

CONSTRUCTION OF LEGAL PARADIGM OF PANCASILA: A CONCEPTUAL PERSPECTIVE

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ABSTRACT

This study discusses the Pancasila as legal paradigm based on the State of Law system. The Pancasila as the Basic Ideology of state and as a source root of ideology, role as the ultimate source of legal system and has been regarded as the foundation that formulated in Indonesia Constitution preamble. The Pancasila has been postulated as the principal source and the main basis of all foundations of law which has been implementing in the rule of laws of Indonesia; therefore, Pancasila as the grand theory was different to the Rechtstaat Concept in the Continental European Legal System and Rule of Law in the Anglo Saxon. This study formulate the Pancasila state of Law based on the general State of Law Theory, which has important values related to the Concept and Paradigm of the Pancasila based on the values of Ideology. The results of this study found that the Pancasila as legal paradigm formulated as a grand theory that is ultimate to the Indonesian people in Indonesia Legal System.

Keywords: Legal, Paradigm, Pancasila, Ideology and Constitution.

INTRODUCTION

The paradigm and structure of the Theory of Pancasila Rule of Law fundamentally exist in the formulation of the Pancasila respectively, which is the result of the agreement of the Founding Fathers of Indonesia, who took the principles of Pancasila from the spirit and culture of the Indonesian nation for hundreds of years, before Indonesia's independence on August 17, 1945 (Latief et al., 2018). The formulation of the Pancasila was officially carried out through two periods of the Indonesian Independence Preparatory Body (BPUPKI), Session-I Period: from May 29 to June 1, 1945. Session-II Period: from June 10 to June 16, 1945 (Martoredjo, 2016).

Restoration strategy of Indonesian law in the early post-colonial period applied the pattern of evolution gradually; the process of restoration done without detached the product of Dutch colonial law instantly. The Restoration Effort of This progress of law furthermore does not correspond the paradigmatic basis of colonial inheritance law the positivistic and liberalistic. In fact, the spirit to design a law state that shown an Indonesian personality since the beginning of independence has been affirmed (Lukito, 2012).

Paradigmatic formation of the Indonesia law to be constructed and established inseparable from Pancasila as an ideology or way of life (mode vivendi) nation and state that are juridical constitutional which previously accepted and established on August 18, 1945 as

philosophy, and state ideology as it exists in the fourth paragraph of the Preamble of the 1945 Constitution of Indonesia (Suharto, 2020).

The progress thinking of Pancasila was formed from meetings and interactions between various ideological streams in Indonesia. Based on this progress, Pancasila substantially functions as a basis of law in Indonesia, and consist of three crucial aspects; nationality, platform and the progress of thought. The Pancasila-based state context, consist of a consistent association concerning of the Pancasila Principles. The first and second principle of Pancasila roles as a moral state. The third point roles as a national principle, and the fourth role as state system while the fifth functions as state goal (Ichwan, 2012).

In the Legal Studies in Indonesia, recently the term Pancasila Rule of law was developed. However, in fact the theoretical framework regarding Pancasila as rule of law has not yet been widely agreed upon scholar due to each diverse perspective on this concept (Abdurrahman et al., 2018.). In the construction of the law is focused on constructing regulations rationally, coherently and systematically there for, the law product can be applied by jurists through law contrivances. In specific context, the systemic of law and logic significance the rule of law as orientation and described rationally according to recognized methods of dogmatic of judicial resolutions.

Therefore, the Theory is basically still the Idea of Law of the Indonesia, (Friedman, 2018).Consequently, the concept of the Pancasila Rule of Law in this study formulated into the Pancasila Rule of Law Theory. Furthermore, the Pancasila is idealized as the State Paradigm of Pancasila Law, which specifically applied in Indonesia (Prasetyo, 2016). So it is very important to study the idea of this law further in the theoretical perspective, and existing theories.

LITERATURE REVIEW

Rule of Law Theory

Historically, the background of the birth of the concept of the European Rule of Law both *Rechtsstaat* and the Rule of Law was different from the context of the birth of Pancasila which was related to the 1945 Constitution, as the "*Vivendi mode*", or the Birth Certificate of the Nation and Indonesia. The status of the 1945 Constitution, and Pancasila Meanwhile, the history of the birth of the *Rechtsstaat* concept was born due to the concept opposed the absolutism, which was revolutionary, and was based on the Continental European Legal System termed the Civil Law (Iskandar, 2016). Instead, The Rule of Law evolves evolutionarily, which relies on the Common Law Legal System. Nevertheless, the differences between the two in their development are not questioned, because they lead to the same goal, that is, the protection of human rights (Agiyanto, 2018).

