

Pancasila Values in the New Indonesian Criminal Code: Does the Code More Humanist?

Ridwan Arifin 

Faculty of Law, Universitas Negeri Semarang, Indonesia

Nadiyah Meyliana Putri  

Faculty of Law, Universitas Negeri Semarang, Indonesia

Mutia Azizah Aksan 

Faculty of Law, Universitas Negeri Semarang, Indonesia

Radhitya Pratama 

Faculty of Law, Universitas Negeri Semarang, Indonesia

Angel Maris Linda 

Faculty of Law, Universitas Negeri Semarang, Indonesia

✉ nadiyahmeyliana11@students.unnes.ac.id

Abstract

The impending implementation of the new Indonesian Criminal Code has sparked significant debates regarding its alignment with the nation's philosophical foundation, Pancasila. This abstract scrutinizes the incorporation of Pancasila values into the revised criminal code, focusing on its potential impact on human rights and humanitarian principles. Pancasila, as Indonesia's foundational philosophy, emphasizes principles such as social justice, democracy, and the dignity of all individuals. This paper examines whether the new criminal code upholds these values or deviates from them,

particularly in areas concerning individual freedoms, minority rights, and due process. Through a comprehensive analysis of key provisions in the new criminal code, the study identifies potential challenges and opportunities for aligning the legal framework with Pancasila's humanistic principles. Special attention is given to areas such as blasphemy laws, restrictions on free expression, and the treatment of marginalized communities. The research draws on legal texts, case studies, and comparative analyses to evaluate the degree to which the new criminal code promotes a more humanistic approach. Additionally, the paper explores the implications of any identified discrepancies between the legal framework and Pancasila values for Indonesia's commitment to international human rights standards. The findings contribute to ongoing discussions on legal reforms in Indonesia and provide insights into the delicate balance between preserving cultural values and ensuring the protection of individual liberties. By addressing the question of whether the new criminal code leans towards a more humanistic perspective, this study aims to inform policymakers, legal scholars, and human rights advocates on potential areas for improvement in the pursuit of a just and equitable legal system.

Keywords

Indonesian Criminal Code, Pancasila Values, Law Number 1 of 2023, Criminal Law Reform

Introduction

Indonesia stands firmly committed to the principles of the rule of law. In essence, the legal framework in Indonesia is intricately intertwined with societal values. This alignment is underscored by the legal adage "*ubi societas ibi ius*," signifying that Indonesian law functions optimally when it is crafted and shaped by the collective spirit of the community. Historically, Indonesia's criminal law system traces its roots to the colonial criminal law, known as the *Wetboek van Strafrecht* or the Criminal Code. This code was ratified through the *Staatsblad* of 1915 number 732 and officially took effect on January 1, 1918. The criminal law system operates on the principle of concordance, wherein European law, or the law in the Netherlands, also governed European groups in the Dutch East Indies (pre-independence Indonesia).¹

¹ See Oleg Yurievich Latyshev, Andrei Valerievich Skorobogatov, and Alexander Krasnov. "Legal Principle Between Concept and Content". *Journal of Indonesian Legal Studies* 5, no.

Along with the development of society, criminal law in Indonesia is currently considered no longer appropriate and no longer able to answer the challenges of the existing times. Lawrence M. Friedman also said that there are three elements that can be a benchmark for the effectiveness and success or failure of the legal system in Indonesia, these three elements are then known as the legal system theory.² *First*, the *structure of law*, which includes law enforcement officials such as police, prosecutors, judges, prisons and advocates. *The second* substance of *the law*, which includes the set of legislation. *The third* is *legal culture*, which contains laws that live and are embraced by the community (*living law*). This legal system theory is used to obtain answers about problems that arise and answers to why criminal law no longer has a deterrent effect. Based on these three elements, a movement is needed to compile a new Criminal Code oriented towards modern criminal law, namely corrective justice, restorative justice, and rehabilitative justice.

Therefore, there needs to be a fundamental change by prioritizing the values of Pancasila in accordance with the characteristics of Indonesian society. The reform of criminal law in Indonesia through modernization and recodification has basically become one of the government's designs which in its implementation requires a long time. In 2019, the draft Criminal Code was almost agreed upon by the Government and the House of Representatives, but the draft again failed to be passed because it still received a lot of rejection from the public. The draft Criminal Code itself has become one of the oldest drafts in Indonesia. In line with Satjipto Rahardjo's view, that legal development must have two meanings, namely as an effort to update existing laws and the second as an effort to functionalize the law through the provision of social changes in accordance with the needs of the community.³

In response to these concerns, the government formally incorporated the draft Criminal Code into the National Legislation Program, known as

2 (2020): 479-500; Andrianantenaina Fanirintsoa Aime, and Pradistya Purnama Aji. "Interpretation of the Expansion of the Application of the Authority of the State Administrative Court in Adjudicating Factual Legal Actions of the Government". *Indonesian State Law Review (ISLRev)* 6, no. 2 (2023): 253-76; Sholahuddin Al-Fatih, Muchamad Ali Safaat, Aan Eko Widiarto, Dhia Al Uyun, and Muhammad Nur. "The Hierarchical Model of Delegated Legislation in Indonesia". *Lex Scientia Law Review* 7, no. 2 (2023): 629-58; Mohammad Wahyu Adji Setio Budi, "Indonesian State System Based on Pancasila and the 1945 Constitution: A Contemporary Developments". *Indonesian Journal of Pancasila and Global Constitutionalism* 1, no. 1 (2022): 1-16.

