Reconstruction of Law Enforcement in Indonesia Through Strengthening the Embodiment of Pancasila Values of Justice to Realize Humane Law Enforcement

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<th>Article’s Information</th>
<th>Abstract</th>
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<td><strong>Keywords:</strong> Law Enforcement, Pancasila Justice, Restorative Justice</td>
<td>The development of globalization has had both positive and negative impacts on all sectors in its implementation, especially law enforcement in Indonesia. The practice of law enforcement so far has continued without an adequate foundation, giving rise to injustice. Therefore, efforts are needed as preventive and curative steps, namely strengthening the realization of Pancasila justice in law enforcement to realize humane law enforcement, especially within the prosecutor's office. The research method used in this paper is normative juridical with a philosophical approach, a conceptual approach, and a case approach. The results obtained are that law enforcement must prioritize the application of the noble values of Pancasila, which is balanced with the application of a philosophy of punishment based on the concept of restorative justice, which justice to frame various existing policies, so that the results of these policies can create a sense of justice that perpetrators feel, victims, the public and answer various problems in the judiciary and lead to the creation of humane prosecutors, besides that the values of Pancasila must be attached to law enforcers, especially prosecutor's profession. Judges decide cases with the direction &quot;For the sake of God Almighty&quot;, but the role of the prosecutor's office must also take part</td>
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A. Introduction

The contemporary era is related to globalization which is a global process, the rapidly growing progress of science and technology and the liberal ideology of the western world can have positive and negative impacts on all sectors, especially related to law enforcement in Indonesia, so the filtering process must be carried out to ward off global legal issues contemporary. Preventive and curative steps need to be reflected and re-examined on the ideology of Pancasila as a philosophical foundation so that it is not only a Pancasila law but more than that, it is called a Pancasila moral because, in addition to being the source of all legal sources, Pancasila is also a filter for foreign cultural values, which has influenced the Indonesian nation. According to Hans Nawiasky, there are at least 21 fundamental values, all of which can be referred to as "staatsfundamental norms ", including the five essential values or precepts that are agreed upon as Pancasila, as the identity of the Indonesian national and state constitution (constitutional identity), as well as containing specific values and norms. as an ideology in the life of the nation and state. The establishment of Pancasila as the Staatsfundamentalnorm means that the law's formation, application, and implementation cannot be separated from the values of Pancasila.

Pancasila as a legal ideal (rechtsidee) is the guiding star of how the values of Pancasila should form public awareness and legal culture, this is in line with Lawrence M. Friedman's opinion, which states that three main and most essential components influence a legal system to run well. or not, namely regarding the legal structure (legal structure), legal substance (legal substance), and legal culture (legal culture). Hans Kelsen also believes that separating the notion of law from all the elements that play a role in its formation, such as psychology, sociology, history, politics, and ethics, is a purity of law.

Law enforcement is the most central issue in a country. One way to deal with crime and violence in a country depends on the law enforcement system and management chosen. Systematic law enforcement and theoretical justice can be effective through 5 legal pillars, namely: 1) legal instruments; 2) legal culture; 3) law enforcement officers; 4) society within the comprehensive scope of legal regulations; 5) law enforcement facilities and infrastructure.

Based on existing history, the relationship between justice and law began in mainland of Europe, which is indicated by the existence of a rule that is embodied in the form of law with a dichotomy so that a term that characterizes the existence of law appears, namely: 1. Law is justice (iustitia). So the law signifies a fair regulation of people's lives as aspired; 2. The law embodied in the law (lex) is the rule to realize a just rule (Theo Huijbers).

Law enforcement based on Pancasila will refer to the fourth precept, namely " Popularity led by wisdom in representative deliberation ", Philosophically "deliberation" contains 5 (five) principles as follows: first, conferencing, second search solution, third reconciliation, fourth...

