



## Criminal Politics (Enforcement) of Criminal Law Based on Pancasila Equity

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### Abstract

Indonesian state based on Pancasila, any rule of law (criminal) and their enforcement should always contains/is inspired by the values of Pancasila. The policy of enforcing criminal law means upholding justice, and the justice for the Indonesian people is equity based on Pancasila. The direction and policies for the development of national law (criminal law) in realizing the ideals of legal development based on justice should always be based on religious values, customs and socio-cultural values of Indonesian society which crystallized in the Pancasila philosophy. Therefore, the essence of criminal law policy is that efforts to achieve social welfare should always be inspired by and based on the basic values of the Pancasila philosophy as Grundnorm / Staatsfundamentalnorm (fundamental norms of the state) of the Indonesian nation. Pancasila is the values, principles, soul and spirit of the Indonesian people. Pancasila is the basic norm (grundnorm), and at the same time the basic values (grundwerten), which are the spirit of Indonesian law. Law is always rooted in "a peculiar form of social life", therefore a legal system is a uniqueness, an institution rooted in the cosmology, values and traditions of the nation concerned.

**Keyword:** Criminal Politics; Equity; Justice; Law Enforcement

### INTRODUCTION

Talking about law enforcement, often trapped in the problem of dogmatism and simple thinking, as if all matters are finished when the regulations have been implemented, the laws have been implemented so that there is no longer the responsibility of the state to implement the principle of a state of law on justice. This way of thinking is wrong toward the law, it should think the opposite, smart thinking invites the public to say that upholding the law is not just simply carrying out laws or formalistic-legalistic procedures (Rahardjo, 2010).

In the spiritual treasures of the East (Java), the term mesu budi is known (Rahardjo, 2010), which is defined as expressing the totality of soul power in a person.

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Asian people in general (including Indonesia) or better known as "*easterners*" have a culture of prioritizing and prioritizing feelings / conscience in their association (law). The term *mesu budi* is actually very familiar and has been practiced in Javanese or religious life, although using different terms for each religious adherent in Indonesian society.

In the modern era or the millennial era like today, the industrial era 4.0, life is filled with mastery of all sophisticated technology (digitalization era), science and rational thinking, as well as mastery of data (Big data), culture and enthusiasm for promoting tolerance and conscience are still very relevant and is a big asset in modern life as it is today in order to guarantee a life that is still based on mutual cooperation and a sense of kinship in a peaceful community life.

Law enforcement officials who always think legalistic-formalistic, it can be predicted that the implementation of law in Indonesia, whether carried out by the legislative, executive or judicial bodies, results in the collapse of the sense of justice (substantive) of the community and will only produce formalistic-procedural justice. For example, law is only implemented and applied rationally, not substantive justice to be created.

Pancasila is a philosophical foundation in the perspective of national development, including legal development which has an important and very strategic role. This implies that all activities or development steps must refer to and be based on the socio-cultural values of Indonesian society which are embedded in Pancasila (Syamsudin M, 2009). Grand Design and National Law Politics in national development are designed systematically and logically within the framework of national legal development based on the values of the Pancasila philosophy and the basic law of the State, namely the 1945 Constitution (Serikat Putra Jaya, 2018b).

Pancasila is the personality of the Indonesian nation, which is able to give a special characteristic or identity to the Indonesian nation (Ismayawati, 2017) which is able to differentiate from other nations in the world.

Law is used as a means of community development / renewal in line with the teachings of "law is a means to change society" (Marbun, 2014). In Indonesia, the teaching of Roscoe Pound was disseminated by Mochtar Kusumaatmadja, who brought ideas to make use of law as a means of changing society through the implementation of national development. The policy of developing the Legal System (National), which includes the sub-system of the branch of law, including among others: Criminal, civil, state administration and others, must be based on and imbued with the values of Pancasila as the spirit of the nation's philosophy (Maryanto, 1970).

The criminal law system, as a component part of national development, is seen from the point of view of a criminal law development strategy, and is also part of the development of "positive criminal law". Meanwhile, "positive criminal law" is part of "normative criminal law" (Nawawi Arief, 2018).

