



PANCASILA AS A NORM IN THE BASIS OF THE INDONESIAN LEGAL SYSTEM

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ABSTRACT

Pancasila is the foundation of the Indonesian state and is the highest source of law in the Indonesian legal system. As an ideological foundation, Pancasila is a guideline in the formation and implementation of laws and regulations. This is reflected in the 1945 Constitution, which emphasizes that every regulation must be in accordance with the values of Pancasila. The values in Pancasila includes Divinity, Humanity, Unity, Democracy, and Social Justice. The five principles are a guide in realizing fair laws and creating social order. In legal regulations, all policies and rules made by the government or other state institutions must be based on the values of Pancasila. If there are regulations that conflict, then the regulations are considered invalid and can be revoked. Thus, Pancasila is not only the moral and ethical foundation of the nation, but also has a legal position as the highest guideline that covers all legal regulations in Indonesia. Pancasila is also referred to as the source of all sources of law, why? because it has received legal legitimacy through MPR Decree Number XX/MPRS/1966 concerning the DPR- GR Memorandum Concerning the Source of Legal Order of the Republic of Indonesia and the Sequence of Legislation of the Republic of Indonesia. After the reformation, the existence of Pancasila was reaffirmed in Law Number 10 of 2004 which was then replaced by Law Number 12 of 2011 concerning Legislation. Pancasila as the source of all sources of law gives meaning that the national legal system must be based on Pancasila.

Keywords: Pancasila Foundation, Pancasila Values, Source of Law

1. INTRODUCTION

Pancasila is the foundation of the Indonesian state which is established as the main guideline in national and state life. As a philosophical, ideological, and moral foundation for the Indonesian nation, Pancasila also acts as the highest source of law in the national legal system (Rambe & Sihombing, 2024). The position of Pancasila as the highest source of law shows that every form of legislation, public policy, and state practice must be based on the values contained in Pancasila.

Since independence, Pancasila has been recognized as the core of all principles and ideals of the nation. Its position is emphasized in the Preamble to the 1945 Constitution (UUD) which states that Pancasila is the foundation of the state which is the main guideline for all Indonesian people. The values of Pancasila, namely Divinity, Humanity, Unity, Democracy, and Social Justice, are not only the ideology and ideals of the nation, but also as a source of law that must be followed in the preparation, implementation, and evaluation of legislation.

As the highest source of law, Pancasila contains principles that must be used as the basis for all legal products in Indonesia (Rambe et al., 2024). This means that every regulation, from the constitution to regional regulations, must be in line with Pancasila. If there are regulations that conflict with Pancasila, the regulations are considered invalid and can be revoked or not applied. The role of Pancasila as the highest source of law is proof that law in Indonesia not only prioritizes order, but also prioritizes moral values that reflect the personality of the nation.

Therefore, Pancasila not only functions as a symbol of national identity, but also as the highest guideline in organizing the state. Based on Pancasila, law in Indonesia is expected to be able to create social justice, maintain social harmony, and strengthen national unity. After Pancasila was constitutionally established on August 18 by the PPKI as the basis of the state, Pancasila had an important position in the order of life of the Indonesian nation. The importance of the position of Pancasila then gave awareness to the Indonesian nation to make it an absolute reference for the order of life both in socializing society, politics, religion, and law. In the legal order or in law, the position of Pancasila is emphasized as a source of legal order or what is known as the source of all sources of law through MPR Decree Number XX/MPRS/1966 in conjunction with MPR Decree Number V/MPR/1973 in conjunction with MPR Decree Number IX/MPR/1978. Therefore, Pancasila is the main source in the legal order so that even though there are so many sources of law, the sources of law must be in accordance with Pancasila (Rambe et al., 2023).

2. RESEARCH METHODE

This research is a case study with a qualitative approach. Qualitative methods are also called post-positivistic because they are based on the philosophy of post-positivism, and as artistic methods because the research process is more artistic (less patterned), and are called interpretive methods because the research data is more concerned with the interpretation of data found in the field. The type of data used in this paper is secondary data. The secondary data comes from laws and regulations, previous research results, literature books, magazines, newspapers, journals, and others related to the problems faced. Meanwhile, data collection in this paper is carried out using the library study method and data search via the internet.

