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Initiating a National Criminal Law Profile in the Future in Indonesia

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Abstract

The Indonesian nation does not yet have its product national criminal system. The current national criminal law system is the legal system left by the Dutch colonialists. The national criminal law system must be built based on the ideals of the nation contained in the Preamble to the 1945 Constitution. The research aims to formulate a future profile of national criminal law in Indonesia. This research uses a philosophical approach, which is to analyze the ideal law in the future. Data were analyzed qualitatively. The results of this study indicate the existence of criminal law in society as crime prevention through criminal law laws. Criminal law has a repressive and preventive function. Criminal law is part of the overall law that applies in a country in implementing criminal provisions. The Indonesian nation needs its own national criminal law system. The national criminal law is a criminal law based on Pancasila and the 1945 Constitution which applies nationally in Indonesia. Having its national criminal law for the Indonesian people is an effort to reveal national identity by the hopes and ideals of the independence of the Indonesian nation. The national criminal law profile ideally is the ideal of Pancasila law which is the perspective of the Indonesian people and places the bonds of togetherness and kinship ties as the core of the social life of the Indonesian people. The national criminal law system must be oriented to three pillars, namely: oriented to the values of "God"; oriented to the values of "Humanity"; and oriented to "Society" values.

Keywords: Profile, Criminal Law, 1945 Constitution, Indonesia

1. Introduction

The Indonesian nation until now (2022) does not yet have its product national criminal system. The current national criminal law system is the legal system left by the Dutch colonialists. Many experts have also tried to put forward the idea of a national criminal law profile in the future.

If the national criminal law system is seen as a legal substance, it means that the legal system is the elaboration of Pancasila in the legal field. The national criminal law system must be oriented to the values contained in Pancasila, namely divinity, humanity, unity, deliberation, and justice for all. Because Pancasila is the soul of the nation and the crystallization of the diverse values of the Indonesian nation.

The national criminal law system must be built based on the ideals of the nation, the goals of the state, the ideals of the law, and the guidelines contained in the Preamble to the 1945 Constitution (Mahfud M.D., 2007). The 1945

Constitution in Indonesia is the most basic source of law, the highest law that contains values, principles, and norms that must be obeyed. Implementatively, the implementation of the national criminal law system to be built depends on the direction of national legal politics.

National criminal law is ²⁴ of the components that become a point in the development of the national legal system. The development of the criminal law system includes the development of legal substance, legal structure, and legal culture. Public legal awareness is very essential to be considered in the development of national law so that the resulting law does not conflict (Pane, 2018).

³⁵ The development of the national criminal law is still in progress. The essence of national criminal law development implies an effort to reorient and reform criminal law by the central socio-political, socio-philosophical, and socio-cultural values of Indonesian society. The development of national criminal law is very necessary because the current criminal law, namely the Criminal Code (KUHP) is not to the demands and developments of today's society. ¹⁶

The current Criminal Code is a product of the Dutch colonial law which is not by the life perspective of an independent, sovereign, and religious Indonesian nation (Lala, 2021). Historically, the criminal law inherited from ¹⁹ the Dutch colonial era came from the Continental legal system (Civil Law System). The values that underlie the legal system of Continental Europe are individualism, liberalism, and individual rights which of course are not the values adopted by the Indonesian people (Itmam, 2013). ³⁷

The colonial government at that time applied criminal law in colonized countries so that there were similarities with their parent countries. The Criminal Code was only applicable when the Indonesian people were still under Dutch colonial rule (Wahyuningsih, 2014). The Dutch colonial government deliberately prepared the criminal law material in question (Wetboek van Strafrecht voor Nederlandsch Indie 1915) specifically to be applied to the colonial nation in the Dutch colony. All legal life was fostered to achieve the purposes of the colonizers so the legal conception at that time was not profitable for the Indonesian people (Sudaryatmi, 2012).

