

# Application of The Concept of Justice in the Perspective of Pancasila State Law

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## ABSTRACT

This research is an empirical normative juridical research using a statute approach. This research is carried out by examining all laws related to the legal issue being studied. This research focuses on research that views law as a complete system that includes a set of legal principles, legal norms, and legal rules (written or unwritten). From the research, it was found that the application of the concept of justice in criminal law enforcement has not been implemented perfectly due to differences in the interpretation of the rule of law in its implementation and is influenced by the legal system adopted in Indonesia. Indonesia adheres to the Continental European legal system which does not recognize precedent decisions. Meanwhile, the embodiment of law enforcement when viewed from the perspective of the state of Pancasila law has not been fully implemented in the implementation in the field. This is a matter of debate among jurists. The law does not only refer to the principle of legality but also to the benefits of a sense of justice in the order of people's lives.

**Keywords:** Value of Justice; Pancasila State Law;

## A. INTRODUCTION

The existence of a judicial institution in a modern country like Indonesia is a necessity, because it would be impossible for the political power of the government to run properly and fairly if there is no institution that functions to enforce the law and adjudicate disputes between the people and the government or between the people and other members of the community. The enforcement of law and justice is one of the functions of the sovereignty of a country. According to David Storey in his book *Territory The Claiming of Space* quoted by Artidjo Alkotsar, he emphasized the role and function of the state, namely:

1. Regulate the country's economy.

2. Providing for the needs and interests of the public, especially health and transportation.
3. Provide legal instruments and enforce justice for its people.
4. Defending and protecting the territory of the state and the security of its people from external threats (Storey, 2001: 39).

To realize an accountable and transparent justice system and fulfill a sense of justice, the authors try to take an inventory of cases of law enforcement officers where there are two differences in behavior and actions in law enforcement towards handling corruption cases.

The settlement of the Brotoseno corruption case raises big questions for the

public. How could it not be, AKBP Raden Brotoseno remains active as a member of the police even though in November 2016 he was arrested for the corruption case in rice field printing which was handled by the National Police Headquarters, where he worked. The total value of losses due to corruption reached Rp 3 billion.

Departing from the case, Brotoseno had to face a series of examinations. He was officially sentenced to five (5) years in prison by the Jakarta Corruption Court on June 14, 2017. He was also required to pay a fine of IDR 300 million or a subsidiary of 3 months in prison (suara.com, 8: 2022).

The case involving Brotoseno looks very sad in law enforcement. This can be seen, where Brotoseno was involved in the investigation into the corruption case of the Palembang athletes' homestead with the Corruption Eradication Commission (KPK). After serving his sentence, it turned out that Brotoseno was not fired from the police agency. Now he is back actively working as an investigator for the Criminal Investigation Agency (Bareskrim) of the Indonesian National Police.

The absence of this dismissal of Brotoseno was first revealed by Indonesia Corruption Watch (ICW). In his official

statement, the Rasuah monitoring agency suspected that Brotoseno was still holding a certain position in the National Police. In line with this, the police confirmed that Brotoseno was still a member of the National Police. However, it does not provide detailed details regarding his position.

To restore the image of the Police related to the AKBP case. R. Brotoseno, Mahfudh MD, in his explanation appreciated the steps taken by the National Police Chief General Listyo Sigit Prabowo, namely revising the National Police Chief Regulation, making it possible to review the results of the ethics trial. The Coordinating Minister for Political and Security Affairs, Mahfudh MD, also responded and coordinated, who is also the Head of Kompolnas, very much hoping that it would produce a good decision. *First*, it will revise the decision on the appointment of Brotoseno. *Second*, changing the rules of the National Police and making regulations for the Chief of Police. This was revealed by Mahfud in The Hague, Netherlands, on June 10, 2022 (Tirto, 8: 2022).

Furthermore, at the meeting of the Coordinating Minister for Political, Legal and Security Affairs as the Chairman of the National Police Commission (Kompolnas) with the leadership of the

National Police on January 3, 2022. According to the Coordinating Minister, the Coordinating Minister agreed that the National Police would revise the rules. The National Police Chief, Listyo Sigit Prabowo, said that the National Police is ready to revise Perkap No. 14 of 2011 concerning the Police Professional Code of Ethics with Perkap No. 19 of 2012 concerning Organizational Structure and Work Procedures of the Police Ethics Commission.<sup>1</sup> With the National Police asking for the opinion of a number of criminal experts related to the Brotoseno AKBP case, the National Police Chief Number 7 of 2022 was issued.