Modern law that has become technological, which is very positivistic, enforcing the (criminal) law means enforcing laws or written regulations. Meanwhile, the Indonesian State is based on the Pancasila philosophy, all legal

(criminal) regulations and their enforcement should always contain / be imbued with the values of Pancasila. Upholding criminal law means upholding justice, and justice in Indonesian society is Pancasila justice. The problem is "How is the criminal politics of criminal law enforcement based on Pancasila equity?"

## DISCUSSION

### Criminal Politics of Criminal Law

According to Marc Ancel, as quoted by Nyoman United Putra Jaya explained that Criminal Policy is "the organization of the control of crime by society" (United Putra Jaya, 2017). Furthermore, G. Peter Hoefnagels stated that "Criminal Policy is the rational organization of the social reaction to crime" (United Putra Jaya, 2017). Because the dynamics and needs of society always keep abreast of developments in science and technology, encouraging people to (United Putra Jaya, 2018a) fulfill their needs in various ways including being able to use methods that are contrary to law enforcement.

In another explanation, Nyoman United Putra Jaya citing Soedarto's opinion, stated that the direction of legal policy is a strategy of an organization called the state through state institutions that have the authority to ratify the desired legal regulations, which are expected to be used to realize the desires of the community and realize their dreams. -the ideals of the nation and state (Putra Jaya Union, 2018a). In addition, it is also the state's efforts to prevent crime in society (Sudarto, 1986).

The definition of legal politics as stated by Padmo Wahyono in Mahfud MD's writing, legal politics is a fundamental strategy to determine the objectives, form and things contained in the law to be formed (Mahfud, 2019). Efforts to tackle evil acts can be done by using criminal law and non-criminal law. Prevention of criminal acts / evil deeds by using penal means is essentially a part of criminal policy (United Putra Jaya, 2018a).

A series of activities in the framework of implementing criminal policies have a very noble purpose, namely to protect society from crimes that threaten or endanger peace and prosperity. Therefore, basically, criminal policy is a planned effort to provide security and comfort for the community as an integral part of all policies (Nawawi Arief, 2017a).

The politics (policy) of criminal law or the so-called criminal system includes the formulation stage / legislative stage at the DPR, the implementation stage of laws (the application stage in the executive / government agency) and the execution / implementation stage of the Criminal Law as a functional / operational unit for achieve the goal of punishment (Nawawi Arief, 2017b).

Seeking and making better strategies for designing and simultaneously making criminal laws is basically part of the effort to tackle crime. Therefore, the policy of drafting criminal legislation is essentially the same as a strategy for overcoming criminal acts through criminal law (Penal) means (Slamet, 201AD).

M. Cherif Bassiouni mentioned the 3 (three) stages of the policy, as cited by Barda Nawawi Arief, using other terms, namely the formulation stage (formulation / legislative process), the implementation stage (judicial / judicial process) and the implementation stage (execution / administrative process). The stage of formulating criminal law rules (formulation / legislative policies) is the stage of implementing criminal law "in abstracto". At the judicial policy stage and the executive stage are criminal law policy processes "in concreto" (Nawawi Arief, 2016).

Meanwhile, according to Mahfud MD, the definition of legal politics is a legitimate strategy from the state regarding the formulation of legal rules to be implemented, either through the preparation of completely new legal rules or through the process of replacing outdated legal rules to achieve state goals (Mahfud, 2019) as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia, Paragraph IV. Therefore, the scope of the study should at least include: the state strategy (official line) regarding how good legal rules are to be implemented or not implemented within the jurisdiction of the country (Indonesia). So that the study coverage can include: the origin of the political conditions of the country concerned, economic problems, socio-cultural problems of the nation / state concerned in order to produce legal rules and their enforcement in the real conditions of society.

In line with the definition of legal politics as mentioned above, in relation to the Political Criminal Law it can be understood as an official policy regarding the enactment of a new criminal law (through the making / renewal), as well as replacing the old criminal law (either partially / partially or as a whole / comprehensive) because it is considered no longer in accordance with the dynamics of development required by society in order to achieve the goals of the nation and state.

The objectives of the nation / state are none other than: maintaining the integrity of the nation and homeland of Indonesia, encouraging the realization of community welfare, increasing the level of intelligence capable of increasing the standard of living of the nation, and implementing world order / world peace. Criminal Law Politics as the direction, form and content of criminal law policies in order to realize the goals of the country it is necessary to pursue a strategy through criminal law policy.