3. RESULT AND ANALYSIS

Pancasila as a Norm in the Basis of the Indonesian Legal System

Pancasila contains five ethical values, namely: Divinity, Humanity, Unity, Democracy, Justice (Sabila Pramesti S, 2022). Pancasila is also a basic norm in the Indonesian legal system which is described in laws and regulations. In the formation of legal policies, Pancasila is a guideline for promoting justice, inclusiveness, and respect for human dignity (Latif Maulana Akbar, 2023).

Efforts to realize Pancasila as a source of values are to make basic values a source for compiling legal norms in Indonesia. The operationalization of the basic values of Pancasila is to make Pancasila the basic norm for compiling legal norms in Indonesia. The Republic of Indonesia has national laws which are a unified legal system. The Indonesian legal system is sourced from and based on Pancasila as the basic norm of the state.

Pancasila as the basic norm in the Indonesian legal system also has a position as the source of all sources of law, namely:

- a. Indonesian legal ideology
- b. Collection of values that must be the basis of Indonesian law
- c. Principles that must be followed in choosing laws in Indonesia
- d. Statement of the spiritual values and desires of the Indonesian people (DJKN Article).

Pancasila has a position as *grundnorm* (basic norm) or *staatsfundamentálnorm* (fundamental state norm) in the level of legal norms in Indonesia. The values of Pancasila are further described in various existing laws and regulations. Legislation, provisions, decisions, government policies, development programs, and other regulations are essentially instrumental values as an elaboration of the basic values of Pancasila.

Another effort to realize Pancasila as a source of values is with the basic values of Pancasila as a source of forming ethical norms (moral norms) in the life of society, nation, and state. The values of Pancasila are moral values. Therefore, the values of Pancasila can also be realized into moral norms (ethics). These ethical norms can then be used as guidelines or references in attitudes and behavior in national and state life. Indonesia has now succeeded in formulating ethical norms as guidelines in attitudes and behavior. These ethical norms are based on Pancasila as the nation's cultural values. The formulation of these ethical norms is stated in the MPR Decree No. VI/MPR/2001 concerning the Ethics of National, State, and Community Life. MPR Decree No. VI/MPR/2001 concerning the ethics of National, State, and Community Life is an elaboration of the values of Pancasila

as guidelines in thinking, behaving, and behaving which are a reflection of religious and cultural values that are rooted in community life (Fransiska Novita Eleanora).

Pancasila Insight as a Source of Law in Indonesia

In terms of normative theory, the position of Pancasila is higher than the 1945 Constitution. However, the 1945 Constitution is the highest legal basis in the hierarchy of laws and regulations (Munawaroh Nafiatul, 2024). June 1 every year after independence is the birthday of Pancasila, this momentum began with President Soekarno reading a speech on June 1, 1945, at the session of the Investigating Committee for Preparatory Work for Indonesian Independence (BPUPKI) or Dokuritsu Junbi Cosakai. In an effort to formulate the basis of an independent Indonesian state, Soekarno said we need a basis that can be a static basis and one that can be a dynamic leitstar". The concept of leitstar or leitstern here means a guiding star, where in digging it must be as deep as possible according to the soul of the nation itself.

In that case, Bung Karno often stated that he was not the creator of Pancasila, but merely the excavator of Pancasila from the earth of the Indonesian homeland itself. The excavation of the "pearl of the soul" of this nation, he considered to reach the archeology of civilization, namely the pre-Hindu line, the Hindu line, the Islamic line, and the Imperialist line. Pancasila as a static basis and dynamic guiding star, has a wide range of conceptual frameworks which are described as:

- a. Philosophical basis
- b. World view
- c. Fundamental rules
- d. State ideology

