

Formulating Legal Justice based on Pancasila Value

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Abstract: Pancasila has been accepted and established as the basis of the state as mention in the Preamble of the 1945 Constitution of the Republic of Indonesia is the personality and the view of life of the Nation. Realizing the importance of this value, it is necessary to cultivate the realization of the noble values contained therein by every Indonesian citizen, every state organizer and every state institution and social institution, both in central or local government. The effort to concretize is to formulate legal justice based on Pancasila values. The method used in this paper is doctrinal by using statute approach, analytical approach and conceptual approach. Based on the result, it is known that the formulation model of good legislation needs to be implemented with three stages covering the planning stage, at the time of formulation and enactment and stages after the enactment. In order to internalize the value of Pancasila as the national identity, it need to establish an institution which review and create concrete values of Pancasila in forming legislation.

1 INTRODUCTION

The national legal system that has been built since the establishment of the Indonesian State is based on Pancasila. (I. Istiningsih Hadiprayitno, 2010) Pancasila as the basis of the state has a central position in the Indonesian rule of law. According to Sudjito, Pancasila is the basis of the construction of the Indonesian legal concept which has been formed from a combination of three elements, namely society value, national law and state objectives. It means that Pancasila is the basis for the formation of national law which is used as an instrument to achieve the state's goals. (A. Wahyudi, et.al, 2009) This is in line with the opinion of Mahfud M.D who stated that in the context of legal politics, law is a tool that works and implement in certain legal systems in order to achieve the goals of the state or the goal of the Indonesian nation which is to form a just and prosperous society based on Pancasila. It means that the goals of the Indonesian people must be achieved by the state whose implementation is based on the Pancasila legal system. (M. Mahfud MD, 2006)

Pancasila as an Indonesian philosophy have been seen on the way of life and ideology which contains its own legal aspiration (*rechtside*). Pancasila values must be seen as a basic norm of state (*Grundnorm/Staatsfundamentalnorm*) which is the

source of all Indonesian legal sources. (Y. Latif, 2016)

In this recent era, the Democracy System of Pancasila have some challenges relating with the dynamic of social way of life in Indonesia. The main factor are to solve first, how do Pancasila values become the spirit in the design of the state bow system. This is important to ensure that the state's direction remains on the track towards the ideals of the establishment of the state; and Second, how Pancasila values can be actualized in the legislation.

Based on those condition, it is important to carry out scientific writing relating to the establishment of legal justice based on the value of Pancasila in the formulation of legislation. Thats why the following problems are first, what is the actualization of Pancasila in the formation of legal justice through the drafting of legislation and second, what kind efforts which have been made to harmonize the values of Pancasila in the formulation of legislation?

2 THEORY

In general, ideology is a set of action-oriented ideas or thoughts that organized into a regular system. In ideology, it contains three elements, namely (1) the existence of an interpretation or understanding of reality; (2) accommodate a set of moral values or

prescriptions; (3) held orientation of an action, ideology is a guideline of activities to realize the values contained in it. (Sastrapratedja, 1991).

Mubyarto defines that ideology is a number of doctrines, beliefs and symbols of society or a nation that become guidelines (or struggle) to achieve the goals of that society or nation. (Mubyarto, 1991)

Oesman and Alfian interpreted that ideology contains series of values (norms) or basic values system that are comprehensive and profound owned and held by a society or nation as an insight or view of their lives. Through this set of basic values system, they know the best way, morally or normatively to be right and fair, in behaving to preserve, maintain and build a life together with its various dimensions. (Oesman and Alfian, 1991)

From the opinions above, Pitoyo concludes that ideology is (1) ideas, ideals, and basic values that constitute a whole, round and basic value system; (2) is a reflection of the life view and life philosophy of a nation; (3) in the form of solid political beliefs as a result of a shared will; and (4) becomes a firm foundation and direction in achieving shared ideals. (Pitoyo, 2012)

Substantively, Pancasila is an ideology held by the State or the government and the people of Indonesia as a whole, not the property or monopoly of a person or any particular group. In this relation, Pancasila as a National Ideology is also a source of value for Indonesian law and order so as to create legal ideals for the Indonesian as a whole. Pancasila became the reference of political and state life in Indonesia.

