

Reform of the Indonesia Criminal Procedural Code as a Concept of Legal Pluralism in the Framework of Legal Universalism

Shinta Ayu Purnamawati¹ Sidik Sunaryo^{2*} Cekli Setya Pratiwi³

^{1,2,3} Faculty of Law (University of Muhammadiyah Malang), Malang, Indonesia

*Corresponding author: sidik_sunaryo@yahoo.co.id

ABSTRACT

As a formal law, the Indonesia Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code or KUHP) is intended to realize material law as a whole, therefore it is hoped that the Criminal Procedure Code will become the basis and foundation for the implementation of the judicial system to enforce material law. The presence of the Criminal Procedure Code as a formal law becomes the direction and basis of the journey in building a civilized criminal justice system, by providing guarantees of justice through the continuity and sustainability of all aspects of community life. The big role of the Criminal Procedure Code in building the legal system can be realized if the rules of the Criminal Procedure Code can accommodate the value of legal pluralism that lives in society and make it a legal universalism.

Keywords: *Indonesia, Criminal Code, pluralism, universalism.*

1. INTRODUCTION

Ideology provides the basis for legal morality in the concept of legal pluralism and universalism. The constitution provides the basis for legal certainty in the concepts of legal pluralism and universalism. Legal ideology is the basis and direction for strengthening the concept of legal pluralism, while the legal constitution that prioritizes legal certainty becomes the basis and direction for strengthening the concept of legal universalism. Legal pluralism essentially negates legal universalism and vice versa. Pancasila is the source of all sources of law in Indonesia, therefore the overall values of Pancasila must be the ideology (morality) in building legal pluralism in Indonesia.[1]

Pancasila is the source of the morality of legal pluralism because the overall values of Pancasila provide sufficient space for the growth and development of pluralistic values about justice that exists and lives in society. The constitution is a source of legal certainty because the state of Indonesia is a state of law, so written law must be able to ensure all the life

of the nation and state. The concept of the rule of law provides firm boundaries regarding legal certainty, and the law that applies throughout Indonesia is written law (universalism). Indonesia as a country based on the law (Indonesia Constitution), is realized through an independent judicial power to administer justice to uphold law and justice (Indonesia Constitution). The law that forms the basis for the implementation of all judicial processes is intended to provide legal certainty.

The presence of law intended to build community as a whole. There is an adage *ubi ius ibi societas*, where there is law there is society. The adage provides an affirmation that wherever there is a community, then of course there must be law in it. The law is here to provide guidance, direction, and basis for regulating the life order, interaction patterns, social arrangements of all individuals who are members of the community. Law exists to maintain the balance of rights and obligations of every individual in society. Law is present as the basis and foundation of the order and formation of the social system, cultural system, political system, economic system, the defense system of a society. Law is here to be the direction and foundation of the journey

in building a civilized society. The law exists to maintain and ensure the continuity and sustainability of all aspects of community life. Thus, the present law is intended to maintain and guarantee the existence of a solid social structure of society, in which there is a just, sure, orderly, and prosperous life because the law is the basis for building a balance of rights and obligations between individuals in society. In other words, the presence of law in society is to be the basis for the direction of development and development of civilization in the life of the community.

2. METHOD

The method used in this study is a normative research method. Normative legal research is research conducted by examining positive legislation/laws using library materials or secondary data. The approach method used in this research is a statutory approach and a conceptual approach. The main/primary legal materials used are statutory regulations. To assist the research, secondary legal materials are also used consisting of bibliographical literature such as books, research reports, journals, and the like that are supportive in nature.

3. RESULT AND DISCUSSION

I. THE IDEOLOGY AND CONSTITUTION OF PLURALISM INDONESIAN LEGAL UNIVERSALISM.

The basis for guaranteeing legal morality and legal certainty in exercising independent judicial power in the field of criminal law is contained in Law Number 8 of 1981 concerning the Criminal Procedure Code (State Gazette of the Republic of Indonesia of 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209). Law Number 8 of 1981, hereinafter referred to as KUHAP.

