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Philosophical Discourse on the Relationship Articles 1 and 2 of the National Criminal Code, Such as the Relationship of the Human Body and Soul

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Abstract

KUHP is the result of a critical breakthrough for the nation of Indonesia. An interesting point about the National Criminal Code is that it accommodates the principles of material legality and formal legality. The arrangement of the quo principle is assumed to be similar to the reality of the relationship between the human body and soul. This article wants to discuss philosophically and conceptually four main things related to the reality of the Legality Principles of the Indonesian National Criminal Code. First, the concept of philosophical presuppositions regarding the relationship between Articles 1 and 2 of the National Criminal Code and the relationship between body and soul in human reality will be discussed by several philosophers. Second, discuss the fundamental ontological reality of Article 1 of the National Criminal Code. Third, discuss the fundamental ontological reality of Article 2 of the National Criminal Code. Fourth: Discuss the philosophical relationship between the two provisions of Article A quo. This research is normative legal research with a philosophical and legal approach. The results of the research show that, first, the concept of philosophers' thinking, which, in its essence, really emphasizes the element of human unity as a complete reality composed of soul and body. Second, in ontological reality, the provisions of Article 1 of the Indonesian Criminal Code are laws and are a logical risk of modern law (legal positivism), which prioritizes the reality of visible and objective phenomena. Third: that in ontology, the provisions of article 2 of the Indonesian Criminal Code are anthropological facts

of the Indonesian people themselves starting from the journey of civilization, Pancasila as the basis of philosophy, the source of all sources of law, and the 1945 Constitution as the source of legal order (normative constitution). Fourth: the form of philosophical relationship between the two a quo provisions appears in the juridical, moral, and sociological synthesis of the new Indonesian Criminal Code.

Keywords: National Criminal Code, Relation, Ontology, Human

A. Introduction

The historicity of the Criminal Code (KUHP), which is still valid in the Indonesian legal system, is a product of legal codification inherited from the Dutch colonialists. Since Indonesia proclaimed Independence on August 17, 1945, it would have been contradictory if it continued to use the legal order inherited from Dutch colonialism (political reasons) as an independent and fully sovereign nation. Philosophically, the Criminal Code is a legal codification created outside the Indonesian nation; of course, there are ideal legal values that are not symmetrical to the legal values of Indonesian society. These historical, political, and philosophical considerations have encouraged the Indonesian nation to have a Criminal Code as its masterpiece that truly accommodates national interests. Now, of course, civilization is developing rapidly, and the types and nature of crime are also following developments so that the Criminal Code left behind by colonialists is out of date (adaptive considerations).[1]

The long struggle of the Indonesian people for more than a century to have their criminal law system has paid off. The Indonesian people finally have their criminal law system after the People's Representative Council ratified the Draft Criminal Code into the

[1] Mahrus Ali dan Muhammad Abdul Kholiq, "Adopsi Nilai dan Prinsip Hukum Pidana Islam tentang Delik Kesusilaan Zina dalam Kitab Undang-Undang Hukum Pidana Nasional", *Jurnal Hukum Ius Quia Iustum* No. 3 Vol. 30 (September 2023): 622–649 https://doi.org/10.20885/iustum.vol30.iss3.art8

Criminal Code (Law No. 1 of 2023). This is a historic event in the context of the legal civilization of the Indonesian people. (legal reasons) This event signifies the "decolonization of law" politically and is a form of the independence of the Indonesian people legal.[2]

The Criminal Code is a masterpiece (opus magnum) compiled by the Indonesian nation. Why is it called Opus magnum? The nation's jurists were directly involved in building a criminal law system; the new Criminal Code system is a national legal product. The colonial legacy of the Criminal Code, which is metahistorical in nature, was abandoned.[3]

According to the author, there are exciting provisions in the National Criminal Code, namely Article 1 and Article 2, where these provisions are in the space of communicative reality. The provisions of Article 1 represent the formal form of law (leges), and the provisions of Article 2 represent the material or content of the law (ius). It is interesting, according to the author, that the provisions of this article are a form of extreme segregation between legal certainty (phenomena), which emphasizes objectivity, and legal foundationalism (noumena), which, according to the author, is innate to the law, in fact, philosophically there is an inherent value between the two and cannot be separated.

The provisions of these two articles become philosophically discursive and tendentious, causing the emergence of two fascinating

[2] Henny Saida Flora (et al), "The Orientation and Implications of New Criminal Code: An Analysis of Lawrence Friedman's Legal System", *Jurnal Ius Kajian Hukum dan Keadilan*, Vol. 11, No.1, (April 2023): 114-125 http://dx.doi.org/10.29303/ius.v11i1.1169)

[3] Arista Candra Irawatu "Politik Hukum Dalam Pembaharuan Hukum Pidana (RUU KUHP Asas Legalitas)", *Jurnal Adil Indonesia* Vol. 2, No 1, (Juli 2019): 1-12 unw.ac.id/index.php/AIJ/issue/view/52

questions, namely "What is legal science" (Article 1 of the Criminal Code) and "What is law" (Article 2 of the Criminal Code).[4]

The question of what law places more emphasis on the substance or material of law (substance), whereas what is legal science places more emphasis on the formal form of law (laws). It must be reiterated that material and formal cannot simply be separated because legal material without legal form is meaningless, and vice versa. Material and form are inseparable. So, if one of these elements is missing, then the law will go/die.[5]

Likewise, if we talk about human existence as a person, we find the accepted fact that "humans exist." Our 'existence' is a fact that does not need evidence.[6]

Human existence is a whole constructed between the soul (Geist) and the body. The human soul and body are not two substances but one substance. The two presuppose each other and are inseparable. Man cannot be thought of simply as a body, nor can he stand alone as a soul. As a body, it is no longer human but is more suitable to be called a corpse, and is a spirit if humans are only seen from the aspect of their soul. Because human unity is not something accidental but something that should be (necessary).[7]

It is also inevitable that in the course of the development of philosophy, there are various kinds of opinions, views, stances, and

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[4] Andrea Ata Ujan, *Membangun Hukum Membela Keadilan*, (Jogjakarta:Kanisius, 2017), 16.

[5] Fransiskus Saverius Nurdin, "Kontra Antara Legem dan Ius Pada Peristiwa Bom Bali 1", *Jurnal Positum*, Vol. 5 No. 1, (Juni, 2020):100-123 https://doi.org/10.35706/positum.v5i1.3521

[6] A. Mangun Harjana, Yang Ceria Dan Bahagia, (Jogjakarta:Kanisius, 2002), 9.

[7] William David Ross, *The Works of Aristotle*, (Methuen & Company, Limited: London, 2020), 132. The soul and body are not two substances but separable elements in a single substance. Soul and body like matter in general, are in a sense separable

doctrines regarding the correlation between the soul and the body. *Human existence* is a mystery that can only be solved once it is clear and complete. This mystery appears especially in human plurality because we can see it from many different angles, see it in very different relationships, and encounter it in significantly changing situations.[8]

In his book De Anima, Aristotle also acknowledged that the problem of soul and body is the most challenging problem to solve. In the Caecilian School (500 AD), the soul was considered to be the harmony of the body.[9] As with musical instruments, harmony (soul) is indeed more valuable than wood and strings (body), but harmony cannot exist without wood and strings, and harmony changes depending on the condition of the musical instrument.[10]

The author imagines the assumption above that if, for example, in law, there is only form (leges) without material (ius) as something that makes the law perfect, the law will experience decay (*legis corruption*). How crucial is the existence of matter in legal reality for it to be worthy of being called law?