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8Ibid.
repair, and the fifth circles.\textsuperscript{9} These principles are the same as the justice currently applied in law enforcement in Indonesia, namely Restorative Justice. There are two understandings of Restorative Justice, the first conceptually and the second in the process. According to the concept, understanding means the restoration of justice, which does not focus on punishment, for the understanding process is the settlement of cases involving the victims and perpetrators.\textsuperscript{10}

Restorative Justice often raises the question it is wrong if law enforcement does not continue the ongoing legal process against a criminal act. According to Prof. Bagir Manan, SH said that law enforcement through a more just humanist approach should be encouraged and prioritized, rather than a rigid, legalistic formal approach that does not create justice in society. Because what is being sought in a sentencing process is justice, if the methods adopted have given birth to order and peace, then the purpose of sentencing has been achieved so that there is no longer a need for a sentencing process.\textsuperscript{11}

In previous research on the concept of restorative justice with a humanist approach and does not replace retributive justice, this research describes more about the humanist concept, which is more conical to the problems of upholding restorative justice in today's society.\textsuperscript{12} Then at the level of applying steps from restorative justice is one of the concepts of humanist law enforcement where the aim is to put equal rights and nature between fellow human beings as legal subjects.\textsuperscript{13} As stated in Pancasila, this is the Indonesian people's way of life.

As a "religious nation-state" based on Pancasila, Indonesia is neither religious nor secular.\textsuperscript{14} Indonesia is also not a follower of individualism like liberalism, nor is it collectivism like communism. However, based on Pancasila, Indonesia adheres to parity or a balance between individualism and collectivism with an emphasis on the realization of social justice from the 5th principle of Pancasila, namely the plurality of tribes, ethnicities, languages, cultures, customs, and religions. So Indonesian law enforcement must prioritize implementing the noble values of Pancasila and apply fair restorative justice. The method in carrying out this research uses normative juridical research (legal research), or library research, namely research on secondary data in the form of legal materials, which are then processed so that in this study, the formulation of the problem sought is about strengthening the embodiment of Pancasila justice in Indonesian law enforcement, and the integration the concept of restorative justice to create a humanist judiciary.

Furthermore, in normative juridical research, a conceptual approach and a case approach are used to examine the suitability of law enforcement with restorative justice associated with the value of Pancasila justice as a philosophical basis and a volkgeist (the soul of the nation).

Based on this paper, a novelty was found regarding the regulation of the application of humanist restorative justice based on Pancasila, namely placing equal rights and nature among fellow human beings as legal subjects through existing laws and regulations so that it is necessary to harmonize through regulatory instruments that regulate the meaning, scope, and types of crimes committed in the category of application of restorative justice. Can be done with Restorative Justice can be done as a guideline for law enforcers to carry out Restorative Justice based on the values contained in Pancasila. In addition, the value of Pancasila justice


\textsuperscript{11}Bambang Waluyo, Design of the Prosecutor’s Function in Restorative Justice (PT RajaGrafindo Persada, Higher Education Book Division, 2016).


itself also needs to be realized in order to create justice that is more effectively implemented by law enforcers in Indonesia.

B. Discussion

1. Reconstruction of Law Enforcement in Indonesia through Strengthening the Manifestation of the Values of Pancasila Justice for the sake of Creating a Humane Prosecutor

The contemporary era is related to global issues that are not only faced by one country but threaten several certain countries, the Indonesian people now seem not to know themselves, culture or external values, both appropriate and inappropriate, are absorbed by all conditions such as This makes Pancasila has an important role as the basis of the state and way of life, which provides an assessment of new values so that they can still be absorbed to be adapted to the noble values of the Indonesian nation's personality. Currently, the noble values of the Indonesian nation contained in Pancasila have been pursued in the process of law enforcement based on *Restorative Justice*, especially by the Prosecutor's Office, which is part of the *Integrated Criminal Justice System* prosecution of a defendant.

The public prosecutor is known as *dominus litis* or the ruler of the case, just like the indictment, which is a *litis contestation*, so it is the same with the public prosecutor, without a public prosecutor, a criminal case can't be prosecuted.\(^{15}\) According to Andi Hamzah, the public prosecutor is free to determine which criminal regulations are indicted and whether the case can be continued.\(^{16}\) Law enforcement through *Restorative Justice* by the Prosecutor's Office can be seen from the process of stopping prosecutions that the Prosecutor's Office has carried out throughout April 2022, the Attorney General of the Republic of Indonesia, through the Junior Attorney General for general crimes approved 6 (six) of 9 (nine) requests for termination of prosecution based on *Restorative Justice*, \(^{17}\) including the suspect Nurbaya Masang Alias Baya from the Southwest Maluku District Attorney, the suspect Husni Thamrin Bin Muhni from the Pesawaran District Attorney, the suspect Ernaawati Binti M. Ali Ismail et al from the Bandar Lampung District Attorney, and others.