For information, the two Perkaps do not stipulate a procedure for reviewing the results of the ethics trial decisions which are considered to have injured the public's sense of justice, especially related to corruption. "We discussed with the experts and we agreed to make changes or revise the perkap," Sigit said. Sigit claims that this effort is a manifestation of a transparent Polri and pays attention to public aspirations (Tirto, 8: 2022).

As a form of comparison with other law enforcement cases, namely the

final verdict of the Pinangki Attorney Sirna Malasari issued in June 2021, many Indonesians have highlighted. The reason is that the judge who gave the verdict cut the sentence of Prosecutor Pinangki to only 4 years in prison from the initial 10 years. The judge judged that the Pinangki Prosecutor regretted what he had done. Moreover, the judge also argued that the Pinangki Prosecutor deserved a cut in his sentence because he had a toddler who must be cared for with love (Pikiran Rakyat, 8: 2022).

Quoted by [PikiranRakyat.com](http://PikiranRakyat.com) from *Hukum Online* on Tuesday, June 22, 2021, Faisal explained that the shortened sentence period of the Pinangki Prosecutor was evidence of a decline in corruption in Indonesia. "This is a setback in law enforcement related to corruption in Indonesia. "Perpetrators must be punished to the maximum extent so that there is a deterrent effect on law enforcers or officials in Indonesia," Faisal explained. Prosecutor Pinangki is a law enforcer. "They should carry out the mandate to be an example / role model for the community," he said again.

The judges of the DKI Jakarta High Court reduced Djoko Tjandra's sentence from 4 years and 6 months to 3 years and 6 months in prison. In other words, Djoko Tjandra's sentence was reduced by one

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<sup>1</sup>The issuance of the National Police Chief Number 7 of 2022 concerning the Professional Code of Ethics and the Indonesian Police Code of Ethics Commission, which was promulgated on 15 June 2022.

year in prison. Previously, the DKI Jakarta High Court (PT) also granted an appeal filed by former Pinangki prosecutor Sirna Malasari.

The appeal decision makes the sentence for the convicted person in the case related to Djoko Tjandra much reduced compared to the judge's decision at the first instance. Pinangki's prison sentence was cut to 6 years, down from 10 years to only 4 years. This is stated in Decision number 10/PID.SUS-TPK/2021/PT DKI which was decided on Tuesday (8/6/2021).

From the description of the background above, the problem can be formulated as follows:

1. How is the application of the concept of justice in the enforcement of the criminal law of corruption?
2. How is the realization of law enforcement when viewed from the perspective of the Pancasila state law on decisions in corruption cases?

## **B. RESEARCH METHODS**

The statutory approach is carried out by reviewing all legislation relating to the legal issue being researched (Peter Mahmud Marzuki, 2009: 96). The legal issue in this research is about the concept of

justice in the state of Pancasila law. While the conceptual approach (conceptual approach) departs from the views and doctrines that develop in the science of law (Peter Mahmud Marzuki, 2009: 137).

## **C. RESEARCH DATA SOURCES**

In this study the author uses research or a normative approach which is often called research with a juridical approach, where this research views the law as a system of norms or a system of rules (Irwansyah, 2021: 20). This study focuses on research that views the law as a complete system that includes a set of legal principles, legal norms, and legal rules (written or unwritten) (Ahmad Ali, 2002: 7). Meanwhile, normative legal research according to Ronny Hanitijo Soemitro is a library research, namely research on secondary data. This study uses secondary data sources, in the form of primary legal materials and secondary legal materials (Ronny Hanitijo Soemitro, 1988: 11).

Thus, this study approaches with prescriptive characteristics, by providing an assessment of right or wrong, appropriateness or non-conformity. With the conclusion drawn is to use a deductive way of thinking, namely the norm system as general postulates, then confronted with a particular case or event, which in the end the conclusion or conclusion as a special

postulate. From the description above, it is very clear that the author wants to realize the law described as *in-abstracto* or *das sollen*. The law is judged on the state of right or wrong. Realizing legal certainty is the main thing from this research approach.

Primary legal materials are legal materials that are authoritative, meaning they have authority, consisting of legislation, official records or minutes in making legislation and judges' decisions. While secondary legal materials are in the form of publications on law that are not official documents, including publications on law, legal journals, and comments on court decisions (Peter Mahmud Marzuki: 142).

