



# Reorientation of the Indonesian Penal System Based on the Philosophy of Pancasila

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**Abstract.** The imposition of suffering or criminal sanctions has been a longstanding practice considered painful by any society. Given the facts of criminal law, society cannot function without the intervention of criminal law. Sentencing is not a pleasant experience for the convicted individual and incurs substantial costs, including court proceedings, prisons, parole, consultation centers, and fines. According to utilitarian theory, punishment is a necessary evil that can only be justified if it prevents greater harm than it inflicts on the perpetrator. The evolving sense of justice in sentencing has led to various sentencing objectives that have developed over time, moving towards a more rational approach. Starting with the theory of retribution, which aims to satisfy all parties, the concept of criminal law retaliation is primitive but continues to influence modern practices due to its deep-rooted nature. Unlike other branches of law, the objective here is seen as ancient, focusing on expiation or retribution. Criminal suffering is viewed as penance for the perpetrator's sins, restoring balance within the individual, and is considered a fundamental requirement of our moral nature. By the end of the eighteenth century, criminal law practice was still influenced by the idea of retribution, combined with the aim of deterrence. Since classical times, the purpose of punishment has been a subject of debate. Simons, following Immanuel Kant's perspective, posits that unlawful acts warrant retribution. Similarly, Hegel argues that breaking the law is an inhuman act that deserves punishment.

**Keywords:** Sentence Reorientation; Pancasila Philosophy

## 1 Introduction

### 1.1 Background

Sentence is not a pleasant thing for someone who is convicted. Sentence costs relatively a lot, the cost of court proceedings, prisons, parole, consultation centers that must be attended, and collection of fines. According to the utilitarian theory, punishment is a crime (mischief) which can only be justified if the crime is able to prevent a greater crime than punishment for the perpetrator.

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The thoughts that color the sense of justice in sentencing give rise to various sentencing objectives that have developed from the past to the present which are more directed towards a more rational direction. Starting from d(Bakhri, 2010)ari the theory of retaliation aims to satisfy all parties. The theory of criminal law retaliation is very primitive in nature but its influence is still being felt in modern times, because the primitive elements in criminal law are the most difficult to remove. In contrast to other branches of law, the objective is seen as ancient, namely expiation or retribution.

Criminal suffering is a penance for the sins of the maker, and his guilt will be recovered through the balance of values in the maker himself, and is a fundamental requirement of our moral nature. At the end of the eighteenth century, in the practice of criminal law, it was still influenced by the idea of retaliation which, together with efforts to frighten, was seen as the goal of punishment. Since classical times the purpose of punishment has been a concern. Simons, following Immanuel Kant's point of view, argues that unlawful acts that have taken place are met with retribution. Likewise Hegel, argued that breaking the law is an inhuman act.

Stahl argues that the principle of vengeance originates from divinity and is an eternal law. Crimes must be avenged by the state and the perpetrators must suffer. Furthermore, Von Bar in terms of punishment, argued that law must acquire the character of decency desired by morals, but with an increasingly advanced civilization, its forms must be more extensive. As the founder of the retributive school, Immanuel Kant has always argued that the imposition of punishment or sentencing is to repay the perpetrator's actions. Kant's thoughts were followed by other experts in various theories of retaliation. Criminal is a demand for justice. Criminal as a logical necessity as a consequence of crime, because crime is a denial of law and state order which is the embodiment of moral ideals. In the past, very cruel punishment was a manifestation of being criticized by society and the authorities. Therefore criminal or punishment is the most important right in criminal law. Now criminal sanctions are imposed by the authorities for a reprisal against perpetrators who violate a rule, so that criminal sanctions are intended, as an effort to maintain peace and control from society as a general and special prevention.

Regarding the goals to be achieved in a sentence, it turns out that there is no unanimity of opinion among experts, but there are at least three main ideas about the goals to be achieved in a sentence. The same thing can also be known from the Roman writers, namely, to improve the personality of criminals themselves, to make people become deterrent to commit crimes, and to make certain criminals unable to commit other crimes, criminals who by means of - another way, it can no longer be repaired.

In sentencing in Indonesia, which is clearly seen to be still based on provisions made by the Dutch Colonial government, this cannot be denied, because this is a consequence of Article II of the Transitional Rules of the 1945 Constitution which states that "all state agencies and existing regulations valid, as long as new ones have not been made according to this law."

Criminal imposition in this case is part of law enforcement. Law enforcement must be adapted to the legal ideals of the nation concerned (Proclamation, Pancasila and the 1945 Constitution). That is, law enforcement must be adapted to the philosophy, view of life, rules and principles adopted by the people concerned, so that it will be in accordance with the legal awareness they have. For this reason, law enforcement must be

adjusted to the values that are upheld by the community, which for Indonesian people include the values of divinity, justice, togetherness, peace, order, modernity of deliberations, protection of human rights and so on. Of course, as a country that adheres to the continental European legal system, wherever possible these values are stated in the form of laws, including in terms of values and rules of law enforcement.