The Criminal Procedure Code is intended as the basis for the implementation of independent judicial power in criminal justice, has an ideological basis that the Republic of Indonesia is a legal state based on Pancasila and the Indonesia Constitution. According to A. Mukti Fadjar, "the rule of law that we want to fight for or enforce in Indonesia this country is a country of law in material, the Rule of Just law, which aims to organize the general welfare physical and spiritual, based on the principles of the law is right and just, so that the basic rights of citizens truly honored (to

respect), protected (to protect), fulfilled (to fulfill)".[2] In the preamble of the Criminal Procedure Code, it is explained, considering: that the Republic of Indonesia is a constitutional state based on Pancasila and the Indonesia Constitution, which upholds human rights and which guarantees that all citizens are equal before the law and government and are obliged to uphold the law and the government without exception. This is intended as a basis for criminal justice that upholds human rights and guarantees the equal status of citizens in law and government, with the obligation to uphold law and government without exception.

The ideological meaning of the Criminal Procedure Code mandates that the criminal justice process must be based on Pancasila and the Indonesia Constitution of the Republic of Indonesia, hereinafter referred to as the Indonesia Constitution. The entire value of Pancasila and the goals of the state in the Preamble and the provisions contained in the Indonesia Constitution must form the basis and spirit of criminal justice. in upholding law and justice in Indonesia. The 2012 Indonesian State of Law Perception Index stated that "although the constitution states that Indonesia is a state of law, it is difficult to deny that the law in Indonesia has been running on the right track. Every day we hear on the news about corruption, human rights violations, horizontal conflicts, and so on. This indicates that there are serious problems in the legal world in Indonesia".

The existence of the Criminal Procedure Code is intended as an effort to modernize the criminal justice process that ensures legal certainty. Legal certainty which is the ideology in organizing criminal justice procedurals (due process of law) must be placed within the framework of realizing a state of law that is material (rule of just law).

II. MODERNITY PLURALITY IN THE FRAME OF UNIVERSALITY

Rationality which is a symbol of modernity must be developed in a framework to accommodate universal plurality. The Criminal Procedure Code is made as to the basis for the universality of formal criminal law but it cannot negate plurality, where the substance reflects the values of justice that live in society.

Tedy Asmara stated that "the community of judges develops economic rationality as a legal economic culture of judges by trying to reconstruct the values of

expediency over the law and the economy pragmatically. The economic culture of judges' law is a pragmatic reflection of economic rationality which can be proven by an appreciation of the case but not from the aspect of the idea of justice and truth, but focuses on how it might affect the potential for reciprocity (transactional)".[3] Justice is only seen as a value that must symbolically maintain modern rationality from those who have more abilities.

According to Satjipto Raharjo, "parties who have more ability will dominate the practice of law, which means they get better justice services. Legal apparatus (police, etc.) who have to work in a social and legal atmosphere like this will of course also become law enforcement agencies that tend to protect the interests or positions of certain groups, even though legally everything can be said to be legal".[4] So that the judiciary becomes the legitimacy of injustice.

Joyceline M. Pollock, stated that " many people refer to the criminal justice system as a "criminal injustice system", because of the perception that courtroom practices are not under the ideals of justice (many people refer to the criminal justice system as the "criminal injustice", because of perception that practices in the nation's courtrooms do not necessarily conform to the ideals of justice)".[5] As Satjipto's opinion, "The modern law that we use has experienced a specific growth or is socially, politically, and culturally unique. The law is not the result of developments in Indonesia, but as something imposed from outside".[6]

The provisions of articles 5, 50, 53 of Law Number 48 of 2009 concerning Judicial Power and article 197 of the Criminal Procedure Code explain that the complexity of the problems of the criminal justice process is a tangible manifestation of the incompatibility of the values of justice that exist in positive law which is the basis of plurality in the frame of universality. Legal certainty is not seen from the perspective of the need for the values of justice, usefulness, order that exist and develop in a pluralistic society. Society always has "space" to be a place to catalyze the values of certainty, justice, benefit, which are made by the state in the form of written law. Such spaces become the standard to provide the meanings of certainty, justice, and benefit according to their needs.

