

Culture-Based Law Enforcement to Create Justice and Legal Certainty of Indonesian Community

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Abstract

Rejection of decisions that are considered controversial is a form of incompetence in law enforcement based on culture. Justice and legal certainty are elements of value and the essence of law enforcement, although in its application there is often a tug of war between the two. However, as a law, the judge's decision ideally can provide justice, as well as guarantee legal certainty. So far, law enforcement is still far from values and law enforcement, so to restore public confidence in the law enforcement process, it is necessary to conduct research on forms of cultural-based law enforcement and the process of selecting these cultural values to be applied in the law enforcement process so that it can provide justice. and create legal certainty for the community. The type of research conducted is philosophical law research which aims to reveal idealistic legal truths by using a philosophical or ideological approach, by conceptualizing law as ideas, ideals, values, and morals. and then analyzed prescriptively and descriptively. The results show that culture-based law enforcement can provide justice and legal certainty if it is based on national cultural values that have crystallized in Pancasila, and the selection of these values must be carried out thoroughly on all cultural values in Pancasila, as a value system. This means that these five values must be reflected in every final result of the law enforcement process.

Keywords: culture; justice ; law enforcement; legal certainty, legal value.

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I. Introduction

The motto of *Bhinneka Tunggal Ika* shows that Indonesia is a country that respects culture. As a unitary state, Indonesia consists of several tribes, cultures and languages. Constitutionally, the recognition of national culture is regulated in Article 32 paragraph (1) of the 1945 Constitution. As a national asset, it needs to be explored and developed to give content and direction to culture-based national law. Culture is the embodiment of human mind activity in the form of an assessment of the natural surroundings which are always arranged in a pattern or configuration of values.

Law enforcement is the process of implementing the law or the process of maintaining the moral values contained in the law in a normal way or without any dispute or in the event of a violation of the law. Article 2 paragraph (2) of the Law on Judicial Power emphasizes that the state judiciary in implementing and enforcing law and justice must be based on Pancasila. This means that the process of law enforcement through the judiciary must strive to maintain the cultural values contained in Pancasila as the source of all sources of law.

Theoretically, Friedman¹ also includes elements of legal culture or culture as an important component in the law enforcement system, in addition to legal substance and legal structure. As law and justice enforcers, judges are obliged to explore, follow and understand the legal values and sense of justice that live in society as referred to in Article 5 paragraph (1) of the Law on Judicial Power. The same thing was once stated by Scholten,² that in essence the law already exists, it is just a matter of digging, seeking or finding it.

The reality of the community's rejection of the acquittal of the Rengat District Court, Indragiri Hulu Regency, Riau, which was held on Thursday, February 25, 2021 against Mak Gadi, who is suspected of being a

¹ Lawrence W, Friedmann, *The Legal System A Social Science Prespective*, (New York : Russel Sage Foundation, 1975).

² Paul Scholten, *Handleiding Tot De Beoefening van Het Nederlandsch Burgerlijke Recht Algemeen Deel*, (W.E. Jheenk Willink, Zwolle, N.V. Uitgevers Maatschappij, 1934).

drug dealer, is a form of incompetence in law enforcement based on culture because it is considered contrary to values, value of law and justice. In fact, since the process of arresting the defendant, it has attracted public attention because investigators managed to secure evidence in the form of 116.52 grams of crystal methamphetamine and 40.95 grams of gorilla tobacco. 6 month subsidiary. Likewise, the controversy over the decision of the panel of judges, which was held on Tuesday, June 15, 2021, which reduced the criminal sentence against Prosecutor Pinangki to 4 years in prison, after previously being sentenced to 10 years in prison by the Corruption Crime Court, which was felt to seriously injure the value of justice in the law enforcement process.

The inability of judges to provide a sense of justice and legal certainty in the law enforcement process raises questions for the public about the seriousness of law enforcement as an effort to create justice and order in society. The government's concrete steps in the form of a "state present" to help the community determine the direction of the life of the nation and state have not been able to realize the hopes of justice seekers. Law enforcement through the concept of back to basic, which means exploring and re-recognizing the nation's cultural identity, can be an alternative solution to create justice and legal certainty through the law enforcement process.