In his materialism, Democritus stated that the soul consists of round atoms that quickly move. Meanwhile, Plato's dualism emphasizes the determination (superiority) of the soul over the body. The soul exists before the body, then is thrown inside the body, as in a prison, and will become its perfect self only after it is freed from the body. Liberation can only be achieved by detaching oneself from bodily sensory activities and not seeking truth through observations. Aristotle

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[8] Aziza Aryati, "Memahami Manusia Melalui Dimensi Filsafat (Upaya Memahami Eksistensi Manusia)", *Jurnal El-Afkar*, Vol. 7 No. II, (Juli- Desember 2018):79-94 DOI: http://dx.doi.org/10.29300/jpkth.v7i2.1602

[9] Santoso (*et al*), "Harmonisasi Al-Ruh, Al-Nafs, Dan Al-Hawa Dalam Psiklogi Islam", *Jurnal Islamika*, Vol. 3, No. 1 (Mei, 2020): 170—181 DOI: https://doi.org/10.37859/jsi.v3i1.1899

[10] Franz Dahler dan Julius Chandra, Asal dan Tujuan Manusia, (Jogjakarta: Kanisius,1976), 63.

rejected these opinions. As a student of Plato, he agreed that the soul included another reality than the body. However, he still maintains that every living creature is one thing, which is only one substance.[11]

The main idea of Aristotle is the emphasis on the unity of living things and the explanation of how wrong it is to talk about soul and body as two "beings." Indeed, we are almost forced by our language because we have to name these two different but inseparable aspects using two different terms, each of which is substantive. However, Aristotle could base this difficulty on his views on the principles of matter-form.[12]

Based on this material-forma theory, Aristotle also had to abandon Plato's theory of the immortality of the soul. Because the soul as matter is wholly directed towards the body as form, it is clear that the soul cannot continue to exist without the body. The soul also experiences decay, destruction (decay) when the body is destroyed (death).[13]

Likewise, two aspects are closely embedded in "existing" (read the reality of Article 1 and Article 2 of the National Criminal Code). The reality that "exists" cannot be interpreted as two different things. Article 1 and Article 2 of the National Criminal Code (principle of legality), according to the author, are a unified whole that animates each other.

The National Criminal Code is the culmination of the Indonesian nation's struggle in the field of law. The issue in this Article boils down to the Legality Principle of the National Criminal Code. In fact, Article (1) of the Criminal Code is the principle of formal legality, and Article (2) is the principle of material legality. Based on the background above, the formulation of the problem in this paper is: First, what is a brief conception of the philosophical presuppositions of the relationship between the provisions of a quo article and the relationship between

[11] Louis Leahly Sagiv (*et al*), *Siapakah Manusia*? (Jogjakarta: Kanisius, 2001), 73.
[12] *Ibid*
[13] *Ibid*

body and soul in human reality according to several philosophers? Second: What is the basis for the ontological reality of Article 1 of the Indonesian Criminal Code? Third: What is the basis for the ontological reality of Article 2 of the Indonesian Criminal Code? Fourth: What is the philosophical relationship (harmonization) between Article 1 of the Criminal Code and Article 2 of the Indonesian Criminal Code as the basis of philosophy, the source of all sources of law, and the 1945 Constitution as the source of legal order (normative constitution).

B. Method

The type of research is normative juridical research, so the logical implications studied are primary and secondary legal materials. The primary legal material in this research is Law NO.1 of 2023 concerning the Indonesian Criminal Code. The secondary legal materials are various library research. The approach used in this research is a philosophical approach and a statutory approach. The focus of reasoning in this research is the philosophical presupposition of the relationship between body and soul in human reality and the ontological reality relationship of Article 1 and Article 2 of the Criminal Code and their harmonization).[14] The technique for presenting the results of reasoning in this research is analytical descriptive.

C. Result & Discussion

Philosophically, the goal of national development, which protects the entire Indonesian nation and all of Indonesia's bloodshed, is the protection of society or the public interest (Social Defence).[15]

[14] Peter Mahmud Marzuki, *Penelitian Hukum* Edisi Revisi Cetakan ke XIV, (Jakarta: Kencana Prenada Media Group, 2019), 133.

[15]Wahyuninsgih, E. "Urgensi Pembaharauan Hukum Pidana Materil Indonesia Berdasarkan Nilai-Nilai Ketuhanan Yang Maha Esa." *Jurnal Pembaharuan Hukum*, No. I Vo1, 2014, hlm. 17-23

Furthermore, the next goal of national development is to advance the general welfare, educate the life of the nation, and participate in implementing world order based on independence, eternal peace, and social justice, namely the protection or development of individuals (*social welfare*).[16]

Paying attention to the national development goals, it is clear that there is a balance between national development goals that protect the public interest (*social defense*) and individual interests (social welfare). Criminal law or penal law (KUHP concept) is a tool or means to maintain a balance between public interests (*social defense*) and individual interests (*social welfare*). Thus, criminal or penal law is in the framework of individual protection; the realization is protection against evil acts and protection against evil people, and the realization of community protection is protection against misuse of sanctions or reactions and protection against the balance of interests or values being disturbed.

These revolutionary ideas became the philosophical basis for the codification of the National Criminal Code, even though it was just a recodification. One of the revolutionary basic ideas for the birth of the National Criminal Code is the accommodation of the Material Legality Principle (Article 2 of the National Criminal Code)..

1) A Brief Concept of Philosophical Presuppositions of Some Philosophers' Thoughts on the Relationship between Body and Soul and Their Correlation with Articles 1 and 2 of the National Criminal Code

a. Democritus

Democritus based his view of the soul on atomic theory. According to Democritus, atoms are unlimited in number and vary significantly in size and shape, like balls.

[16] *Ibid*

Furthermore, atoms always move in space. Thus, Democritus stated that what "does not exist" exists as well as what "is."[17] So, for Democritus, "that which does not exist" and "that which exists" are identical. For Democritus, the soul is the driving principle that moves.[18]

Furthermore, Democritus emphasized that the soul is identical to the mind, and what appears with what is true. Soul and mind are the same, cannot be divided, and are the source of movement.[19] The author argues that based on Demokritos' philosophical argument if it is drawn into legal reality, Article 2 of the Criminal Code is like the soul of Article 1. Alternatively, Article 2 is the driving force that moves Article 1 of the Criminal Code. What this means is that the provisions of Article 1 will not exist without Article 2 of the Criminal Code. Apart from differences of opinion regarding the law itself, that the form or formality of the law is different from the material or substance of the law, there is a separation between both.[20]

b. Anaxagoras

Anaxagoras, like Democritus, also rejected the monism espoused by Parmenides. For Anaxagoras, reality as a whole is not one but consists of many elements, and the number is unlimited. Furthermore, he emphasized that the soul is the cause and principle of the movement of

[17] K. Bertens, *Sejarah Filsafat Yunani,* Eidsi Revisi (Jogjakarta:Kanisius, 2018), 62-63.

