition and belief in God as the Creator of the universe, this can be seen from the absence of coercion or a culture of discrimination against people of certain religions, ethnicities or certain beliefs. Justice, as highly recommended, is clearly reflected in the various strategies above, which indirectly also prioritize human values, unity values, populist values and noble ideals of the value of justice.

Regarding the value of justice, Allah Almighty has said in QS Al Mulk verse 3 and QS Al Infitar Verse 7, which means: " who has created seven skies, one over the other. You will see nothing out of proportion in the creation of the RaHmān (the All-Merciful Allah). So, cast your eye again. Do you see any rifts?". (Surah Al-Mulk: 7)

"The one who created you then perfected your events and brought your (body structure) into balance." (Surah Al-Infitar: 7).

Criminal law must not be secular in nature, and must be able to accommodate religious values, and have consequences in order to continue to explore the divine science of law. One of them is by regulating the granting of decisions based on "For Justice based on God".

Political law in the idea of criminal law reform in Indonesia

Padmo Wahjono defines legal politics as a policy of state administrators which is fundamental in determining the direction, form and content of the law to be formed and about what will be the criteria for punishing something, this also applies to the direction of reform of Indonesian Criminal Law which adopts the idea of balance. The idea of balance adopted from the Koran gives birth to harmony, harmony and justice, and in the realm of Criminal Law, the idea of balance is described in several forms of the idea of monoduality balance, as follows:

1. Balance between public/ community interests and individual interests;
2. Balance between the protection/ interests of the perpetrator (the idea of criminal individualization) and the victim;

3. A balance between "objective" (action/ outer) and "subjective" (person/ inner/ mental attitude) factors; the idea of "daad-dader strafrecht";
4. Balance between "formal" and "material" criteria;
5. Balance between "legal certainty", "flexibility/ elasticity/ flexibility", and "justice";
6. Balance between national values and global/ international/ universal values

Several forms of this idea of balance are reflected in the implementation in the form of the purpose of punishment, the principles and conditions of punishment, problems of legal sources (legality principles) and the determination of *sufat* and legal action, problems of enactment of criminal law (non-retroactive and retroactive), problems of transitional regulations, problems of errors. - strict liability-*rechterlijk pardon*-principle *culpa in causa*, as well as crimes oriented towards the protection of the community, both broadly and to victims and perpetrators.

The idea of reforming criminal law with its strategy tends to be different from the *WvS KUHP*, for example regarding the purpose of punishment Article 58 Concept of the Criminal Code:

(1) Criminalization aims:

a. prevent Criminal Actions by upholding legal norms for the

protection and protection of the community;

b. socializing the convicted person by providing guidance and guidance to become a good and useful person;

c. resolving conflicts arising from Criminal Actions, restoring balance, and creating a sense of security and peace in society; and

d. foster a sense of remorse and relieve guilt in the convict.

(2) Criminalization is not meant to torment humans and degrade human dignity.

The formulation of the concept of the article has the objective of protecting the community (social defense), in particular for preventing crime, protecting (protecting) the community, and restoring the condition of society so that it returns to balance through conflict resolution and by bringing a sense of peace. In addition to protecting the public interest, the purpose of the concept of the Criminal Code is to protect or foster individuals (social welfare)¹⁶, namely in the form of socializing the convicted person (resocialization / rehabilitation), relieving guilt, and punishment is not intended to preach and humiliate human dignity (protection against arbitrary / retaliatory sanctions).

As for the reflection of the idea of balance in crime and action, it is written in the concept of the Criminal Code with the following articles:

¹⁶ Desi Apriani, "Urgensi Hukum Adat dalam Pembaharuan Hukum Pidana di

Indonesia," *Jurnal Ilmu Hukum* Vol 5 No 1 (Januari 2014): 5.

Article 76

Article 70

Criminal consists of:

- a. principal criminal;
- b. additional penalties; and
- c. specific crimes for certain crimes stipulated in law.

Article 71

(1) The principal crimes as referred to in Article 70 letter a consist of:

- a. imprisonment;
- b. closure penalty;
- c. supervision crime;
- d. criminal fine; and
- e. social work crime.

The imposition of imprisonment in Indonesia is a legacy of the Dutch colonial law which has a punitive and repressive.¹⁷

This characteristic is influenced by the teachings of retributive punishment, so that various alternatives emerge from the imposition of imprisonment which has many negative impacts, such as overcrowding of prisons which creates domino effects in it. The orientation of sanctioning has now shifted to a balance between fellow humans and creators, humans and other humans and humans and their natural surroundings.¹⁸ Not only reforms in terms of imprisonment, there are articles that are in accordance with the results of the congress on the reform of criminal law, namely by focusing on the age of the perpetrator of the crime.

(1) Taking into account the provisions as meant in Article 59 and Article 60, imprisonment shall not be imposed as far as possible if the following conditions are found:

- a. the accused is under 18 (eighteen) years of age or over 70 (seventy) years;
- b. this was the first time the defendant had committed a criminal act;
- c. the losses and sufferings of the victims were not too great;
- d. the defendant has paid compensation to the victim;
- e. the defendant did not realize that the criminal act that was committed would cause a large loss;
- f. a criminal act occurs because of the very strong incitement of another person;
- g. the victim of a criminal act encourages or instigates the crime;
- h. The Criminal Act is the result of a situation that cannot be repeated;
- i. the personality and behavior of the defendant assures that he will not commit another criminal act;
- j. imprisonment will cause great suffering to the defendant or his family;
- k. guidance outside the correctional facility is expected to be successful for the defendant;
- l. the imposition of a lighter sentence will not reduce the seriousness of the criminal

¹⁷ Dede Kania, "Pidana Penjara dalam Pembaharuan Hukum Pidana Indonesia," *Yustisia* Vol 4 No 1 (April 2015): 55.

