

Legal Philosophy in Constructing the Pancasila Legal System in Indonesia

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History: Received 12/03/2022 | Revised 17/03/2022 | Accepted 01/04/2022 | Published 30/04/2022

Abstract. This research is based on the philosophical conception of Pancasila as the basic norm of law formation. Therefore, it is necessary to reconstruct a legal system that is in accordance with the noble values of a nation. Good law is a law that applies well from society as a long-lasting noble value from the ancestors of the community. This study uses a qualitative description method through the study of literacy in books and other scientific notes. The data analysis technique uses narrative analysis techniques. This research can be guaranteed in accordance with the meaning of the rule of law based on Pancasila, the paradigm of the development of the Indonesian legal state based on Pancasila, requiring the Indonesian legal state which is built on the basic values of divinity, humanity, unity, populist, and social justice.

Keywords: *Phylosophy; System; Law; Pancasila*

Abstrak. Penelitian ini didasari oleh konsepsi filosofis Pancasila sebagai norma dasar pembentukan hukum. oleh sebab itu, diperlukan rekonstruksi sistem hukum yang sesuai nilai luhur sebuah bangsa. Hukum yang baik adalah hukum berlaku baik dari masyarakat sebagai nilai luhur yang bertahan lama dari leluhur masyarakat. Penelitian ini menggunakan metode deskripsi kualitatif melalui studi literasi buku dan catatan ilmiah lainnya. Teknik analisis data menggunakan teknik analisis naratif. Penelitian ini dapat disimpulkan sesuai dengan makna negara hukum berdasarkan Pancasila, Paradigma pembangunan negara hukum Indonesia yang berbasis Pancasila, mensyaratkan negara hukum Indonesia dibangun di atas nilai-nilai dasar ketuhanan, kemanusiaan, persatuan, kerakyatan, dan keadilan sosial.

Kata Kunci: *Filsafat; Sistem; Hukum; Pancasila*

INTRODUCTION

The conception of Philosophy of Law requires that a legal philosophical foundation of a country be very important as a reference for values and norms. The origin of these values and norms is realized through a society, a nation that always has a view of life, which is different from other nations in the world which is called local genius (society intelligence / creativity) (Suryatni, L. 2016). Thus, Pancasila must be placed as a legal foundation for the nation and state by trying to color the pattern of law in Indonesia through five foundations; the value of divinity, the value of humanity, the value of unity, the value of deliberation and consensus and the value of social justice (Fuad, F. 2016).

Pancasila as the philosophy of the state with the greatest gift given by Allah SWT and as a light-star for the Indonesian nation which is a guideline in fighting for the independence of the Indonesian state and becomes a unifying tool for the nation and state, as well as a way of life for everyday people. Pancasila was born on June 1, 1945 and was established on August 18, 1945 together with the 1945 Constitution. The sounds and words of Pancasila are based on Presidential Instruction No. 12 of 1968, namely One, the One Godhead. Two, just and civilized humanity. Three, the Indonesian Association. Fourth, Democracy led by wisdom in deliberation and representation. Five, Social justice for all Indonesian people.

To strengthen the legal system in Indonesia, of course, it must be constructed from the values contained in Pancasila as a rule that lives in the midst of Indonesian society. Pancasila contains law enforcement through the principle of the word fair contained in the second precept, just and civilized humanity. Besides that, it is also contained in the fifth principle, Social Justice for all Indonesian people. Honesty and sincerity are the crowns of law enforcement, while empathy, concern and dedication to realizing the value of justice are the spirit of law enforcement (Abra, E. H., & Wahanisa, R. 2020).

These human values contain meanings, namely basically humans as cultural beings, fair in nature such as fair in relation to oneself, fair to humans and others, to the nation and state, fair to the environment, fair to God Almighty (Floranta A, 2012). One example in terms of criminal law enforcement, the essence of implementing criminal law is that efforts to achieve social welfare must always be inspired and based on the basic values of the Pancasila philosophy as the Grundnorm/Staatsfundamentalnorm (basic norms of the state) of the Indonesian nation (Rasdi, 2020).

