

Pancasila as a Paradigm of Legal Development in Indonesia

Shelawati Emilia^{1*}, Mutia Andini², Masduki Asbari³

^{1,2}Sekolah Tinggi Ilmu Ekonomi Insan Pembangunan

³STMIK Insan Pembangunan

*Corresponding author email: Shelawatiemilia895@gmail.com

Abstract - This paper aims to examine the urgency of Pancasila in the development of National Law. Therefore, why Pancasila should be a guide in every law formation in Indonesia. How the philosophical basis of Pancasila is used as a guide in the development of national law and what is the juridical basis. Pancasila is the ideology of the Indonesian nation, the crystallization of the noble values of the Indonesian nation originating from religious values and customary values which are believed to be true and become the basis and guidelines for the behavior of the Indonesian people in the life of the nation and state. Based on this, Pancasila becomes the philosophical basis for the development of national law because the law can be enforced and effective if the law is based on religious values, customary values, and state law. In addition, the basis of the Pancasila state is the source of all sources of law in Indonesia so it becomes a necessity for Pancasila as a philosophical foundation in the development of law in Indonesia. The legal basis for the use of Pancasila as a basic guideline in the development of national law is included in Law Number 10 of 2004 concerning the formation of laws and regulations which was later refined by Law Number 12 of 2011 concerning the formation of laws and regulations. Article 2 of Law Number 12 of 2011 explicitly states that Pancasila is the source of all legal sources. The contents of article 2 contain the understanding that the formation of law must not conflict with the values contained in the precepts of Pancasila.

Keywords: National Law Development, Pancasila, philosophical basis, juridical basis

I. INTRODUCTION

Sustainable legal development is a necessity that must be carried out by a nation in following the development of society and the development of crime because basically the development of crime always follows the development of society itself. According to Barda Nawawi Arief, legal development must always be adapted to the dynamics of life (Roeslan Saleh, 1984: 41). In this context, the study of legal reform is a generational study (Barda Nawawi Arief, 2009: 2).

In carrying out legal development, a guideline is needed so that legal development can support the achievement of national goals. The reform of the National Legal System that has been intended to be realized is the National Law System with Pancasila. According to Sudarto, it was explained that the Indonesian state in carrying out its legal politics was based on the basic philosophy of the State, namely Pancasila and the 1945 Constitution (Sudarto, 1983:20/ Moeljatno, 1985:14). Satjipto Rahardjo argued that the Pancasila philosophy, along with the objectives stated in the Preamble to the 1945 Constitution, became the framework of reference for the development of the new legal system (Satjipto Rahardjo, 2009:9). Pancasila contains religious, humanistic, and democratic values. According to Ismail Saleh, by using Pancasila as the basis for the development of the national legal system, in the Indonesian legal system, there should be no conflict of values between written law and unwritten law (Ismail Saleh, 1987:38). For this reason, in carrying out the renewal/development of the National Legal System, signs are included as stated in Law Number 17 of 2007 concerning the National Long-Term Development Plan (RPJPN) for 2005-2025, in Chapter IV.1.3 concerning Long-Term Development Directions. 2005-2025, and in the description of the missions of the two RPJPs.

In the description of the mission of the second RPJPN, among other things, it is stated that: The development of legal materials is directed at continuing the renewal of legal products to replace the colonial legacy legislation that reflects the social values and interests of the Indonesian people and can encourage the growth of creativity and community involvement which is very much needed for support the implementation of government administration and national development based on Pancasila and the 1945 Constitution, which includes legal planning, law formation, legal research, and development. Based on these provisions, it is a necessity that in legal development/renewal, Pancasila must be a source of values and a foundation in the framework of thinking. In this context, all Indonesian legal products must be based on the main ideas contained in Pancasila.

II. RESULT AND DISCUSSION

In the reform era, the people's calls and demands for legal reform became a must because the reform process that carried out realignment was impossible without making changes to the laws and regulations. A more concrete agenda that the reformists are most pressing for is reform in the field of law.