² Andhie Fajar Arianto and Ludy Himawan, "Nilai Pancasila dalam Pembaharuan Hukum Pidana," *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum* 19, no. 1 (2021): 67.

³ Andi Lala, "Implementasi Nilai-Nilai Pancasila dalam Pembangunan Hukum Pidana Nasional," *Jurnal Indonesia Sosial Sains* 2, no. 5 (2021): 729; Finda Hastin Nurkhasanah, "The Challenge of Pancasila in Fair Law Enforcement". *Indonesian Journal of Pancasila and Global Constitutionalism* 1, no. 2 (2022): 239-64.

Prolegnas, in 2022. Eddy O.S. Hiariej, the Deputy Minister of Law and Human Rights, emphasized three key factors driving the imperative for Criminal Code reform.⁴ These factors include the necessity for alignment with contemporary norms, the demand for adaptation to modern criminal law principles, and the imperative for ensuring legal certainty. Notably, the existing Criminal Code in use by the Indonesian people has surpassed 222 years, underscoring the urgency to contemporize it in line with the evolving ideology of the Indonesian nation. Consequently, the government, in collaboration with the House of Representatives, has successfully enacted the Criminal Code Bill. This culminated in the establishment of new criminal law regulations embodied in Law Number 1 of 2023, officially titled the Nusantara Criminal Code.

The National Criminal Law in its enactment is considered to be in accordance with the nation's ideology and Pancasila as a characteristic of the Indonesian nation. Pancasila in the enforceability of criminal law in Indonesia was initiated so that later each rule in the Nusantara Criminal Code can apply in accordance with every aspect of life, society, nation and state. This is in line with the ideals of criminal law development in Indonesia that is independent and free from western culture, as well as its existence to realize public welfare and also create substantive justice as seen from the politics and legal approach used in the preparation of the Nusantara Criminal Code.

Reflecting on the incompatibility of the Dutch Criminal Code with the values of Pancasila, it is actually seen from its presence that is not formed based on or guided by the value of the philosophy of Pancasila, so that the content in it does not fully reflect the values contained in Pancasila. It should be underlined, there are several things in the Dutch Criminal Code that are not in accordance with the values of Pancasila, for example, regarding decency. This can be explained where the content of the Decency Article in Articles 284, 285, and 294 of the Dutch Criminal Code regarding adultery, rape, and fornication is considered not in accordance with the first precept of Pancasila, namely the One and Only Godhead. This is because the article does not apply to a person who has not or is not bound by marriage but has committed intercourse outside marriage, as in fact the act is expressly prohibited by religion so that it does not reflect the practice of the meaning of the first precept of Pancasila.

Then, with the existence of the Nusantara Criminal Code as a Criminal Code formed by the Indonesian people themselves with its formation based

⁴ Kementerian Hukum dan Hak Asasi Manusia, "3 Alasan Penting Perlunya Pembaharuan KUHP," Kementerian Hukum dan Hak Asasi Manusia, 2022, <https://www.kemenkumham.go.id/berita-utama/3-alasan-penting-perlunya-pembaharuan-kuhp>.

on the values of Pancasila, so that the content in the Nusantara Criminal Code has been integrated with the ideology of Pancasila. However, regarding the discrepancy in Articles 284, 285, and 294 of the Criminal Code, the Nusantara Criminal Code corrects it with Article 411 which states basically that any person who is not his husband or wife has committed adultery will be criminally charged. [4] This article clearly states that a person who is not in a conjugal relationship, including anyone who has not or is not bound in marriage by having committed adultery, can be subject to criminal sanctions.

Indonesia is a nation that has the ideology of Pancasila as the philosophy of state life, and criminal sanctions are part of the criminal law system that is inseparable from the national legal system oriented to the state ideology of Pancasila. The reform of the Criminal Code must pay attention to the values that live with the Indonesian people is none other than Pancasila, a state ideology that contains elements of balance values from each precept in Pancasila. [5] The above is a small illustration of the reason why the Dutch Criminal Code needs to be replaced because its content is not in accordance with the values of Pancasila, so that it was then formed and compiled the Nusantara Criminal Code instead which in its manufacture has been real and clearly based on the values of Pancasila. Therefore, none other than the contents of the articles of the Nusantara Criminal Code have been based on the philosophy of the Indonesian nation and state, namely Pancasila. The existence of the Nusantara Criminal Code leads to a life that is aspired by the Indonesian nation and state to live adhering to religion, achieving justice, unity of the Indonesian nation and state, and benefits for the benefit of all Indonesian citizens.