Thus, the object of study of legal science is authoritative text, consisting of legislation products (laws in a broad sense), judges' decisions [courts], unwritten law, and the work of legal scientists who are authoritative in their fields (doctrine) (Arief Sidharta, 2000: 135). The secondary data used in this study were collected from legal materials as follows:

#### **a) Primary Legal Material**

Primary legal materials in this study include legislation in the field of law, namely:

- 1) The 1945 Constitution of the Republic of Indonesia; and
- 2) Relevant court decisions including the Decision of the National Police Code of Ethics Commission.

#### **b) Secondary Legal Material**

Secondary legal materials are materials that are not included in the scope of primary legal materials, in this case, among others: legal principles and legal principles, research results, opinions of legal experts published in legal journals, books, magazines, newspapers and bulletins, encyclopedias, and dictionaries as well as other written materials related to the theme of this research.

This research is expected to be able to provide a detailed explanation regarding the law between *das sollen* and *das sein*. This means that the author tries to study and explain briefly and clearly about the law that should be and the law in fact. Where the law when applied by law enforcement officials has created a gap, there is a gap between the law that should be and the reality. So it is very clear that the law that is being enforced is getting wider and wider, so that [as if] there is no strict control and return of the concept in the application of the law, surely the law will not and cannot provide fair protection to the community (Sadjijono, 2021: v-vi).

The specific objectives of this research are as follows:

1. Knowing and explaining the application of the concept of justice in criminal law enforcement.
2. Knowing and explaining the embodiment of law enforcement when viewed from the perspective of the Pancasila state law.

According to the author, this research concerns that there has been a disparity in criminal law enforcement as in the national legal system. So that it has injured the sense of legal justice and social justice for the community. Although the court's decision is still considered correct and in the world of law enforcement it is known as the doctrine of "*Ius Curia Novit*". The doctrine implies that the judge (most) knows (what) the law is (for any settlement of any legal problem). So only the judge knows the law in its application. Meanwhile, non-judges are considered not to know the law.

## D. LITERATURE REVIEW

### 1. Justice in Islamic Law

Islamic law is a law that regulates Muslims in prioritizing justice as the desired goal (*maqasid al-shariah*) as the highest goal (Asghar Ali Enginer, 10: 2022). In Islam justice is not only limited to the results of human reasoning produced by

roots (Allal al-Fasi, 1945: 91). This is influenced that human reason is limited and there are limits. In Islam pure justice is absolute justice based on the guidance (*al-wahy*) of Allah contained in al-nass and its implementation in the *shari'ah* (Hafidz Taqiyuddin, 2014: 19). In Islam the belief in the existence of justice is an obligation for Muslims who in the last days (*yaum al-akhir*) will be held accountable before God (Birgit Krawietz, 2008: 36-37).

Furthermore, fair can be interpreted as impartial, equal, appropriate, not one-sided, and not arbitrary (Hafidz Taqiyuddin: 19-20). For example, in a decision that is not severe and impartial to one party, it is considered fair, and the government's treatment of the people can also be said to be fair (Language Dictionary Compilation Team, 2008: 12). Meanwhile, according to M. Quraish Shihab, it gives several meanings to the term "justice" namely:

1. Fair in the sense of balance;
2. Fair means equal;
3. Just in the sense of the attribute associated with God; and
4. Fair in the sense of concern for and respect for individual rights (M. Quraish Shihab: 113-117).

Thus, that every law of God that is assigned to humans contains elements of justice in the form of truth, is right on

target, and there is wisdom in it (Ibnu al-Qayim: 22).

It is different with the concept of justice in national law or applicable positive law. Real and tangible law based on court decisions based on what has been considered according to the legislation. Pancasila philosophy itself has specific ways of dealing with the influence of foreign ideologies and philosophies. Namely with the eclectic-incorporation method. This means that the processing of values from outside into the property of the Indonesian nation is still based on the principles of Pancasila. Thus, the values adopted from outside must be in accordance with and faithful to the psyche of the Indonesian nation (Slamet Sutrisno, 2006: 5).

According to Munir Fuady, the legal theory of Pancasila moves from a principle that every law must be in accordance with Pancasila as its benchmark. That is, every rule of law must be in accordance with the five precepts of Pancasila. So, Indonesian law must fulfill the following elements: (Munir Fuady , 2007: 167).

