JGC XI (2) (2022)

JURNAL GLOBAL CITIZEN

JURNAL ILMIAH KAJIAN PENDIDIKAN KEWARGANEGARAAN

https://ejurnal.unisri.ac.id/index.php/glbctz

Diterima: 14-07-2022, Disetujui: 18-10-2022, Dipublikasikan: 01-12-2022

CORRELATION AND IMPLEMENTATION OF PHILOSOPHY OF PANCASILA IN INDONESIAN CRIMINAL SYSTEM

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Abstrak

Sistem pemidanaan di Indonesia hingga dewasa ini masih terbelenggu pada pengaruh sistem pemidanaan yang diwariskan oleh Belanda yang bernafaskan liberalisme. Hal ini tercermin dari aturan-aturan pemidanaan di Indonesia yang masih mengacu pada hukum warisan kolonial. Sistem pemidanaan yang eksis hingga hari ini tidaklah berdasarkan kearifan lokal masyarakat Indonesia, sehingga tidak mencerminkan Pancasila yang merupakan sebuah nilai yang dipegang teguh oleh bangsa Indonesia dan merupakan sumber dari segala sumber hukum. Tujuan penulisan ini adalah untuk menelaah tentang konsep pemidanaan yang menunjukkan korelasi dan implementasi filsafat Pancasila dalam sistem pemidanaan di Indonesia. Metode yang digunakan dalam penulisan ini adalah metode penelitian hukum normatif, dengan pendekatan konseptual dan perundang-undangan. Hasil dari penelitian ini adalah keterkaitan antara sistem pemidanaan dengan implementasi nilai- nilai Pancasila.

Kata Kunci: Sistem Pemidanaan, Pancasila, Filosofis.

Abstract

The criminal system in Indonesia is still shackled to the influence of the criminal system inherited by the Dutch, which breathes liberalism. This is reflected in the criminal laws in Indonesia which still refer to the colonial legacy law. The criminal system that exists to this day is not based on the local wisdom of the Indonesian people, so it does not reflect Pancasila which is a value that is firmly held by the Indonesian people and is the source of all sources of law. The purpose of this paper is to examine the concept of punishment which shows the correlation and implementation of the Pancasila philosophy in the criminal system in Indonesia. The method used in this paper is a normative legal research method, with a conceptual approach and legislation. The result of this research is the relationship between the criminal system and the implementation of Pancasila values.

Keywords: Criminal System, Pancasila, Philosophy.

INTRODUCTION

The state is the largest organization of society to which a large group of people submit themselves. The state is an institution that has enormous power in a society, this enormous power is obtained because the state is an institutionalization of the public interest. In essence, the state is a community organization, namely a group of people with cooperation and division of tasks, targeting a common goal that cannot be achieved individually. in a country the officers or apparatus are those who are at the top of the leadership of the organization, they are the ones in charge of maintaining and regulating so that the goals of the organization can be realized. In a country, state equipment or high state institutions are formed.[1]

The authority and power possessed by state authorities must be limited in order to prevent arbitrariness. The only thing that can limit the authority and power of the state is the law. This is the concept of a legal state owned by Indonesia. The establishment of a legal state cannot be separated from the history of its people and the formation of law for the first time in that country.[2]

According to Stahl, a rule of law must fulfill four important elements, namely:[3]

a. There is a guarantee of basic human rights;
b. There is a division of power;
c. Government must be based on legal regulations;
d. The existence of administrative justice.

The rule of law aims to ensure legal certainty in society. The law aims to create certainty in human relations, namely to ensure predictability, and also aims to prevent the strongest rights that apply.

Indonesia is a state of law, this is expressly stated in Article. 1 paragraph (3) of the 1945 Constitution, ideally all actions of the government must be based on the existing legal rules, the rule of law must also not deviate from Pancasila as the National Ideology. As the ideology of the Indonesian nation in carrying out the rule of law referred to by the government, it cannot be separated from Pancasila which is also the source of all sources of law in Indonesia.