Pancasila is a state philosophy that was born from the collective ideology (shared ideals) of the entire Indonesian nation (Abdulgani, R 1990). Pancasila can withstand various shocks from the political turmoil that hit the country. Pancasila means tolerance,

whoever opposes Pancasila means opposing tolerance. The characteristics of law in Indonesia are the adoption of the social order of society which is reflected in the way of life of cultural values and social life in the heterogeneous and plural diversity of Indonesian society (Setiawan, Dian Alan, 2018). This rationale is then constructed in the Pancasila philosophical system. Pancasila is the soul of the entire Indonesian nation that can give life force to the Indonesian nation and guide it to pursue a much better inner and outer life.

Studying Pancasila from an ontology point of view means looking for the deepest reality (Sudarsono, 1994). Ontology is quite broad, so the discussion on ontology is only limited to discussing the essence, substance of reality and adding cosmology as an approach tool. Pancasila as a philosophical system is the reality of Pancasila which is considered an objective reality, in the sense that it is contained in Pancasila. Objective reality exists and lies from Pancasila itself, so that Pancasila is considered a philosophical system that is unique and different from other philosophical systems. Having values and character as a conception of the nation's materialist cause that comes from the identity of the Indonesian nation.

Pancasila is defined as the basic philosophy of the state as well as a philosophical view of the Indonesian nation. Thus, it is a moral imperative to be able to

consistently realize every aspect of social, national and state life as well as in the application of humanistic law based on religious, humanitarian, social values as well as the values of justice and legal certainty (Maroni, Sitepu S, and Ariani, Nenny Dwi, 2019). Thus, it can be seen that the Indonesian people in their state and social life are based on the values contained in Pancasila. The Indonesian nation is viewed from a philosophical point of view, namely before establishing the state as a nation that has a divinity and humanity. As a basic concept that humans as creatures created by God Almighty, all rights attached to them must be respected in accordance with human rights. This research focuses on the conception of legal philosophy based on the values of Pancasila: as a unified system and organic which cannot be separated from each of its precepts; not only divinity and humanity, but also lays down every precept as the main basis for legal construction in Indonesia. so that the focus of this study lies on the construction of the value of Pancasila as the main pillar in law enforcement in Indonesia.

RESEARCH METHODS

This research method uses a qualitative description approach, which is in the form of library research derived from books and other literature as the main object (Hadi, 1995). This study attempts to analyze the problem through the literature in the form of notes and

descriptive data contained in the text under study (Mantra, 2008). By doing qualitative research, it is necessary to do descriptive analysis. The analysis technique uses narrative analysis by providing clear, objective, systematic, analytical and critical descriptions and information in constructing the Pancasila legal system in Indonesia. The qualitative approach is based on the initial steps taken by collecting the required data, then classification and description are carried out. In choosing a research methodology, apart from considering previous methodologies in similar research, it will also be greatly influenced by resource constraints, namely the time and funds owned by the researcher (Fathur, W, 2004).

DISCUSSION

Perspective of the Indonesian Legal State Based on Pancasila

The term rule of law in Indonesia is often referred to as *rechtstaats* or the rule of law. The notion of *rechtstaats* basically rests on the legal system of Continental Europe, although in the 1945 Constitution the term rule of law is defined as *rechtstaats*, but from a normative point of view it must be distinguished from the notion of the rule of law in the Continental European legal system or the concept of the rule of law in the Anglo Saxon legal system. The concept of the rule of law in Indonesia must be in accordance with the values reflected in Pancasila. A complete understanding of the concept of a rule of law

based on Pancasila can be seen from the process and the background behind the birth of the formulation of the Preamble to the 1945 Constitution as a statement of the will to establish a state in the territory of Indonesia, as well as being the philosophical basis and goals of the state. Thus, it can be concluded that the rule of law based on Pancasila in addition to having similarities, also has differences with the concept of a rule of law developed in other countries (Zoelva, H 2010).