Derived from the previously outlined issues, the research questions in this study encapsulate three primary aspects. Firstly, an exploration into the incorporation of Pancasila values within the framework of Law Number 1 of 2023. Secondly, an investigation into the correlation between the Pancasila values articulated in Law Number 1 of 2023 and the universal concept. Thirdly, an inquiry into how the formulation of articles in Law Number 1 of 2023 aligns with the inherent characteristics of the Indonesian nation.

Method

This qualitative research employs normative legal research methods, specifically utilizing the Statute Approach and Library Research, to delve into the main topic of the study. The focus of this research encompasses an examination of Law Number 1 of 2023, evaluating its alignment with the values of Pancasila, its correlation with universal concepts, and the congruence of its article formulations with the characteristics of the Indonesian nation.

The legal sources utilized in this study are both primary and secondary. Primary legal sources, crucial for comprehensive analysis, include pertinent laws and regulations. Meanwhile, secondary legal sources, comprising books, articles, journals, and relevant websites, serve to provide additional insights and perspectives on the identified research problem. This dual-source approach ensures a thorough exploration of the intricacies surrounding the interplay between Law Number 1 of 2023 and the broader legal and societal context.

Pancasila Values in Law No. 1 of 2023

Criminal law in Indonesia traces its origins back to 1946, specifically through the enactment of Law Number 1 of 1946 on February 26. Aligned with the foundational legal principle "*ubi societas, ibi ius*," signifying the symbiotic relationship between law and society, this expression underscores the necessity for their mutual coexistence and interdependence. However, practical implementation proves challenging, given the dynamic and ever-evolving nature of society.

The contemporary pace of societal changes, fueled by rapid advancements in Technology and Science, adds a layer of complexity to this dynamic. The ongoing societal evolution significantly contributes to the transformation of criminal dynamics in Indonesia. Consequently, there arises an imperative for legal reform, seeking to establish and uphold consistency in the values of justice, truth, order, and legal certainty. This reform aims to navigate the evolving landscape, striking a balance between national and community interests while rooted in the foundational values of Pancasila.⁵

The progressive development of the Criminal Code is underpinned by four overarching objectives. First and foremost, it is designed to uphold community protection through the implementation of social defense mechanisms. Secondly, the Code functions as a tool for the rehabilitation and resocialization of offenders, facilitating their effective reintegration into society. Thirdly, it aligns with the tenets of customary law, recognizing and incorporating traditional perspectives. Finally, the spiritual dimension of the Code is anchored in accordance with the foundational principle of Pancasila, emphasizing the reverence for "*God Almighty*" as a core spiritual value.

Departing from this goal, it resulted in a generalization stating that the Criminal Code in its development was oriented towards the Utilitarian theory.

⁵ Rusli Muhammad, *Pembaharuan Hukum Pidana Indonesia* (Yogyakarta: UII Press, 2019).

This theory considers that the criminal law in the Nusantara Criminal Code is prospective and forward-looking and its purpose is as a means of prevention with the ultimate goal of social welfare. This character also emphasizes that punishment for both actions and perpetrators is no longer solely backward-oriented retaliation.⁶

The Indonesian State of Law has characteristics and characteristics that are based on the spirit and soul of the Indonesian nation (*volkegeist*), namely the values of Pancasila. Pancasila is a *staatsfundamentalnorm* or basic guideline in all aspects of Indonesian life including the source of all sources of law both in the formation of law and in law enforcement efforts.⁷ Based on the sound of Paragraph IV of the Preamble to the 1945 Constitution hereinafter referred to as the 1945 NRI Constitution, Pancasila is established as the fundamental basic norm of the Unitary State of the Republic of Indonesia (NKRI). The logical consequence of this is that Pancasila must be used as the basis for every establishment of laws and regulations, including the formation of the Nusantara Criminal Code. Notonagoro argues that Pancasila in this case has an important value in the formation of law, this is because Pancasila has been juridically agreed as the ideology of the Indonesian nation, therefore the applicable law must be in accordance and have the ideology of Pancasila.⁸

Within the framework of the rule of law, criminal law has a role to create order in public life. One of the articles of the Criminal Code that has become a debate is regarding the offense of zina which is included in the offense of decency in Article 284 of the Criminal Code. Article 284 of the Criminal Code in its enactment is considered not in accordance with the first precept of Pancasila, namely "The One and Only God", this is because the Article only regulates adulterers whose two or one of them has been bound by marriage. So that adulterers who are not bound by marriage cannot be sanctioned even though in this case both have violated the moral values of the Indonesian nation, this certainly encourages the increasingly widespread promiscuity and sexual relations among the younger generation.⁹ The Nusantara Criminal

⁶ Alvi Syahrin, Martono Anggusti, and Abdul Azis Alsia, *Dasar-Dasar Hukum Pidana: Suatu Pengantar* (Medan: CV. Merdeka Kreasi Group, 2023).

⁷ Nanda Saputra Umara and Pathorang Halim, "Membangun Hukum Pidana Nasional di Atas Pondasi Keadilan Pancasila Dalam Wujud Nilai Ketuhanan Yang Maha Esa," *Al-Qisth Law Review* 5, no. 1 (2021): 176–77.