Brian Z. Tamanaha stated: "every system stands in a close relationship to the ideas, aims, and purposes of society. law reflects the intellectual, social, economic, and political climate of its time. The positivistic legalistic understanding gives birth to the complexity and stability of certainty, justice, and the benefits of a pluralistic nation and state life.[7] According to Seidman, "legal texts from a nation cannot simply be taken over, and then enforced in other countries, especially since the socio-cultural values of the nation are different. The textual transformation of law from one country to another will have the potential to create value differences which will also have implications for the disruption of the practice of applying the law".[8]

Pancasila as the highest source of law and is a crystallization of the values of the soul and personality of the Indonesian nation, must become an ideology of legal plurality. the plurality of legal substance. Satjipto Raharjo stated, "if we are willing to put in the context of positive legal order and the order map (order) is greater, then the substance of the alternative, an alternative order, meaning the positive law is always there in the community. In legalistic-positivistic legal science, the law as a complex regulatory institution has been reduced to something simple, linear, mechanistic, especially for the benefit of the profession".[9] The meaning of legal plurality rationality in the frame of universality must be understood not only in written law but also in the overall context of the values of justice that flow in all aspects and spaces of life.

Charles Stamford states, "The nonsystematic theory to be drawn in their place is naturally complex the single word that most captures it is 'melee': a fluid, constantly changing set of interaction in a complex struggle between a large number of groups and institutions".[10] The substance of plurality rationality in the frame of legal universality. Satjipto Raharjo stated that "the law is not a building full of logical-rational order. The truth is, that it is humans who have an interest and want to see that the law is what it is". Stamford, uses the terms 'social melee' and 'legal melee' as a means to reveal the complexities of the law. Melee is a liquid state (fluid) so it does not have a formal format or a definite and rigid structure. Stamford saw that human relations were melee in both social and legal life.

Law is built from such human relations, namely social relations between individuals with all variations

and complexities. This situation leads to asymmetric tendencies.[11] Law is a fluid state, which does not prioritize form (formal procedural), but prioritizes substantial regularity (fluid-melee). Roberto Unger, stated that "the implication of our scathing attack on formalism is to undermine efforts to save doctrine through some of these ruses. This is to show that a doctrinal practice that puts its hope in the great difference between legal thought and ideology, philosophy, and political prediction ends up as a chaotic set of apologies." [12]

Sajitpito Raharjo stated: "Law is subject to the centripetal forces that create an organized institution, but at the same time, it is subject to the centrifugal forces that create conflict and disorder. Legal schemes and relationships that are explicitly formulated in the legislation do not eliminate the melee nature behind them. Behind the positive law is the interaction between humans that determines what will happen to the written rules. The law is legible and rational schemes are found, but that must be ensured through processes and interactions between humans in society. In the end, what emerged was the 'legal melee' It gives meaning to a rule, so that meaning is determined by the position of the person who gives that meaning". [13]

Sulistyowati Irianto stated that "law has many dimensions, therefore it must be studied by placing it in a holistic social, cultural, economic and political context. Many legal and social issues are very complicated and cannot be answered in a textual normative manner.[14] The pluralistic dimension of legal morality is not single, which includes positive and critical dimensions of legal morality. Plural legal morality must be seen in an ideological and constitutional perspective, not in an ansich codification perspective. Satjipto Raharjo stated that "satisfaction with existing legal science, which has been able to compile legal material into codification and use of specific methods, began to experience shocks entering the twentieth century". [9]

Plural law in the frame of universality must contain morality (critical) in an ideal way (Pancasila) and constitutionally (state goals). Hart divides the dimensions of morality into two, namely "positive morality which means legal morality which is only based on the values contained in positive law and critical morality, namely legal morality which is not

only based on positive law but also based on the values that live in a society". [1]

The Draft Criminal Procedure Code, which adopts customary law (the principle of material legality), is a manifestation of the concept of legal pluralism within the framework of legal universalism. In the Draft Criminal Procedure Code there are two ideal conceptions of society, namely consensus and conflict society. In a consensus society, common values have been determined, and those who oppose common values in society are actually in the process (transition period) to agree and make consensus. Whereas in conflict communities they are struggling to develop such a consensus, the conflict that occurs is a form of different value perspectives from one another, so that the conflict that occurs in their attempt to "legalize" these different values to accept.