Likewise, if a crime occurs, order and regularity in society will be disrupted. This situation caused chaos in the community concerned which resulted in disharmony in people's lives and caused suffering and losses for victims. Therefore, every criminal must receive criminal sanctions in accordance with social justice without prejudice to the existence of Pancasila in the social life of Indonesian society.

According to Immanuel Kant's opinion, the main essence of punishment will be found in the crime itself, because the crime causes suffering and loss to others while punishment is the main requirement of the moral law. Immanuel Kant's opinion is known as the theory of absolute punishment. Meanwhile, according to the relative theory, it assumes that people who commit crimes are people who have deviant social behavior, so they need to be guided so that in the end when they return to society they become useful people and the combined theory is a theory that in imposing crimes against perpetrators of crimes combines absolute theory with theory relatively.

In the imposition of a crime in Indonesia, which clearly is still based on the provisions made by the Dutch Colonial government, this cannot be denied, because this is a consequence of Article II of the

[1] Kirdi Dipoyudo, 1985, Keadilan Sosial. Seri Penghayatan dan Pengamalan Pancasila, Rajawali, Jakarta, p. 1-2.
[2] *Ibid.*
[3] Stahl, in Abu Daud Busroh and Abubakar Busro, 1982, Principles of Constitutional Law, Ghalia Indonesia, Jakarta, p. 112-113

Transitional Rules of the 1945 Constitution which states that "all state bodies and existing regulations are still directly valid, as long as a new one has not been made according to this law". The imposition of a criminal in this case is part of law enforcement.

Law enforcement must be adapted to the legal ideals of the nation concerned (the Proclamation, Pancasila, and the 1945 Constitution). This means that law enforcement must be adjusted to the philosophy, view of life, rules and principles adopted by the community 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 the Indonesian people these values include the value of divinity, justice, togetherness, peace, order, modernity of deliberation, protection of human rights and so on.

Of course, as a country that adheres to a continental European legal system, as far as possible these values are expressed in the form of law, 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 practice. In the context of the criminal justice system, the scope of criminal law enforcement has begun since the formulation of legislation by the legislature (legislative policy) in the field of criminal law, both material and formal criminal law, the implementation of the legislation in the community, as well as other steps or actions. which are taken or should be taken by criminal law enforcement officers such as police, public prosecutors, judges, and legal advisors when in the community there is a 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 the Criminal Procedure Code, which is popularly known as the Criminal Procedure Code, the Law on Judicial Power, and other laws and regulations as a complement. The Criminal Procedure Code and the Judicial Power Act contain principles that must be realized in the implementation of criminal proceedings, especially by the ranks of law enforcement officers (official criminal justice system).

RESEARCH METHOD

The research method used in writing this article is normative legal research. This study uses 2 (two) research approaches, namely the conceptual approach and the statutory approach. The sources of legal materials used in writing this article are primary sources of legal materials and secondary sources of legal materials. The problems in this study were analyzed using deductive analysis techniques using minor and major premises using syllogistic reasoning.

DISCUSSION

Crime is a social reality, which has existed since the creation of humans on this earth. In criminal law, crime is more focused on being referred to as a crime, because an act is called a crime if it meets the formulation in the principle of legality.[4] Understanding the meaning of the principle of legality, illustrates the rule of law for people who live in a country, because with this principle the government cannot do arbitrariness against

crime or violation of the existing criminal law must continue to pay attention to and in

[4] R. Soesilo, *Kitab Undang-undang Hukum Pidana (KUHP) Serta Komentar- komentarnya Lengkap Pasal Demi Pasal*, Politeia, Bogor, 1996, p. 27.

the people. As had happened in the days before the French revolution. Along with the times, the forms of crime are also developing and the types of operandi are increasingly varied and the victims are no longer in the form of individuals but are already collective and systematic victims.