The legal state of Indonesia is defined as the state of Pancasila law which has a different birth background in the concept of a state of law known in the west, although the state of law as a genus of *begrip* is stated through the explanation of the 1945 Constitution inspired by the concept of a state of law known in Europe and if you read and understand what Soepomo imagined when writing the explanation of the 1945 Constitution refers to the concept of *rechtstaat*. The rule of law is understood as a western concept (Satjipto Rahardjo, 2006: 48). Inspired by the concept of the rule of law in the west, namely *rechtstaat*, the 1945 Constitution wants the elements of *rechtstaat* and the rule of law to be part of the principles of the Indonesian rule of law (Erwinsyahbana, T 2012).

The rule of law is not a type and character of the state that comes by chance. The realization of the rule of law must be fought for, because even though it is stipulated by state regulations, it must be recognized that

the absolute supremacy of law, material, normative and operative aspects, organizational formalities, and imperative aspects must be recognized. All of this does not guarantee the realization of a rule of law if there is no support from the spirit of the rule of law from the government as well as citizens and the people. The soul of the state is defined as the attitude, sense of responsibility, and strength of humans as citizens and in groups, which gives direction and discipline of thought and action to realize a state of law.

The elements of the rule of law in Indonesia are considered as values taken from the whole process of the birth of the Indonesian state, the philosophical basis and legal ideals of the Indonesian state. The preamble to the 1945 Constitution contains the formulation that Pancasila can be the highest source of law in the Indonesian legal state. The preamble to the 1945 Constitution is defined as the highest abstraction value contained in the preamble which is a guiding method for the preparation of articles of the 1945 Constitution so as not to deviate from the values that are the basis of the philosophy and ideals of the state.

The composition of Pancasila is hierarchical and has a pyramidal shape, when viewed at the core of its content, the sequences of the 5 precepts show a series of levels in and breadth of content. Each precept that is behind the other precepts is considered a specialization of the precepts in front of it, if each order of precepts is considered to have

such meaning, then among the 5 precepts in question there is a mutually binding relationship with one another, so that Pancasila is a unity. round one. In a hierarchical and pyramidal arrangement, God Almighty is the basis of humanity (humanity), Indonesian unity (nationality), democracy and social justice. On the other hand, there is one God who is human, united (national), populist and has social justice, and so on. As the basis of morality and the direction of the nation-state, Pancasila has a strong ontological, epistemological, and axiological basis. Each precept has a justification for historicity, rationality, and actuality, if studied, believed and practiced consistently, it is used as a support for the great achievement of national civilization (Latif, Y 2011).

The Indonesian state of law has the characteristics of Indonesia, because it has a state view of life, namely Pancasila. With the adoption of Pancasila as the main basis and source of law, the Indonesian State of Law can be referred to as the State of Pancasila Law. Although the explanation of the 1945 Constitution uses the term *rechtstaats*, the Indonesian state does not embrace the concept of *rechtstaats* nor does it constitute the concept of the rule of law, but is considered the concept of a Pancasila State Law which has the following characteristics: there is a close relationship between religion and the state; rests on God Almighty; freedom of religion in a positive sense; atheism is not allowed and

communism is prohibited; the principle of kinship and harmony.

Based on the principle that Pancasila is the source of all sources of state law, every rule of positive law that applies in Indonesia must reflect the noble and pure values contained in each of the Pancasila Precepts and of course be guided by the Divine Precepts (Darmodiharjo, D 2008). Thus, it can be said that if the philosophy of law makes an assessment of the law (whether the existing law has fulfilled the sense of justice, legal certainty, and expediency), for the Indonesian people, what is used as a measure, an assessment tool, or the touchstone is Pancasila as a source of all sources of law, which are identical to the main ideas in the Preamble to the 1945 Constitution.

The position of Pancasila in the Indonesian constitutional system is the basic norm for the formation of law. Pancasila is seen as a legal ideal is a guiding star. This position requires the formation of positive law, namely to obtain ideas in Pancasila, and can be used in testing positive law (Jimly, Asshiddiqie 2006). By making Pancasila as a fundamental norm, the formation of law, its application and implementation cannot be separated from the values of Pancasila.