As a value system, culture in which the intent and purpose of human life is implied is an inseparable part of applicable law. In general, law is defined as a living guide on how humans should behave or behave in relation to other people so that their interests and the interests of others can be fulfilled. In relation to Ralph Linton's opinion that culture is a design for living that can provide a blueprint or blueprint for human behavior, the element of culture cannot be separated from the substance of the law itself.

A legal expert, Bernardus Maria Taverne once gave a scathing criticism of the law enforcement process that occurred by saying "*Geef me goede rechter, goede rechter commissarissen, goede officieren van justitie en goede politie ambtenaren, en ik zal met een slecht wetboek van strafprosesrecht het goede* (Give me good judges, prosecutors, police and lawyers, then even with bad laws, I can bring about justice). B.M Taverne's statement illustrates that the law enforcement process is not only determined by law but is strongly influenced and determined by humans. Judges are the spearhead of law enforcement and justice for the sake of the implementation of the State of Law of the Republic of Indonesia. so that it is very reasonable for Aristotle's opinion in von Schmid³ which said, "*if you want a living justice, then go to the judge.*"

It is hoped that culturally based law enforcement will be able to restore public confidence in the law enforcement process. Various applicable regulations have provided opportunities to develop legal values that apply in society as an effort to enforce culture-based law. Even based on Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the existence of cultural values that live and develop in society is recognized by the state as a constitutional right of the people. The state's recognition of the values that grow and develop in society is then implemented through the provisions of Article 5 paragraph (1) of the Law on Judicial Power, which obliges judges to always explore, follow, and understand legal values and a sense of justice that lives in society in adjudicate and decide cases brought against him.

By incorporating cultural elements in national law enforcement, it can increase the effectiveness of law enforcement in society because it is in accordance with cultural values that live in society so that the law can fulfill a sense of justice, truth and obedience to the community. Cultural development must be directed at providing cultural values and meaning to law enforcement while taking into account the common interest. *Pancasila* as the basis of law enforcement in Indonesia is a crystallization of the legal values and justice of the Indonesian nation, therefore in addition to providing justice and legal certainty through their decisions, judges can also function as lawmakers or are called law makers. Mertokusumo's opinion which states that the judge's decision contains two elements, namely, on the one hand, the decision is the resolution/solution of a concrete event and on the other hand, the decision is the determination of legal rules or regulations for the future.⁴

Law enforcement in the state of law (*rechtsstaat*), the Republic of Indonesia, must be directed at the implementation of legal order, namely rules based on legal awareness or based on views that live in society about how people should behave. The solution to restore public confidence in the law enforcement process which is considered far from the values of the community's legal culture, can be done by conducting research on forms of culture-based law enforcement and the process of selecting these cultural values as an effort to create justice and legal certainty in Indonesian society. .

³ J.J. von Schmid, *Ahli Pemikir Besar tentang Negara dan Hukum*, (Jakarta : Pustaka Sardjana, PT Pembangunan, 1962).

⁴ Sudikno Mertokusumo, *Penemuan Hukum Sebuah Pengantar*, (Yogyakarta : Liberty, 2007).

II. Research Methods

Research is an attempt to obtain answers to the problems posed.⁵ Based on the problems posed, the purpose of this research is to determine the form of law enforcement based on culture and the process of selecting these cultural values as an effort to provide justice and legal certainty in Indonesian society. The research conducted is normative legal research using a philosophical-ideological approach. Such an approach conceptualizes law as ideas, ideals, values, and morals so that it requires secondary data sourced from legal materials, both primary legal materials, secondary legal materials and tertiary legal materials. Data processing and analysis were carried out prescriptively and descriptively. The analysis was carried out prescriptively intended to provide arguments for the results of the study with the aim of providing answers to what should be according to law for the occurrence of legal facts or events, and descriptive analysis is an analysis by describing or explaining the subjects and objects of research that have been carried out.⁶

III. Analysis and Discussion

3.1. Forms of Culture-Based Law Enforcement

Law enforcement is defined as the process of implementing the law or maintaining the moral values contained in the law by expressing them into a reality either under normal circumstances or without any dispute or in the event of a violation of the law. Law enforcement is an action that must be carried out if there is a violation of the law that results in disrupted order so that there is an imbalance in society. By enforcing the law, the imbalance is restored. This is the main task of law, namely seeking a balance of order in society (*restitutio in integrum*) so that its goal is achieved, namely order in society. This is related to the stable and consistent nature of the legal system, not wanting any conflict within the legal system itself, so that if there is a conflict, then the system and within the legal system itself must be resolved immediately.