In Indonesian laws and regulations, there is no definition of a crime. Definition of criminal act that is understood so far is a theoretical creation of legal experts. Criminal law experts in general still include mistakes as part of the definition of criminal acts.[5] Regarding the definition of strafbaarfeit between scholars there is no unity of opinion, they call it strafbaarfeit by their respective terms, including Moeljatno, interpreting srafbaarfeit as a criminal act, with the formulation: "an act that is prohibited by a prohibition law which is accompanied by threats (sanctions). in the form of a certain crime, for those who violate the prohibition.[6]

Simon said that strafbaarfeit is behavior that is punishable by crime, is against the law, and is related to mistakes made by people who are capable of being responsible.[7]

Strafbaarfeit or delict in Indonesian is widely translated such as: Crime, criminal acts, Criminal Offenses, Acts that may be punished and acts that can be punished.[8] Based on the description, it can be concluded that what is meant by a criminal act is: an act or a series of human actions that are contrary to the law or other regulations, the act can be threatened with a criminal. The act is a criminal act if it fulfills the conditions contained in the relevant argument.

Perpetrators of criminal acts should be punished, in accordance with the provisions of the legislation. The imposition of crimes against perpetrators of urgent crimes is carried out even though the perpetrators are people who have certain social strata, this is to create the rule of law, everyone has the same position before the law.

The history of the Indonesian nation from colonial to independence is a paradigmatic journey. Politically, it changed from a peripheral nation to a nation that took over the center of power through the proclamation of independence in August 1945: from the Dutch East Indies to the Republic of Indonesia. Not all nations in their independence want to build a new life based on new principles. Here, the role of the 1945 Constitution will determine the occurrence of this leaping change. The Constitution is the grand design of a new society and life in Indonesia.[9]

Thus, the 1945 Constitution is a very important instrument in the process of building a new Indonesian society and becomes the capital for the development of law in Indonesia. Therefore. Indonesian Law Science which is tasked with describing and explaining legal life in this country cannot be separated from the 1945 Constitution. Referring to this thought, the paradigms that can be captured from the 1945 Constitution include: Belief in One God; Humanity; Unity; Citizenship; Social justice; kinship; Harmony; Discussion.

This paradigm can guide the implementation of a state of law, namely law making, law enforcement and the judiciary. The legal order that operates in a society is

[5] Chairul Huda, 2006, Dari Tindak Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan: Tinjauan Kritis terhadap teori Pemisahan Tindak Pidana dan Pertanggungjawaban Pidana, Kencana Prenada Media, Jakarta, p. 26

[6] Moeljatno, 1985, Azas-azas Hukum Pidana, Bina Aksara, Jakarta, p. 54

[7] S.R. Sianturi, 1986, Asas-asas Hukum Pidana di Indonesia dan Penerapannya, Alumni AHAEM-PTHAEM, Jakarta, p. 205.

[8] Mustafa Abdullah dan Ruben Achmad, 1986, Intisari Hukum Pidana, Ghalia Indonesia, Jakarta, p. 25-27

[9] Sajipto Raharjo, 1989 *Paradigma Ilmu Hukum,* Alumni, Bandung, p. 34.

basically the embodiment of the legal ideals adopted in the society concerned into various sets of positive rules, legal institutions and processes (behavior of government bureaucracy and society).[10] The development and direction of law in Indonesia is based on Pancasila and the 1945 Constitution. It implicitly shows that the formulation of laws that apply in Indonesia cannot be separated from the nation's view of life, Pancasila. With Pancasila as a way of life, the understanding of the rule of law is not as embraced in western legal culture. Likewise, the imposition of a crime must be adapted to local wisdom, namely based on the law that grows and develops in Indonesian society.

Every state in carrying out criminal law and imposing punishment must guarantee the personal human rights of every citizen, and maintain the dignity and dignity of humanity. Thus, punishment must be oriented towards the goals and functions of maintaining harmony between interests, namely personal interests and the interests of society in order to achieve common prosperity. This philosophical value will be in line with and in line with the philosophy of Pancasila, specifically in the 5th precept of Pancasila, "Social Justice for All Indonesian People". The meaning of the 5th precept philosophical value is the embodiment of protection for society to achieve prosperity for all Indonesian people. Henceforth, knowing and formulating the functions and objectives of sentencing cannot be separated from the prevailing sentencing theories.