⁸ S.S. Nugroho, *Membumikan Hukum Pancasila Sebagai Basis Hukum Nasional Masa Depan (Cita Hukum Pancasila)*. (Solo: Iltizam, 2016).

⁹ Memo Bayu Pratama, "Kriminalisasi Perbuatan Zina Sebagai Perwujudan Implementasi Sila Ketuhanan Yang Maha Esa dalam Rancangan Kitab Undang-Undang Hukum Pidana (RKUHP)," *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam* 4, no. 2 (2022): 587; Anis Widyawati, "Criminal Policy of Adultery in Indonesia." *Journal of Indonesian Legal Studies* 5, no. 1 (2020): 171-186; Agustya Catur Mahendra, "Ambiguity of Adultery

Code was born as a form of transformation in the implementation of Pancasila values that are adjusted to the values of the nation. Adultery in the Nusantara Criminal Code is regulated in Articles 411 to 413 of the Nusantara Criminal Code. These articles provide provisions for the prohibition of having intercourse and living together as husband and wife outside of marriage.¹⁰

Furthermore, within the framework of the state, law enforcement must be directed at the values of justice for all Indonesian people. The precepts of humanity that are just and civilized in the renewal of Indonesian legislation need to be upheld in its implementation. One of them is in the preparation of the Nusantara Criminal Code which must carry the spirit of the Indonesian nation to form a criminal law system that is adapted to the nation's ideology. Article 54 paragraph (1) and Article 54 paragraph (2) of the Nusantara Criminal Code have regulated the rights that need and must be considered by judges in handing down decisions. Article 54 paragraph (1) of the Nusantara Criminal Code consists of:¹¹

1. the form of guilt of the perpetrator of the Criminal Act;
2. motive and purpose of committing a Criminal Act;
3. the inner attitude of the perpetrator of the Criminal Act;
4. Criminal acts are committed premeditated or unplanned;
5. how to commit a Criminal Offence;
6. attitude and actions of the perpetrator after committing a criminal act;
7. curriculum vitae, social conditions, and economic conditions of the criminal offender;
8. criminal influence on the future of criminal offenders;
9. the influence of the Crime on the Victim or the Victim's family;
10. forgiveness from the Victim and/or the Victim's family; and/or
11. The value of law and justice that lives in society.

Furthermore, in Article 54 paragraph (2) of the Nusantara Criminal Code which reads "The lightness of the act, the personal condition of the perpetrator, or the circumstances at the time of the Crime and what occurred later can be used as a basis for consideration not to impose a crime or not to impose actions by considering the aspects of justice and humanity". The article became known as the principle of *rechterlijke pardon* or *judicial pardon*, which has authorized judges to forgive someone who is guilty and has committed a

Concept (Zina) in Criminal and Justice System (A Comparison between Indonesia, Pakistan, and Turkey)." *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, no. 1 (2019): 93-106; Atha Saputri, and Ricky Julianto. "Comparative Justice Accountability of Samen Leven Actors in Indonesia and Malaysia". *Contemporary Issues on Interfaith Law and Society* 2, no. 2 (2023): 131-60.

¹⁰ Republic of Indonesia, "Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," 2023.

¹¹ *Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana*

minor crime. This apology is included in the verdict but it must still be stated that the defendant is proven to have committed the Criminal Act masterminded by him.¹² This article was born as a result of rampant legal problems that often cause judges to experience inner conflicts in handing down decisions. One of them is the theft of 3 (three) cocoa beans confessed by Minah's grandmother.

Further efforts to reform the law in the Nusantara Criminal Code in its enactment must be able to anticipate all forms of community development in the reform era. Today, new crimes continue to evolve and have implications for every aspect of the life of the nation and state. Actualization of the application of the 4th precept of Pancasila became one of the legal foundations that placed power under the rule of the people. This is in line with the Indonesian state which is a democratic country (from the people, by the people and for the people) by basing everything through deliberation and consensus. Criminal in this case aims to provide protection for the interests of society. The implementation of the 4th precept of Pancasila in the Nusantara Criminal Code can be seen from the types of crimes consisting of death, life imprisonment, and imprisonment where the criminal still pays attention to changes in perpetrators while serving their sentences.¹³ So that in this case convicts who behave well can be changed their crimes (*modification of sanction*) and the death penalty in Article 100 of the Nusantara Criminal Code can be disallowed as long as they behave well within the waiting period of 10 (ten) years to life imprisonment.

Furthermore, the last legal reform effort is by regulating the perspective and achievement of justice in improving and restoring the situation after the criminal justice process which is familiarly known as *restorative justice*.¹⁴ This concept is contained in Article 53 letter (a) and (b) of the Nusantara Criminal Code which expressly contains the concept of restorative justice that can be widely applied in criminal law settlements. This restorative justice is also regulated in Article 70 paragraph (1) of the Nusantara Criminal Code, which contains rules regarding the consideration of circumstances for not being criminalized. One of the circumstances referred to above is that the Defendant is a child and the Defendant is over 75 years old, these conditions need to be considered to avoid negative effects of punishment. This offense reflects the

¹² Vincentius Patria Setyawan and Itok Dwi Kurniawan, "Permaafan Hakim dalam Pembaharuan Hukum Pidana," *Jurnal Dunia Ilmu Hukum* 1, no. 1 (2023): 22.