The concept of the rule of law that applied in Indonesia which is often referred as the concept of the Pancasila Law, which is more spiritual and communal, this means that the concept of the rule of law in Indonesia was not only oriented to worldly questions, but also oriented transcendently and spiritually to the God (Mambaya, 2018). As written in the Pancasila texts contained in the fourth paragraph of the 1945 Constitution which is the Constitution of the Republic of Indonesia. While the idea of the rule of law adopted by Western countries recently, according to Tahir Azhari, the idea of a legal state derived from the results of Western

intellectual thought, which rests on liberal and secular philosophy. The Western Law State is only worldly oriented, and places the God aspect outside the jurisdiction or state. deeply in the study of the Principles of the rule of law seen in terms of Islamic law, it turns out to a familiarity between the concept of the Pancasila Rule of Law and the Concept of the rule of law in Islam (Azahary, 1992).

Furthermore, the view of the monarchy or the good rule of law features nine principles, which include; The principle of power as a mandate; Principles of Deliberation; Principles of Justice; Principle of equality; Principles of recognition and protection of human rights; a free principle of justice; The principle of peace; The principle of welfare (Azahary, 1992).

Legal Theory as a Nation Soul (Volkgeist)

The law since the beginning of history has inherited national characteristics. As with language, customs, and the constitution, it is unique to the people. Legal phenomena were not autonomous. The law does not arise by chance, but was born of the inner consciousness of the people. That is why the law developed according to the development of the people and finally disappeared when the people lost their nationality (Tanya, 2018).

In Indonesia perspective, the formulation of the Pancasila precepts is the result of the extraction of the Indonesian culture which is then extracted in the five precepts of Pancasila and applied as the legal, spiritual or philosophical basis of the Indonesian nation. According to Savigny, legal positivism in the sense that legislation needs to express the legal spirit of a nation. And the existence of the 1945 Constitution and the Pancasila as a declaration of the existence of the Indonesian Nation is acceptable (Savigny, 2019).

Moreover, the law is one of the factors in a nation's shared life, such as language, customs, morals, and state. Therefore the law is something that is supra-individual, a symptom of society. However, a society was born in history, developed in history and vanished in history. In fact, the law which includes the community participates in organic development, regardless of the people who have no law at all. There were actually no human-individuals. Every human being is part of a higher unity, namely family, nation, country. Moreover, every period is intertwined with the previous period so that culture and law can only come from the soul of the nation because every nation still holds its relationship with the past (Rai, 2010). the point of view that focuses on human relations with history and culture is that Von Savigny was included in philosophical law of the history (Kantorowicz, 1937).

Legal System Theory

The various social systems that exist in a society that contributed meaning and effect to the law respectively. Legal Substance, Legal Structure and Legal Culture which are referred to as components of the Legal System (Rumyantsev et al., 2019). This system basically works based on the input that enters the system. Moreover, the system processes the data or code that turns into the system which is analogous to a large system and then issues a result (Burazin, 2016).

Legal Structure is a judicial system of the number of judges, court jurisdiction, higher court position above a lower court, and people related to various types of courts. Legal Substance; is the form of rules and regulations about the institution role. Legal Culture; is an

element of social attitudes and values; which support the legal system as an external world (Turainin et al., 2019). The legal system is an accessible facility; it depends absolutely on external input. Without any litigation parties, there will be no trial. Without problems and the will to solve it, no one will be litigating (Friedman, 1971).

METHODOLOGY

This study formulate the Pancasila state of Law paradigm based on the general State of Law Theory which is supported by the Law Theory as a people's nation (volkgeist) (Savigny, 2019) and with the legal system theory of Lawrence Friedmann (Friedman, 1971). To yield an important value related to the Concept and Paradigm of the Pancasila State of Law in Indonesia based on the values in Pancasila Ideology.

RESULTS/FINDINGS

Construction of Pancasila Rule of Law Paradigm

The existence of the Pancasila constitutionally integrated from the Preamble of the 1945 Constitution, where in the fourth paragraph of the opening, Pancasila values are expressly stated. According to Notonagoro, the opening of the fourth one, which became an opening in a sense purely than the Constitution (1945) (Mintarsih & Sukamto, 2020). The contents further classified in fifth terms, where the fifth thing is about the basis of philosophy of the state with formulation:

“Based on: the Almighty God, civilized humanity, Indonesian unity and popularise led by wisdom of wisdom in consultation, as well as realizing a social justice for the entire citizen.”