1. According to the rules of religion (divinity sila).
2. Contains elements of humanity, fair and civilized.

3. Contains elements of Indonesian unity.
4. According to popular sovereignty.
5. Contains elements of social justice.

Systemically to the law, according to Sunaryati Hartono, that in the national legal system based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), every legal field that will be developed is part of the national legal system. of the values contained in Pancasila and the 1945 Constitution (Sunaryati Hartono, 2006: 8).

From what has been described above, it is true that the Pancasila philosophy is a national legal order that becomes the spirit in the preparation including harmonization with foreign legal elements which also have a relationship with the progressive law developed by Satjipto Rahardjo. The characteristics of progressive law can be characterized by the following statements:

1. The law exists to serve humans.
2. Progressive law will continue to live because the law is always in its status as law in the making and is never final, as long as humans exist, progressive law will continue to live in managing people's lives.
3. In progressive law there is always a very strong ethical and moral

humanity that will respond to human development and needs and serve justice, welfare, prosperity and concern for humans in general (SatjiptoRahardjo, 2007: 92).

In progressive law that has taken a stance beyond legal positivism, because legal positivism is a school of thought that discusses legal concepts exclusively (E. Sumaryono: 183). And the understanding of legal positivism only adheres to the laws and regulations.

Meanwhile in the teaching of *Schutznorm* Theory or also called the teaching of "relativity" this comes from German law, which was brought to the Netherlands by Geleim Vitringa. The word "schutz" literally means "protection". So the term "schutznorm" literally means "protection norm". This *Schutznorm* theory teaches that a person can be held responsible for committing an unlawful act (Munir Fuady, 2013: 14-15). In the teaching of this theory, that the violated norms or rules are made to protect (*schutz*) the interests of the victims who have been violated.

Thus, Schutznorm's theory is often referred to as "the theory of relativity" because the application of this theory will differentiate the treatment of victims from unlawful acts. Because the victim of an

unlawful act is the party who will receive compensation from the perpetrator, the law provides a set of rules to determine who the victim is. And because it involves civil compensation, the rights of the victims are rights that can be inherited, in accordance with the applicable inheritance law (Munir Fuady: 19).

From what has been mentioned above, it is the state that determines which behavioral norms will be confirmed as legal rules by keeping in mind the interests that need to be protected, especially from the intervention of other parties and also not all interests can be served by law because everyone's interests are different (Komariah Emong Supardjaja, 2002: 3).

Therefore, it is not explicitly found what is the purpose of the regulation on the implementation of the criminal justice system based on the criminal procedural law. However, if we re-examine some of the considerations that became the reason for the preparation of this Criminal Procedure Code, it is clear that in brief it has 5 objectives as follows: (Pontang Moerad B.M, 2012: 175).

1. Protection of human dignity (suspect or defendant);
2. Protection of legal and government interests;

3. Codification and unification of criminal procedural law;
4. To achieve unity in the attitudes and actions of law enforcement officers;
5. Realizing criminal procedural law in accordance with Pancasila and the 1945 Constitution; (Romli Atmasasmita : 77) and
6. Protecting the human rights of suspects, defendants, witnesses, victims and law enforcement officers included in the Criminal Justice System.

## E. METHOD

This research is later expected to contribute ideas to the development of the concept of the application of legal science in general and in particular the deepening of understanding of criminal law and efforts to develop special knowledge of criminal law, especially the criminal law of corruption.

As mentioned above, the method used is a legal research method in a wider scope (the study of legal science) which departs from the nature of science. More clearly there are two approaches that can be taken to explain legal scholarship and naturally bring consequences to the method of study, namely the approach from the point of view of the philosophy

of science and the approach from the point of view of legal theory (Philippus M. Hadjon & Tatiek Sri Djamiati, 2005: 1).

Thus, the approach mentioned above has a concrete explanation as follows: (Irwansyah: 83) *First*, the approach from **the point of view of the philosophy of science** that distinguishes science from two points of view, namely the positivistic view which gave birth to empirical science and the normative view which gave birth to normative science. So the science of law has two sides. On the one hand, the science of law with its original characteristics as a normative science and on the other hand the science of law has empirical aspects. So from the empirical side it becomes a study of empirical legal science such as *sociological jurisprudence* and *socio legal jurisprudence*. Finally, from this point of view, normative jurisprudence has a unique study method, while empirical jurisprudence can be studied through quantitative or qualitative research, depending on the nature of the data.