[18] Jonathan Barnes (Editor), *Complete Works of Aristotle*, Volume 2, (Princeton University Press: USA, 1984),1.

[19] *Ibid*

[20] This differentiation dives into the real debate between the standing point natural law school that law is justice, unjust law is not law and positivism and standing point law, that the law must be written to show legal certainty

things. For Anaxagoras, the soul is found in humans and every living creature, whether large or small, high or low creatures. However, thought cannot be found at all levels of living creatures; it can only be found in humans. However, it must be remembered that the souls of all living creatures are not the same. Although Anaxagoras distinguished between soul and mind, he referred to both as a single substance.[21]

Likewise, the reality of Article 1 and Article 2 of the National Criminal Code is also called the Principle of Legality, which is formed from 2 elements: Formal (Positivism) and Material (legal substance). These two elements work together, animating to form one reality of the Principle of Legality; these two elements cannot exist alone but need each other.

c. Aristotle

Understood substance as a composition of form and matter. Here, Aristotle distinguishes between matter and form, but he emphasizes that matter can never be found separately without form or form found without matter. Everything that exists is a concrete individual item, a unity (composition) of matter and form. These two elements are not two objects but rather a metaphysical principle directed towards one another inseparably. Matter (first) is that from which something arises. It is a substance that is still an *en in potentia* and has yet to be actualized.

In every description of humans, Aristotle always emphasized that the soul and body cannot be understood independently. Humans do not consist of two different and separate substances. He firmly emphasized the psycho-

[21]Lorens Bagus, *Metafisika*, (Jakarta:Gramedia, 2002), 20.

physical unity within humans. The separate condition of soul and body is like a helmsman and his ship (Plato), and on the one hand, he rejects the position of materialists who consider the soul as the harmony of the body. Aristotle described the unity of soul and body as a substantial unity. He does not attribute the soul to the body but emphasizes that the soul and body are one substance consisting of two aspects. Both are related to each other as form and matter. Just as matter cannot be imagined without form, vice versa, form without matter.

The soul and body can also only be understood about each other. This concept of material form applies to human-made items (statues, tables, chairs) and to all creatures. Thus, material and form each have a role as *actus-potentia*, essence-existence. The body is potential and essence, while the soul is actus and existence.

According to the author, what Aristotle said is very interesting; in the context of the reality of the Principle of Legality, Form and Matter are one substance and are absolute. Legal material that gives life (animation) to formal law. So, if the formal law is not supported by legal material, the law will be limping and cause death. Based on the views of Democritus, Anaxagoras, and Aristotle above, which essentially emphasize the element of human unity as an existing reality and its correlation with the reality of the Principle of Legality, Article 1 and Article 2 of the Criminal Code are one complete substance. Article 2 of the Criminal Code acts as the immortal soul of Article 1 of the Criminal Code. If Article 2 of the Criminal Code is removed, the law will collapse and even result in death

2) Discourse on Ontological Reality Article 1 of the Indonesian Criminal Code[22]

In principle, scientific activities are driven by questions based on three fundamental issues, namely: What do you want to know (ontology), how to obtain knowledge (epistemology), and what is the value of that knowledge (axiology)? The word ontology comes from the word "Ontos," which means "being (which exists)." The nature of reality or reality can be approached ontologically based on two points of view. First, a quantitative point of view, namely by asking whether reality is singular or plural. Second, a qualitative point of view is asking whether the reality (reality) has certain qualities, such as green leaves and roses that smell good. In simple terms, ontology can be formulated as a science that critically studies reality or concrete facts. Several schools in the field of ontology are realism, naturalism, and empiricism.

The most important terms related to this ontology are, for example, being, reality, existence, essence, substance, change, single, and plural (many). People who want to understand reality fully need to study the concepts of ontology above because they are helpful for the study of empirical sciences, for example, anthropology, sociology, medicine, cultural sciences, physics, and technology.[23]

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[22] In this segment the author does not write Article 1 of the Criminal Code continuously but replaces it with legal positivism, because returning to the prologue of the discussion above, Article 1 is the biological child of the legal positivism school. Or in other words, Article 1 of the Criminal Code is an absolute representation of the school of legal positivism.

[23]M.T. Soejanto Poespowardodjo dan Alexander Seran, *Filsafat Ilmu Pengetahuan, Hakikat Ilmu Pengetahuan, Kritik Terhadap Visi Positivisme Logis, Serta Implikasinya,* (Jakarta: Kompas, 2021), 1-32

Now, taking a serious look at the reality/reality of Article 1 of the National Criminal Code, which determines:

> *(1) No act can be subject to criminal sanctions and action except on the strength of criminal regulations in laws and regulations before the act was committed.*
> *(2) When determining the existence of a criminal act, analogies are prohibited from being used.*

Article 1 of the Indonesian Criminal Code is clearly and undeniably the biological child of legal positivism. This school is also derivably influenced by logical positivism in the philosophy of science. What is understood as positivism is that natural science is the only source of proper knowledge. The speculative activity of reason produces statements that cannot be proven empirically and, therefore, are not scientific because they cannot be proven empirically, true or false. So, positivism emphasizes experience and free will. Experience is sensory data that can be proven; if it is not, it cannot be proven as fact. Through its emphasis on experience and free will, positivism rejects theology and metaphysics as scientific knowledge because they are both speculative and prescriptive. Speculation is non-sensical (not a sensory experience), and prescriptions act as mere beliefs.

Article 1 of the Criminal Code is one of the fundamental provisions that form the basis of the contents of the Indonesian Criminal Code as a whole. Article 1 is often called the principle of legality or "principle of legality" (English), "de la legality" (French), and "legalities beginsel" (Dutch). Article 1 of the

Criminal Code is the most vital provision because it is the foundation for subsequent provisions in the Criminal Code.[24]

Based on historical evidence, the provisions regarding Article 1 of the Criminal Code were first included in the Constitution, namely in the United States in 1776. The provisions of Article 1 of the Criminal Code have essential meaning as introductory provisions or sources of law to qualify an act, whether it is a criminal act or not.[25] The provisions of Article 1 of the Criminal Code provide normative prescriptions as a guarantee of legal protection for all citizens without exception. Article 1 of the Criminal Code means that every criminal act must be based on the strength of written and authoritative regulations.[26]

The provisions regarding Article 1 of the Criminal Code teleologically aim to limit the arbitrariness of the authorities to impose sorrow on all citizens, or in other words, the existence of Article 1 of the Criminal Code prevents state etatism. Implicitly, Article 1 of the Criminal Code contains the following meaning:

1) *Lex scripta:* primary element in imposing a criminal sentence. Criminal impositions are based on written law because the written law contains what actions can and cannot be done.