So the noble values of Pancasila such as justice, humanity and human rights (human dignity), legal certainty, benefit and national unity must be internalized in the dynamics of law enforcement practices. In the context of the criminal justice system, the scope of criminal law enforcement has started since the formulation of laws and regulations by the legislature (legislative policy) in the field of criminal law, both material and formal criminal law, the implementation of these laws in society, as well as steps or actions taken or should have been taken by criminal law enforcement officials such as the police, public prosecutors, judges and legal advisers when a crime occurs in society or a violation of existing criminal law must still pay attention to and be in accordance with the noble values of Pancasila.

The implementation of criminal procedures (especially for general crimes) is based on Law Number 8 of 1981 concerning Criminal Procedure Law, which is popularly known as the [1] designation of the Criminal Procedure Code, the Judicial Power Law, and other statutory regulations as a complement. The Criminal Procedure Code and the Law on Judicial Power contain principles that must be realized in the implementation of criminal procedures, especially by the ranks of law enforcement officials (official criminal justice system).

## **1.2 Formulation of the Problem**

Based on the background above, what will be the problem in making this journal are:

1. What is the influence of Pancasila values in the imposition of criminal law in Indonesia?
2. What is the relation between Pancasila philosophy and the fall of the criminal law system in Indonesia?

## **1.3 Research Methods**

The type of research used is normative juridical research which emphasizes and leads to a literature review in order to collect data from various literature related to the legal issues studied. The research approach used in this writing is:

1. Statute Approach The statutory approach is an approach that is taken by examining all laws and regulations that are related to the legal issues being handled (Peter Machmud. 2011: 93).
2. Theoretical Approach The conceptual approach is an approach that departs from the views and doctrines that have developed in the science of law, in order to find ideas that give rise to relevant understandings, concepts and legal principles, as a basis in building a legal argument in solving the legal issues at hand. (Peter Mahmud Marzuki, 2008:95).

## 2 Discussion

### 2.1 The Influence of Pancasila Values in Imposing Criminal Law in Indonesia

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Post-independence Indonesia has a Pancasila philosophy so that the purpose of sentencing must be adjusted to put forward the principles of sentencing in the view of Pancasila philosophy which is carried out in accordance with the culture adopted by the Indonesian nation by taking into account the following principles.

- 1) Recognition of humans as creatures of God Almighty so that the form of punishment may not conflict with religious beliefs or beliefs held by the people of Indonesia. Punishment against a person must be directed at awakening the faith of the convict so that he can repent and become a human being of faith and obedience. In this case, sentencing must function as a mental development of the convicted person and transform the convict into a religious person (Sahetapy, J. E., 1982:284).
- 2) Recognition of the nobility of human dignity as God's creation. Punishment must not violate the most basic human rights and guarantees for the right to life. This right is a right that cannot be reduced under any circumstances (non derogable right) and may not be degrading for any reason. The implication is that even though the convict is in a penitentiary, his human elements and characteristics must not be set aside in order to free the person concerned from his evil thoughts, traits, habits and behavior.
- 3) National solidarity with other people as fellow citizens of the nation. Perpetrators must be directed at efforts to increase tolerance with other people, cultivate sensitivity to the interests of the nation, and direct them not to commit crimes. In other words, punishment needs to be directed at instilling a sense of love for the nation (Sahetapy, J. E., 1982: 284).
- 4) Growing maturity as citizens who are solemn, able to control themselves, discipline, and respect, and obey the law as a form of people's decisions (Sahetapy, J. E., 1982: 284).
- 5) Raising awareness of the obligations of each individual as a social being who upholds justice with other people as fellow citizens. It should be remembered that the

government and the people must take responsibility for freeing convicts from the chaos and cruel social reality that surrounds them as perpetrators of crimes (Sahetapy, J. E., 1982: 284).

## **2.2 Orientation of Pancasila Philosophy on the Colonization of the Criminal Law System in Indonesia**

Pancasila is the philosophy of the Indonesian state which is the soul of the nation, the personality of the nation, the means and goals of the nation's life, the nation's view of life, and the source of all sources of Indonesian state law, as well as the noble agreement of the Indonesian nation within the state.

As a sanction to return disturbances to balance, harmony and harmony in people's lives which result in individual and societal damage, fines must also be imposed by taking into account the values of Pancasila as the philosophy of the Indonesian nation. Fines that are carried out with the intention or willingness to pay compensation to victims and or their families mean the same value as the desire to balance, harmonize and re-harmonize individual damage due to criminal acts committed by perpetrators. What's more, the existence of this type of compensation sanction is sociologically known since hundreds of years ago, even before positive criminal law came into force in Indonesia.

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