Soedarto stated a broad definition of criminal policy (by quoting Jorgen Jepson's opinion), which includes all strategies, pursued by formulating laws and policies of legitimate state institutions, with the aim of properly implementing the important norms / rules that live in community (Nawawi Arief, 2017a). And it is also emphasized that "criminal policy as a science of policy is part of larger policy" (Ravena, 2017).

Efforts to tackle evil acts are actually an inseparable series or constitute an integral part of efforts to protect society and efforts to achieve a better / more prosperous level of community life. Therefore the noble ideals of criminal policies are basically an effort to protect society so that a prosperous society can be realized physically and spiritually. This is also in line with the XXXIV training report conducted by The United Nations Asia and Far East Institute for the

Prevention of Crime and the Treatment of Offenders in Japan in 1973, emphasized (Nawawi Arief, 2017a):

"Most of the group members agree with some disagreement that public protection can be accepted as the ultimate goal of criminal policy, even though it is not the end goal of society which might be described in terms such as citizen happiness, healthy and cultural life, social welfare or equality".

Based on this explanation, in essence, criminal politics can be affirmed as a whole series of mechanisms for achieving social welfare, namely to achieve social welfare.

An in-depth explanation of the term policy or the politics of criminal law can be seen from the point of view of legal politics or from criminal politics. Carrying out a criminal law policy can actually be interpreted as the art of implementing a choice in order to achieve the success of criminal law / law effectively and efficiently in order to achieve justice and benefit the community. Carrying out a criminal law policy can also be interpreted as an effort to implement good criminal legislation in order to meet the needs and dynamics of a rapidly developing society along with advances in science and technology which require planning for future needs following the current development of the times (Nawawi Arief, 2017a).

Efforts and strategies in order to formulate criminal law regulations that can meet the needs and dynamics of the growing society are essentially a series of inseparable activities with the aim of tackling evil acts in line with the increasingly advanced development of society. So the political strategy / mechanism of criminal law can be identified as an inseparable series from criminal politics. Thus, in fact, criminal law policy is basically the same as the notion of a strategy for overcoming evil acts through criminal law enforcement.

A broad view of the "criminal policy" was conveyed by Muladi that the prevention of crime is included in the criminal justice system and "prevention without punishment" (Muladi, 2002b). He further said that the "Criminal Policy" which will color the criminal justice system is a combination of the retributive justice approach which remains valid with rationalization (just desert model) and restorative justice that applies conditionally, **which is colored by Pancasila** (bold and italic writing: pen.), Human Rights and general legal principles accepted by civilized nations; In the purpose of punishment, the aspect of retaliation is not prominent (Muladi; Diah Sulistyani RS, 2016).

Criminal law policy in achieving the goal of just legal development cannot at all be separated from the basic philosophical values of Indonesian society. These basic values by the Indonesian people have been around for a long time and have been recognized and have crystallized in their form as embodied in the Indonesian nation's philosophy, namely Pancasila. Therefore, the criminal law policy which is essentially an effort to achieve the welfare of the people is reasonable and should always be imbued with and based on the basic values of the Pancasila philosophy which have become the Grundnorm / Staatsfundamentalnorm (fundamental norms of the state) of the Indonesian nation.

### Scientific Approach to Enforce Criminal Law

A very important problem in upholding criminal law so far is the problem of a scientific approach in implementing the Criminal Justice System. In principle, the system for enforcing the law is a system of power / authority for how with that authority criminal law can be implemented / enforced in accordance with the aims and objectives of making legal regulations. And the power / authority to implement the rule of law means the equivalent of the term judicial authority. And therefore the Criminal Justice System essentially has the same meaning as the authority of the judiciary in the realm of criminal law.

According to Muladi's opinion, it is said that at the ideal level, it includes at least 3 indicators to determine the level of effectiveness of the criminal law system, namely that it can create a rehabilitation process and a resocialization process for criminals; can prevent crime and can create social welfare (Muladi, 2002a).