After Indonesia's independence, it was very natural, ¹⁴ a body to build its criminal law. The development of national criminal law must be based on extracting the values contained in the form of awareness and legal ideals (rechtidee), moral ideals, individual and national independence, ³³ humanity, peace, political ideals, and state goals. The profile of the national criminal law will later reflect the values of life that exist in society and the values contained in Pancasila (Pane, 2018).

Pancasila must be used as a paradigm in the development of national criminal law (Sunaryo, 2013). Because Pancasila contains the basic conception of life that is aspired and involves the idea of a form of life that is considered good for all Indonesian people, namely a prosperous society (Sudjana, 2018). The idealized profile of the national criminal law will be by the legal awareness of the community.

The problems that ¹² will be discussed in this study are the function of criminal law in society, the need for a national criminal law for the Indonesian nation, and the profile of national criminal law as the ideal of Pancasila law.

2. Research Methods

This type of research is library research. Library research is research that ¹¹ is carried out by examining library materials or secondary data. This ³⁶ arch includes library research because the data used are more secondary in the form of legal documents. The approach used in this research is philosophical. The philosophical approach in legal research is to examine the law ²² from the ideal side. This study uses a philosophical approach because the law being studied is at an ideal level. The source of data used in this study is secondary data. Secondary data is data obtained indirectly or has been provided by other parties. Secondary data is used as the main reference ¹⁵ that is already available in written form in books, scientific journals, and other written sources. Qualitative data analysis is the process of organizing and sorting data into patterns, categories, and basic units of description so that themes

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can be found that are presented in narrative form. This study uses qualitative data analysis because the data will be presented in a narrative-descriptive manner, not in the form of numbers or numeric.

3. Discussion

6 3.1. Functions of Criminal Law in Society

The existence of criminal law in society is an effort to overcome crime through criminal law laws. With the existence of criminal law, crime can be avoided through criminal law enforcement with criminal threats. Criminal law has a repressive and preventive function.

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Each country has its criminal law. Because criminal law is part of the overall law that applies in a country that has the rule of law. Criminal law is coercive and binding, so it has consequences for its implementation. The result is a criminal threat (Putri & Purwani, 2020).

Many experts have formulated the definition of criminal law with all its functions. Criminal law can be interpreted as a legal regulation regarding crime" (Lamintang, 1999). The word "criminal" means things that are "criminalized," namely things that are delegated by the competent agency to a person as things that are not pleasant to feel and also things that are not delegated daily (Pumowo, 1982). Criminal law is all the legal rules that determine what actions should be punished and what kind of crime it is (Muljatno, 2008).

Criminal law can be interpreted objectively and subjectively. Objectively, criminal law is several legal regulations that contain prohibitions and orders or obligations in which violators are threatened with legal sanctions in the form of certain crimes. Criminal law in this sense is often called *ius poenale*. Subjectively, criminal law is a regulation that stipulates the investigation, further investigation, prosecution, imposition, and execution of a crime. According to this understanding, criminal law is often called *ius puniendi* (Abidin, 1993).

The definition of criminal law is a law that regulates violations and crimes against the public interest, acts that are threatened with punishment that constitutes suffering or torture. Criminal law is not a law that contains norms, but only regulates violations and crimes against legal norms concerning the public interest (Kansil, 1997). Criminal law is part of the overall law that applies in a country that provides the basis and rules.

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Criminal law is not absolute and has limitations, namely:

1. Determine which actions should not be carried out, which are prohibited, accompanied by certain criminal threats for anyone violating the prohibition.
2. Determining when and in what cases those who have violated the prohibitions can be imposed or sentenced to the punishment that has been threatened.
3. Determine in what way the imposition of a crime can be carried out if there are people who are suspected of having violated the prohibition (Abidin, 1993).