Implementation of such *Restorative Justice* needs to be studied in depth and thoroughly so that law enforcement in Indonesia can realize the goal of the law, namely, justice. According to Plato,\(^{18}\) "*Justice the supreme virus which harmonizes all other virtues*" To realize justice, society must be returned to its original structure so that it becomes the highest virtue value, and this becomes the duty of the state so that justice is no longer limited to the relationship between individuals but the relationship between individuals and the state.\(^{19}\) Justice as the goal of law enforcement has various meanings, so it has various definitions.

Ulpianus said that justice is a constant and continuous will to give everyone what is due for him (*justia est contants et perpetua voluntas ius suum cuique tribuendi*).\(^{20}\)


\(^{16}\)Zainal Abidin and Andi Hamzah, *Introduction to Indonesian Criminal Law* (Yarsif Watampone, 2010).


Furthermore, Hans Kelsen defines justice: "*Justice is social happiness guaranteed by a social order*."\(^{21}\) According to John Rawls, a society is said to be good if it is based on two principles, namely *fairness* and *veil ignorance* which guarantees for all members, regardless of their beliefs and the values they hold. Law enforcement aims to tackle crimes that exist in society, there are at least two efforts that can be made, namely *preventive efforts* and *repressive efforts*, according to Philipus M. Hadjon in the realm of administrative law which, when described based on a pyramid scheme:\(^{22}\)

Apart from being an instrumental recht, administrative law also stipulates legal protection for the ruler's decision. When linked to the concept of *preventive* and *repressive legal action*, administrative law recognizes the opportunity for the people to file objections (*inspraak*) to the ruler's legal actions (*fraises Armisen/discretion*), before a decision is made in a definitive form. Let's look at its application in criminal law. It can be seen in the concepts of appeal, cassation and judicial review, which are a means for the defendant to file an objection before the decision *is inckracht*.\(^{23}\) Law enforcement substantively aims to provide justice, certainty, and benefit,\(^{24}\) whether such law enforcement has been proven to make law enforcement in Indonesia which was originally based on *retributive justice* into *Restorative Justice*, we can see from a survey that has been conducted by a group of respondents who were asked for their views. Regarding the face of law enforcement in Indonesia throughout 2022:\(^{25}\)

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\(^{21}\) Hans Kelsen, 1957, *What Justice?: Justice, Politicand law in the Mirror of Science*, University


Based on the survey that has been conducted, most people respond to the state of law enforcement with a "medium" value, and for public trust in institutions, especially the Attorney General's Office, it is 62.8%. Seeing this reality, law enforcers should prioritize justice that lives in society as contained in the values of Pancasila through Restorative Justice to understand the attitudes of beliefs, values, and expectations as well as people's thoughts on the applicable legal system.26

The development of the Prosecutor's Office in implementing law enforcement that prioritizes the values of Pancasila through Restorative Justice needs to be examined in advance juridically, philosophically, and sociologically, whether through the Prosecutor's Office, justice which initially only focuses on punishment, can become justice that prioritizes legal certainty and balance between perpetrators and victims.27 First, Juridically, the Prosecutor's Office in implementing Restorative Justice can override the prosecution of criminal cases and resolve them through non-litigation, based on the principle of opportunity (for the public interest) as regulated in Article 35 letter c of Law Number 16 of 2004 Jo. Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia. Currently, the Prosecutor's Office has attempted to resolve criminal cases by the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Prosecution Based on Restorative Justice (Perja) and then submitted in stages to the Head of the High Prosecutor's Office by considering the articles alleged to the Defendant.

Second, philosophically, the termination of prosecution by the Prosecutor's Office, which is the implementation of Restorative Justice, has a strong philosophical foundation. Prosecutors who are given the authority as dominus litis are also juxtaposed with the term quasi-judicial officer or quasi-judgment, with such authority it is not surprising that the Prosecutor is given the authority to be able to stop prosecution, both for technical reasons and for reasons of public interest. The restorative justice paradigm contains at least philosophical values, namely:28
1. Recovery of victims' losses and forgiveness of perpetrators;
2. Rebuild a harmonious relationship between the victim and the perpetrator, including the community;
3. Dispute resolution is fast, simple, and low cost; and
4. Benefiting the parties, be it perpetrators, victims, or the community (win-win solution).