Normatively, Indonesian identity is incarnated in a consensus that maintains the upholding of Indonesian constitutionalism into the five basic principles of Pancasila served as an ideological-philosophical foundation in achieving and realizing the four goals of the state. The five fundamental principles which stated as Pancasila are:

1. Belief in the One and Only God;
2. A just and civilized humanity;
3. A unified Indonesia;
4. Democracy, led by the wisdom of the representatives of the People; and
5. Social justice for all Indonesians.

Pancasila which is the nation's view of life as well as the foundation of nation that has been figured and found, and the values that live in Indonesian society, has placed Pancasila as an ideology that is the way of life to the state. The reason for Pancasila as Ideology is expressed by Koento Wibisono. According to him there are three aspects that have been fulfilled by Pancasila as an ideology, namely:

1. Reality, in the sense that the values contained in Pancasila reflect the growing and developing reality of society. Ideology must give the futuristic image that it come from reality in society itself.
2. Identity, in the sense that the level of idealism contained in Pancasila is able to cultivate motivation, passion to the support subjects so that what is contained in it, is not just utopi, without meaning, but at some point can actually be realized in the reality of life.
3. Flexibility, in the sense that Pancasila remains relevant and remains functional as a *deseingrund* and *leitsmotif* in the fact of life. 9 K. W. Siswimihardjo, 1999)

As a national ideology, Pancasila functions to mobilize the community in building the nation with efforts covering all areas of life. So that Pancasila embodies a principle of spirituality, life view, life guidance for the nation and state of Indonesia that must be maintained, developed and practiced in the life of the nation and state by all the elements that exist. Pancasila as a state ideology is the principle and orientation of living in state that is believed to be able to move the nation and realize the ideals of independence.

Basically the ideology of Pancasila is an open ideology that has a responsive nature to the problems and dynamics of life that occurs in the life of the people in the nation. In other words, Pancasila is the ideology that should not be primordial or exclusive, but must uphold the dignity of human beings for the all people's sake. With this assumption, Pancasila as a national ideology will express the universal value, which shows integral integrative insight and Pancasila as a modern ideology that is able to provide passion and high spirits.

Thus, the ideology of Pancasila is an ideology which is different from western ideology, ideology of Marxism/communism, as well as religious ideology. For Indonesian nation, the Pancasila ideology was born from the struggle of the colonized nation by foreign nations and became an independent nation. A state can be said to have an ideology when it has made a decision to alter its past and present facts according to what it wishes to be based on the values that live in the country.

Value is something precious; it has a quality and useful for human beings. Something has value means that it is valuable or useful to human life. The existence of these two values is in line with the assertion of Pancasila as an open ideology. The formulation of Pancasila as in the opening paragraph 4 of the 1945 Constitution of the Republic of

Indonesia is expressed as the basic value and its expression as instrumental value. The basic value has not changed and cannot be changed anymore. No matter how important the basic values contained in the opening of the 1945 Constitution of the Republic of Indonesia, its nature is not yet operational which needs to be suggested into instrumental value. Instrumental value must still refer to the basic values that it describes. The description clearly should not conflict with its basic values.

When the position of Pancasila is linked in the structure of legislation through *theorie von stufenbau der rechtsordnung*, then the order of norms according to the theory is:

- 1) The fundamental norm of the state (*staatsfundamentalnorm*);
- 2) Basic rules (*staatsgrundgesetz*);
- 3) Formal law (*formell gesetz*); and
- 4) Implementation of Regulation and autonomous regulation (*verordnung en autonome satzung*).