¹³ Andi Lala, "Implementation of Pancasila Values in the Development of National Criminal Law."

¹⁴ Lucky Ferdiles, "Reformasi Hukum dalam Penerapan Restorative Justice dalam Sistem Pidana Nasional," *Lex Publica* 6, no. 1 (2019): 27–28.

application of the value of "justice" as stated in the 5th precept of Pancasila "Social justice for all Indonesian people".

Correlation of Pancasila Values in Law Number 1 of 2023 with Universal Concept

Pancasila is positioned as the basis of state philosophy which is composed of Pancasila precepts which form a value system in the form of divine or religious values, humanity, unity or nationalism, democracy, and social justice. The Pancasila value system has a universal nature, meaning that the content of Pancasila values is taken from values that actually exist and are believed by the world community, then become values formed on the basis of the character and culture of the Indonesian nation to later become guidelines for all Indonesian people in the unity of national and state life.¹⁵ The unity of life of the Indonesian people in the nation and state is formed due to the position of the human individual on the universality of life as a human being created by God, on the conditions of the reach of knowledge and association making humans so provocative and universal that they form various differences. Therefore, the value of Pancasila in the universal concept as a value that already exists in the life of the world community as a guideline basis for every human action and behavior, where its application no longer speaks to a certain individual or community scope but involves the universal scope of Indonesian society, nation, and state.¹⁶

The universal concept can be explained in each value of Pancasila as a value that is recognized and applied in the inter-subjectivity of the Indonesian nation. Similarly, the value of Divinity in Pancasila where its existence is related to God Almighty so that this value shows its essence not only in certain individuals or groups but intended for all human individuals as God's creation. Likewise for other Pancasila values that provide their own views on universal concepts such as international values or humanity where this value does not only refer to the scope of the Indonesian state but also other countries. Back again to the universal concept of Pancasila which provides an explanation that Pancasila as a basic guideline for human life in society and state through values that are actually part of the values of the world community, but then by the

¹⁵ Tutik Nurul Janah and Siti Nur Ami'in, "Fiqh Sosial Paradigm for Understanding Universal Values of Pancasila," *Santri: Journal of Pesantren and Fiqh Sosial* 4, no. 1 (2023): 83–100.

¹⁶ Dini Anggraeni Dewi, "Implementasi Nilai-Nilai Pancasila dalam Wawasan Kebangsaan di Era Globalisasi," *Jurnal Global Citizen: Jurnal Ilmiah Kajian Pendidikan Kewarganegaraan* 10, no. 2 (2021): 49–58.

Indonesian state is packaged in the word Pancasila which describes that the state specifically makes it a guideline for life.

The position of Pancasila as a guideline for the life of the nation and state through the values contained therein is merely not just a spirit for the Indonesian nation and state, but its existence as a tangible manifestation of the basic source of all existing legal sources.¹⁷ This is the background of Indonesia's status as a legal state that carries out every act or action based on law. The position of Pancasila as the basis of state philosophy which acts as a source of law so that the Indonesian state has outwardly instilled and based its views in running the state based on Pancasila as the source of all sources of law. In line with the previous discussion which stated that Pancasila as a *staatsfundamentalnorm* or basic guideline in all aspects of national and state life, and also includes the source of all sources of law both in the formation of law and in law enforcement efforts.

Law as a rule that regulates human actions and behavior that has a close correlation with Pancasila. The correlation is created on the basis of the position of Pancasila as a *staatsfundamentalnorm* or basic guideline, and also as a source of all sources of law. The existence of Pancasila in every formation, change, or renewal of law has an important position, because the planned rule of law must be based on the values in Pancasila. Thus, this also applies to the Criminal Code that has just been drafted and ratified by the Indonesian state as a criminal code formed and drafted by the Indonesian state and apart from the old Criminal Code which is a legacy of the Dutch Colonial. The new Criminal Code was previously a draft that was formed and prepared in order to find a door out of various shortcomings of the old Criminal Code and, also not only that, this new Criminal Code exists as a goal directed to better legal deontology in order to realize a better ontology.

The new Criminal Code became a product of national law formed and formulated to regulate the actions and actions of people living in society with regard to criminal law. The formulation of the new Criminal Code is formulated based on the values of the Indonesian state derived from the values of Pancasila. As explained in the previous discussion, several articles in the old Criminal Code that were previously incompatible with the values of Pancasila have been corrected or updated. The values contained in Pancasila are actually a reflection of the life of Indonesian people in the nation and state, which contains the values of Pancasila in question can be explained as follows:¹⁸

¹⁷ Indra Rahmatullah, "Meneguhkan Kembali Indonesia Sebagai Negara Hukum Pancasila," *ADALAH* 4, no. 2 (2020): 39–44.