Constitutionally, law enforcement in Indonesia is aimed at upholding law and justice based on Pancasila and the Constitution of the Republic of Indonesia for the sake of the implementation of the State of Law of the Republic of Indonesia. The General Encyclopedia defines a state of law as a state that aims to maintain legal order, namely an order that is based on legal awareness or based on views that live in society about how people should behave.⁷

In the concept of the State of Law of the Republic of Indonesia, law enforcement is carried out by the judicial power which is an independent state power to administer justice. This means that the judicial power as the organizer of the judiciary is an important element in law enforcement for the creation of a constitutional state of the Republic of Indonesia. One of the characteristics of law enforcement in a state of law is the freedom of judges to hear and decide cases.

As a legal principle, the freedom of judges is not absolute and if it is related to the duties and functions of judges, then this limitation on the freedom of judges is intended so that judges in adjudicating and deciding cases remain based on the moral values and justice contained in Pancasila. The principle of freedom of judges will give judges the flexibility to make decisions that are in accordance with their own conscience based on God Almighty after going through legal considerations in the trial process.

Justice is a fundamental element for law enforcement, especially if it is associated with the opinion that the purpose of law is to create justice. The term court comes from the basic word fair which, in terminology, implies an attitude that is free from dishonesty and discrimination. Courts are often associated with the word judiciary, both of which have different meanings. Judiciary is defined as everything related to the task of judges in deciding cases, whether civil or criminal cases, to defend the law or ensure compliance with material law with decisions, while the court shows where the judge carries out his main duties.

Law is one of the means that can be used to realize justice and legal certainty, although in its application, there are often conflicts between the two, in accordance with the principle of *summum ius, summa iniuria*, which means that if the regulations have been regulated in such detail and must be implemented as it reads, then the justice contained in it will be increasingly pressed. Basically, law cannot be separated from the value of justice, because justice is seen as a constitutive element of law, so according to Huijbers,⁸ a law is said to be law, if it is fair. Legal certainty guarantees that the law must be carried out according to its sound, although on the one hand it will feel very disadvantaged but the law must be implemented, according to *lex dura set tamen scripta*, meaning that the law is cruel but that's how it says.

⁵ Elisabeth Nurhaini Butarbutar, *Metode Penelitian Hukum, Langkah-Langkah untuk Menemukan Kebenaran dalam Ilmu Hukum*, (Bandung : PT Rafika, 2018).

⁶ M. Fajar, & Achmad, Y., *Dualisme Penelitian Hukum Normatif dan Empiris*, (Yogyakarta : Pustaka Pelajar, 2015).

⁷ Kanisius, *Ensiklopedia Umum* Cetakan kedelapan, (Yogyakarta : Kanisius, 1999).

⁸ Theo, Huijbers, *Filsafat Hukum*, (Yogyakarta : Kanisius, 1990).

Pancasila is a national agreement and a noble agreement that must be used as a guide for the nation, the government in achieving a modern, just and prosperous Indonesian society.⁹ Pancasila as a form of crystallization of moral values and justice originating from the personality and outlook on life of the Indonesian nation, becomes the basis for judges in upholding law and justice as stipulated in Article 2 paragraph (2) of the Law on Judicial Power. Pancasila is a national agreement and a noble agreement that must be used as a guide for the nation, the government in achieving a modern, just and prosperous Indonesian society. State justice based on *Pancasila*, can be interpreted as law enforcement and justice based on the values contained in the five precepts, namely the value of the *One Godhead*, *just and civilized human values*, *the value of unity*, *the value of deliberation for consensus* and *the value of justice for the entire Indonesian nation to create order in society*.