4. CONCLUSION

In the theory of universalism, legal rationality and justice in the Draft Criminal Procedure Code are built on the complexity of the need to always be able to live in balance by integrating the value system into the social system. The functions and mechanisms of the complex legal and justice value system must be integrated into the agreed social system. The process towards the integration of the value system and social system has a function to maintain the balances that are the goal of the existence of the sustainability of the community's life. Critical rationality views that the Draft Criminal

Procedure Code, which guarantees fair legal certainty, must and must be exchanged with the principle that every legal process/settlement of criminal acts is one of the constitutional and ideological rights for the community that must be issued by the state in upholding the rule of law (cost). Each stage of the case settlement procedure must be able to guarantee fair legal certainty. This is a form of reward from the state's obligation to ensure that every community gets a job and a decent living for humanity (*reward*). Proceedings that guarantee fair legal certainty are an advantage for every community to realize their welfare and life intelligence (*profit*).

REFERENCES

- [1] Y. A. Fajrin and A. F. Triwijaya, "Arah Pembaharuan Hukum Pidana Indonesia di Tengah Pluralisme Hukum Indonesia,"

- Ekspose J. Penelit. Huk. dan Pendidik.*, vol. 18, no. 1, pp. 734–740, 2019.
- [2] M. . Fadjjar, *Membangun Negara Hukum Yang Bermartabat*. Jakarta, 2013.
- [3] T. Asmara, *Budaya Ekonomi Hakim Kajian Antropologis tentang Rasionalitas Ekonomik pada Penggunaan Kebebasan Hakim dalam Penanganan Perkara Pidana di Pengadilan Negeri Kotamaju, Disertasi, PDIH*. Semarang, 2010.
- [4] F. A. Susanto, *Wajah Peradilan Kita: Konstruksi Sosial Tentang Penyimpangan, Mekanisme Kontrol dan Akuntabilitas Peradilan Pidana*. Bandung, 2004.
- [5] P. S. N. Jaya, *Beberapa Pemikiran Ke Arah Pengembangan Hukum Pidana. Citra Aditya Bakti*. Bandung: Citra Aditya Bakti, 2008.
- [6] S. Rahardjo, *Penegakan Hukum Progresif*. Jakarta: PT. Kompas Media Nusantara, 2010.
- [7] B. Z. Tamanaha, *A General Jurisprudence of Law and Society*. Oxford Universty, 2001.
- [8] S. Rahardjo, *Ilmu Hukum*. Bandung: PT. Citra Aditya Bakti, 2012.
- [9] R. Satjipto, *Sosiologi Hukum Perkembangan Metode dan Pilihan Masalah*. Genta Publishing. Jakarta: Genta Publishing, 2010.
- [10] C. Sampford, *The Disorder Of Law : A Critique Of Legal Theory*. New York: Blackwell, 1989.
- [11] R. Satjipto, *Hukum dan Perilaku Hidup Baik adalah Dasar Hukum yang Baik*, PT Kompas. Jakarta: Media Nusantara, 2009.
- [12] R. M. Unger, *Gerakan Studi Hukum Kritis*. Jakarta: ELSAM, 1999.
- [13] R. Satjipto, *Hukum Dalam Jagat Ketertiban*, UKI Press. Jakarta, 2006.
- [14] S. Irianto, *Hukum Yang Bergerak Tinjauan Antropologi Hukum*. 2009.