¹⁸ I Wayan Sudirta, "Rekonstruksi Pemahaman Atas Nilai-Nilai Pancasila Dalam Kehidupan Berbangsa dan Bernegara," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 11, no. 4 (2022): 843.

1. The Almighty God
The state is conceptualized as a space for individuals to fulfill their aspirations as creations of God Almighty. In this perspective, the essence of divine values transcends temporal and spatial boundaries, applying universally to each individual regardless of time and place.
2. Just and Civilized Humanity
Cultivating a consciousness of moral attitudes and behavior among individuals involves an appreciation of values and cultural norms. This awareness extends to how individuals navigate their relationship with themselves, others, society, and the environment.
3. Unity of Indonesia
Indonesia, with its diverse array of religions, races, and cultures, is rightfully labeled as a multicultural nation. Despite these differences, the country is bound together by the unifying motto "*Bhineka Tunggal Ika*" (Unity in Diversity). Consequently, provisions are established with the intention of universal application, aiming to resonate with and apply to all Indonesian citizens.
4. Citizenship led by wisdom in representative consultation
The position of the Indonesian people holds power in a country so that its existence must be considered in every state affair, by placing it through democracy which must be implemented in the life of the country.
5. Social Justice for All Indonesians
Justice holds a pivotal role in the fabric of the state, and its ramifications should be realized uniformly for all Indonesian citizens. This encompasses various dimensions, including distributive justice, commutative justice, and legal justice. These facets collectively contribute to the overarching principle of justice that the state endeavors to uphold throughout its diverse population.

By looking at the position of Pancasila, the values contained in it should be the basis for the content of articles in the new Criminal Code. The role of the universal concept of Pancasila on the presence of new articles in the new Criminal Code provides a correlation that is able to provide its own perspective on both. Placing the view of the universal concept of Pancasila which was previously mentioned with the presence of the new Criminal Code as the basis of criminal law in Indonesia, it can be described based on the following explanation:

1. Basic Universal Values of Pancasila as a guideline basis
Pancasila encapsulates universal values, representing fundamental principles inherent in the global community. These values transcend national boundaries, offering applicability for other countries to adopt and implement. In alignment with Notonegoro's perspective, which

posits that all values in human life, including Pancasila, are self-evident, the universality of these principles becomes apparent as they resonate with the shared human experience across diverse societies worldwide.¹⁹ The values embedded in Pancasila serve as overarching objectives for all communities, states, and nations. The correlation between the universal concept of Pancasila and the new Criminal Code is elucidated by delving into the essence of Pancasila values, which are foundational principles shared by the global community. The monotheistic nature of the value of God establishes religious values as potent foundations for individuals within society. This is evidenced by the revisions to the adultery article in the previous Criminal Code, where its alignment with divine values was lacking. To rectify this, the Nusantara Criminal Code now explicitly addresses adultery in Articles 411 to 413, firmly prohibiting extramarital sexual relations and cohabitation, aligning with the principles of divine values and societal norms.

2. Society's View on the Position of Pancasila Universal Values as a view of race and nation life

The position of universal values in the precepts of Pancasila as a view of life of the community in the life of the nation and state which in its application is shown without distinguishing the ethnicity, religion, race, and culture of the Indonesian people.²⁰ However, the values of Pancasila present in the universality of life are addressed to all Indonesian people not to any particular individual or certain society, and also do not limit the scope of their application to all Indonesian people both within Indonesian territory and people outside Indonesian territory. In other words, that the values of Pancasila apply to all Indonesian people wherever they are.

The correlation between the universal value of Pancasila and the new Criminal Code is notably evident in the manifestation of the 4th precept, emphasizing the ideals of "*just and civilized people*." This precept finds expression in Article 100 of the Nusantara Criminal Code, allowing the disallowance of parole as long as commendable behavior is demonstrated within the 10-year waiting period, leading to a life imprisonment sentence. Recognizing this correlation underscores the universal relevance of Pancasila, as it permeates legal provisions such as Article 100, effectively incorporating the precept's values into a legal framework. The essence of the 4th precept,

¹⁹ Fathorrahman, "Potensi Pancasila Sebagai Falsafah Dunia," *Jurnal Renaissance* 3, no. 2 (2018): 411.

²⁰ Siti Fatimah and Dinie Anggraeni Dewi, "Implementation of Pancasila Values in Building the Identity Character of the Nation's Children," *Journal of Humanities Research* 1, no. 3 (2021): 70–76.

embodied in this Article, signifies the equal rights of every individual as part of the Indonesian people before the law, irrespective of any distinctions, even when facing suspicion for a committed crime.

Affirming what has been explained that every product of Indonesian state law in this case the new Criminal Code should contain the values of Pancasila in the context of implementing Pancasila as the source of all sources of law and *staatsfundamentalnorm*. The values of Pancasila are actually formed from existing values and believed by the world community, but then based on the character of the Indonesian nation these values are compiled in a state philosophy in the form of Pancasila. The application of the value of Pancasila is then seen as universally applicable to all Indonesian people without exception, wherever it applies to human beings both domestically and abroad. Thus, there is a correlation between the values of Pancasila in the formation and formulation of the new national Criminal Code based on the universal context of Pancasila.