In the Criminal Justice System, the realization / implementation is carried out through 4 (four) sub-systems of criminal law enforcement including: (1) sub-system of power to carry out investigations (residing in the police / prosecutor's agency), (2) sub-system of power to carry out prosecution (located at the prosecutor's office), (3) the sub-system of power to conduct proceedings in the framework of *pro justisia* is under the judiciary (4) the power to carry out criminal decisions (resides with the executing apparatus). All components of the system have a strong and inseparable link from one another to form an integral and inseparable unit in enforcing criminal law in an integral manner which is more popularly known as the Integrated Justice System (Nawawi Arief, 2019).

The four agencies / institutions are bodies that exercise judicial authority as commonly used in the 1945 Constitution before the 3rd amendment. So that these institutions / agencies are not identical as the judicial institutions known in the provisions of Law Number 14 of 1970 in conjunction with Law Number 35 of 1999, Law Number 4 of 2004, Law Number 48 of 2009 and the terms used in Article 24 3rd amendment to the 1945 Constitution of the State, Article 24.

Authority in terms of carrying out the aspects of justice regarding the criminal law enforcement system, can not only be exercised within the authority of the judicial process (deciding or imposing punishment), but can be carried out through 4 components / stages of authority in an integral / integrated manner as described above, namely covering the authority to investigate, authority to prosecute, authority to adjudicate and authority to execute / implement criminal decisions.

The scientific approach to law enforcement in Indonesia needs to be emphasized optimally considering the emergence of symptoms of the current law enforcement system, its structure / scientific orientation has experienced tremendous degradation, and has shifted to a more partial view.

Indicators of declining quality of scientific approaches and a shift to a current financial perspective can be seen in the emergence of symptoms such as the spread of "bribe money habits / culture", "money playing habits", or "the habit of using all means" or more popularly called the "culture of judicial crime

conspiracy" which has hit the practice of law enforcement that has been troubling the public (Nawawi Arief, 2019). For example, a case that is currently booming, namely the case of Bank Bali Joko Candra's claim rights which involved suspects who in fact are high-ranking law enforcement officials in this country. This condition is inseparable from the emergence of symptoms of weakening moral and ethical integrity, a decline in the "culture of shame" of law enforcement officials and the habit of taking deviant paths for the sake of momentary interests.

Various other terms have also appeared, such as the term "buying and selling cases", dry cases and wet cases, the term "everything can be arranged", and so on. The development of the culture of settlement of cases with envelope money is a sign of the weakening of the "scientific approach" in law enforcement which has been practiced in this country. So it can be true, that a court case is like playing gambling. Losing and winning is difficult to predict. The handle is not strong evidence, not correct legal arguments. What must be firmly held is the judge (Asmara, 2011).

Based on the aforementioned phenomena, in the court community there are names of judges who are labeled as "buser" judges (need immediate money) and "KKO" judges (right and left okay) (Asmara, 2011).

The widespread habit of resolving cases using envelope money and the emergence of various terms above, is a culture that is contrary to the "scientific approach", which in the settlement of each case is based on scientific/rational ethical nature and can become a stumbling block and insult and even destroy the integrity to enforce the law (criminal).

### **Politics / Criminal Law Enforcement Policies Based on Pancasila Equity**

Based on the provisions of the 1945 Constitution of the Republic of Indonesia before the amendment, as stated in Article II concerning Transitional Rules, it states that "All State agencies / institutions and all existing regulations are still in effect, as long as there has been no renewal based on the provisions of this Constitution". When viewed from the contents of the article, it actually contains an implicit order that after the ratification of the 1945 Constitution of the Republic of Indonesia from 18-8-1945 there is an obligation for the Government to adapt to the conditions of development and the dynamics of the needs of the Indonesian people as an independent nation. This means that there is a demand to reform the National Law system based on the conditions and cultural values of the Indonesian nation in other terms forming a National Law System as a form of a legal system that has an Indonesian spirit.

Along with the 1998 reform movement marked by the fall of President Soeharto's government, changes in various fields including the legal sector can no longer be delayed. Many reforms in the field of law have been carried out, both through the formation of agencies/institutions and the formation of laws and regulations in accordance with the Reform mandate. Including amending the 1945 Constitution itself.