The position of Pancasila in the Indonesian constitutional system which is the state's fundamental norm or the highest, of course, can be used as a benchmark / benchmark for the validity of a statutory regulation. This reflection of the noble values

of Pancasila in every legal instrument in force in Indonesia is the distinguishing element between the concept of a state of law Pancasila and the concept of a state of law (rechtstaats or the rule of law) which is generally known in other countries. Therefore, positive law must be harmonized with the values contained in the Pancasila precepts. Every rule of law in Indonesia certainly reflects the noble and pure values contained in each of the precepts of Pancasila.

Pancasila can be interpreted as a system of all things, where conceptually all the precepts contained in Pancasila are closely intertwined and cannot be separated as a unified whole. The First Precept is the soul of all the precepts which is the core of all the precepts. The First Precept reflects the deepest spiritual values, so substantially it is not easy to change (Otje, R Salman S, 2005). If seen in a round manner, namely by paying attention to the basic thoughts in the First, Third and Fifth Precepts, then balance is the main substance contained in it. Harmony in all of its precepts, namely harmony with the interests of society, individuals and the interests of the rulers who are guided by the Divine Precepts. Based on this theory, it can be said that justice in the perspective of Pancasila is justice in which there is a balance of individual interests, the interests of society and the state. Thus, national law must pay attention to the justice of all parties, including justice that balances and

harmonizes individual interests between general interests (public and state interests).

Paradigm of the Development of the State of Law in Indonesia

The Indonesian legal system cannot be separated from past experience of the transplantation of Dutch colonial law in making its economic exploitation more effective. It can be said that the strategy of reforming Indonesian law in the early post-colonial era took an evolutionary pattern, namely gradual renewal, not necessarily breaking the legal products of the Dutch colonial era. This evolutionary legal reform effort also does not touch the positivistic and liberalistic basis of the colonial legacy of legal paradigms.

In fact, the spirit to design a legal state with an Indonesian personality since the beginning of independence has been proclaimed. President Soekarno once called for the need to create revolutionary laws to replace all remaining colonial laws which until now according to their formal rules still have to be seen as applicable law (Juwana, H 2009: 4). It is unfortunate that the leadership of President Soekarno, which was later simplified into the old order government, until the end of his fall, was powerless to create a "legal revolution".

This government marked by politics as commander (political supremacy) had to face various challenges, ranging from a liberal

political life, ideological conflicts, to undermining the recolonization of the Dutch colonialists. Likewise, during the era of Suharto's new order leadership, the leadership with the development jargon of yes, no politics, by placing the economy as the commander (economic supremacy) only used the law as an instrument of power. The law appears with its repressive character, as a guardian and guardian of power. Law enforcement agencies (police, prosecutors, judiciary) are used to serve the appetite for power.

Likewise, the legal development agenda is running slowly and only to stimulate the need for power. The subordination of the law under the control of the interests of the new order government which made this government corrupt and authoritarian, so that Suharto's new order government followed in the footsteps of its predecessor, ending in the middle of the reign due to the 1998 reform movement by students and the people.

The conditions of law and its enforcement that existed in the reform era were also in a triangular condition, the old style of development that had its roots in the legal development style that was still used to legitimize the power or interests of groups, and which had been transmitted to the development approach in the political field, social and economic up to now. It is this context which presupposes that discussing the paradigmatic conception of the Indonesian

legal state which is to be built and developed cannot be separated from Pancasila as the ideology or way of life of the nation and state which is legally and constitutionally accepted and stipulated on August 18, 1945 as the philosophy and ideology of the state as contained in fourth paragraph of the Preamble to the 1945 Constitution. The following paradigmatic framework is described in the section below.

A state of law that believes in the one and only God.

The paradigm of the development of the Indonesian legal state based on Pancasila starts from the critical awareness that divine existence is the highest existence in the reality of existence. God is the source of all sources that make humans and all of nature, the existence of this God requires divine values or religious values.

The precepts of the One Supreme Godhead presuppose a holistic-relational relationship between humans, nature, and their God. The human anthropological crisis in the form of human alienation from each other and the ecological crisis in the form of an extreme decline in environmental functions experienced by modern humans today can be read as a phenomenon of the disconnection of humans from that religion. Critical awareness about the existence and divine values within the framework of the Pancasila legal state development paradigm presupposes that the

management of the rule of law must be accompanied by a moral commitment and noble character as implied by the first principle of Pancasila (Luthan, Salman 2012).