The formulation of articles in Law Number 1 of 2023 is in line with the characteristics of the Indonesian nation

The formulation of articles in each law made must include the characteristics of the Indonesian nation, the principles of a democratic state, reflecting the values of Pancasila, and *Bhinneka Tunggal Ika* in order to achieve a law that is in line with the Indonesian nation. In the formation of laws and regulations, several principles are known that must be considered²¹ and include:

1. Form a legal hierarchy
Low-degree legal regulations cannot change or enshrine the rules of higher law, but otherwise the rule of law can only be repealed, changed or supplemented by or by a rule of law that is equivalent or higher in degree.
2. In the formulation of laws and regulations, there must be a juridical basis
Without the basic foundation of law, the rule of law will be void for the sake of the law or can be revoked. The basic foundation of the law of legal regulation is always the rule of law. It is not possible for other laws to be used as the basis of law other than the rule of law. Other laws other than the rule of law can only be used as material in drafting legal regulations, such as materials from customary law, prudential law and so on.
3. Only certain legal regulations can be used as the basis of law.

²¹ Manan, Bagir, and Susi Dwi Harijanti. "Artikel Kehormatan: Peraturan Pemerintah Pengganti Undang-Undang dalam Perspektif Ajaran Konstitusi dan Prinsip Negara Hukum." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 4, no. 2 (2017): 222-243.

The specific legal regulations referred to herein are legal regulations that are degree or higher in level and directly related to the rules of law to be drafted.

4. The new law sidesteps the old legal rules.

This principle is better known as *lex posteriori derogat lex priori*. Defined as when there is a conflict between the rules of law, then what is enacted is the latest rule of law.

5. Legal regulations of a specific nature sideline the rules of law of a general nature

This principle is called *lex specialist derogat lex generalis*. If there is a conflict between special laws and regulations of an equal level, then the special laws and regulations will win. For example, there is a conflict between the Law on Corruption and Law Number 1 of 2023, then the Law on Corruption applies.

In the process of national development, adjustments to various legal instruments in an effort to respond to the needs of the times must put the paradigm of diversity in every assumption and decision-making consideration. The birth of Law Number 1 of 2023 which was passed some time ago is a success in efforts to update the legal system of the Indonesian nation, especially the Criminal Code which is more than 200 years old. The purpose of changing the Criminal Code this time is in order to respect and uphold the values and principles of human rights. The birth of the new Criminal Code is also in an effort to adjust the existing conditions in Indonesia at this time, such as there are a number of criminal acts regulated in the new Criminal Code after the country ratified several conventions in the world that were not accommodated in the old Criminal Code.

The new Criminal Code has also accommodated criminal acts related to anti-discrimination. Regarding criminal sanctions, he explained, the new Criminal Code not only regulates imprisonment and fines, but also accommodates social sanctions that can reduce overcrowding in prisons. In fact, the death penalty in the new Criminal Code is only a special sanction, unlike in the old Criminal Code the death penalty is the main sanction. The newly passed Criminal Code of the House of Representatives is a balance point that can be achieved in making the foundation of criminal law in the country, where in the process many repositions and reformulations are carried out²², even abolition to achieve the balance of the Indonesian nation. Every time there is input and aspirations related to the new Criminal Code, the government always discusses it while still referring to Pancasila, the 1945 Constitution and related Constitutional Court decisions.

In making a law in Indonesia, the characteristic views of the Indonesian nation are very important for the formation of laws that are in accordance with national identity and values. The establishment of Law Number 1 of 2023 concerning the Criminal Code is inseparable from the 1945 Constitution of the Republic of Indonesia. As said by Satjipto Rahardjo, that the *grand design* of society and new life in Indonesia is the 1945 Constitution. Thus, a very important instrument and capital that must be brought in the process of building a new society in Indonesia is the 1945 Constitution. In the end, the establishment of Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code and the formulation of the articles contained therein must be in line with the characteristics of the Indonesian nation. The Indonesian nation has unique characteristics and is not owned by other countries, including:

1. *Bhinneka Tunggal Ika*

This national motto of the Indonesian nation reflects diversity in one unity. Taken from Sanskrit which if translated contains a meaning that is

very suitable for the situation of Indonesian society, "Different but still one thing" where tolerance for ethnic diversity, culture, language, and religion is highly upheld in Indonesia. It is important to acknowledge the ethnic, religious, and cultural diversity that is the main characteristic of the Indonesian nation. Laws should be drafted to meet the protection and recognition of the rights of individuals from various cultural and religious backgrounds. The principles of pluralism, tolerance, and freedom of religion should be an integral part of every law made.