In the process of law enforcement through the courts, there are two things that must be known by the judge, namely the certainty that the disputed event has occurred and the law, as stated by Paul Scholten¹⁰ "*hij weet, dat hij twee dingen noodig heeft: de kennis der feiten en van den regel ; een toepassing van den regel op de feiten geeft het antwoord.*" Certainty that the disputed event has occurred is known by the judge from the proceedings at the trial, namely the answer and answer process and the evidentiary process. As for the law, according to the *ius curia novit* principle, the judge is considered to know all the laws, because the judge is a law scholar. Concrete events that have been proven in the trial will be qualified by the judge as legal events. then apply the law.

The proceedings at the trial are regulated in procedural law which must be considered by the judge to obtain certainty that the disputed event has occurred. be considered by the judge to release the defendant Hj. Nurhasanah alias Mak Gadi at the Rengat District Court, because in the process of proving the judge judged that no evidence of narcotics was found, because what was used as evidence at trial belonged to his children and son-in-law who were also defendants and different files. Besides that. based on the statements of the witnesses plus other evidence in the form of a history of telephone conversations, none of which led to the defendant, that the defendant was selling narcotics, so from the facts of the trial, nothing proved that the defendant had abused narcotics. As one of the forms of freedom of judges is the freedom to judge whether the disputed event is proven or not based on the evidence presented to the trial.

In the Appeal Decision which reduces the criminal sentence of Prosecutor Pinangki to 4 years in prison, after previously being sentenced to 10 years in prison by the Corruption Court, it is also felt that it has greatly injured the value of justice in the law enforcement process. But basically in law enforcement, differences of opinion in adjudicating and deciding cases are also known. This happens because in addition to the constitutionally guaranteed freedom of judges, judges' decisions are also shaped by various judges' judgments and attitudes so as to produce an art, which is good and proper (*ars boni et aequi*), and as a good and proper art, judgment and the attitude of the judge can not be separated from the background of life and the environment. One of the considerations of the judges of the DKI Jakarta High Court in the appeal decision was because the defendant had pleaded guilty and regretted his actions as well as the status of a mother of a four-year-old child so that she deserved the opportunity to care for and give love to her child in his growing period. In this case, it seems that the judge prioritizes the value of justice over legal certainty in making a decision.

Achieving justice and legal certainty in law enforcement is the main task of judges. By having integrity and impeccable personality, being honest, fair, professional and experienced in the field of law, it is hoped that judges can give decisions based on legal values and justice for justice seekers (*justiciabeleen*). *Pancasila* as a value system containing moral and legal values is a unit that has a relationship with each other and has their respective functions in achieving the objectives of the law enforcement process. In law enforcement, these five value elements play a role both in the process and the results of the law enforcement process itself.

The value of God in Pancasila gives the meaning of an acknowledgment of the power of God Almighty, who is the source of truth in Indonesia. Humans are God's most noble creations who are given a sublime mind to live and reproduce to live side by side with other God's creations as human nature. The value of God is concretized through Article 2 paragraph (1) which stipulates that justice is carried out "*For Justice Based on Belief in the one and only God.*" This principle is the implementation of Article 29 of the 1945 Constitution of the Republic of Indonesia, which states that the state guarantees freedom of religion and worship according to the religion and belief of each citizen.

The value of God in Pancasila is applied to the law enforcement process by treating humans as God's creations that are noble and dignified and showing the attitude that law enforcers provide God's representatives to provide justice for violations of rights so that order is always created in society. Therefore, judges as law enforcers must have integrity and impeccable personality, be honest, fair, professional, and have experience in

⁹ The Secretariat General of the People's Consultative Assembly of the Republic of Indonesia, *The Four Pillars of National and State Life*, (Jakarta : MPR RI, 2014).

¹⁰ Paul Scholten, 1934, *Op. Cit.*

the legal field. By having integrity and impeccable personality, being honest, fair, professional and experienced in the field of law, it is hoped that judges can give decisions based on legal values and justice for justice seekers.

In law enforcement, the value of God is concreted through the principle of justice, which is carried out "*For Justice Based on Belief in the one and only God.*" The principle *Belief in the one and only God*, which requires making a decision head (grose deed) with the sound, "*For Justice based on Belief in the one and only God,*" so that the result of the law enforcement process through the decision given by the judge is a truth that comes from God. This means that the justice given by the judge in his decision is based on justice that comes from divine morals taught by recognized religious beliefs and must be accountable not only to the community but also before God Almighty.