[24]M Nabiel Fadlilah, Siti Saadah Fauziah, Andian Achya D.K. "Tinjauan Yuridis Mengenai Pertentangan Hukum Yang Hidup dalam Masyarakat" *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam,* Vol. 4, No. 2 (November, 2022): 505-514. https://doi.org/10.37680/almanhaj.v4i2.1790)

[25]Fransiskus Saverius Nurdin, "Rekonstruksi Asas Legalitas Hukum Pidana Berdasarkan Prinsip Keadilan", *Jurnal Refelksi Hukum,* Vol. 1, No.1, (Desember 2016):1-14. 10.24246/jrh. 2016. v1.i1.p1-14)

[26] M Nabiel Fadlilah (*et all*), *Op.Cit* 507

2) *Lex strict:* written law must be interpreted rigidly or rigorously without providing interpretative discursive space not to harm criminals as legal subjects.
3) *Lex certa* means that the authoritative ruler (lawmaker) must make laws in which the provisions are explicit and do not create ambiguity. So that it does not give rise to a deconstructive interpretation of the unclear provisions of the norm.[27]

The reality of Article 1 of the National Criminal Code is also an articulation or representation of the teaching of the formal unlawful nature. Unlawful nature and error in the criminal law applicable in Indonesia, especially the old Criminal Code, which is still in force today, adheres to the monistic theory, which states that unlawful nature (*wederrechtelijkheid*) and error (*schuld)* are elements of a criminal act (*strafbaar feit*).[28]

To fulfill an act as a criminal act, the Criminal Code requires the existence of the main elements that must be fulfilled, namely the unlawful nature (*wederrechtelijkheid*) and fault (*schuld*). The unlawful nature always includes a criminal act, whether the unlawful nature is explicitly stated in the formulation of the criminal act or not explicitly stated in the formulation of the criminal act. The element of fault always includes a criminal act, whether explicitly stated in the formulation of the criminal act or not explicitly stated in the formulation of the criminal act, except in the formulation of the criminal act, there is an element of negligence. In order to fulfil

[27] *Ibid*
[28]Andi Zainal Abidin, *Hukum Pidana 1*, cet II, (Jakarta: Sinar Grafika, 2007), 346 see also Ruslan Renggong, *Hukum Pidana Khusus Memahami Delik-Delik Diluar KUHP*, (Jakarta:Prenada Media Group, 2016),17-18

an act as a criminal act, it must fulfil the elements of unlawful nature and fault.

Several Dutch criminal law experts and several criminal law experts in Indonesia widely follow the monistic theory; for example, according to van Hamel, a crime is human behaviour that is formulated in law, against the law, that should be punished, and that is carried out with error. [29] According to Simon, a criminal act has the following elements: it is punishable by law, it is against the law, a guilty person commits it, and that person is deemed responsible for his actions.[30] Vos argues that a crime is a human behaviour that is punished by statutory regulations, so human behaviour is generally prohibited and is threatened with punishment.[31]

The legal positivism school (read Article 1 of the Criminal Code) is a form of rational reaction to natural law dominated by transcendent law (legal ideals). When the positivists observe law as an object of study, they consider law only as a social phenomenon. Positivists generally only recognize positive science. Likewise, legal positivism only recognizes one type of law: positive law. Legal positivism ultimately gave birth to the most influential exponents in legal philosophy: John Austin, with his credo of analytical legal positivism and jurisprudence, and Johannes Kelsen, his credo *of Pure Theory of Law*.[32]

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[29] Andi Zainal Abidin, dan Andi Hamzah, *Pengantar dalam Hukum Pidana Indonesia*, cet I, (Jakarta: Yarsif Watampone, 2010), 117.

[30] *Ibid*

[31] *Ibid*

[32]Rasjidi Lili, & B. Arif Sidharta, *Filsafat Hukum Mazhab dan Refleksinya,* (Bandung:Remaja Rosda Karya, 1999), 50 see also Sukarno Aburaera (*et al)* ,*Filsafat Hukum Teori dan Praktik* (Jakarta:Kencana Prenada Media Group,2015), 106-110

By legal positivists, law is only studied from the aspect of formal form, what appears as the reality of social life, without considering values and norms such as justice, truth, wisdom, and others that underlie the rules of law, so the five senses cannot capture these values. Legal positivism also recognizes law outside the law but with the condition: "the law is designated or confirmed by law." In addition, legal positivists do not separate existing or applicable law (positive) from the law that should exist, which contains ideal norms. However, positivists consider that the two must be separated in different fields. In substance, the author sees that positivists do not accept anything related to noumena entering the reality of law. It may enter, but with conditions, noumena must be made positive into a phenomenon. So that legal positivism ultimately does not stand in a closed space (*open logical system*).

Principles of legal positivism:

1) Laws are commands from sovereign human beings.
2) There is no need for an inherent value between law and morals, between existing law (das sein) and the law that should be (das sollen).
3) An analysis of legal concepts worth continuing must be distinguished from historical studies regarding the causes or origins of laws and must also be different from critical assessments.
4) Decisions (law) can be deduced logically from preexisting regulations without needing to refer to social goals, wisdom, morality, etc.

5) Moral judgment cannot be enforced and maintained by rational reasoning, proof (evidence), or testing (verification).[33]

Before legal positivism, legal science had a school of thought, namely legist. This legal thought has developed since the Middle Ages and has influenced various countries, including Indonesia. This school of thought identifies law with statutes; no law exists outside written statutes. The only source of law is statutes.[34] The Legalism school considers laws a 'magic talisman' and encourages rulers to multiply laws until all life is regulated legally. They think living together will be harmonious if they have reasonable regulations.[35]

The positivist and legist schools, which prioritize written laws, have strong support in continental legal areas, which tend to legal codification. This codification is inspired by Roman law. In Roman times, the prominent power of the king was to make regulations through decrees, which from various decrees were used as references by state administrators in carrying out and deciding various cases.[36]

Legal positivism adheres to two radical principles: First, only laws are called laws, and outside laws are not laws. Second, the state or authoritative institutions are the only sources of law. These two principles imply that every law that a legitimate authority has established is considered a law that must be obeyed, whatever its contents. Consequently, the law will become an

[33] W. Friedmann (diterjemahkan oleh Mohammad Arifin), *Teori dan Filsafat Hukum*, (Jakarta:Rajawali, 1996), 147.
[34] *Ibid*
[35]Theo Huijbers, *Filsafat Hukum dalam Lintasan Sejarah,* cetakan ke 20, (Jogjakarta:Kanisius, 2018),120.
[36] *Ibid*

instrument of legitimacy for the holder of power in exercising and maintaining his power.[37]

The influence of legal positivism has also been very successful in imagining the construction of the Indonesian criminal law system. Moreover, this is clearly stated in Article 1 of the Indonesian Criminal Code. This is not only because the legal positivism school has a large and significant influence on the development of legal philosophy but also because Indonesia is one of the countries that adhere to the Civil Law legal system inherited from the Roman Empire. In the end, the author argues that in terms of ontological reality, the provisions of Article 1 of the Indonesian Criminal Code are laws (legitime) and are a logical risk of modern law (legal positivism), which prioritizes the reality of phenomena/objectives, and a quo provisions are a representation of teachings against formal law.