Belief in the Pancasila framework is like the concept of "civil religion" which can involve universal moral values of religions, but can clearly be distinguished from religion. These religious values are the main principles in law enforcement in Indonesia. This principle of God in One God also emphasizes that the socio-historical existence of religion in the formation of the Indonesian nation-state plays an important role. Religion is present as a revolutionary spirit against the colonialism regime. This is different from the experience experienced by European countries, where socio-historically the development of European countries shows a conflictual relationship between religion and the process of forming a nation state there..

A Just and Civilized Humane Rule of Law

The Pancasila-based Indonesian legal state development paradigm implies that the state of law was built to provide protection and respect for the existence of human dignity as human beings. In this paradigm, human arbitrariness is not justified against other human beings, either in the form of arbitrariness of the power apparatus against the people or the arbitrariness of the majority group against the minority.

According to the mindset of this value paradigm, the development of a legal system on the issue of solving problems with instruments of violence or taking the law into your own hands is not justified. The dynamics of problems in the social space of a society with a Pancasila state law must be resolved through humane and civilized problem solving means, namely through dialogue and fair law enforcement. Realizing a high sense of civility in a nation is the noble ideal of a country. At this level, the paradigm of the development of the Pancasila legal state puts its main attention. The function of the law that is expected today is to make efforts to move people to behave in accordance with new ways to achieve an aspired goal.

Justice is the key word in building the social order of the nation and state. Justice occurs in all parts of the world, Indonesia is no exception. The occurrence of social turmoil in Indonesia is thought to be caused by the lack of justice expected by the Indonesian people as a whole (Inge Dwisvimiar, 2011). Thus, justice actually contains universal moral values which are basic human rights and needs throughout the world.

The conception of the development paradigm of the rule of law assumes that the purpose of law enforcement is not merely to fulfill the ideal of legal certainty (*rechtzakerheid*) but also to pursue the ideal of justice. In other words, law enforcement in the Pancasila state development paradigm is not

solely for the sake of realizing formal or procedural justice but also material or substantial justice. The principle of just and civilized humanity contained in the Pancasila-based legal state development paradigm is an affirmation that in the conception of this legal state development paradigm it recognizes and respects the existence of universal humanism as was once uttered in the struggle of the French Revolution (1789) regarding the existence of free human beings (liberty), equal (equality), and brothers (fraternity), so that this principle also becomes the basic spirit for the attitude to totally reject the existence of colonialism, neocolonialism, feudalism, and neo-feudalism which are the cause of human slavery over humans.

More than that, the principle of universal humanism embodied in the paradigm of the development of a constitutional state based on Pancasila puts the humanitarian principles in the framework of not only worshipping human rights but also emphasizing their balance with human obligations, the balance between freedom (emancipation), and the distribution of obligations and responsibilities (Maroni, 2012: 91).

The rule of law based on the principle of national unity

The Pancasila-based legal state development paradigm departs from the contextual awareness that the sociological and geographical composition of Indonesian

society is built from a diverse geocultural background where each culture, both religious and ethnic, has a historical investment that cannot be ignored in the long process of becoming a common community called the Indonesian state.

This bond of unity does not occur immediately, but through a long historical and social process. The seeds of national consciousness emerged since 1908 and experienced an amazing crystallization on October 28, 1928 which was marked by the existence of the youth oath, a pledge by the youth of the archipelago to fuse their primordial ego into the national ego, namely being Indonesian, having an Indonesian homeland, and speaking Indonesian. That is, October 28, 1928 was an era of enlightenment (renaissance) for the Indonesian nation to move from a relationship between human inhabitants of the archipelago which is ethnically a nation full of communalism values to a relationship between humans in which the civic nation has a strong bond of unity.