The intended accountability is that the judge's decision must be able to create happiness and peace in society through an honest and professional game in the trial process. This results in the decision of the judge with the head "*For Justice based on Belief in the one and only God,*" giving the power of execution and binding power to the parties so that the decision applies as law or legal truth and justice in accordance with the principle of *res judicata pro veritate habetur* which means the decision judges should be regarded as something right

Just and civilized humanity values emphasize that all humans are cultured beings who have the values of justice and are virtuous. *Just and civilized humanity* human value is an awareness of an attitude that is based on equality for all human beings in accordance with the nature, nature and dignity of all human beings without exception. Therefore, humans must be treated according to norms and morals in general as God's noble creatures. It is not surprising that the symbol of the goddess of justice was made in the form of a woman carrying a weighing sword with her eyes closed. This symbol means that in determining the considerations should be carried out impartially and do not see who the person is.

Law enforcement based on humanity values is implemented with the principle of *equality before the law*, which views all humans as equal before the law so they must be treated equally. The demands must be equally based on the recognition of human nature which has the same degree and dignity, so that humans have the same rights and obligations. On the other hand, unequal treatment is based on the consideration that every human being in addition to having the same nature, also has differences between one another.

The principle of justice, also known as the principle of *to each his own*, is applied when a judge makes a decision. In the case of making a decision, the judge will give what is the right or law for the parties. This decision, which was handed down by the judge, was based on the arguments and evidence presented by the parties at the trial. To achieve justice, in the trial, the judge's decision must be based on an impartial attitude and give equal treatment to the parties. The element of justice provides a guarantee that in law those who are entitled can get their rights back in accordance with what is determined.

The unity of Indonesia value of Pancasila is defined as unity and unity formed by the existence of cultural, ideological, ethnic and religious diversity to form a state government that protects the entire Indonesian nation and all of Indonesia's bloodshed. The value of rapid development is born because of diversity and recognizes the enactment of legal values that develop in society. The application of the value of unity in the law enforcement process is realized through the application of *the rechtswergering* principle, namely the legal principle that requires judges to explore, follow and understand the legal values that live in society, which includes cultural elements as a sub-system in the law enforcement process. In line with what was stated by Peter de Cruz that factors of a nation's historical background, characteristics and ways of thinking, types of legal sources and ideology also influence the operation of the legal system.

The application of the value of unity which recognizes the application of the diversity of legal values in the process of law enforcement and justice, however, law enforcement is only carried out by state courts conducted by the Constitutional Court and the Supreme Court with four lower courts. Thus, the Republic of Indonesia only recognizes four judicial environments, namely General Courts, Religious Courts, Military Courts, and State Administrative Courts, and no longer recognizes courts conducted by non-state judicial bodies such as customary courts, autonomous courts, and other courts that not stipulated by law.

The legal value contained in the *Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives* is respect for the spirit of deliberation as an Indonesian personality to formulate a matter based on a common will so that a decision is reached based on unanimity of opinion or consensus. In enforcing the law, the value of deliberation for consensus is concreted in the principle of deliberation for consensus in making decisions contained in Article 11 paragraph (1) of the Law on Judicial Power. the decision will be taken based on the majority of votes provided that the different judges' opinions must be included in the decision.

The value of justice contained in the *Social justice for the whole of the people of Indonesia* can be interpreted as everyone who is a citizen of Indonesia, whether living in the territory of the Republic of Indonesia or Indonesian citizens residing abroad, must receive fair treatment in all areas of life, including the field of law, political, social, economic and cultural without discriminating against ethnicity, religion and culture.

The notion of justice is always associated with law, because law is an effective means of social control to prevent or take action against all forms of injustice that occur in society. In line with that, Gustav Radbruch quoted by Setiardja argues that the values of justice are manifested in human life through law, so that law only has meaning as law if it is the realization of justice. However, it is difficult to define the content of justice, as stated by Apeldorn that justice has a general principle called *ius suum cuique tribuere*, meaning that justice is not seen as equal to equality, because justice does not mean that everyone gets the same share, by because the law must be generalized but justice demands that each case must be weighed separately.