However, the paradigm of the state of Indonesian law has not been introduced in this opening, but only values, principles, and principles of Pancasila (Siswoyo, 2013).

The Pancasila rule of law is constructed on basic values of divinity which Divine the value that the state recognizes and protects religious plurality in Indonesia. The state encourages the citizens to build a state and nation based on divine values. Humanity contains a legal understanding that every Indonesian citizen prioritizes civilized human principles within the scope of the value of justice. Civilized humanity implies that the formation of laws must show the character and legal characteristics of civilized humans. Unity divine The Indonesian citizens have the same position, rights and obligations, in exercising and prioritize the interests of the state and the interests of the community. The policies in representative deliberations aspire to the realization of a democratic society, so the mass movement that occurs must be carried out in democratic ways, and social justice contain all citizens have the same rights and that all are equal before the law. Therefore, the rule of law development contains substance of value developed in a complementary and qualifying manner in accordance with these values.

Indonesia as the State of Pancasila Law, which can be interpreted as the Paradigm of the Indonesian Law. Accordingly, the position of the Pancasila as the Concept of the Indonesia Law State is clear and cannot be interpreted outside the values of the Pancasila itself. Thus, article 2 of Law No. 12 of 2012 has a strong foundation of the constitution, as in Article 1 paragraph 3 of the 1945 Constitution, concerning the concept of an Indonesian legal state. With compositions

such as the empty space between the sounds of Article 2 of the Law. No. 12 of 2012 with the fourth paragraph of the Preamble to the 1945 Constitution, filled with changes to Article 1 Paragraph 3 of the 1945 Constitution, resulting in coherence between, Opening, Body, and Law related to the concept of Indonesian law.

In the concept of the Pancasila based State, the significance role of government is concern in rational decision making that focus on the principle of rationality-efficiency, the principle of rationality-reasonableness, the principle of rationality-rules and the principle of rationality-values, rather than mere organizations of power.

Furthermore, the birth concept of Pancasila based State, or Pancasila Rule of Law concept, as well as the term most often applied recently, the concept of the "*Pancasila Rule of Law*", which was developed by Indonesian jurists, inseparable from the influence of the concept of classics legal state, both from the Continental European Legal System and the Anglo Saxon Law System, due to the Pancasila as the root ideology of the nation and the state of Indonesia is rooted in the vision of life and philosophy of the Indonesian People. Pancasila is resulting from the principles of the culture and spiritual values of the Indonesian nation. Henceforth, Pancasila is the nation and the state ideology.

CONCLUSION

The relationship between theories that existed and the theoretical framework of the Pancasila Rule of Law, both from the point of view of the Rule of Law Theory, Volkgeist Theory, and Legal System Theory. Therefore, the Rule of Law Theory can be positioned as Grand Theory, which is the main topic of discussion on the Paradigm of the Pancasila Rule of Law; due to the Pancasila is the main object of study, especially concerning the Concept of Indonesian Law.

Furthermore, Pancasila, as the Base of State Spirituality, or State Philosophy as agreed upon constitutional experts in Indonesia, was examined in the context of local genus, or the original finding of the Indonesian people, as the essence of the soul of the Indonesian Nation. This is in accordance with the theory of Carl Frederic von Savigny. In this case, the Pancasila is the soul of Indonesian Nation Law, is referred to as "*volkgeist*" (Law is the Soul of the Nation). Therefore, this theory can be positioned as "*Middle Range Theory*", or a theory that explain the main theories about the rule of law in the Pancasila.

Moreover, the Legal System Theory, positioned as applied theory at the tangible level as a Paradigm. The Pancasila in the highest position in the system of values or norm systems in Indonesia will determine the applicable law. The theoretical construction of the Theory of Pancasila Rule of Law constructed systematically, from a general framework that is abstract and philosophical in the preliminary level, to a concrete level of Pancasila to forms a separate Legal System based on the values contained in Pancasila which is referred as the Pancasila Rule of Law Theory. Hence, it can be scientifically proof that the Pancasila Rule of Law exist and is a separate from legal philosophy with characteristics that are typical of the Indonesian Nation as rule of law.

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