Thus, the development of national law must not be contradictory and counterproductive to the value of national unity (integrity) both territorially and ideologically. In the Pancasila-based legal state development paradigm, there should be no discriminatory legal products that are only devoted to the sociological and/or territorial interests of certain communities and ignore the interests of other communities.

A State of Law Based on Popular Principles Led by Wisdom of Wisdom in Deliberation/Representation

The Pancasila-based legal state development paradigm presupposes the growth and development of a democratic legal state (democratische rechtstaat), which juxtaposes the principles of the rule of law (nomocracy) with the principles of popular sovereignty (democracy) itself in a harmonious and complementary manner. Because a state of law without a democratic government will turn into a fascist and repressive state, on the contrary a democratic government without a law will be trapped in the state's journey into anarchy ([Muntoha, 2009](#)). In this rule of law development paradigm, democratic values and institutions must be cared for and developed as vital elements in maintaining and developing the rule of law in Indonesia.

Democratic values are placed in the frame of mutual cooperation or deliberation, a value perspective that promotes equal communication and dialogue between citizens, so that legal products in the nuances of the Indonesian rule of law are deliberative consensus among the nation's stakeholders. At this level, the relationship of interests between various vital sectors in the state can be built in a good governance manner, both the market sector (private), government, and civil society can develop dynamically and emancipatory, not on the contrary loaded with hegemony and

the dominance of crippled interests from one sector. over other sectors.

Democracy is a common space for various elements of the nation in expressing and realizing all national political ideals which lead to the creation of common prosperity. A democratic rule of law in the Pancasila-based legal state development paradigm is not a democracy that matters "most votes" or *volunte generale* democracy which Rousseau assumes, where this assumption holds the potential for the dangers of communalism and majority totalitarianism (Gerung, R 2010). Wisdom of wisdom in the conception of the paradigm of the rule of law is the soul of democracy, so that democracy as a way of managing government power can control the sovereignty of the people so that it is not distorted into majoritarianism..

A State of Law with Social Justice for All Indonesian People

The Pancasila-based legal state development paradigm implies that the Indonesian legal state has a vision of a welfare state that does not merely pursue justice and the happiness of its citizens in a liberal and individualistic manner. In this way of thinking, the law is not merely present as a power to reconcile conflicts and maintain public order as is typically assumed in a classical (formal) legal state or is also termed a night watch state, where the state is only dedicated to

establishing the interests of the haves or the ruling. class.

This paradigm of the rule of law requires a high sense of caring from the state (government) to overcome the reality of the economic structure and social life of society which is unfair, unequal, and impoverished. The state through law must be present as a transforming force for society (a tool of social engineering) from unfair (exploitative) economic-social relations towards new social-economic relations that are just (prosperous). Even in this development paradigm, the state through legal means is awaited for its role as a force that empowers the people.

Based on this line of thinking, the state does not merely act as a neutral referee. On the other hand, the state is required to have a high level of responsibility in listening to and listening to the complaints of the poor and the losers in the dynamics of social and market competition both locally, nationally and globally, and in turn, becomes a force for restitution as a protector and empowerment of the poor and the losers. . Therefore, the Pancasila-based state law development paradigm is a paradigmatic vehicle for building and developing a responsive legal system. Covers the substance of responsive legal rules, responsive law enforcement agencies and actors, as well as responsive legal culture and perspective in order to be able to create values of justice in every political and legal decision.

CONCLUSION

In accordance with the meaning of a legal state based on Pancasila, the Indonesian nation has the nature of togetherness, kinship, and religious nature and it is in this sense that the Indonesian nation is basically said to be a nation that believes in the One Godhead. The word Belief in One God is contained in the Preamble to the 1945 Constitution, giving a distinctive character to the Indonesian state, namely not as a secular state that separates religion from the state, nor as a religious state, namely the state based on a particular religion. The formulation of the One Godhead which shows that the Indonesian state is neither a secular state nor a religious state. The Pancasila-based Indonesian legal state development paradigm requires that the Indonesian state of law be built on the basic values of divinity, humanity, unity, democracy, and social justice. Therefore, the paradigm of the development of the rule of law in Indonesia contains a value substance that is built to complement and qualify each other in accordance with these values.

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