Law enforcement is based on Pancasila which is a value system that contains cultural and moral elements of all Indonesian people. This means that Pancasila is the basis of the state as well as the nation's view of life. Therefore, enforcing laws based on Pancasila culture is believed to be able to create justice and order in society. The rejection of several judges' decisions is basically related to the law enforcement system which is influenced by the legal culture of law enforcers which must always be based on morals, so that their decisions can be accepted as law in society. Understanding whether or not a decision can be accepted is not always interpreted purely and factually because judges are not mouthpieces of the law (*bouche de la loi*) nor are they the mouthpiece of society (*bouche de la societe*).

3.2. Selection of Cultural Values in the Law Enforcement Process

The national agreement to recognize *Pancasila* as a source of cultural and moral values becomes the philosophical basis for making the source of all sources of law in the process of law enforcement and justice in Indonesia. *Pancasila* is also referred to as the ideology of our country, along with its legal basis and operational basis, containing cultural values and concepts that have been selected, so that they can be accepted by all groups and ethnic groups in the Republic of Indonesia.

The relationship between law and the system of cultural values as a whole community attitude also determines how the law should apply in the community concerned. Culture can be described as a system of ordering human life in the form of norms, laws, all of which are guided by the cultural value system of society. A cultural value system consists of concepts that live in the minds of most people about things that are considered very valuable in life.

Pancasila-based law enforcement is the application of legal values crystallized in its five precepts. In line with the opinion that the law is the embodiment of the legal awareness of the community, so that all laws come from the customs and beliefs of the community.¹¹ This is because every culture contains social values and norms which are the driving factors for humans to behave and achieve certain satisfactions in everyday life. Value is often interpreted as a measure of a person's attitude related to good and bad conditions, or right and wrong towards an object.

The cultural and legal values contained in the *Pancasila* precepts are a measure of the attitude of the Indonesian people related to good and bad conditions, or correct in behavior patterns as well as being a blueprint for the way of life of citizens, and one way for society to can preserve its culture is the law. And as a system of cultural values serves as the highest guideline for human behavior, as well as being a blueprint for behavior through the way of life of citizens, and one way for people to preserve their culture is law.¹²

Culture-based law enforcement places *Pancasila* as the philosophical basis, meaning that judges' considerations in their decisions must describe the values of *Pancasila*, although the dominant one is the value of the One Godhead by giving the Head of Decision which reads "*For Justice Based on Belief in the one and only God.*" that justice given through a decision must take into account the view of life, awareness, and legal ideals which include the spiritual atmosphere and the philosophy of the Indonesian nation which originates from *Pancasila* and the Preamble to the 1945 Constitution.

Likewise, the formation of law in the form of legislation must be based on a philosophical, sociological and juridical basis for the birth of the regulation, *Pancasila* which consists of five basic values of the attitude of the Indonesian people which are explored and selected to become the ideology and philosophy of every action of every society, namely the values of for the acknowledgment of God Almighty, the value of humanity, the value of unity and integrity, the value of deliberation for consensus and social justice for the whole of the people of Indonesia.

Law enforcement in the legal state of the Republic of Indonesia is carried out by a state court that applies and enforces law and justice based on *Pancasila*, not a court of power, so judges must have the freedom to provide justice to justice seekers through their decisions. The principle of justice is the core of divine morality as well as the basic foundation of humanity in unity and integrity. Thus, social justice is imbued with the precepts of the One Godhead, just and civilized humanity, Indonesian unity, democracy led by wisdom in deliberation of representatives. indeed justice is the substance of values contained in the five precepts of

¹¹ Ronny Hanitiyo Soemitri, *Masalah-Masalah Sosiologi Hukum*, (Bandung: Sinar Baru, 1984).

¹² T.O. Ihromi, *Pokok-Pokok Antropologi Budaya*, (Jakarta: Gramedia, 1986).

Pancasila. This means that the realization of justice through the process of law enforcement is by practicing the precepts of *Pancasila*.