According to Satochid Kartanegara and the opinions of leading legal experts in criminal law, there are three streams of punishment or punishment in criminal law, namely:[11]

a. Absolute or vergeldings theory (vergelden/reward)

   This school teaches that the basis of punishment must be sought in the crime itself to show the crime as the basis for a relationship that is considered retaliation, reward (velgelding) against people who do evil deeds. Because the crime causes suffering to the victim. This theory sees that the perpetrators of urgent crimes must be punished and the orientation of this punishment is the state and the victims of crime.

b. Relative or doel theory (doel/intention, goal)

   In this teaching, what is considered as the legal basis for sentencing is not velgelding, but the purpose (doel) of the punishment. So this school relies on punishment on the intent and purpose of sentencing, meaning that this theory seeks benefits rather than punishment (nut van de straf). the crime.

c. Vereningings theory (combined theory)

   This theory provides a statement that the imposition of a crime is solely because someone has committed a crime or criminal act. Crime is an absolute consequence that must exist as a revenge for people who have committed crimes. As for the justification for the imposition of a crime, it lies in the existence of the crime itself, therefore the crime has a function to eliminate the crime. Johanes Andenaes, said that the main purpose of a crime is to satisfy the demands of justice (to satesfy the claims of justice), while other beneficial influences are secondary, so he thinks that the punishment imposed is solely to seek justice by retaliating.

[10] Bernard Arief Sidharta, 1987, Paradigma Ilmu Hukum Indonesia Dalam Perspektif Positivis, Universitas Diponegoro, Semarang, p.27.

[11] Muladi, *Op.cit*, p. 11.

M. Sholehuddin stated that the issue of sanctions is a central thing in criminal law because it often describes the socio-cultural values of a nation. This means that crime contains values in a society regarding what is good and what is not, what is moral and what is immoral and what is allowed and what is prohibited.[12] But in reality the criminal sanctions threatened in the provisions of the Criminal Code are not based on soul. Indonesian people, on the one hand and on the other hand, law enforcement officials must comply with the provisions of existing laws and regulations (the principle of legality).

The system is an inseparable unit of several elements or elements that become a unified function. The penal system occupies a strategic and core place in efforts to tackle and resolve criminal acts that have occurred. The penal system is the laws and regulations related to punishment in the form of criminal sanctions. If the penal system is translated in a broad sense, it has a definition as several stages in the awarding or imposition of a decision by a judge or panel of judges in a deliberation of judges, so it can be interpreted that the penal system includes all provisions in laws and regulations that provide guidelines on how criminal law is enforced or implemented concretely, so that a criminal can be subject to criminal sanctions. This has the meaning that all statutory regulations regarding substantive criminal law, formal criminal law, and the execution of crimes can be seen as an integrated punishment system. Based on this, it can be said that punishment is closely related and cannot be separated from the variety of crimes regulated in the positive criminal law that applies in a country.

In addition to formal punishment carried out by the community, the community can also participate in providing punishment to perpetrators of criminal acts by imposing social sanctions. Social sanctions that are usually given by society to perpetrators of criminal acts can be in the form of isolating or getting rid of perpetrators of criminal acts, so that perpetrators have a sense of deterrence and are not involved in criminal acts again in the future.

Ways to get rid of can be done in various forms, namely in the form of capital punishment, disposal, shipping across the ocean and up to imprisonment. Gradually, there is a tendency for the method of punishment to shift from time to time.

At the time of the Majapahit kingdom, there was a criminal system in the form of; the main punishment which includes the death penalty, cutting off limbs for those who are guilty, fines, compensation, or Pangligawa or Putukucawa. In addition, additional crimes are also known which include ransom, confiscation and patibajambi (drug purchaser's money). In the Majapahit laws and regulations, there is absolutely no imprisonment and confinement. Thus, every guilty person must serve one of the four main crimes above.[13]

At this time it is clear that punishment is victim-oriented, where the victim is expected to get a sense of justice with the sentence imposed, however, it can be seen that what is contained in the second principle of Pancasila is not fulfilled, namely "just and civilized humanity". Because punishment seems to occur in a barbaric society, without human rights protection.