Based on Nawiasky's theory, A. Hamid S. Attamimi compares it to Kelsen's theory and applies it to the structure of the law in Indonesia. Attamimi shows the hierarchical structure of Indonesian legal system using Nawiasky theory. Based on the theory, the Indonesian legal system is as follows:

- 1) *Staatsfundamentalnorm*: Pancasila (Preamble to the the 1945 Constitution of the Republic of Indonesia);
- 2) *Staatsgrundgesetz*: the substance of the 1945 Constitution of the Republic of Indonesia, the MPR Decree, and the Convention;
- 3) *Formell gesetz*: Law; and
- 4) *Verordnung en Autonome Satzung*: hierarchically from the Government Regulation to the Decree of the Regent or Mayor.

Therefore, the national legal development guided by Pancasila will be appropriate with:

1. The first principle which is the acknowledgement to be a country believing in the one and only god instructs to all legal products to ensoul the religious principles.
2. The second principle is every law should in line with humanity which means the law formulated cannot ignore the humanities and against human rights.
3. The third principle is the legal development should be unity, which means keeping the pluralities and the unity in diversity.
4. The fourth principle is the law has to be democratic; and
5. The fifth principle is the law should bring the social justice and prosperity.

3 MATERIALS AND METHODS

This paper has the intention to synchronize the values with the application of Pancasila related to the formulation of legal justice in the preparation of legislation. Efforts to fulfill the value of Pancasila in legal justice will be analyzed and evaluated, which is then implemented as a measure of the harmonious value of Pancasila in the formulation of legislation. Base on those reason, this paper is based on doctrinal methods through a qualitative approach. In addition, a problem approach related to legal justice is based on the value of Pancasila through statute approach, philosophical approach and a conceptual approach. The data analysis uses qualitative normative with several interpretation models including grammatical and systematic interpretation.

4 RESULTS

From the time the proclamation of independence was declared on August 17, 1945, the journey of constitutional life of the Republic of Indonesia as a sovereign state is considered relatively "young" i.e., 73 years, compared to 242 years of that of the United States of America, whose independence was declared on July 4, 1776. Nevertheless, admittedly the idea and or concept of constitutional implementation has always accompanied the state administration. This condition create Indonesia become a modern state which uphold the law and humanity.

Article 1 paragraph (3) the 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a legal state. The existence of this formula means that the the 1945 Constitution of the Republic of Indonesia explicitly affirms that the state ideology adopted is to understand the rule of law. Article 1 paragraph (2) the 1945 Constitution of the Republic of Indonesia states that sovereignty is in the hands of the people and carried out according to the Constitution. This provision shows clearly that the the 1945 Constitution of the Republic of Indonesia also adheres to the notion of popular sovereignty or democracy. Based on these provisions it can be concluded that the state's aspiration to be realized is the State of the Republic of Indonesia as a democratic rule of law (*demokratische rechtsstaat*) and at the same time a democratic state based on law (constitutional democracy). (I Dewa Gede Palguna, 2008)

The country's interest can be realized if in the constitution or the Constitution, both explicit and implicit are actually incarnated in the practice of everyday life. What has been regulated in the

constitution or the Constitution is further elaborated in the legislation under it, in other words, the desire to realize the implementation of constitutional or constitutional provisions in the practice of daily life is very much dependent on the ability of lawmakers (and other implementing regulations) in capturing the spirit of the constitution or the Constitution. Therefore, the Law, as well as other implementing regulations, may not deviate or conflict with the constitution or the Constitution. Based on that thought, in every country that adheres to the rule of law, the principle or principle is derived which is then known as the principle or principle of constitutionality of the Act. Consequently, there must be a mechanism that can guarantee that the law made is not contradictory to the Constitution. This is what became the forerunner of the practice of statehood which is known as "testing the Law against the Constitution". ((I Dewa Gede Palguna, 2008)