Seen from the point of view of social institutions that have the authority to make criminal law, it includes all orders and prohibitions imposed by the state and which are threatened with a crime/misfortune for those who do not obey them (Soeharto, 1993). This definition puts pressure on the state as the only party that enforces criminal law. Criminal law is a whole of the principles and regulations that are followed and determined by the state or other legal community. The state as the custodian of public law and order has prohibited the conduct of unlawful actions and has linked violations of its regulations with special suffering in the form of punishment (Abidin, 1993).

The scope of criminal law includes several components. Criminal law sometimes means material law, namely the rules regarding prohibited acts (delict/criminal acts/criminal acts), criteria that make people liable to punishment (criminal responsibility), and sanctions or punishments (criminal sanctions). Sometimes criminal law means formal criminal law, namely the procedures or procedures for imposing criminal sanctions for someone who violates material criminal law. In addition, criminal law sometimes means the implementation of a crime, namely the provisions on how a criminal sanction that has been imposed on a person is carried out.

3.2. The Need for a National Criminal Law for the Indonesian Nation

The Indonesian nation is in dire need of its own national criminal law system. National criminal law is a criminal law that is based on the ideological foundations and the state constitution, namely Pancasila and the 1945 Constitution which apply nationally in Indonesia (Sularno, 2006). According to his understanding, the Indonesian nation does not yet have a national criminal law, because the existing criminal law is a legacy of the Dutch colonial government which is not based on Pancasila even though it has a constitutional basis.

Creating its national criminal law for the Indonesian people is an effort to reveal national identity by the hopes and ideals of the independence of the Indonesian nation as contained in the Preamble to the 1945 Constitution. Efforts and efforts have been made by the Indonesian people to achieve these ideals, namely National Law Development Program. The absence of national criminal law is one of the problems of legal development in Indonesia that has emerged since the independence of the Republic of Indonesia (Azizy, 2004).

The policy of developing national criminal law as a system is directed at the realization of a legal system that supports national interests (Risdiarto, 2017). Friedman likens the legal system to a factory, where the "legal structure" is a machine. The legal substance is what is produced or done by machines and "legal culture" is anything or anyone who decides to turn on and turn off machines and decides how machines are used (Akmal, 2021).

The legal system is a unified whole of orders consisting of parts or elements that are interconnected and closely related to each other (Nurhardianto, 2015). The explanation of the three legal elements is as follows:

1. Structure, namely the entire existing legal institutions and their apparatus, including the Police with their police officers, the prosecutor's office with their prosecutors, the courts with their judges, and others.
2. Substance, namely the entire rule of law, legal norms, and legal principles, both written and unwritten, including court decisions.
3. Legal culture, namely opinions, beliefs, habits, ways of thinking, and ways of acting, both from law enforcers and from citizens about the law and various phenomena related to law (Nurhardianto, 2015).

The legal system has a certain mechanism that guarantees the implementation of the rule in a fair, definite, and firm manner, and has benefits for the realization of public order and peace. Legal reform related to the development of law in Indonesia in the formation of laws and regulations is one element of legal products, so the principles of formation, enforcement, and enforcement must contain legal values in general. To be binding in general and have effectiveness in terms of the imposition of sanctions, in its formation it must pay attention to several juridical prerequisites (Risdiarto, 2017).

Legal development is a management mechanism in a national legal system. The legal development model is ideally placed within the framework of development law management, which fulfills the elements of management. The elements that should ideally be contained are legal planning, legal organizing, legal creating, legal implementing, legal controlling, and legal reviewing (Nurhardianto, 2015).

Criminal law must be able to become a tool for carrying out development in society (social engineering). This means that criminal law can create conditions that lead people to a harmonious state in improving their lives (Pane, 2018). If this condition is achieved, then the purpose of criminal law has been fulfilled in society.

The background of the development of the national criminal law is: First, The Criminal Code is considered incomplete or unable to accommodate various problems and aspirations and the dimensions of the development of new forms of crime. Second, the Criminal Code is not by the socio-philosophical, socio-political, and socio-cultural living in society. Third, the Criminal Code is no longer by the developments and thoughts/ideas, and aspirations of the demands/needs of the community. Fourth, the Criminal Code is not a complete legal system, because some articles/offenses have been revoked (Arief, 2009).