The value of justice is contained in Pancasila: "Popularity led by wisdom in representative deliberation ". These values align with the values of justice that grow and develop in people's lives. Thus, it can be concluded that the application of the principles of Restorative Justice by the Prosecutor's Office through the settlement of cases outside the court has a strong philosophical foundation both from the Prosecutor's Office and from the side of Restorative Justice.

Third, sociologically, Restorative Justice is implemented by the Prosecutor's Office based on the cultural roots of the Indonesian people, which are still oriented to family values that put forward the principle of deliberation and consensus to resolve a problem. To follow the paradigm of modern criminal law but still based on the cultural values contained in Pancasila, the Prosecutor's Office initiated the formation of the "House of Restorative Justice ". According to the data we obtained, the Prosecutor's Office of the Republic of Indonesia has inaugurated 410 Restorative Justice houses spread across 33 areas of the High Prosecutor's Office in

Indonesia plays an important role in maintaining balance and order based on local wisdom. Strengthening the manifestation of the value of Pancasila justice for law enforcement needs to be concreted with real efforts. The perpetrators of law enforcement in the contemporary era must have a soul, as well as the perpetrators of implementing the values of Pancasila. It takes integrated law enforcement in a solid legal system guided by Pancasila as a whole, not partial, to realize the legal goals of legal certainty, justice, and expediency.

2. Justice-Based Law Enforcement Efforts Through Harmonized Restorative Justice Regulations

In accordance with the "Triangular Concept," as stated by Werner Menski, Indonesia needs to realize a responsive law by harmonizing state, social, and moral elements as well as religion. The characteristic of responsive law is to look for the implied values contained in regulations and policies. Law with such character is better known as the concept of *law as a tool of social engineering* from Roscoe Pound, or what in Moctar Kusumaatmadja's terminology is mentioned as a law that functions as a means to help change society. It is said that responsive law exists in a society that upholds the spirit of democracy, responsive law shows the characteristic that law exists not for the sake of the law itself, not for the benefit of legal practitioners, nor to make the government happy, but the law exists for the benefit of the people in society.

Looking for responsive law is one of the efforts as a reference for the sustainability of modern legal theory. As Jerome Frank puts forward his opinion on legal realism is to make law: "be more responsive to social needs." As the goal is to encourage the expansion of "fields that have legal ties and links" so that legal reasoning reaches knowledge in social contexts that have an influence on legal actions. Sociological jurisprudence also has the goal of providing the ability for each institution "to be more general and thorough in being intelligent in considering the social facts in which the law is processed and applied."

Responsive legal theory, when it is associated with the **triangular concept of legal pluralism**, is interpreted in three main types of legal approaches, namely the law created by the community, the law created by the state, and the law that arises through values and ethics, the three elements are plural. To face the era of globalization, of course, harmonization of regulations related to *Restorative Justice* needs to be enforced, currently it has been regulated regarding the application of Restorative Justice in several related regulations, but still, no synchronization has been found in terms of definition, scope, and types of criminal acts that can be carried out by restorative justice. We can see the comparison as follows:

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<td>Regulation of the State Police of the Republic of Indonesia Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice (PERPOL)</td>
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| Prosecutors' Regulation of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (PERJA) | 1. Regulate the principles that must be considered before carrying out restorative justice (article 4 paragraphs (1) and (2))  
2. Narcotics crimes cannot be restorative justice (article 5 paragraph (8) letter c. The guidelines are now changed in Perja Number 18 of 2021)  
3. Exceptions for criminal acts that carry a penalty of more than five years and a loss of more than 2.5 million  
4. Narcotics crimes cannot be restorative justice (article 5 paragraph (8) letter c. The guidelines are now changed in Perja Number 18 of 2021)  
5. Can be done for ordinary crimes, not just minor crimes  
6. Focusing on the process of stopping the case if there is already compensation |
| Decree of the Director General of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/2020 concerning the Implementation of Restorative Justice (SK BADILUM) | 1. Regulate the principles that must be considered before carrying out restorative justice (article 4, paragraphs 1 and 2)  
2. Not setting restorative justice for UUITE  
3. Narcotics can be in restorative justice stages  
4. Restorative justice can only be used for criminal acts light in nature (theft, embezzlement, fraud etc., in the Criminal Code)  
5. Combining various restorative justice programs such as penal mediation and child diversion. |