In his speech on June 1, 1945, Soekarno mentioned the term philosophische grondslag 4 times plus 1 time using the term filsafatsche principle; while the term weltanschauung was mentioned 31 times. This fact suggests that Soekarno emphasized Pancasila more in an ideological sense. The philosophical basis or philosophische grondslag, means fundamentals, philosophy, deepest thoughts, soul, deepest desires on which the building of Indonesia Merdeka is built. The term of the establishment of the independent Indonesian building explains that Pancasila as a philosophical foundation has an equivalent as the basis of the state or the philosophical basis of the state. Worldview or weltanschauung, contains the meaning of a view that is contextual, existential and historical. Soekarno tended to associate the concept of weltanschauung as an ideology (worldview). The concept of weltanschauung is close to ideology and even religion, similar to the concept stated in the German constitution (Grundgezets) (Vani Wirawan, 2022).

Legal Policy in Indonesia Related to Pancasila

What is the relationship between Pancasila and law? Law Number 12 of 2011 concerning the Formation of Legislation emphasizes that Pancasila is the source of all sources of state law. Thus, all laws, including legislation, must be based on Pancasila (Nurul Pratiwi Hani, 2022).

Legal policies related to Pancasila

also refer to a series of policies made and implemented by the Indonesian government to ensure that the values and principles of Pancasila are the basis for the formation of the state legal system. Pancasila is the ideology of the Indonesian state which consists of five principles, namely Belief in the One Almighty God, Just and Civilized Humanity, Unity of Indonesia, Democracy Guided by the Wisdom of Deliberation/Representation, and Social Justice for All Indonesian People.

Pancasila is recognized as the basis of the state in the Indonesian constitution, namely the 1945 Constitution. Therefore, legal policies related to Pancasila aim to ensure that the values of Pancasila are reflected in all aspects of people's lives, including in the legal system. One of the legal policies related to Pancasila is the use of Pancasila as a guideline for legal interpretation. This means that in the process of making legal decisions, judges and government officials must refer to the values and principles. In this case, the interpretation of the constitution and laws can be carried out in line with the values of Pancasila.

In addition, legal policies can also include the formation of regulations that support the implementation of Pancasila values in everyday life. For example, the government can issue regulations that encourage tolerance between religious communities, national unity, and social justice. The purpose of this policy is to create a just, harmonious, and equitable society.

Furthermore, legal policies related to Pancasila can also involve legal education that is oriented towards values. Legal education based on Pancasila aims to produce legal professionals who have a good understanding of the values and principles of Pancasila and are able to apply them in legal practice.

Pancasila is also the basis for the formation of state institutions and the Indonesian political system. Legal policies can include regulations on the structure and functions of state institutions such as the legislative, executive, and judiciary to comply with the principles of Pancasila.

In the context of international relations, Indonesia's foreign policy can also reflect the values of Pancasila. The Indonesian government can promote peace, international cooperation, and respect for human rights as part of the implementation of Pancasila values at the global level (Akbar Maulana Latif, et al., 2023).

4. CONCLUSION

Pancasila in today's phenomenon can be seen only as the main reference or legal basis for the creation of all kinds of laws and regulations. However, the term Pancasila is no longer found as the source of all sources of law (legal order) in all dimensions of national life. This does not interfere with the existence of Pancasila as a basic norm that underlies all norms but certainly reduces the supremacy and binding power of Pancasila in the legal order.

In particular, the legal system and modern legal scholars have been greatly influenced by the school of thought of legal positivism, especially legalism, which only recognizes written regulations. Therefore, it would be a mistake not to explicitly explain Pancasila as the source of all sources of law.

Pancasila can also be used as the basic norm of the State, because it has a very important position in the Indonesian legal system. It also functions as a guideline that regulates all laws and regulations in Indonesia, and ensures that every regulation issued must be in line with the values

contained in Pancasila. The hierarchy of laws and regulations in Indonesia also shows that Pancasila as the highest source of law must be a reference in the creation and

implementation of legal regulations in Indonesia. The legal policies above related to Pancasila are also used as policies that prioritize the noble values of Pancasila in every step of the formulation, development, and implementation of law in Indonesia. Pancasila must be the main foundation for creating legal policies that are fair, civilized, and in accordance with the needs and aspirations of the nation, while still respecting diversity and maintaining national unity.

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