One thing that must be considered is that legal development must be based on the foundation of the ideas contained in Pancasila and the 1945 Constitution. Legal development is carried out systemically, in the sense that it is carried out by planning and implementing work as well as overall performance evaluation regarding the achievements of legal development. (Muhtamar, Razak, & Wahid, 2011). The preamble to the 1945 Constitution states the ideals and goals of the Indonesian nation. The ideals of the Indonesian people are to bring the Indonesian people to the front gate of Indonesia's independence, which is independent, united, sovereign, just, and prosperous.

The goals of the Indonesian people are to form a government that protects the entire Indonesian nation and entire homeland of Indonesia, advances public welfare, educates the nation's life and takes an active role and participates in implementing a world order based on independence, eternal peace and social justice (Ratnaningsih, 2016).). Legal development activities are not just changing a law that is currently in effect. If the legal development activity is referred to as an act of planning a new legal system, then the activity of changing a law is changing an existing law (Pane, 2018).

Based on the provisions contained in the 1945 Constitution, the desired state is a democratic welfare state. All activities of the state after the proclamation are aimed at realizing the conception of the state. In other words, as the embodiment of values, the presence of law is to protect and promote the values upheld by the people.

3.3. Profile of National Criminal Law as the Ideal of Pancasila Law

Rechtsidee (legal ideals) Pancasila is the legal philosophy of the Indonesian nation or the Indonesian nation's perspective which places the bonds of togetherness and kinship ties at the core of the social life of the Indonesian people. The underlying value is the spirit of helping, cooperation, and kinship (Latumeten, 2017). The ideals of law will give birth to the Pancasila legal system.

The Pancasila legal system installs signs and gives birth to guiding principles in national legal politics, namely the prohibition of the emergence of laws that are contrary to the values of Pancasila (Tongat, 2012). Apart from being a rechtsidee, Pancasila is a Staatsfundamentalnorm, the highest norm of a country. The highest norm is a norm that is not formed by a higher norm but is pre-supposed by the community in a country and is a legal norm depending on the legal norms under it (Ibrahim, 2010).

Pancasila as a whole must be seen as a national guideline, as a national standard, norm, and principles, which at the same time contain human rights and human responsibility. The function of Pancasila is as a margin of appreciation, namely the boundary or margin of appreciation for the law that lives in a pluralistic society (the living law) so that it can be justified in the life of national law. In this regard, the development of national law must rely on and be able to utilize the universal ethics contained in the precepts of Pancasila.

The national criminal law must not conflict with the principles of God Almighty, which respects the order of religious life, religious feeling and religion as a great interest. The national criminal law must also respect the values of human rights, both civil and political rights as well as economic, social, and cultural rights, and within the framework of relations between nations must respect the development rights. In addition, national criminal law must also base national unity on respect for the concept of civic nationalism, which appreciates pluralism (Sunaryo, 2013).

The index or core values of democracy as a democracy audit tool must also be respected and have a place in the national criminal law. In addition, it must place legal justice within the framework of social justice and in relations between nations in the form of the principles of global justice. The development of criminal law is also part of an effort to review and reassess the main points of thought or basic ideas or socio-philosophical, socio-political, and socio-cultural values that underlie criminal policies and criminal law enforcement policies so far (Pradityo, 2017).

The development of criminal law is an effort to reorient and reform criminal law by the central socio-political, socio-philosophical, and socio-cultural values that underlie and give sides to the normative content and substance

of the aspired criminal law (Arief, 2010). 2009). The scope of criminal law development includes four things, namely:

1. Part of the policy (rational effort) to renew legal substances to make law enforcement more effective.
2. Part of the policy (rational effort) to eradicate/handle crime in the context of protecting the community.
3. Part of the policy (rational effort) to address social problems and humanitarian problems to achieve/support national goals (i.e. "social defense" and "social welfare").
4. Part of an effort to review and reassess ("re-orientation and re-evaluation") the main points of thought, basic ideas, or socio-philosophical, socio-political, and socio-cultural values that underlie criminal policies and policies (enforcement) of criminal law so far (Wahyuningsih, 2014).