3). Discourse of Reality Ontology Article 2 of the Indonesian Criminal Code

Regarding the definition and scope of ontology, look again at the discussion on problem formulation two (2). Based on the perspective of the philosophy of science, all reality in the universe must constitutively experience change. It started with the cosmological thesis expressed by the philosopher Thales that life comes from water, then Heraclitus said that everything must change, the emergence of a new reality as a result of change; Parmenides then said "there is" as the being that determines all reality/reality (being), Socrates emphasized that the essence of reality is arete (principle of goodness) as the ultimate source of all empirical reality, next the philosopher Plato said that the phenomena of the empirical world originate from the world of

[37] W. Friedmann, *Op.Cit*, 2.

ideas (noumena) as the principle of existence. Finally, Aristotle emphasized empirical reality as the basis for arriving at all empirical reality's arche (essence). Nature as reality is the starting point for reality (realism). Furthermore, according to al-Farabi, science is everything that is not constant. Every event cannot be separated from the object of knowledge. Aristotle's thesis is believed to be the essential foundation for the birth of realism, positivism, and the progress of science.[38]

The author concludes that science is a "communicative" reality. The communicative phenomenon that occurs in the philosophy of science also has implications for the journey of legal science during human civilization history. Starting when the legal thinking of ancient Greece to Rome continued the Middle Ages, legal thinking during the Renaissance, and legal thinking during the Rationalism period, and finally, humanity entered a new era of legal thinking in the new millennium. Moreover, the communicative phenomenon also inspired the Indonesian Criminal Code system. The communicative phenomenon that the author means is the accommodation of the Principle of Material Legality in the National Criminal Code. This step is a critical breakthrough in the Indonesian national criminal law system. Look at the provisions of Article 2 of the Indonesian National Criminal Code, which stipulates:

1) *The provisions referred to in Article 1 paragraph (1) do not reduce the validity of the law that is alive in society, which determines that a person should be punished even though this law does not regulate the act.*
2) *The Law that is alive in society, as referred to in paragraph (1), applies in the place where the law is alive, and as long as it is not regulated in this law and by the values contained in Pancasila, the 1945*

[38] Ahmad Saifuddin, Warto and Jamil, Abdul, "Ilmu Dalam Perspektif Filsafat Islam (Science in Perspective of Islamic Philosophy)" *Ewha Journal of Social Sciences*, Vol. 35, No. 1, (Maret 2019)):1-14 https://ssrn.com/abstract=3549062

Constitution of the Republic of Indonesia, human rights, and general legal principles recognized by civilized society.

As stated above, the fundamental system alteration in the renewal of the Indonesian criminal law system is the existence of the Provisions of Article 2 of the Criminal Code. Article 2 of the Indonesian Criminal Code can also be called material legality (*substance/essence of law*).

According to the author, this is only a matter of terminology; the most important thing is to keep the true meaning of Article 2. The provisions of Article 2 emerged due to the weaknesses of Article 1 and are considered the provisions of Article 2 to represent Indonesian philosophy.

The struggle of the Indonesian people for the renewal of the Criminal Code system is based on political, sociological, and practical reasons. Political reasons are based on the idea that an independent country must have its national law for national pride, which aligns with its national goals as written in the 1945 Constitution of the Republic of Indonesia (UUD NRI). Sociological reasons require laws that reflect the cultural values of a nation (latency). In contrast, practical reasons, among others, are based on the fact that former colonial countries usually inherit the legal system of the colonizing country with its original language, either through the principle of concordance, jurisprudence, and doctrines instilled by the colonizers, which are then often not understood by the younger generation of the newly independent country. This is because the newly independent country wants to make its system and language a unified system and language so that the language of

the colonizing country is only owned by the generation that experienced colonization.[39]

The provisions of Article 2 of the Criminal Code are inspired by the esoteric civilization of the Indonesian nation, Pancasila, as the foundation of the state, the philosophical basis of the state, and the source of all sources of law of the Indonesian nation as well as the 1945 Constitution.[40] Article 2 of the Criminal Code implements the interests of a just society and legal certainty. Article (1) is legal certainty, while Article (2) is the essentiality of law based on the spirit (*Volk Geist*) of the Indonesian nation.

Philosophically, according to the Author, the provisions of Article 2 of the Criminal Code align with the adage *ubi societas ibi ius* where there is society, there is law. This adage means that law exists because of humans, not the law that creates humans. In the context of Indonesian civilization, Indonesian society causes the law to exist, not the society of other countries. Also, the existence of Indonesian law follows the development of Indonesian society as the cause (causa) of the reality of the provisions of Article 2.[41]

The history of Indonesian civilization is an Indonesian philosophy clearly stated in the 5 Principles of Pancasila. Local wisdom that lives and is practiced in each region in Indonesia is the "spirit" of the values of Pancasila. The local wisdom of this nation is the "*root" of the values of Pancasila, but at the same time, it is also a sturdy "tree" full of thick branches and leaves in which*

[39]BPHN, "*Naskah Akademik KUHP Indonesia",* (Jakarta: BPHN Kemenkumham, 2022),1.

[40] Ending Wahyuningsih *Loc.Cit*

[41]Fransiskus Saverius Nurdin, "Diskursus Urgensi Sosiologi Hukum" *Jurnal Transformatif,* Vol. 10, No. 2, (November, 2022): 65-77 https://doi.org/10.58300/transformatif.v10i2.215

beautiful butterflies and various beautiful birds take shelter. Local wisdom can also be seen as fresh, ripe, and aesthetic "fruits." Whoever picks it is refreshed by its taste. All of these living values are the philosophy of the Indonesian.[42]

In fact, in preparing norms, it is necessary to underline that the norms produced represent the civilization of the Indonesian nation itself so that these norms are not considered to have died (legis corruption) or do not destroy the local wisdom of the nation itself. Local wisdom is the philosophy of Pancasila, the philosophy of the Indonesian nation, and the state ideology. Pancasila is also the basis of the Republic of Indonesia, which significantly determines the substance of the codification of the Indonesian National Criminal Code.[43]

The design of Indonesia's esoteric legal state is called the Pancasila Legal State. As a national philosophy, Pancasila contains values that guide the Indonesian nation's attitude toward facts and events concerning humans, the universe, and the Creator. Pancasila is closely related to the philosophical, legal, and sociological aspects and all favorable legal regulations of the Republic of Indonesia, including Article 2 of the Indonesian National Criminal Code.[44]

The provisions of Article 2 of the Indonesian Criminal Code are due to the limitations of Article 1 of the Criminal Code, which is the biological child of legal positivism.