1. Pancasila as the philosophical foundation for the development of National Law

Pancasila in the life of the nation and state is the philosophy and ideology of the Indonesian nation and state. The values contained in Pancasila come from the Indonesian people themselves, namely the values of customs, culture, and religious values. Through the BPUPKI and PPKI sessions on August 18, 1945, Pancasila was ratified as the basis of the state philosophy (Philosophische Grondslag) of the Republic of Indonesia. Based on the position of Pancasila, Pancasila is a basic value and norm to regulate the state government/state organizers. Therefore, all state implementation and administration, especially state laws and regulations, are described and derived from the values of Pancasila (M.Ali Mansyur, 2005:3-4). According to M.Ali Masyur (2005:6), that Pancasila as the basis of the state is a national legal philosophy that should have an imperative nature, namely Pancasila as the basis and direction for the development of national legal philosophy and as a reference in the preparation, guidance, and development of a consistent and relevant legal philosophy. with the values of Pancasila itself (M.Ali Mansyur, 2005:66). From several explanations about the position of Pancasila, it shows that as the basis of the state philosophy, Pancasila is the source of all sources of law for the Indonesian nation.

In carrying out the development of national law, it is necessary to use several approaches, including a policy approach, a religious approach, and a values approach. Concerning a value-oriented approach, the reconstruction of Indonesian criminal law must be based on the basic ideas of Pancasila as the basic values of living and being a nation for the Indonesian people (Barda Nawawi Arief, 2005:4). Put forward by Sudarto (1972: 72). the formation of the National Criminal Code (a form of national law development) must be based on Pancasila. B. Arief Sidharta (2007:149) argues that Pancasila is the basis of philosophy and the norm of criticism of the Indonesian legal system, therefore in carrying out the development of Indonesian law -in the context of carrying out the life of the nation and state - must be imbued with Pancasila. Furthermore, Barda Nawawi Arief said that reform of the national criminal law should be motivated and based on the basic ideas of Pancasila.

The existence of Pancasila – the preamble of Pancasila – is clearly and unequivocally established as the basis of the State as stated in the Preamble of the 1945 Constitution, paragraph IV. It is stated in the paragraph that the Republic of Indonesia was formed based on the principles of Pancasila. It is also stated that the precepts of Pancasila are a means or a tool to achieve national goals. The sentence in paragraph IV has a very deep and broad meaning for the Indonesian people in the life of the nation and state. As stated by B. Arief Sidharta (2005: 145) that with the placement of Pancasila in the Preamble to the 1945 Constitution, Pancasila became the philosophical foundation that underlies and animates state life in Indonesia.

When examined further, the sentence in paragraph IV of the Preamble to the 1945 Constitution implies that the Indonesian nation in carrying out the life of the nation and state must not conflict or violate the values contained in the Pancasila precepts. Borrowing the opinion of Kaelan (1996:43-44), that in paragraph IV of the opening of the 1945 Constitution means that Pancasila is the basis of state philosophy which contains the consequence that all areas of life in the administration of the state must be based on the values contained in the Pancasila precepts.

In addition to Pancasila, Indonesia also adheres to the Trisakti principle in nation-building. The trisakti principle is used in carrying out development and legal reform related to economic, social, cultural, and new things that are present in Indonesia. Trisakti has values such as:

- 1) Sovereign in politics, meaning that Indonesia must have a role in the international world
- 2) Independent economy, meaning that Indonesia can design and develop patterns of economic cooperation with its industrialized countries with confidence and mutual benefit
- 3) Personality and culture, meaning that the Indonesian people must have good and dignified attitudes and moral development.

Pancasila in political development must increase human dignity by placing the highest power for the people, by the people, and for the people in the Indonesian political system following Pancasila as the idea of a democratic political system. For this reason, it is necessary to develop the concept of citizenship in the 4th Pancasila precepts on the moral basis of the Pancasila precepts. Then successively the Indonesian political system developed above moral divinity, humanity, proper political order, and moral behavior as well as the development of legal policy in Indonesia.