Amendments to the 1945 Constitution of the Republic of Indonesia gave rise to a new body, a Constitutional Court and a Judicial Commission whose formation is regulated by law. In addition to that, the old institution was eliminated, namely the Supreme Advisory Council, because it was deemed no longer in accordance with the demands of reform / national development needs. Improvements are required to be carried out here and there, including immediately implementing law enforcement policies, in order to adapt to the demands and demands of legal reform so that comprehensive changes are needed in various aspects of the nation's life.

Criminal law enforcement policies as part of the national legal system, no longer only focus on the problem of producing in abstracto norms in law (law in book) and in-concreto norms in public behavior (law in action), but also producing knowledge of values. Legal studies as values / ideas (law in minds), especially in the context of developing national law, conduct legal studies including criminal law against ideal legal values from the perspective of signs of the Pancasila National Criminal Law System (Nawawi Arief, 2015). In fact, it was emphasized in the Seminar and National Congress that the national legal system must be based on Pancasila.

Pancasila for the Indonesian nation is the soul and personality of the nation which contains the noble goals of the nation, basic principles, psychology, motivation and spirit of the Indonesian nation. Therefore, Pancasila is placed in a very high position as a source of legal order (Yonas Bo'a, 2018), as a grundnorm that is able to provide a solid foundation for the enactment of all applicable laws and regulations in Indonesia (Erfandi, 2016), as well as The test stone for the validity of the Republic of Indonesia legislation, whether it is in accordance with the values contained in Pancasila (Sulistyani, 2018). In addition, Pancasila is also a grundwerten (a fundamental value), and therefore provides different characteristics from the legal method / concept of punishment of the Indonesian nation (Nawawi Arief, 2015). Therefore, it is natural that these basic values become the object of study in Indonesian criminal law.

Satjipta Rahardjo said that law is always rooted in "a peculiar form of social life", so that a legal system is always a uniqueness, an institution rooted in the cosmology, values and traditions of the nation concerned (Raharjo, 2009). Including the traditions and socio-cultural values of the Indonesian people.

Our nation's legal system actually tends to match the common law system that is generally adopted by the British state and spreads in its former colonies (Commonwealth countries) under the Queen of England and adopted by American countries (Narulita, 2010). Because the Indonesian people with customary law, where their life is very strong and deeply rooted in people's lives, and lives side by side with culture and religion, so it indicates the pattern of the customary / general law system rather than the civil law system which has a parentage in the jurisdiction of Germany and France (Utsman, 2008). Because the Indonesian people still maintain and uphold the customs and noble values of society as well as the teachings of this nation's predecessors.

The concept of the Indonesian State based on the law aspired by the Indonesian nation describes a governance that reflects the form of law based on



conscience and a rule of law that prioritizes / is attached to care (a state with conscience and compassion). The rule of law in Indonesia aspires to create a National Legal System with the values of tolerance and togetherness as its foundation. The rule of law in Indonesia describes the state as "by moral design" (Rahardjo, 2009). So that (criminal) law enforcement cannot be separated from moral considerations, traditions and culture / customs in force, the living law in society.

The conditions above can be seen in the Signs of the National Legal Framework which include (Nawawi Arief, 2012):

1. The 1945 Constitution of the Republic of Indonesia, Article 18 Paragraph (2):  
"There is government recognition of the customary laws of the local community and the rights they have"
2. The 1945 Constitution of the Republic of Indonesia, Article 24 Paragraph (1):  
"Explaining the authority in the field of Justice in carrying out the judiciary for the enforcement of fair laws"
3. The 1945 Constitution of the Republic of Indonesia, Article 22D:  
"Everyone has the right to obtain legal certainty that is just and equal before the law"
4. Law Number 48 of 2009, Article 2 Paragraph (2):  
"The State Court implements just law enforcement based on Pancasila". So implementing fair law enforcement based on Pancasila contains principles of balance and substantive / material certainty, not just formal certainty (formal / legal certainty) (Nawawi Arief, 2008).