2. *Pancasila*

A foundation of the Indonesian state consisting of five principles that strongly describe the Indonesian nation and are used as a guide to the direction of the nation's goals. The process for establishing and fostering law in Indonesia is inseparable and must be based on Pancasila as the source of all sources and the 1945 Constitution.²³ The principles of Pancasila as the basis of the Republic of Indonesia must be the foundation for the formation of Law Number 1 of 2023 concerning the Criminal Code. The precepts in Pancasila such as social justice, unity, and social welfare should be the focus and reflected in the purpose and content of the law. The formulation of Article 1 and Article 2 of Law Number 1 of 2023 concerning the Criminal Code is an affirmation of the value of the fifth precept of Pancasila, namely social justice. It can be seen that there is a principle of legality (the main principle in criminal law) which determines that an act is a criminal act if it is determined by laws and regulations, namely laws and regional regulations. That is, criminal provisions should not apply retroactively. As customary law communities who with the modernization of law often feel neglected, this Criminal Code seeks to accommodate customary criminal values and norms so that customary law norms that are considered inferior to state legal norms do not occur in the formulation of the Criminal Code.²⁴ In other words, the position of customary norms in criminal law enforcement is getting stronger in the formulation of the Criminal Code.

In Article 284 of the old Penal Code regarding adultery we can see the element for a person to be said to commit adultery i.e. one or both are bound in a marital relationship. This means that the act of adultery in question when

²² Najib, Iqbal Mar'i. Ainun. "Pembaruan Hukum Pidana Materil Indonesia Dalam Perspektif Islam Nusantara." PhD diss., UIN Sunan Kalijaga Yogyakarta, 2023.

²³ Ali Dahwir, "Pengembangan Filsafat Pancasila dalam Sistem Pidana di Indonesia" 17 (2019): 13–22.

²⁴ Kartini Mallarangan, "Reconstruction of the Legality Principle: The Essence of the Pancasila Spirit in Criminal Law Reform," *Rechtsidee* 8 (2021), <https://doi.org/10.21070/jihr.v8i0.782>.

one or both of them have been bound by a new marital relationship can be said to be adultery while if they are not yet in the marriage bond, the intercourse is not included in the criminal act of adultery. This is very incompatible with moral and religious values as values contained in Pancasila because after all people who commit intercourse outside the existence of marital relations are committing adultery. Meanwhile, when we look at the formulation of the article of Law Number 1 of 2023 concerning the Criminal Code, article 411 paragraph (1) states that "Every person who has intercourse with a person who is not his husband or wife, shall be convicted of adultery, with a maximum imprisonment of 1 (one) year or a maximum fine of category II". In its explanation, article 411 means that the crime of adultery occurs if there is intercourse between two people who are not husband or wife, the elements are:

1. a man who is in a marital bond has intercourse with a woman who is not his wife;
2. a woman who is in the bonds of marriage has intercourse with a man who is not her husband;
3. a man who is not in the marriage bond has intercourse with a woman, even though it is known that the woman is in the marriage bond;
4. a woman who is not in the bonds of marriage has intercourse with a man, even though it is known that the man is in the bond of marriage; or
5. A man and a woman who are not each bound in marriage have intercourse.

Looking at the description of these elements, it is clearly very different when compared to the adultery article contained in the old Criminal Code. The new Criminal Code prioritizes moral values and religious values as derivatives rather than the values contained in Pancasila as the philosophy of the Indonesian state. Any sexual intercourse committed by two persons, whether outside of marriage or between one or both within the bonds of marriage, is considered adultery.

There is a formulation of articles that if in the old Criminal Code does not exist but in the new Criminal Code the rules are explained. Article 412 of Law Number 1 of 2023 concerning the Criminal Code stipulates *samenleven* or better known as "*kumpul kebo*" where it is explained that, "Everyone who lives together as husband and wife outside marriage shall be punished with a maximum imprisonment of 6 (six) months or a maximum fine of category II". The term if in the new Criminal Code is referred to as cohabitation, where the formulation of this article contains moral values and religious values that are firmly held as characteristics of the Indonesian people who have lived for a long time in society. This means, the formulation of articles follows the

developments and circumstances that occur in Indonesian society and then adjusted to the values of Pancasila.

Conclusion

In conclusion, the current state of criminal law in Indonesia is perceived as inadequate in addressing contemporary challenges and the evolving issues in people's lives. Recognizing this inadequacy, the state has embarked on a comprehensive effort to shape a new Criminal Code that mirrors the character and culture of Indonesia, incorporating the foundational values of Pancasila. Notably, the inclusion of Pancasila values in the Nusantara Criminal Code is exemplified by the explicit regulation in Articles 411 to 413, addressing prohibitions related to extramarital relationships. Additionally, democratic values are embodied in the sentencing structure that considers the evolution of the perpetrator during their term.

The correlation between the universal values of Pancasila and the Nusantara Criminal Code is evident, positioning Pancasila as the source of all legal principles. This integration not only reflects values inherent in the global community but also aligns with the character and culture of the Indonesian state, cementing Pancasila as the national philosophy. The application of Pancasila in the Criminal Code transcends specific individuals or societies, encompassing the universal scope of Indonesian society, nation, and state. This approach is vital, as it aligns with the characteristic views of the Indonesian nation, ensuring that the laws formulated resonate with the national identity and values encapsulated in *Bhinneka Tunggal Ika* and Pancasila.

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