One thing that must be considered in carrying out legal development is that the law must be understood and developed as a single system in which there are institutional elements, legal material elements, and legal cultural elements. (A. Ramli, 2008) National Law is a legal entity that is built to achieve state goals derived from the philosophy and constitution of the country. In both cases, the objectives, bases and ideals of the legal state of Indonesia are contained. (. (A. Ramli, 2008)

According to Mochtar Kusumaatmadja that law is a tool to maintain order in society. Given its legal nature, basically it is conservative meaning that the law is to maintain what is achieved. This function is needed in every society, including developing communities that must be maintained, protected and secured. The old-fashioned view of the law that emphasizes the maintenance function of order in a static sense, and emphasizes the conservative nature of the law, considers that law cannot implementing a meaningful role in the process of renewal. (M. Kusumaatmadja, 2006)

Furthermore, it was emphasized that the law was expected to function not only to guarantee the legal certainty but also as a "means of community renewal" or "means of development". Another assumption contained in the conception of law as a means of renewal is the law can be function as a tool (regulator) or means of development in directing human activities. Based on those condition, the development of Indonesian law is a legal development based on the Pancasila value. It means that in the overall principles, rules governing human life in society, also includes institutions.(T. Sudrajat, et.al, 2018) This overview in line with Sjachran Basah which states

that the expected legal function in addition to its classical function, can also function as a director in building to form a society that is to be achieved in accordance with the purpose of state life. (S. Basah, 1992)

The national legal development requires a clear Grand Design System and Legal politic as a comprehensive design, which serves as a guideline for all stakeholders, which includes all elements from the planning, legislation, dissemination and legal culture of the community. Grand Design System and National legal politic is a comprehensive guide line, which is the focal point and purpose of all stakeholders of legal development which includes the design of the legal development structure as a whole. (A. Ramli, 2008) Furthermore it was emphasized that grand design must begin with the basic thoughts, as follows:

1. Legal development must include: principles, norms, institutions, processes and their enforcement without ignoring legal culture;
2. In the context of legal harmonization, a more systematic, comprehensive and holistic legislative mechanism is needed;
3. Consistency in the hierarchy of regulations culminating in the constitution;
4. Dedication to national interests as a pillar for achieving legal objectives, namely the creation of justice and order in the framework of the welfare state;
5. Grand design is carried out by the legal sector.

Mochtar Kusumaatmadja's view of the function and role of law in national development, later known as the Legal Development Theory, is placed on a premise that is the core of the teachings or principles as follows:

1. All developing communities are always characterized by change and the law functions in order to ensure that changes occur in an orderly manner.
2. Both change and order are the initial goals of a developing society, so the law becomes a means (not a tool) that cannot be ignored in the development process.
3. The legal function in society is to maintain order through legal certainty and also the law (as a social rule) must be able to regulate (assist) the process of change in society.
4. A good law is a law that is in accordance with the living law in society, which is certainly appropriate or is a reflection
5. The implementation of the aforementioned legal functions can only be realized if the law is carried out by a power, but the power itself must

run within the limits of the rules specified in the law. (R. Atmasasmita, 2012)

The concept of Satjipto Rahardjo known as progressive law. It confirms that the law is an institution that aims to bring people to a just, prosperous life and stable. (S. Rahardjo, 2009) Satjipto Rahardjo's views on the characteristics and functions and role of law in development are divided into 2 (two) things, namely:

1. The law is always placed to find a basis for ratification of an action that adheres to procedural characteristics of the legal basis and basic rules.
2. Legal development is an instrumental nature that experiences exchanges with forces outside the law so that the law becomes a channel for carrying out political or legal decisions as a means of social engineering. (S. Rahardjo, 2009)

The theory of legal development have challenges in the normative perspective that must be rooted in its people, but at the same time the law must be empowered to change the attitudes and behavior of its people more than the changes in bureaucratic attitudes and behavior in the Indonesian government system. Progressive legal theory does not recognize the excess normative power of written law or law as a means to find solutions in people's lives because all written legal products are seen as always reflecting the interests of power rather than public justice. (S. Rahardjo, 2009)