¹⁸ Abdul Syatar, "Relevansi antara Pemidanaan Indonesia dan Sanksi Pidana Islam," *Jurnal Syariah dan Hukum Diktum* Vol 16 Nomor 1 (Juli 2018): 132.

- act committed by the defendant;
- m. Crime occurs among families; and / or Crime occurs because of negligence.

The determination of the minimum age limit is also in accordance with Article 2 paragraph (1) of ILO Convention No. 138 of 1973 by taking into account a child's responsibility, mindset and mental and psychological readiness. This shows clearly that the Reform of the National Criminal Law orientates itself to the idea of criminal individualization and is a consequence and accountability that must be carried out for the existence of the foundation and philosophy of the Indonesian State, Pancasila. Divine values, religiosity and human values are felt, but not only for the purpose of protecting the perpetrators, but for the protection of society in general.

Apart from the aforementioned reforms, from the point of view of the concept of criminal liability, renewal is also very much felt¹⁹ This is shown by the inclusion of corporations as subjects of criminal law, thus making corporations also liable and punished. With this development in the concept of accountability, it is intended to uphold justice by adjusting the development of industry and corporations in this technological era.

It should be noted, that in the running of governance, the aim is to protect all nationalities and

promote public welfare, educate the nation's life and participate in the implementation and implementation of world order based on independence, eternal peace and social justice. To borrow a term from Philippe Nonet and Philip Selznick, in law and society in transition to word responsive law, 1978, the concept of criminal law contains three legal characters in society related to politics, each of which has not absolute power, namely:

1. Repressive law, namely the concept of criminal law as a means of repressive power and a servant of power that is pressing / coercive, but the emphasis is not absolute, because it intervenes in the values in Pancasila that uphold compassion and tolerance according to religious teachings.

2. Autonomous law, namely the law as an institution capable of taming repression (oppression) and protecting one's own integrity. This then helps to soften the rigidity of repressive laws, that criminal law also applies to those who govern and those who are governed. Although autonomous law views procedure as the core of procedural law or justice, the concept of criminal law also upholds the values of customary values in unwritten customary law.

3. Responsive law, namely the law is a means of responding to the needs and aspirations of the community. Responsive law upholds the value of substance justice, people's morality, and the

¹⁹ Septa Candra, "Pembaharuan Hukum Pidana; Konsep Pertanggungjawaban Pidana Dalam Hukum Pidana Nasional

Yang Akan Datang," *Cita Hukum* Vol I No 1 (Juni 2013): 55.

rule of law subject to principles / principles / doctrines and policies.

Law is an entity with a high level of complexity, including a pluralistic and pluralistic society, covering various aspects, dimensions and phases.²⁰

Criminal law reform is essentially a form of review and reorientation to sociopolitical, sociophilosophical and sociocultural values based on the content of the normative content and substance of criminal law that is aspired to achieve protection and as an aspect of realizing the welfare of society. The formation of Criminal Law in Indonesia through a penal reform strategy²¹, then has reflected an orientation towards the direction of legal ideals (*rechtsidee*) and ideals of the state (*staatsidee*) laid down by the fighters of the Indonesian nation in the foundation of the philosophy of the nation and state of Indonesia, namely Pancasila.²²

CONCLUSION

Pancasila values in the form of divinity, humanity, unity and tolerance, populist values and the value of justice are well implemented in the strategy of reforming criminal law in Indonesia. The process uses local Indonesian wisdom that has been forgotten in the WvS Criminal Code. Moreover, the idea of balance is so upheld so that the orientation of criminal law is not only towards the perpetrator of the

criminal act, but also to the party most disadvantaged by the criminal act, namely the victim. This has also been in accordance with the objectives of the formation of the Criminal Law, namely as a greeting towards social protection and to achieve social welfare in society.

As an entity with high complexity, the new Criminal Law was formed by taking into account the conditions in society or responsiveness. Even so, Law Politics with repressive values and legal autonomy still exists and its enforcement is not absolute, considering that the Indonesian nation upholds democracy. The human and divine values based on the values of Pancasila will replace the WvS KUHP with the KUHP made by the nation's children. The use of the national philosophy is a necessity for the formulation of laws that apply in Indonesia, as a rule of law, the Criminal Code must be based on the ideology of the nation, not using the rule of law as it is embraced in western legal culture.

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²⁰ Kartono, "Politik Hukum Judicial Review di Indonesia," 17.

²¹ Ade Mahmud, "Transformasi Nilai-Nilai Pancasila dala Pembaharuan Hukum Pidana Nasional," *Jurnal Hukum Mimbar Justitia* Vol 4 No 1 (Juni 2018): 18.

²² Heriyono Tardjono, "Reorientasi Politik Hukum Pebentukan Undang-Undang di Indonesia," *Jurnal Renaissance* 1 No 2 (Agustus 2016): 62.

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