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[42]F.X. Armada Riyanto (*et al*), "*Kearifan Lokal - Pancasila: Butir-Butir Filsafat Keindonesiaan*" (Jogjakarta: Kanisius, 2023), 1

[43]Atmoredjo Sutedjo, "*Ideologi Hukum Indonesia, Kajian tentang Pancasila dalam Perspektif Ilmu Hukum dan Dasar Negara Indonesia*, (Jogjakarta: Lingkar Merdeka, 2016), 9-10

[44] I Made Walesa Putra "Ideologi Pancasila Sebagai Dasar Tujuan Pemidanaan Dalam Pembaharuan Hukum Pidana Nasional" *Jurnal Vyavahara Duta*: Volume Xvii, No.1, (April 2022), 2614-5162 https://doi.org/10.25078/vd.v16i2.2911

According to the author, the radical weakness of the provisions of Article 1 of the Criminal Code is the reality of a quo Article, not being a representation of the Indonesian nation's civilization, which is unique and different from the civilizations of other nations (esoteric civilization).[45]

Other weaknesses of the provisions on the principle of formal legality (Article 1) of the Indonesian Criminal Code are:

1. Law is often used as an instrument of power for rulers to maintain their power (ruler's etatism). Of course, it is not uncommon for laws that are supposed to guarantee protection for the community to oppress the people themselves consciously. There is a transition from *the rule of law* to the *rule by law*, where the supremacy of law is under the authority/domination of power.
2. Laws always lag behind the rapid developments of the times, which are significant and inevitable. This makes the law very unadaptive.
3. Laws, as written, have a minimal capacity to include all matters relating to social, political, and technological (sospoltek) problems, which are very complex and certainly dynamic because social and political problems follow human progress.

These weaknesses of Article 1 of the Indonesian Criminal Code are the prime cause of the emergence of Article 2 of the Criminal Code. According to Bagir Manan, this unwritten law has the following roles:

[45] Suwandoko (*et al*), "Legal Humanism Based on Local Wisdom: Progressive Legal Development Study in Magelang", *Jurnal Pandecta* Volume 17. Number 2, (December 2022): 229-236 https://doi.org/10.15294/pandecta.v17i2.36870

a. It is an instrument that complements and fills various legal gaps in a statutory regulation.
b. It is an instrument that provides dynamics to statutory regulations. It is an instrument for relaxation or correction of statutory regulations to make them more in line with the demands of development, a sense of justice, and truth in society.[46]

According to the author, what Bagir Manan said shows that the spirit of Article 1 of the KIHP (leges) is Article 2 of the Criminal Code (material), which lives in the journey of Indonesian civilization. It is unfair when legal positivism annuls the presence of the spirit (ius) in law. So, ontologically, the provisions of Article 2 of the Indonesian Criminal Code, according to the author, are anthropological facts of the Indonesian nation itself starting from its journey of civilization, Pancasila as the basis, philosophy, source of all sources of law, and the 1945 Constitution as a source of legal order and as a constitution.

4). Philosophical Relationship (Harmonization) of Article 1 and Article 2 of the Indonesian Criminal Code

Regardless of the controversy over the provisions of the Principle of Legality of the National Criminal Code between Article 1 and Article 2, in which, in substance, the presence of Article 2 of the Criminal Code (material legality) can override

[46]Bagir Manan, *Peranan Hukum Administrasi Negara dalam Pembentukan Peraturan Perundang-undangan,* Makalah pada Penataran Nasional Hukum Administrasi Negara, (Makasar: Fakultas Hukum Universitas Hasanudin,1998), 85. See also Erlina Maria Christin Sinaga, Sharfina Sabila, "Politik Legislasi Hukum Tidak Tertulis Dalam Pembangunan Hukum Nasional," *Jurnal Recht Vinding Media Pembelajaran Hukum Nasional*", Vol 8, No 1, (April 2019), 1-18 http://dx.doi.org/10.33331/rechtsvinding.v8i1.306

the binding power of Article 1 of the Criminal Code (formal legality). The author believes this legal anomaly can be further studied on another occasion.

In the author's opinion, the legal reasoning for the Principle of Legality of the Criminal Code combines legal positivism, natural law, and sociological jurisprudence. Philosophically, legal thought is marked by the development of thought in the schools of legal philosophy that are believed to be its ancestors (mater of scientism).

The emergence of a school of law is a response or criticism or even an anomaly to the previously existing school of law or appears as a form of response to the social development of society. Schools that have emerged and developed in the treasury of legal thought include the school of natural law, legal positivism, utilitarianism, legal realism, sociological jurisprudence, and the historical school. The schools mentioned have radical arguments that differ from each other. In other words, each school of thought has a different perspective (paradigm) on the ontological reality of law.[47]

As presented by the author at the beginning of this article, humans are real/real creatures, can be touched, touched by their bodies or bodies, and are active. Humans are reality. The reality of humans is not only created by the body. Human reality is composed or formed from elements of the soul and body. This soul is the element that moves or animates the body. The soul and body are a harmonious combination. The combination of

[47]Mahrus Ali, "Pemetaan Tesis dalam Aliran-Aliran Filsafat Hukum dan Konsekuensi Metodologisnya" *Jurnal Hukum Ius Quia Iustum*, Vol. 24, No.2, (April 2017): 213 – 231 http://dx.doi.org/10.20885/iustum.vol24.iss2.art3
See also Teguh Prasetyo dan Abdul Halim Barkatullah , *Filsafat, Teori dan Ilmu Hukum, Pemikiran Menuju Masyarakat berkeadilan dan Bermartaba,* cetakan ke V, (Jakarta:Rajawali Press 2017)

soul and body in human reality is likened to a guitar formed from strings and the resulting notes. Are the notes visible? Not at all, but felt. Notes are an invisible reality. If the guitar had no notes, it would not function.[48]

Likewise, with the reality of the provisions of Articles 1 and 2 of the Indonesian Criminal Code, both support each other. As a reality, the provisions of Articles 1 and 2 of the Criminal Code (read law) combine two things that form a whole and undistorted unity. The provisions of Article 1 of the Indonesian Criminal Code do not only mean the validity or "legality" of an act according to legal norms but are also related to the actions of the authorities or government and even law enforcers in dealing with citizens, where the actions of the authorities and law enforcers must also be by the benchmarks of legal norms (which have been made legally).[49]

Thomas Aquinas said legal norms are not just there for the sake of existing but must also be reasonable or by reason (*quaedam rationis ordinatio Ad bonum commune*). The norm must also be made and announced by the ruler or government so that everyone knows about the existence of the norm. In addition, another important thing is that the legal provisions (Article 2 of the Criminal Code), which are the spirit or basis of the provisions of Article 1 of the Criminal Code, must contain the value of justice, as well as other general principles of law.[50]

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[48]Kasdim Sihotang, *Filsafat Manusia, Usaha Membangkitkan Humanisme,* (Jogjakarta: Kanisius, 2016), 6.