Restorative Justice is not a program or process, so it is impossible to regulate it in a special law, but its position as a value in law enforcement, Restorative Justice should be applied in one
view, the disharmony of the application of *restorative justice* in some of the regulations described above can be resolved by *sustainable* way through the consolidation of all regulations into one Government Regulation that regulates various types of application of *Restorative Justice* in law enforcement. In addition, it is necessary to reconstruct the values of Pancasila by incorporating three major aspects in the (design) roadmap of Restorative Justice in order to find similarities in perceptions, definitions, scope, and criminal acts that can be carried out by *Restorative Justice*, namely: 1). Implementation of *Restorative Justice* in the Criminal Code and Criminal Procedure Code 2). Alternative punishment for non-imprisonment and fulfillment of rights for Narcotics abusers 3). There are various provisions for the recovery mechanism for victims.\(^{34}\)

In addition to harmonization in government regulations, law enforcement through *Restorative Justice* can also be carried out through judges at the time of trial, found several decisions containing legal considerations regarding *Restorative Justice* in criminal cases this has reflected that law enforcement is not only focused on providing a deterrent effect but also consider other things in it, including the values of Pancasila that live in society. This decision can be seen in the case of Ade Kurniawan Number: 338/Pid.B/2021/PN.Bl, in this case, the Panel of Judges made a decision by giving the convict an opportunity so that during the probationary period, he could improve himself or the circumstances resulting from the crime, including giving accountability to the victim, then there is the Jurisdiction Decision Number: 7/Pid.C/2021/PN.Lbs, the Panel of Judges decided on a probationary sentence by agreeing to compensate for the losses caused by the crime as a special condition to pay attention to the needs of the victim the basic principle of Restorative justice is the existence of recovery for victims who have suffered as a result of crime by providing compensation to victims, peace, perpetrators, doing social work, or other agreements.

Based on the explanation above, it can be concluded that efforts to realize law enforcement in the contemporary era mean that law is an integrated system. Law as a means to help change society, democratic and egalitarian laws that provide protection for human rights, laws that guarantee the fulfillment of justice, both formal justice, and substantive justice. This is in accordance with Pancasila as the philosophical foundation and as the soul of the nation (volkgeist).\(^{35}\)

Therefore, a comprehensive approach is needed in law enforcement both from the normative, empirical, and values and moral (philosophical) aspects. If there are violations committed by law enforcement officers in the process of realizing justice, there need to be sanctions that have a deterrent effect. Law enforcement in the contemporary era should specifically regulate sanctions for law enforcers who do not have the "soul" of social justice, who are unable to realize and guarantee justice for all groups, do not pay attention to humanity and human rights, are undemocratic, do not transparent in the trial process, and discrimination applies. The value of Pancasila should be attached to law enforcers, not only the judge profession who decides cases with the direction of "For Justice Based on the One Godhead," but the role of prosecutors must also take part in law enforcement in Indonesia so that it becomes more just.

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C. Conclusion

The contemporary era is related to globalization which is a global process, the progress of science and technology that is growing rapidly, and the liberal ideology of the western world can have positive and negative impacts on all sectors, especially related to law enforcement in Indonesia so that a filtering process must be carried out to prevent, enforce The law must prioritize the implementation of the noble values of Pancasila balanced with the application of a philosophy of punishment based on the concept of just restorative justice so that it can frame various existing policies so that the results of the policy can create a sense of justice felt by the perpetrators, victims, the community and answer various problems in the judiciary and leads to the creation of a humanist prosecutor. Besides that, Pancasila values should be attached to law enforcers, especially the judge profession who decides cases with the direction of "For Justice Based on the One Godhead", but the role of the prosecutor is also important currents take part in law enforcement in Indonesia so that it becomes juster.

Based on this paper, a novelty was found regarding the regulation of the application of humanist restorative justice based on Pancasila, namely placing equal rights and nature among fellow human beings as legal subjects through existing laws and regulations so that it is necessary to harmonize through regulatory instruments that regulate the meaning, scope, and types of crimes committed in the category of application of restorative justice. Can be done with Restorative Justice can be done as a guideline for law enforcers to carry out Restorative Justice based on the values contained in Pancasila. In addition, the value of Pancasila justice itself also needs to be realized in order to create justice that is more effectively implemented by law enforcers in Indonesia.

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