The development of criminal law is an effort or way to replace the existing criminal law with a better criminal law, which is through justice and community development. This shows that the development of criminal law cannot be separated from the politics of criminal law as part of legal politics. The legal political position determines how to seek or make and formulate good criminal legislation (Maroni, 2016).

The development of criminal law that is carefully planned must be directed at building a modern national legal order by referring to the ideals of the Pancasila law which can provide an efficient and responsive legal framework and rules for the implementation of present and future life. The Indonesian National Legal Order must contain the following characteristics:

1. National insight and archipelago perspective.
2. Accommodate legal awareness of regional ethnic groups and religious beliefs.
3. Written.
4. Rational which includes rationality-efficiency, the rationality of fairness (redelijkheid), rationality-rules, and rationality-values.
5. Procedurals that ensure transparency.
6. Responsive for the development of community aspirations and expectations (Ratnaningsih, 2016).

If the national legal system is seen as a legal substance, it means the Pancasila legal system. The national legal system should be oriented towards three pillars:

1. Oriented to the values of "Divine."
2. Oriented with the values of "Humanity."
3. Oriented to the values of "Society" (Arief, 2009).

The legal system consists of three elements that have a certain independence, and a relatively clear identity that is interrelated, namely: the ideal element, the operational element, and the actual element. There should be no legal product that is contrary to Pancasila and the development of the national criminal law must be by the personality values of Pancasila (Atmadja, 2018). Pancasila is the source of all sources of law for the Indonesian nation.

The values contained in Pancasila come from the Indonesian people themselves, namely the values of customs, culture, and religious values. Pancasila is also a way of life for the Indonesian nation. All behaviors and actions of every Indonesian human must be inspired and are the emanation of all the precepts of Pancasila because Pancasila is a weltanschauung and an organic unity.

It can be said that the development of criminal law is slow due to the strength and influence of the development of legal law and international trends (Atmasasmita, 2012). The development of a comprehensive criminal law must include the renewal of material (substantive) criminal law, formal criminal law or criminal procedural law, and criminal law enforcement. The three areas of criminal law must be renewed together. If only one problem arises in its implementation, the purpose of the reform will not be fully achieved. Efforts to develop criminal law in the formation of the National Criminal Code are a basic need for the community to create fair law enforcement.

4. Conclusion

4 Based on the above discussion, it can be concluded that the existence of criminal law in society is a way to prevent crime through criminal law. Criminal law has a repressive and preventive function. Each country has its criminal law. Criminal law is part of the overall law that applies in a country in implementing criminal provisions. The Indonesian nation needs its own national criminal law system. The national criminal law is a criminal law based on Pancasila and the 1945 Constitution which applies nationally in Indonesia. The Indonesian nation does not yet have a national criminal law. The current criminal law is a legacy of the Dutch colonial government. Having its national criminal law for the Indonesian people is an effort to reveal national identity by the hopes and ideals of the independence of the Indonesian nation. The policy of developing national criminal law as a system is directed at the realization of a legal system that supports national interests. The national criminal law profile ideally is the ideal of Pancasila law which is the perspective of the Indonesian people and places the bonds of togetherness and kinship ties as the core of the social life of the Indonesian people. The underlying value is the spirit of mutual help, cooperation, and kinship. The national criminal law must not conflict with the principles of God Almighty, which respects the order of religious life, religious feelings, and religion as a great interest. National criminal law must also base national unity on respect for the concept of civic nationalism, which appreciates pluralism. The national criminal law system must be oriented to three pillars, namely: oriented to the values of "God"; oriented to the values of "Humanity"; and oriented to "Society" values.

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