As with the main punishment, which is determined by the punishment of cutting off the guilty limb, this shows the lack of a basis for the protection of human rights. So that this kind of crime is also less relevant to be

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[12] Ekaputra, Mohammad dan Abul Khair, 2010, Sistem Pidana Di Dalam KUHP Dan Pengaturannya Menurut Konsep KUHP Baru, USU Press, Medan, p. 13.

[13] Andi Hamzah dan Siti Rahayu, 1986, Suatu Tinjauan Ringkas Sistem Pemidanaan Di Indonesia, Akademik Pressindo, Jakarta, p. 4.

carried out for the Indonesian state which in fact is a state of law.

In contrast to the state of Majapahit, for the current state the criminal system has undergone many changes in the form of improvements from the previous system. In addition to the situation in Indonesia, the existing and valid criminal system still refers to the Criminal Code which is the legacy of the Dutch Colonial. From this system listed in the Criminal Code, many problems arise, including the relevance of the criminal system used today to the conditions and aspirations of the Indonesian nation.

From the description of the sentencing that has been presented above, it is clear that there has been a fundamental error in Indonesian law. Where the punishment that has been determined is not based on the wisdom of the Indonesian people, this is very likely to happen because the basis for the formation of the Criminal Code (Wet Book van Strafrecht) is not based on the soul of the Indonesian nation, it is not inspired by the Pancasila ideology, but is inspired by the Dutch Colonial nation.

CONCLUSION

The existing criminal system in Indonesia is still influenced by the colonial penal system which is reflected in the Criminal Code. The values promoted by the current Criminal Code are the values of liberalism because they originate from the criminal law of the Dutch colonial heritage. This, of course, is contrary to the basic values that are carried by the Indonesian nation in the Pancasila which has the nobility of the Indonesian nation. The direction of the development of the Indonesian criminal system in the future should accommodate the values of Pancasila which are very close to the value of social justice in the settlement of criminal cases.

BIBLIOGRAPHY

Abu Daud Busroh and Abubakar Busro, 1982, Principles of Constitutional Law, Ghalia Indonesia, Jakarta.

Andi Hamzah dan Siti Rahayu, 1986, Suatu Tinjauan Ringkas Sistem Pemidanaan Di Indonesia, Akademik Pressindo, Jakarta.

Bernard Arief Sidharta, 1987, Paradigma Ilmu Hukum Indonesia Dalam Perspektif Positivis, Universitas Diponegoro, Semarang.

Chairul Huda, 2006, Dari Tindak Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan: Tinjauan Kritis terhadap teori Pemisahan Tindak Pidana dan Pertanggungjawaban Pidana, Kencana Prenada Media, Jakarta.

Ekaputra, Mohammad dan Abul Khair, 2010, Sistem Pidana Di Dalam KUHP Dan Pengaturannya Menurut Konsep KUHP Baru, USU Press, Medan.

Kirdi Dipoyudo, 1985, Keadilan Sosial. Seri Penghayatan dan Pengamalan Pancasila, Rajawali, Jakarta.

Moeljatno, 1985, Azas-azas Hukum Pidana, Bina Aksara, Jakarta.

Mustafa Abdullah dan Ruben Achmad, 1986, Intisari Hukum Pidana, Ghalia Indonesia, Jakarta.

R. Soesilo, *Kitab Undang-undang Hukum Pidana (KUHP) Serta Komentar-komentarnya Lengkap Pasal Demi Pasal*, Politeia, Bogor, 1996.

S.R. Sianturi, 1986, Asas-asas Hukum Pidana di Indonesia dan Penerapannya, Alumni AHAEM- PTHAEM, Jakarta.

Sajipto Raharjo, 1989 *Paradigma Ilmu Hukum,* Alumni, Bandung, p. 34.

Satochit Kartanegara, *Hukum Pidana (Kumpulan Kuliah Bagian I),* Balai Lektur Mahasiswa, Without Year.