Basicly, to forming Indonesian legislation there are two principles that must be considered, which are the principle of general law which specifically provides guidance for the formation of the contents of the legislation, and the principle of law which specifically provides guidance for create regulations into their form, for their method of formation, and for the process and procedure for their formation. (A. Hamid S. Attamimi, 1990) Furthermore, it was emphasized that the principles of the formation of Indonesian legislation that must follow guidelines and guidance in accordance with:

1. Indonesian law none other than Pancasila (the precepts in that matter act as the mind, which acts as a guidance star);
2. The fundamental norms of the state none other than Pancasila (the precepts in that matter apply as norms);
3. The fundamental norms of the state none other than Pancasila (the precept in that matter applies as norms);

4. The principles of the state are based on the law that places the law as a regulatory tool (*der Primat des Rechts*); and
5. The principles of government are based on a constitutional system that places laws as the basis and limits of the administration of government activities. (A. Hamid S. Attamimi, 1990)

According to Backy Krisnayuda, the position of Pancasila as the source of all sources of state of law can be transformed when it given space for the values of Pancasila in the formation of the law. The Pancasila values are translated into the postulate of the Pancasila transformation, as follows:

1. Every law must form the nation of the people who fear of God Almighty;
2. Every law must reflect the value of humanity and uphold human dignity;
3. Every law must create a sense of security and peace in the spirit of national unity;
4. Every law must provide space for representation of community members in the formation, implementation and testing of laws; and
5. Every law must prosper the community. (B. Krisnayuda, 2016)

As a national ideology, Pancasila serves to mobilize the community in building the nation with efforts that cover all areas of life. In this condition, Pancasila embodies a principle of spirituality, a view of life, guidelines for the nation and state of Indonesia that must be nurtured, developed and practiced in the life of the nation and state by all elements. Pancasila as a state ideology is a principle and life orientation of a state that is believed to be able to move the nation to realize the ideals of independence.

Basically, the ideology of Pancasila is an open ideology that has responsiveness to solve problems and life dynamics that occur in the life of the nation and state. In other words, the Pancasila ideology cannot be primordial or exclusive, but must be uphold the human dignity for the common good. With this assumption, the Pancasila as a national ideology will display universal values, which show a comprehensive perspective and Pancasila insight as a modern ideology that is able to provide high passion and enthusiasm. Thus the ideology of Pancasila is a different ideology from western ideology, marxism/communism ideology, and religious ideology. For the Indonesian people the ideology of Pancasila was born and the struggle of the colonized people by foreign nations became an independent nation. A country is said to have an ideology when the country has made a decision to change the reality

of the past and its present according to what is desired based on the values that live in its country.

5 DISCUSSION

Value is something that is valuable, shows quality, and useful for humans. Something that is worth means something is valuable or useful for human life. The existence of these two kinds of values is in line with the assertion of Pancasila as an open ideology. The formulation of Pancasila as in the preamble of the fourth paragraph of the the 1945 Constitution of the Republic of Indonesia is stated as the basic value and its elaboration as instrumental value which does not change and cannot be changed again. However important the basic values listed in the opening of the the 1945 Constitution of the Republic of Indonesia, its nature is not yet operational which needs to be translated into instrumental values. The instrumental value must continue to refer to the basic values which are elaborated and the translation clearly cannot be contrary to its basic values. This is what underlies in any form of legislation must fulfill the value of justice as stated in Pancasila.

Consequently if there are legal products which contrary to the spirit and spirit of the nation's philosophical foundation as Pancasila, then based on the principle of hierarchy, the legal product does not have the legal force. As is known, there are 3 (three) consequences adopted by the hierarchy principle, namely:

1. A lower regulation may not be conflict with the laws and regulations in higher level;
2. Lower regulations can only be revoked on the authority of laws or regulations that are level or higher;
3. If the substance of lower regulations is contrary with the higher laws and regulations, the regulation cannot be enforced.