*Second*, the approach from **the point of view of legal theory** which is divided into three main layers, namely legal dogmatics, legal theory (in a narrow sense), and legal philosophy. These three layers provide support for legal practice, each of which has its own distinctive

character and has its own unique method. The problem of method in legal science is a study of legal theory (in a narrow sense). With an objective approach like the one above, it can be determined which method is the most appropriate in legal assessment.

In line with the above, regarding the characteristics of legal science, one can refer to the opinion of Paul Scholten who said that, "*rechtswetenschap kent niet alleen een beschrijvende maar ook voorschrijvende Dimensie*". Meaning that the science of law is different from prescriptive science. Legal science is not to look for historical facts and social relations, as is found in social studies. Thus the science of law deals with legal prescriptions, decisions of a legal nature, and materials processed from habits (Irwansyah: 11-12). Thus, Peter Mahmud Marzuki, stated that the argument put forward by Paul Scholten clearly shows that legal science has a prescriptive character as well as an applied science (Peter Mahmud Marzuki: 32).

## F. RESEARCH RESULT

From the description above, it is found that the application of the concept of justice in criminal law enforcement in Indonesia has not been maximally carried out, not as expected, namely only fulfilling the value of legal certainty but also maximizing the value of justice. When the

value of justice has been achieved, the value of legal certainty will naturally follow. This is because justice for the community is one of the values embodied in one of the values of Pancasila, namely justice for all Indonesian people.

The value of justice contained in one of the precepts of Pancasila is a demand for absolute certainty in the life of the nation and state that must be implemented and fulfilled. For the realization of equality before the law and government. As has been mandated by the constitution regulated in Article 27 (1) of the 1945 Constitution of the Republic of Indonesia. Where it is stated that the position of every citizen before the law and the government is equal and must be upheld.

Thus, the implementation of the embodiment of law enforcement when viewed from the perspective of the Pancasila state law. As we all know, finally AKBP. Raden Brotoseno was dishonorably dismissed based on the Decision of the Police Code of Ethics Commission Session Number PUT/72/X/2020 on October 13, 2020 by incriminating the decision into administrative sanctions in the form of Disrespectful Dismissal (PTDH) (tribunnews, 5: 2022). As known AKBP. Raden Brotoseno is a former prisoner who

was not fired from the National Police institution with a sentence of 5 years in prison and a fine, but until the end of 2020, he is still a member of the National Police. PTDH against Raden Brotoseno was carried out after a Review of the Decision of the Police Code of Ethics Commission (KKEP) was carried out which was based on the National Police Chief Regulation Number 7 of 2022 concerning the Professional Code of Ethics and the Indonesian Police Code of Ethics Commission.

According to Gustav Radbruch in Magdalena Shitya Pitaloka (Muhammadiyah Faculty of Law, 2026: 7-8). which emphasizes that in reality, the three essential elements of law (justice, expediency, and legal certainty) are difficult to realize simultaneously, more often conflicts occur between the three, usually these conflicts arise because of two things (Antonius Sudirman, 2017: 44). *First*, the law (law) was created to protect certain groups. Legal products like this from the beginning, when they were enacted, tended to ignore social realities. The logical consequence of this law is that it is contrary to the sense of justice in society. *Second*, the existing laws and regulations are not relevant (again) to the dynamics that develop in society, at the time of their promulgation and at the beginning of their

enactment in accordance with the reality and sense of justice in society, but gradually they are felt to be irrelevant. Consequently, if the legislation is enforced, it will cause shocks in society. In this context, a conflict will arise between justice and legal certainty (Antonius Sudirman, 2007: 5).

Thus, the occurrence of disparity in criminal law enforcement after serving a sentence is an act that violates the principles of legal certainty and justice, including the existence of a different law enforcement system, namely the Indonesian state which adheres to the continental European legal system that does not recognize precedents for judge decisions.

## G. CONCLUSION

From the description above, it can be explained that the application of the concept of justice in the enforcement of criminal law has not been implemented perfectly due to differences in the interpretation of the rule of law in its implementation and is influenced by the legal system adopted in Indonesia. Indonesia adheres to the Continental European legal system which does not recognize precedent decisions.

Meanwhile, the embodiment of law enforcement when viewed from the

perspective of the state of Pancasila law has not been fully implemented in the implementation in the field. This is a matter of debate among jurists. The law does not only refer to the principle of legality but also to the benefits of a sense of justice in the order of people's lives.

It is recommended that law enforcement should be more assertive in applying the concept of justice values compared to legal certainty and prioritizing the values contained in the state ideology, namely Pancasila.

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