Based on the basic constitutional provisions in the UUD'45, then these legal principles are implemented through various provisions of organic legislation:

1. Law of the Republic of Indonesia Number 48 of 2009, Article 2 Paragraph (1): The judicial process is carried out on the basis of justice based on "the one and only Godhead "
2. Law of the Republic of Indonesia Number 48 of 2009, Article 50 Paragraph (1): In deciding a case, the court must include certain articles of statutory regulations or an unwritten legal basis.
3. Law of the Republic of Indonesia Number 48 of 2009, Article 4 Paragraph (1): The judicial process is carried out by the court based on the law and avoids the nature of discrimination.
4. Law of the Republic of Indonesia Number 48 of 2009, Article 5 Paragraph (1): Judges and judges of the constitution are required to find and understand the values of justice that exist and are recognized as valid in society.

Starting from these guidelines, criminal law enforcement should not be oriented / based on the formal rules as stated in the Criminal Code, Article 1 (one) only and placing the Law as the only legal basis. Because the rule of law according to the provisions of the 1945 Constitution and the Republic of Indonesia concerning the authority of the judiciary uses the term just legal certainty in enforcing the law. (See the provisions of Article 28D of the 1945 Constitution of the Republic of Indonesia, Article 24 Paragraph (1) and Article 3 Paragraph (2) of Law Number 4 of 2004 which has been changed to Article 2

Paragraph (2) of Law of the Republic of Indonesia Number 48 of 2009) .

From these provisions, there is a balanced principle between a certain law (Irawatu, 2019) and a fair law. In addition, the 1945 Constitution and the Law regarding the authority of the judiciary also recognize laws that are rooted in existing habits and apply in society. Therefore, there is a balanced recognition between the two, namely laws and customs which are still recognized as laws that are obeyed in society.

Based on the SISKUMNAS signs above, there should also be a balance in law enforcement, except that it is based on written law which is also based on customary values that are still strongly held and are valid in society. Thus law enforcement aims to uphold the principle of "rule of law" and enforce the "rule of social cohabitation" (rule of community) (Nawawi Arief, 2008), so that there is no impression of denying the existence of a sense of community justice.

Starting from this and the determination of legal figures / scientists at the VI National Law Scientific Meeting in 1994, it is deemed important to develop ideas about how to improve a legal model that can provide a higher degree of substantive justice, in accordance with / better suited to the National legal system. which further shows the special characteristics of Indonesia, namely the justice system of Pancasila as its basis.

Pancasila-based justice contains spiritual or spiritual values with the core values of "justice based on divinity", "justice based on humanity", and "justice characterized by democratic characteristics, nationalism, and **social justice for all people** (society)" (Nawawi Arief, 2012). Thus in law always prioritizes fairness in the substantive sense rather than fair in the formal-legalistic or formal procedural sense.

Based on the explanation above, caution and precision are needed in the use of the legality principle contained in the Criminal Code (*Wetboek van Strafrecht*), in the Indonesian context and should not be interpreted as merely realizing the achievement of a definite, correct or fair legal model only according to the point of view of Law / formal-legalistic only, but it should be more about achieving legal justice in a substantive sense based on the philosophical foundation of the Indonesian nation (Tongat, 2015) itself, namely Pancasila justice.

## CONCLUSION

Policy on criminal law enforcement does not only focus on the problem of producing norms in abstracto in law (law in book) and in concreto norms in public behavior (law in action), but studies that focus more on values / ideas (law in minds). Therefore, the main goal in enforcing the law is not limited to upholding the principle of a rule of law in a formal-legalistic sense, but also upholding the principle of justice for all communities by recognizing that there are customary principles that apply in society as a great cultural heritage. These customary, social values have crystallized in the foundation of the state and the Indonesian nation's way of life, namely Pancasila. Pancasila which contains basic

norms / grundnorm and basic values / grundwerten has been used as the source of all sources of law that bind all laws and regulations in Indonesia. In this position, Pancasila is also a touchstone for the enforcement of all laws in Indonesia. All laws and regulations in effect in Indonesia must not deviate from the values of Pancasila, if this happens then the statutory regulation must be revoked and declared invalid.

That is why law enforcement in Indonesia should be based on achieving a general sense of justice in society, so that there should be no gaps in law enforcement between citizens. All citizens are treated equally before the law and are entitled to equal justice. The legal system capable of realizing law enforcement as described above is none other than the national legal system, which is characterized by Indonesia, namely a legal system that has the spirit of "Pancasila justice".

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