Based on condition above, Pancasila is the source of all sources of state law in the Indonesian legal system which gives direction in the substance of the the 1945 Constitution of the Republic of Indonesia. The interpretation of legal norms in the 1945 Constitution of the Republic of Indonesia as the highest law will be based on function as legal ideals that will become the basis and source of life views or philosophy of life of the nation that becomes a guideline in the formation of lower laws and other regulations. The law and the philosophy of life and the morality of the nation that are the source of all sources of state law will be a benchmark and a milestone for assessing legal policy or can be used as a paradigm that forms the basis of policy making in

the field of law and legislation as well as fields social, economic and political. (M. Siahaan, 2008) The interpretation of legal norms in the 1945 Constitution of the Republic of Indonesia as the highest law will be based on the national core in Pancasila with the function as the legal idea which is going to be the basic and source of life vision or the life philosophy of the nation that is the guide in formulating law and other lower regulation. The legal idea, life philosophy and nation morality which are the source of any state legal source will be the standard to value of legal policy. Otherwise, it can be used as the fundamental paradigm for policy making in law and regulation field or social, economic, and political field. ((M. Siahaan, 2008)

Pancasila which has been accepted and stipulated as the basis of the state as stated in the Preamble of the 1945 Constitution of the Republic of Indonesia is the personality and life view of the Nation that has been tested for its truth and efficacy, so that none force can separate Pancasila from the life of the Indonesian people. Realizing that to preserve the efficacy of the Pancasila, it is necessary to work out real and continuous appreciation and practice of the noble values contained in it by every Indonesian citizen, every state organizer and every state institution and social institution, both at the center and in the area. With the appreciation and practice of Pancasila by Indonesian people, Pancasila will be realized in the lives of Indonesian people and nation.

The unanimous and unified Pancasila gives confidence to the people and nation of Indonesia that the happiness of life will be achieved if it is based on harmony and balance, both in human life as a person, in human relations with society, in human relations with nature, in the nation's relations with the nation other nations, in human relations with God, and in pursuing outer progress and spiritual happiness. With confidence in the truth of Pancasila, humans are placed in the nobility of their dignity as beings of God Almighty with the awareness to carry out their nature as personal beings and social beings.

In this reformation era, the formulation of legislation did not stated clear to refer to Pancasila. It can be caused by various factors that become obstacles in harmonizing and synchronizing Pancasila with the content of legislation. The efforts that can be made to harmonize the values of Pancasila in the formulation of legislation can be implement through 2 (two) stages, namely the initial stages of actualization and the phase of actualization. At the initial stage, actualization is carried out in the form of:

1. Creating standards to conclude Pancasila and reviewing legal products; and
2. Establish an institution which review and create concrete values of Pancasila in forming legislation.

The actualization phase is carried out in the form of:

1. Internalization the values of Pancasila as a philosophical foundation in the formation of legislation at the drafting of regulations; and
2. Conduct Executive Preview before the enactment of the legislation (especially for Local Regulations).

6 CONCLUSIONS

Strengthening the value of Pancasila in the formation of legal justice is based on philosophy, ethos, soul, and the spirit of Pancasila. The process of these precepts is increasingly meaningful when followed by the appearance of policies and concrete actions along with real action practices. The strengthening of Pancasila is not just a process of one precept from Pancasila, but it must always be done all together in a complete manner. The whole process of the Pancasila principles must also be grounded to jointly strengthen and complete inter-precepts, and in the plan to create cohesiveness of the Pancasila precepts. If the Pancasila process is only one precept, especially if the precepts are not in the framework of encouraging and animating the different precepts, the process of one of the precepts actually loses its meaning on the doctrine of Pancasila.

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