2. Juridical basis for using Pancasila as the basis for National Law Development

The use of Pancasila as the basis for the formation of legislation, juridically, can be seen in Law Number 10 of 2004 concerning the Establishment of Legislations which was later refined by Law Number 12 of 2011 concerning the Establishment of Legislations. In Article 2 of Law Number 12 of 2011 concerning the Establishment of Legislation, it is explicitly stated that Pancasila is the source of all sources of law. The sound of Article 2 implies that the formation of any legislation must not conflict with the values contained in the precepts of Pancasila.

The law is a tool to achieve goals, therefore it is necessary to form a law that can realize national goals. The national goals of the Indonesian people are stated in the preamble of the 1945 Constitution, namely to protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, educate the nation life, and participate in carrying out world order based on independence, eternal peace, and social justice. These national goals will only be beautiful words that have no meaning if there are no efforts and means to make them happen.

Concerning national goals which are the ideals of the entire Indonesian nation, the law used must be following the ideals and values of the Indonesian nation, because the law that can be enforced and effective is the law that is following the values of a nation. The law that is by the values and spirit of the Indonesian nation is a law based on the ideology of the Indonesian nation because ideology is the crystallization of the values of a nation that are believed to be true.

The ideology of the Indonesian nation is Pancasila, so making Pancasila a legal ideal is a necessity. Pancasila as the source of all sources of law has been established when Indonesia was newly independent, namely since the Pancasila precepts were included in the preamble of the 1945 Constitution as the basis of the state. Reforming criminal law based on the values of Pancasila is expected to achieve Pancasila justice, namely justice that is divinity, humane justice, democratic justice, nationalistic justice, and social justice. Pancasila justice which is embodied in the category of five kinds of justice is a form of real justice (substantive justice), not just formal justice (Barda Nawaawi Arief, 2011:30). This is based on the consideration that the existing law only gives birth to formal justice so it needs to be renewed so that the legal purpose of realizing real justice can be achieved.

As a state of law, Indonesia makes law the norm in the country, where these laws should be formed based on Pancasila because as a tool that functions to create order in society, the law must be formed based on the ideology of the nation that is the ideal -the ideals of the nation (Sudarto, 1972:88).

The legal obligation to be based on Pancasila as the nation's ideology is because the nation's ideology is the basis of the philosophy of the State (Kaelan, 2002:59). This shows that the law cannot simply be transformed from one country to another, because the law of a nation is a reflection of the values and morals of the nation concerned (Suteki, 2007:1). The law can be enforced if the law is following the values of the nation itself (Satjipto Rahardjo, 2008: 32). So an effective law is a law based on the values of the nation.

Likewise, in Law Number 10 of 2004 concerning the Establishment of Legislation, wherein Article 2 it is explicitly stated that Pancasila is the source of all sources of state law. It can be said that Article 2 is the juridical basis for the use of Pancasila as the ideal basis in the formation of legislation. This law was renewed by Law Number 12 of 2011 concerning the Establishment of Legislation. This new law still makes Pancasila the source of all sources of state law as stated in Article 2. In the explanation of Article 2 it is stated that by making Pancasila the source of all sources of law, there is an intention to place Pancasila as the basis and ideology of the state and at the same time the philosophical basis of the state so that any material content of laws and regulations must not conflict with the values contained in Pancasila. Based on the explanation of the law, shows that in Indonesia it is not allowed to have a statutory regulation that is contrary to the values contained in the Pancasila precepts. Starting from this, Law Number 10 of 2004 concerning the Establishment of Legislation which was later refined by Law Number 12 of 2011 concerning the Establishment of Legislation is the juridical basis for the mandatory use of Pancasila as a basic idea in legal development.

III. CONCLUSION

The development of national law is to reconstruct the law to suit the soul or personality of the Indonesian nation, as well as to follow the development of society and science and technology. Therefore, the development of national law should be based on the values that live in society, which are believed to be true and binding on the community, meaning that it becomes a guide in life. Pancasila values because the values of Pancasila are the crystallization of religious values and customary values that are believed to be true by the Indonesian people and become life guidelines.

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