By carrying out its function for public order, the law enforcement process can recreate the balance of order in society due to violations of the law that can create chaos in society, becoming orderly again. In accordance with the legal duty to always strive for a balance of order in society (*restitution in integrum*), law enforcement can create legal certainty in society. In this regard, Radbruch¹³ argues that the law enforcement process must meet the elements of the *Idee des Recht* values, namely the value of legal certainty (*Rechtssicherheit*), the value of expediency (*Zweckmassigkeit*) and the value of justice (*Gerechtigkeit*) proportionally.

The value of justice and legal certainty in the law enforcement process must always exist so that it can provide benefits for justice seekers. Keeping in mind the function of law for public order, the community has an interest in the final result of the law enforcement process, which is to provide benefits to the community. Because people want a balance of order in society, so as to create social order.

The definition of law enforcement and culture-based justice is the process of implementing law based on *Pancasila* as a deposit of cultural values for all Indonesian people as stated in Article 2 paragraph (2) of the Law on Judicial Power, state courts apply and enforce law and justice based on *Pancasila*. The achievement of justice and legal certainty in every legal decision must contain the five elements of *Pancasila* moral values.

Understanding the application of law is often interpreted as the application of laws to disputed events through the trial process so that the function of law enforcement is often referred to as the mouthpiece of the law (*la bouche de la loi*). This view is based on the assumption that judges as law enforcers are prohibited from evaluating the law, because the process of forming the law has carefully observed the social reality first, so that the law is already a reflection of the law that applies in society. However, for this matter, Bagir Manan¹⁴ stated that law enforcers are always required to not only be the mouth of the law which only provides justice according to the law (*legal justice*), but also must provide justice according to developments in society (*social justice*). The statutory regulations are also general in nature, so they cannot be applied directly to specific and concrete events. As Sir Carleton¹⁵ pointed out that the law cannot be automatically applied to the event but must first be interpreted by the court. Therefore, law enforcement is required to interpret the law to meet the needs or sense of community justice.

The development of community dynamics, especially in the era of supersmart society (*Society 5.0*), judges are required to be able to solve problems through a system that integrates cyberspace and physical space. Because the most significant area that has the potential to be touched by the 5.0 community, is the emergence of confrontations between local cultures that can affect national identity, the state must be part of building a multi-cultural world, to adapt to the information technology revolution that can encourage law as an effort to enforce the law. related to cyber rules that apply in cyberspace.¹⁶

Thus the enforcement of *Pancasila*-based law and justice as a crystallization of national culture is defined as the application of the law, because the law was formed based on moral values that live in social reality as well as enforce the law by adapting the law to legal values. and a sense of justice that lives in society as stipulated in Article 5 paragraph (1) of the Law on Judicial Power. The process of law enforcement based on *Pancasila* must of course always be imbued with the values of the five precepts of *Pancasila* as a whole as a unit that cannot be separated from one value to another to create justice and legal certainty so that public order can be realized.

IV. Conclusions

After discussing the problem, conclusions can be drawn which are formulated that the form of culture-based law enforcement that can provide justice and legal certainty by judges is law enforcement that always prioritizes the national cultural values contained in *Pancasila* as a crystallization of legal and cultural values that grow and develop in Indonesian society. and the choice of national cultural values between efforts to create justice and legal certainty in Indonesian society must be carried out thoroughly between the values contained in *Pancasila*, because as a value system, the five values in *Pancasila* must always be present in every final result of

¹³ Gustav Radbruch, *Rechtsphilosophie*, (Stuttgart : K.F. Koehler, 1973).

¹⁴ Bagir Manan, 2004, *Hukum Positif Indonesia Satu Kajian Teoretis*, Cetakan Pertama, (Yogyakarta : FH UII Press, 2004).

¹⁵ Kemp, Allen Carleton, 1958, *Law in The Making*, Sixth Edition, (Oxford : The Clarendon Press, 1958).

¹⁶ Nabeel Mahdi Althabawi, "Society 5.0: A New Challenge to Legal Norms," *Sriwijaya Law Review* 6 no. 1 (2022) <https://doi.org/10.28946/slrev.Vol6.Iss1.1415.pp41-54>

the Pancasila. the law enforcement process, the values crystallized in *Pancasila* are an agreement on the choice of moral values as the personality of the entire Indonesian nation.

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