[49] See Zakki Adlhiyati and Harjono, " The Virtue of Morality: A Comparative Study Indonesia and England" *Pandecta Research Law Journal*, Vol.18, No. 2, (December 2023):173-194 DOI: http://dx.doi.org/10.15294/pandecta.v18i2.47765

[50] Thomas Aquinas, *Summa Theologica,* Translated by Fathers of The English Dominican Province, (Ohio: Benziger Bros, Edition, 1947), 1332http://dhspriory.org/thomas/english/summa/index.html

As the author has explained on the previous page, the affection of positivism is extreme towards the provisions of Article 1 of the Indonesian Criminal Code. Moreover, the emergence of positivism is a form of rational reaction or political resistance to the flow of natural law (because the flow of natural law is considered unclear in its limits or legal benchmarks for concrete behavior in society). Now, the discourse of the philosophical relationship between the provisions of Article 1 and Article 2 of the Indonesian Criminal Code becomes very relevant. The goal is to understand the ontology of each provision, then the philosophical relationship, and no less important is how the legal synthesis of the provisions of Article 1 and Article 2 of the Indonesian Criminal Code.[51]

In fact, at the formation level, law must be formed by procedures or meet specific formal demands to be recognized as law (legal legitimacy). Here, the urgency of the thesis above is already visible in the provisions of Article 1 of the Indonesian Criminal Code. This means that if only the idea of law (legal ideals) is not enough and will certainly not be recognized as law.[52]

The formal aspect includes negative and positive principles. The formal negative principle states that the primary consideration of the legal system is to protect citizens from the state that seeks to impose its will on them. The formal positive principle emphasizes consistency and completeness in applying the law that requires a state to punish the guilty. The distinction between the positive and negative principles of form is one to

[51] Vincentius Patria Setyawan, Hyronimus Rhiti "Relasi Asas Legalitas Hukum Pidana Dan Pemikiran Hukum Alam" *Jurnal Inovasi Penelitian*, Vol.2, No.12, (Mei 2022):3813-3822 https://doi.org/10.47492/jip.v2i12.1481

[52] Andrea Ata Ujan, *Op.Cit.,*16

remember when discussing leagues and ius. The provisions regarding Article 1 of the Indonesian Criminal Code (read formally) are based on the legal positivism school. At the same time, Article 2 of the Indonesian Criminal Code (read material) is not solely based on formality but also morality.[53] Because the reality of the law (Articles 1 and 2 of the Indonesian Criminal Code) is moral in *abstracto*.[54]

Making laws that fulfill formal procedural aspects alone is not enough. Other important demands are still needed so that they are more appropriate and worthy of being called law, namely the material or content or substance aspect that guarantees that the law does not conflict with the principle of justice and other general principles of law. Law is material (ius), not just formal (leges).

Regarding Article 1 of the Indonesian Criminal Code, quo provisions act as formal rules (leges), which are normative articulations of Article 2 of the Indonesian Criminal Code (material). Article 2 of the Indonesian Criminal Code is the material substance or content of the law. Demands in terms of substance are essential because the law aims to uphold justice through guarantees that the rights and obligations of all citizens can be implemented and appropriately fulfilled (moral legitimacy). The effectiveness of these material or substantial demands depends on the extent of public recognition and appreciation of the law in question. Thus, the public reception (of the Indonesian nation) of the provisions of Articles 1 and 2

[53] George Fletcher P., *Basic Concepts of Criminal Law*, (NewYork: Oxford University Press, 1998),7 https://scholarship.law.columbia.edu/books/79

[54] Simplisius Sandur, *Etika Kebahagiaan. Fondasi Filosofis Etika Thomas Aquinas*, (Jogjakarta: Kanisius,2019), 122.

of the Criminal Code becomes another demand that cannot be ignored by the state (*sociological legitimacy*).[55]

D.CONCLUSSION

Based on what has been stated above, the conclusions that can be drawn are:

1. The concept of philosophical thought is related to the philosophical assumption of the relationship between the human soul and body, which strongly emphasizes human unity as a complete reality composed of soul and body. Human reality cannot be distorted, just like the relationship between Article 1 and Article 2 of the National Criminal Code.
2. In ontological reality, the provisions of Article 1 of the Indonesian Criminal Code are a Law (legalism) and are a logical risk of modern law (legal positivism), which prioritizes the reality of phenomena/objectives and the scientific nature of law. Article 1 of the National Criminal Code also manifests teachings against formal law.
3. In ontological reality, the provisions of Article 2 of the Indonesian Criminal Code are anthropological facts of the Indonesian nation itself starting from its civilization journey, Pancasila as the basis of the state and ideology and philosophy, the source of all sources of law, and the 1945 Constitution as a source of legal order (normative constitution). Because the journey of Indonesian civilization is a philosophy of Indonesianness, Article 2 of the National Criminal Code is also a form of reform of Indonesian criminal law, as well as the embodiment of the teaching of the nature of material unlawfulness.

[55] Andrea Ata Ujan, *Op.Cit.,*16

4. The philosophical relation (harmonization) between Article 1 and Article 2 of the Indonesian Criminal Code is seen in the legal, moral, and sociological synthesis of the National Criminal Code, which is a masterpiece (opus magnum) of the Indonesian nation produced after a long process.

D. References

Abidin, Andi Zainal &Andi Hamzah. *Pengantar dalam Hukum Pidana Indonesia*. cet I, Jakarta: Yarsif Watampone, 2010

Aburaera, Sukarno, *et al*. *Filsafat Hukum Teori dan Praktik* Jakarta:Kencana Prenada Media Group,2015

Adlhiyati, Zakki and Harjono," The Virtue of Morality: A Comparative Study Indonesia and England" *Pandecta Research Law Journal*, Vol.18, No. 2, (December 2023):173-194 DOI: http://dx.doi.org/10.15294/pandecta.v18i2.47765

Ali, Mahrus, 2017. "Pemetaan Tesis dalam Aliran-Aliran Filsafat Hukum dan Konsekuensi Metodologisnya" *Jurnal Ius Quia Iustum* 2 Vol. 24 (April): 213-231 http://dx.doi.org/10.20885/iustum.vol24.iss2.art3

Ali, Mahrus. dan Muhammad Abdul Kholiq, "Adopsi Nilai dan Prinsip Hukum Pidana Islam tentang Delik Kesusilaan Zina dalam Kitab Undang-undang Hukum Pidana Nasional", *Jurnal Ius Quia Iustum* No. 3 Vol. 30 (September 2023): 622 – 649 https://doi.org/10.20885/iustum.vol30.iss3.art8

Aquinas, T. *Summa Theologica*. Translated by Fathers of The English Dominican Province, Ohio: Benziger Bros, Edition,1947 http://dhspriory.org/thomas/english/summa/index.html

Aryati, A. 2018. "Memahami Manusia Melalui Dimensi Filsafat (Upaya Memahami Eksistensi Manusia)." *Jurnal El-Afkar*, Vol. 7 No.

II, (Juli- Desember 2018):79-94 DOI: http://dx.doi.org/10.29300/jpkth.v7i2.1602

Ata Ujan, *Andrea Membangun Hukum Membela Keadilan*. Jogjakarta, Kanisius, 2017

Bagus, Lorens. Metafisika. Gramedia. Gramedia, Jakarta, 1991

Barnes, Jonathan (Editor). *Complete Works of Aristotle* Volume 2, USA New Jersey: Princeton University Press,1984

Bertens, *K. Sejarah Filsafat Yunani.* Jakarta: Gramedia,2018

Candra Irawatu, Arista. 2019. "Politik Hukum Dalam Pembaharuan Hukum Pidana (RUU KUHP Asas Legalitas)". *Jurnal Adil Indonesia* 2 No.1, (Juli):1-12 unw.ac.id/index.php/AIJ/issue/view/52

Dahler, Franz & Julius Chandra. *Asal dan Tujuan Manusia*, Jogjakarta: Kanisius, 1971

Fadlilah, Nabiel, (*et all*) 2022. "Tinjauan Yuridis Mengenai Pertentangan Hukum Yang Hidup dalam Masyarakat," *Jurnal Hukum dan Pranata Sosial Islam* 4, 2 (Desember):505-514 Doi: https://doi.org/10.37680/almanhaj.v4i2.1790

George Fletcher, P. *Basic Concepts of Criminal Law*, New York: Oxford University Press, 1998 https://scholarship.law.columbia.edu/books/79

Huijbers, Theo. *Filsafat Hukum dalam Lintasan Sejarah* cetakan ke 20, Jogjakarta: Kanisius, 2018

Leahly S. Louis, David, Idi Subandy Ibrahim. *Siapakah Manusia*? Jogjakarta: Kanisius, 2001

Made W.P.I. "Ideologi Pancasila Sebagai Dasar Tujuan Pemidanaan Dalam Pembaharuan Hukum Pidana Nasional" *Jurnal Vyavahara Duta*: Volume Xvii, No.1, (April 2022), 2614-5162 https://doi.org/10.25078/vd.v16i2.2911

Mahmud Marzuki, Peter. *Penelitian Hukum* Edisi Revisi Cetakan ke XIV. Jakarta: Kencana Prenada Media Group,2019

Manan, Bagir. "Peranan Hukum Administrasi Negara dalam Pembentukan Peraturan Perundang-undangan". Makalah pada Penataran Nasional Hukum Administrasi Negara, Fakultas Hukum Universitas Hasanudin 1998

Mangunharjana, A. *Yang Ceria dan Bahagia*, Jogjarta:Kanisius, 2002

Naskah akademik KUHP Indonesia Jakarta: BPHN KEMENKUMHAM 2022

Nurdin, F.S. 2016. "Rekonstruski Asas Legalitas Dalam Hukum Pidana Berdasarkan Asas Keadilan". *Jurnal Refleksi Hukum* 1. No. 1 (Desember):1-14 DOI: 10.24246/jrh.2016.v1.i1.p1-14

Peursen, C.A.van, (Alih Bahasa K. Bertens). *Tubuh-Jiwa-Roh: Sebuah Pengantar Dalam Filsafat Manusia*. Jakarta: BPK Gunung Mulia,1991

Prasetyo, Teguh. dan Abdul Halim Barkatullah. "*Filsafat, Teori dan Ilmu Hukum, Pemikiran Menuju Masyarakat berkeadilan dan Bermartabat*". cetakan ke V, Jakarta:Rajawali Press 2017

Rasjidi Lili, & B. Arif Sidharta. *Filsafat Hukum Mazhab dan Refleksinya*. Remaja Rosda Karya: Bandung, 1999

Renggong, Ruslan. *Hukum Pidana Khusus Memahami Delik-Delik Diluar KUHP Jakarta*:Prenada Media Group,2016

Riyanto.A.F.X.(*et all*). *Kearifan Lokal - Pancasila: Butir-Butir Filsafat Keindonesiaan*. Jogjakarta: Kanisius, 2023

Ross, William David. *The Work of Aristotle*. London: Methuen & Co.LTD, 2020

Saida, F.H. Mac Thi Hoai Thuong, Ratna Deliana Erawati,2023. "The Orientation and Implications of New Criminal Code: An Analysis of Lawrence Friedman's Legal System". *Jurnal IUS Kajian HUkum dan Keadilan* 11, No.1. (April):114 Doi: http://dx.doi.org/10.29303/ius.v11i1.1169

Saifuddin, A. *(et all)*. 2019 "Ilmu Dalam Perspektif Filsafat Islam (Science in Perspective of Islamic Philosophy)" *Ewha Journal*

of Social Sciences, Vol. 35, No. 1, (Maret)):1-14 https://ssrn.com/abstract=3549062

Sandur, Simplisius. *Etika Kebahagiaan Fondasi Filosofis Etika Thomas Aquinas*. Jogjakarta: Kanisius, 2019

Santoso (et al). 2020. "Harmonisasi Al-Ruh, Al-Nafs, Dan Al-Hawa Dalam Psiklogi Islam" *Jurnal Jurnal Islamika*, Vol. 3, No. 1 (Mei, 2020): 170—181 DOI: https://doi.org/10.37859/jsi.v3i1.1899

Saverius Nurdin, Fransiskus. 2020. "Kontra antara Legem dan Ius pada Peristiwa Bom Bali I." *Jurnal Hukum Positum* 5. No 1, (Juni 2020): 100–123. https://doi.org/10.35706/positum.v5i1.3521

Saverius Nurdin, Fransiskus. 2022. "Diskursus Urgensi Sosiologi Hukum". *Jurnal Transformatif Unkriswina Sumba,* 10, No. 2, (November):65-77 https://doi.org/10.58300/transformatif.v10i2.215

Setyawan, V. & Rhiti, H. 2022. "Relasi Asas Legalitas Hukum Pidana Dan Pemikiran Hukum Alam". *Jurnal Inovasi Penelitian*, 2, No.12, (Mei): 3813-3822 Doi: https://doi.org/10.47492/jip.v2i12.1481

Sihotang, Kasdin. *Filsafat Manusia, Usaha Membangkitkan Humanism*, Jogjakarta: Kanisius, 2016

Sinaga. Erlina, Sharfina Sabila, 2019. "Politik Legislasi Hukum Tidak Tertulis Dalam Pembangunan Hukum Nasional," *Jurnal Recht Vinding Media Pembelajaran Hukum Nasional* Vol 8, No 1, (April),1-18 http://dx.doi.org/10.33331/rechtsvinding.v8i1.306

Soejanto Poespowardodjo.M.T dan Alexander Seran. *Filsafat Ilmu Pengetahuan, Hakikat Ilmu Pengetahuan, Kritik Terhadap Visi Positivisme Logis, Serta Implikasinya*. Jakarta: Kompas, 2021

Sutedjo, Atmoredjo "*Ideology Hukum Indonesia, Kajian tentang Pancasila dalam Perspektif Ilmu Hukum dan Dasar Negara Indonesia*, (Jogjakarta: Lingkar Merdeka, 2016)

Suwandoko (*et.al*), 2022. "Legal Humanism Based on Local Wisdom: Progressive Legal Development Study in Magelang", *Jurnal Pandecta* 17. No 2, (December 2022): 229-236 DOI: https://doi.org/10.15294/pandecta.v17i2.36870

Undang-Undang No. 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana Indonesia (KUHP)

Wahyuninsgih, E. 2014. "Urgensi Pembaharauan Hukum Pidana Materil Indonesia Berdasarkan Nilai-Nilai Ketuhanan Yang Maha Esa." *Jurnal Pembaharuan Hukum* I, No.1, (Januari – April):17-23 DOI: http://dx.doi.org/10.26532/jph.v1i1.1457

Zainal Abidin. A. *Hukum Pidana 1*. cet II, Jakarta: Sinar Grafika, 2007

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